

**AGENDA
BOARD OF SUPERVISORS
SONOMA COUNTY
575 ADMINISTRATION DRIVE, ROOM 102A
SANTA ROSA, CA 95403**

TUESDAY

MAY 8, 2018

8:30 A.M.

(The regular afternoon session commences at 1:30 p.m.)

Susan Gorin	First District	Sheryl Bratton	County Administrator
David Rabbitt	Second District	Bruce Goldstein	County Counsel
Shirlee Zane	Third District		
James Gore	Fourth District		
Lynda Hopkins	Fifth District		

This is a simultaneous meeting of the Board of Supervisors of Sonoma County, the Board of Directors of the Sonoma County Water Agency, the Board of Commissioners of the Community Development Commission, the Board of Directors of the Sonoma County Agricultural Preservation and Open Space District, the Sonoma County Public Finance Authority, and as the governing board of all special districts having business on the agenda to be heard this date. Each of the foregoing entities is a separate and distinct legal entity.

The Board welcomes you to attend its meetings which are regularly scheduled each Tuesday at 8:30 a.m. Your interest is encouraged and appreciated.

AGENDAS AND MATERIALS: Agendas and most supporting materials are available on the Board's website at <http://www.sonoma-county.org/board/>. Due to legal, copyright, privacy or policy considerations, not all materials are posted online. Materials that are not posted are available for public inspection between 8:00 a.m. and 5:00 p.m., Monday through Friday, at 575 Administration Drive, Room 100A, Santa Rosa, CA.

SUPPLEMENTAL MATERIALS: Materials related to an item on this agenda submitted to the Board after distribution of the agenda packet are available for public inspection in the Board of Supervisors office at 575 Administration Drive, Room 100A, Santa Rosa, CA, during normal business hours.

DISABLED ACCOMMODATION: If you have a disability which requires an accommodation, an alternative format, or requires another person to assist you while attending this meeting, please contact the Clerk of the Board at (707) 565-2241 or bos@sonoma-county.org as soon as possible to ensure arrangements for accommodation.

Public Transit Access to the County Administration Center:

Sonoma County Transit: Rt. 20, 30, 44, 48, 60, 62

Santa Rosa CityBus: Rt. 14

Golden Gate Transit: Rt. 80

For transit information call (707) 576-RIDE or 1-800-345-RIDE or visit or <http://www.sctransit.com/>

APPROVAL OF THE CONSENT CALENDAR

The Consent Calendar includes routine financial and administrative actions that are usually approved by a single majority vote. There will be no discussion on these items prior to voting on the motion unless Board Members request specific items be discussed and/or removed from the Consent Calendar. There will an opportunity for the public to comment on the consent calendar prior to it being voted upon.

PUBLIC COMMENT

Any member of the public may address the Board on a matter listed on the agenda. Commenters are requested to fill out a Speaker Card and to come forward to the podium when recognized by the Board Chair. Please state your name and limit your comments to the agenda item under discussion. Available time for comments is determined by the Board Chair based on agenda scheduling demands and total number of speakers.

8:30 A.M. CALL TO ORDER

PLEDGE OF ALLEGIANCE

I. APPROVAL OF THE AGENDA

(Items may be added or withdrawn from the agenda consistent with State law)

II. 8:30 A.M. - PUBLIC COMMENT ON MATTERS NOT LISTED ON THE AGENDA BUT WITHIN THE SUBJECT MATTER JURISDICTION OF THE BOARD AND ON BOARD MEMBER REPORTS

(Comments are restricted to matters within the Board's jurisdiction. The Board will hear public comments at this time for up to thirty minutes. Each person is usually granted time to speak at the discretion of the Chair. Any additional public comments will be heard at the conclusion of the meeting. While members of the public are welcome to address the Board, under the Brown Act, Board members may not deliberate or take action on items not on the agenda.)

III. CONSENT CALENDAR

HUMAN RESOURCES

AND

AGRICULTURAL PRESERVATION AND OPEN SPACE DISTRICT

SONOMA COUNTY WATER AGENCY

(Directors: Gorin, Rabbitt, Zane, Gore, Hopkins)

AND

COMMUNITY DEVELOPMENT COMMISSION

(Commissioners: Gorin, Rabbitt, Zane, Gore, Hopkins)

1. Recognition of Service Employees International Union as the exclusive representative of Park Ranger Assistants:
 - A) Adopt a Resolution recognizing Service Employees International Union, Local 1021 (SEIU) as the exclusive employee organization representing the job classification of Park Ranger Assistant.
 - B) Adopt a Concurrent Resolution amending Salary Resolution No. 95-0926, Salary Tables Scales, removing the classification of Park Ranger Assistant Extra Help, effective May 8, 2018.
 - C) Adopt a Concurrent Resolution amending the Memorandum of Understanding between the County and SEIU, Local 1021, Appendix A, SEIU Service & Technical Support Non-Supervisory Unit 0005, Salary Table Scales, to include the classification and salary for Park Ranger Assistant, effective May 8, 2018.

COUNTY ADMINISTRATOR/COUNTY COUNSEL
AND
AGRICULTURAL PRESERVATION AND OPEN SPACE DISTRICT
SONOMA COUNTY WATER AGENCY

(Directors: Gorin, Rabbitt, Zane, Gore, Hopkins)

2. Sonoma Development Center Transition Planning:
- A) Approve a minute order authorizing staff from various County departments and agencies to engage in the Sonoma Development Center transition planning and governance structure development.
 - B) Support legislation to implement recommended governance structure consistent with County interests.
- (First District)

COMMUNITY DEVELOPMENT COMMISSION

(Commissioners: Gorin, Rabbitt, Zane, Gore, Hopkins)

3. Approval of California's Land Reuse and Revitalization Act (CLRRA) Program Agreement for Roseland Village Environmental Remediation:
- A) Authorize the Executive Director of the Community Development Commission (Commission) to Execute A CLRRA Program Agreement (Agreement) with the North Coast Regional Water Quality Control Board (Water Board) on behalf of the Commission regarding the environmental remediation of the Roseland Village redevelopment site (Site), and
 - B) As part of the Site remediation, prepare and submit a Response Plan to the Water Board in order to achieve a "No Further Action" notice from the Water Board. Site remediation work will be carried out by Mid-Pen Housing Corp., the master developer operating under an Exclusive Right to Negotiate with the Commission
- (Fifth District)
4. Disposition and Development Agreement with Satellite Affordable Housing Associates for an Affordable Housing Project at 20269 Broadway, Sonoma, California.:
- Authorize the Executive Director of the Sonoma County Community Development Commission (Commission) to execute a Disposition and Development Agreement (DDA) with Satellite Affordable Housing Associates (SAHA) for construction of an affordable housing project at 20269 Broadway, Sonoma consisting of 48 apartments (the Development Project). (First District)

RUSSIAN RIVER COUNTY SANITATION DISTRICT

(Directors: Gorin, Rabbitt, Zane, Gore, Hopkins)

AND

SONOMA VALLEY SANITATION DISTRICT

(Directors: Gorin, Gore, Agrimonti)

5. Resolutions to Apply for Disaster Assistance Grants:
- A) Adopt a Resolution designating the Water Agency's General Manager, Assistant General Managers, and Chief Engineer/Director of Groundwater Management, on behalf of the Sonoma Valley County Sanitation District, to file applications and execute agreements for federal and/or state disaster financial assistance, effective for all open and future disasters for up to three (3) years from the date of approval.
 - B) Adopt a Resolution designating the Water Agency's General Manager, Assistant General Managers, and Chief Engineer/Director of Groundwater Management, on behalf of the Russian River County Sanitation District, to file applications and execute agreements for federal and/or state disaster financial assistance, effective for all open and future disasters for up to three (3) years from the date of approval.
- (First and Fifth District)

SONOMA COUNTY WATER AGENCY

(Directors: Gorin, Rabbitt, Zane, Gore, Hopkins)

AND

SONOMA VALLEY SANITATION DISTRICT

(Directors: Gorin, Gore, Agrimonti)

AND

GENERAL SERVICES

6. Funding of Green Business Program:
- A) Authorize Water Agency's General Manager and the Director of General Services to execute an agreement between the Sonoma County Water Agency and the County of Sonoma through its General Services department to provide funding for business-related water quality and conservation efforts for the amount of \$30,000 for one year, agreement terminates on June 30, 2019.
 - B) Authorize Water Agency's General Manager and the Director of General Services to execute an agreement between the Sonoma Valley County Sanitation District and the County of Sonoma through its General Services department to provide funding for business related water quality and conservation efforts for the amount of \$20,000 for one year, agreement terminates on June 30, 2019.

SONOMA COUNTY WATER AGENCY

(Directors: Gorin, Rabbitt, Zane, Gore, Hopkins)

7. Summary Vacation of Hydraulic Maintenance and Access Easement for Oak Creek Subdivision:
- A) Adopt a resolution determining that vacating any remaining interests in the hydraulic maintenance and access easement granted to the Sonoma County Water Agency in 1978, located in the Town of Windsor on Assessor's Parcel Numbers 163-190-023, 163-190-024, 163-190-025, 163-190-026, and 163-190-027 will not have a significant adverse effect on the environment; and
 - B) Authorize the summary vacation of a hydraulic maintenance and access easement that is not required for purposes of the Water Agency and has not been used for the purpose for which it was dedicated or acquired for five consecutive years immediately preceding the proposed vacation.
- (Fourth District)
8. Sonoma County Water Agency Procurement of two Vacuum Trucks:
Adopt a Resolution Authorizing Adjustments to the Board Adopted Budget for Fiscal Year 2017-2018 for the Sonoma County Water Agency General Fund and Equipment Fund, each in the Amount of \$448,733 for the procurement of two vacuum trucks for hauling wastewater. (4/5th Vote Required) (Fourth and Fifth District)

COUNTY ADMINISTRATOR

9. Fiscal Year 2017-18 Third Quarter Budget Adjustments:
Adopt a Concurrent Budget Resolution adjusting departmental budgets by approximately \$582,000 to carry out operations and delivery of services through the end of the current fiscal year, which are consistent with prior board actions. Of the total, \$10,000 is within the General Fund budgets, and approximately \$572,000 in Other Funds. (4/5th Vote Required)

COUNTY ADMINISTRATOR

AND

COMMUNITY DEVELOPMENT COMMISSION

(Commissioners: Gorin, Rabbitt, Zane, Gore, Hopkins)

10. Housing Recovery Ballot Measure:
- A) Accept the budget plan needed to develop and place a housing recovery ballot measure on the November 2018 ballot, and direct staff to draft ballot measure options for consideration by the Board of Supervisors no later than July 10, 2018.
 - B) Adopt Budgetary Resolution programming \$92,000 of available fund balance from the General Fund Dissolved Redevelopment Areas Residual Tax (also known as Reinvestment and Revitalization) to cover current year estimated costs to develop draft ballot measure options.
- (4/5th Vote Required)

COUNTY ADMINISTRATOR/ FIRE AND EMERGENCY SERVICES

11. Fire Services Advisory Council Appointments and Reimbursements:
 - A) Reappoint Leonard Thompson as a full member of the Fire Services Advisory Council, and reappoint Nick Silva and Nance Jones as alternate members.
 - B) Appoint Mark Heine, Mike Nicholls, and Jason Boaz as a full members of the Fire Services Advisory Council, and Tony Gossner and Justin McNulty as alternates.
 - C) Appoint full members to the Second At-Large seat and Alternate seat of the Fire Advisory Council as directed by the Fire Services Ad Hoc.
 - D) Authorize the Director of Fire and Emergency Services to execute agreements with Sonoma County fire agencies for October fires unreimbursed expenses incurred fighting the Sonoma Complex Fires, as approved by the Fire Advisory Council at the March 8, 2018, meeting. Total amount of all reimbursements not-to-exceed \$500,000.

12. Extend Proclamation of Local Emergency Due to Sonoma Complex Fire:
Adopt a Resolution Extending the Proclamation of Local Emergency Issued on October 9, 2017, for another 30 Days Due to Damage Arising from the Complex Fire. (4/5th Vote Required)

ECONOMIC DEVELOPMENT BOARD

13. Sonoma County Outdoor Recreation Economic Impact Report:
Accept The 2018 Sonoma County Outdoor Recreation Economic Impact Report.

FIRE AND EMERGENCY SERVICES

14. Hazardous Materials Equipment Purchase:
Adopt a Resolution authorizing budgetary adjustments to the FY 2017-18 Final Budget for the Fire and Emergency Services Department totaling \$50,000 to provide funding for the purchase of Self-Contained Breathing Apparatus cylinders for use by Hazardous Materials field staff during response to hazardous materials emergencies. (4/5th Vote Required)

15. Sonoma Raceway Fire Protection Services Agreement:
Approve and authorize the Chair to execute a four-year agreement for supplemental fire protection services with Sonoma Raceway for 2018 through 2021 large events. The contract is estimated annually at \$195,505 and is fully reimbursed by Sonoma Raceway. (First District)

GENERAL SERVICES/SHERIFF'S OFFICE

16. Sonoma Raceway Radio Communications Site:
 - A) Approve construction plans and specifications prepared by GHD, dated February 26, 2018, for public bid.
 - B) Approve Notice of Categorical Exemption prepared by Permit and Resource Management Department, Environmental Review Division.

GENERAL SERVICES/PROBATION

- 17. Lease Amendment for Probation Department at 2777 Cleveland Avenue:
Authorize the General Services Director to execute a lease amendment with 2777 Cleveland Ave., LLC (Landlord), in order to: 1) redefine the leased premises, consisting of 2,953 sq. ft. of office space, located at 2777 Cleveland Avenue, Santa Rosa and leased by the Probation Department Adult Investigations Unit; 2) provide for additional tenant improvements; and 3) specify rent. (2nd Action)
- 18. Main Adult Detention Facility Dayroom Camera Project - Request to Award Installation Contract:
Award a contract with Integrated Security Controls, Inc., in the amount of \$170,515 for procurement and installation of a digital video camera recording system within selected inmate housing dayrooms and recreation yards at the Main Adult Detention Facility.

HEALTH SERVICES

- 19. Emergency Medical Services - Support for Exclusive Operating Area Ambulance Services Extension:
Authorize the Chair to submit a letter expressing County support for a one-year extension request of the California Emergency Medical Services Authority for the Exclusive Operating Area Ambulance Services Agreement covering central Sonoma County and work with the area's Assembly members and State Senator to support this request.

HUMAN SERVICES/IN-HOME SUPPORT SERVICES

- 20. Agreement between In-Home Supportive Services (IHSS) Public Authority and Human Services Department:
Approve the Agreement with In-Home Supportive Services (IHSS) Public Authority to perform State mandated services for registry, referral, background screening, and training. Effective beginning on July 1, 2018 and ending on June 30, 2021.

HUMAN SERVICES

- 21. Area Agency on Aging FY 2018-19 Area Plan Update:
Approve the Area Agency on Aging FY 2016-20 Area Plan Update for FY 2018-19 and authorize the Chairperson of the Board of Supervisors to sign the Transmittal Letter to California Department of Aging, a condition to receive federal funding.

PERMIT AND RESOURCE MANAGEMENT DEPARTMENT

- 22. An Ordinance No. 3836R Permit and Permit Extensions to Sonoma County Water Agency; ROI18-0003:
Adopt a resolution issuing a roiling permit (Ordinance No. 3836R) and necessary permit extensions to Sonoma County Water Agency for in-channel work and Annual Stream Maintenance Activities. (4/5th Vote Required)

23. An Ordinance No. 3836R Permit and Permit Extensions to Russian River Recreation and Park District; ROI18-0002:
Adopt a resolution issuing a roiling permit (Ordinance No. 3836R) and necessary permit extensions to Russian River Recreation and Park District for the recreation dam installation, maintenance, and removal at Johnson’s and Vacation Beaches (Russian River). (4/5th Vote Required) (Fifth District)
24. Lot Line Adjustment, Jackson Family Investments III, LLC; LLA17-0015:
Adopt a Resolution approving a Lot Line Adjustment between two parcels subject to Conditions of Approval and a Land Conservation Act Contract for property located at 3225 Bloomfield Road, Twin Hills; APN 025-100-007. (Second District)
25. Climate Change Action Resolution:
Approve and adopt the Climate Change Action Resolution to support a county-wide framework for reducing greenhouse gas emissions and to pursue local actions that support the identified goals therein.
26. Zone Change to add the Vacation Rental Exclusion (X) Combining Zone to 32 parcels in Glen Ellen; File ZCE17-0008:
Adopt an Ordinance rezoning 32 parcels in Glen Ellen on Morningside Mountain Drive, Vigilante Road, and Oso Trail to add the Vacation Rental Exclusion (X) Combining Zone. APNs: Various; see attached list.

PROBATION

27. Public Safety Realignment Implementation Plan for Fiscal Year 2018-19:
Approve the Community Corrections Partnership’s recommended Public Safety Realignment Implementation Plan for Fiscal Year 2018-19. The Plan prioritizes public safety and supports rehabilitative services designed to reduce offenders’ future involvement in the criminal justice system.

REGIONAL PARKS

28. Highway 12 Bridge Mitigation Restoration Maintenance Cooperative Agreement:
Approve and authorize the Director of Regional Parks to execute reimbursement agreement and any necessary amendments with Caltrans for maintenance and monitoring of mitigation planting for the recent replacement of the Laguna de Santa Rosa bridge in the amount of \$402,500 with a term ending July 31, 2027. (Fifth District)

TRANSPORTATION AND PUBLIC WORKS

29. FY 2018-19 ADA Paratransit Services Agreement:
Approve and authorize Chair to execute an Agreement with Sonoma County Volunteer Center for Countywide Americans with Disabilities Act (ADA) Paratransit Services for the period of July 1, 2018 through June 30, 2019, in an amount not to exceed \$2,333,292.

30. Transit Services Agreement – Mendocino Transit Authority:
Approve and authorize Chair to execute agreement with Mendocino Transit Authority to provide transit services in the northern coastal area of Sonoma County for a not-to-exceed amount of \$172,200 for the period of July 1, 2018 through June 30, 2019.
31. Sonoma County Transit - Lifeline Transportation Program Funding
 - A) Adopt a resolution seeking Lifeline Transportation Program funding from the Metropolitan Transportation Commission (MTC) to continue providing weekday commute feeder bus service and assist with the purchase of one compressed natural gas (CNG)-powered replacement bus.
 - B) Authorize the Director of Transportation and Public Works to execute all required actions and documents, including any amendments thereto, with MTC as required to obtain Lifeline Transportation Program funding.
32. Sonoma County Transit – Purchase of One Thirty-Foot Replacement Transit Coach (BP-17B):
Approve and authorize Chair to execute agreement with Creative Bus Sales Inc., for the purchase of One Thirty-Foot Heavy-Duty, Low-Floor, Natural Gas-powered transit coach from Creative Bus Sales Inc., not to exceed \$651,268.
33. Sonoma County Transit – Purchase of Three Forty-Foot Replacement Transit Coaches (BP-16C):
Approve and authorize Chair to execute agreement with Creative Bus Sales for the purchase of three forty-foot low-floor, natural gas powered, heavy-duty transit coaches for Sonoma County Transit, not to exceed \$2,007,473.
34. On-Call Agreements for Cultural Resources Services:
 - A) Authorize the Chair to execute On-Call Agreements with four (4) Cultural Resources Services consultants for a not-to-exceed amount of \$750,000 each and a combined not-to-exceed amount of \$3,000,000, with terms ending in April 2021;
 - B) Delegate to the Director the authority to execute on behalf of the County, individual Task Order(s) under the Agreement for any amount up to the not-to-exceed amounts for each Agreement; and
 - C) Delegate to the Director the authority to develop, amend and execute on behalf of the County, any documents necessary to administer the Agreement, including a form of Task Order; provided that such documents and any amendments thereto are in a form approved by County Counsel.
35. Out-of-State Travel Request – Airport Manager:
Approve out-of-state travel request – Airport Manager
36. Charles M. Schulz – Sonoma County Airport Consent to Lease Assignment:
Authorize the Chair to: (1) execute the consent to assignment by Cornerstone Properties II S, LLC, a California limited liability company assignment of its 1976 Lease for the property with borders west of N. Laughlin Rd, south of Airport Blvd and east of Flightline Dr. including three buildings and associated parking lot, to its affiliate, CPSA – Airport Industrial Park, LLC, a California limited liability company; and (2) authorize the Director of Transportation and Public Works to execute any other documents reasonably required to effect said consent to lease assignment.

37. Award of Contract for the Charles M. Schulz – Sonoma County Airport Apron D Rehabilitation & Pavement Preservation:
- A) Approve plans and specifications for the Airports Apron D Rehabilitation and Pavement Preservation
 - B) Award and authorize the Chair to execute a construction contract to the lowest responsible bidder, VSS International, Inc. in the amount of \$181,120 for Apron D Rehabilitation and Pavement Preservation within the Air Operations Area at the Charles M. Schulz – Sonoma County Airport, 2290 Airport Blvd, Santa Rosa.
38. On-Call Engineering Design Services Agreements for Road and Bridge Infrastructure Improvement Projects:
- A) Authorize the Chair to execute On-Call Agreements with 16 shortlisted Engineering Design Services consultants with a not-to-exceed amount of \$975,000 per Consultant and a combined not-to-exceed amount of \$15,600,000, with terms ending three years from the executed date.
 - B) Delegate to the Director the authority to execute on behalf of the County, individual Task Order(s) under the Agreement for any amount up to the not-to-exceed amounts for each Agreement; and
 - C) Delegate to the Director the authority to develop, amend and execute on behalf of the County, any documents necessary to administer the Agreement, including a form of Task Order; if such documents and any amendments thereto are in a form approved by County Counsel.

APPOINTMENTS/ REAPPOINTMENTS

39. Approve the Reappointment of Paul Kelley to the North Coast Railroad Authority Board for a two year term through April 11, 2020.
40. Approve the Reappointment of Curt Nichols Agricultural Preservation and Open Space District Advisory Committee for a two year term ending February 16, 2020. (Fourth District)
41. Approve the Appointment of Peter McAweeney to the Mental Health Board beginning May 8, 2018 and expiring December 31, 2020. (Fourth District)
42. Approve the Reappointment of Erick Ratliff to the Bicycle and Pedestrian Advisory Committee serving a two-year term, expiring January 13, 2020 (Second District)

PRESENTATIONS/GOLD RESOLUTIONS

PRESENTATIONS AT THE BOARD MEETING

(Gold resolutions are presented in the afternoon session at 1:30 P.M.)

43. Adopt a Gold Resolution recognizing Carroll Estes on the occasion of her 80th birthday and for her many years of research and advocacy on Social Security and Medicare policy, health reform, long term care, and elder women's economic and health security. (Third District).
44. Adopt a Gold Resolution proclaiming May 2018 as Community Action Month throughout Sonoma County in recognition of Community Action Partnership of Sonoma County. (Fourth District)

45. Recognition of the 2017-2018 Junior Commission on Human Rights:
Recognize twenty-one high school students for their participation on the Junior Commission on Human Rights for the 2017-2018 term. (Human Resources)
46. Adopt a Gold resolution proclaiming May 2018 as Health Care District Month in Sonoma County. (Health Services)
47. Adopt a Gold Resolution designating May 6 through May 12, 2018 as National Correctional Officers and Employees Week in Sonoma County, to recognize the efforts of all Correctional staff in keeping our communities safe. (Sheriff's Office)

PRESENTATION ON A DIFFERENT DATE

48. Adopt a Gold resolution recognizing May 2018 as Sonoma County Travel and Tourism Month. (Economic Development Board)
49. Adopt a Gold resolution declaring May 2018 as CalFresh Awareness Month in Sonoma County. (Human Services/Health Services)
50. Adopt a Gold Resolution declaring May 2018 as Older Americans Month in Sonoma County. (Human Services)
51. Adopt Gold Resolution proclaiming the week of May 6 to 12, 2018 as Public Service Recognition Week in Sonoma County. (Human Resources)
52. Adopt a Gold resolution proclaiming the Week of May 6 through May 12, 2018 as National Nurses Week in Sonoma County. (Health Services)
53. Adopt a Gold Resolution honoring the life and career of Mr. Carl Morrison (Sonoma County Water Agency)
54. Adopt Gold Resolution declaring May 2018 Foster Parent Recognition Month in Sonoma County.
55. Adopt a Gold Resolution in memory of James M. Bouler. (Fourth District)
56. Adopt a Gold Resolution Declaring the Week of May 17-May 23, 2018 Sonoma County Home & Ranch Readiness Week (First District)
57. Adopt a Gold Resolution proclaiming the week of May 6-12, 2018 as "Wildfire Awareness Week" (Fire and Emergency Services)

IV. REGULAR CALENDAR

TRANSPORTATION AND PUBLIC WORKS

58. Long Term Financing for Airport Parking Lot and Terminal Expansion Projects:
Adopt a Resolution authorizing the Director of Transportation and Public Works to submit and approve loan applications to the California Infrastructure and Economic Development Bank for financing of capital improvement projects at the Charles M. Schulz – Sonoma County Airport. The loan applications are intended to secure long term, fixed rate financing for capital improvements to long term parking and pedestrian walkways (\$5,101,005), as well as the expansion of the commercial passenger terminal (\$11,676,756) for a total of \$16,777,761. (4/5th Vote Required)

ECONOMIC DEVELOPMENT BOARD

59. **9:00 A.M.** – Annual Tourism Assessment Report & Continuation of Tourism Assessment Without Change in Fiscal Year 2017-2018:
- A) Conduct a public hearing to consider the Sonoma County Tourism Bureau's annual tourism assessment report to support the continuation of the tourism assessment in fiscal year 2018-19; and
 - B) Adopt a resolution confirming the Tourism Bureau's Annual Report and continuing without change the levy of the tourism assessment for the Sonoma County Tourism Business Improvement Area for Fiscal Year 2018-19.
 - C) Approve an amendment to the Agreement for Services to extend the term to June 30, 2019 to provide services and programs promoting tourism in Sonoma County funded by assessments from within the Sonoma County Tourism Business Improvement Area.

COUNTY ADMINISTRATOR/ GENERAL SERVICES

60. County Government Center Facility Planning:
Authorize the Director of General Services to issue a Request for Interest seeking feedback on the feasibility of a public-private partnership to address inadequate County Government Center office buildings that have exceeded their useful life and are costing more to maintain and repair than they are worth.

COMMUNITY DEVELOPMENT COMMISSION

(Commissioners: Gorin, Rabbitt, Zane, Gore, Hopkins)

61. Consideration of revisions to County Fund for Housing loan terms for Community Housing Sonoma County's development of Veterans Village:
Consider Community Housing Sonoma County (CHSC)'s request to the Executive Director of the Sonoma County Community Development Commission (Commission) to revise the terms of the County Fund for Housing (CFH) loan of \$1,868,851 to expend all awarded funds for the first phase of the multi-phase project. (4/5th Vote Required) (Third District)

62. PUBLIC COMMENT ON CLOSED SESSION ITEMS

V. CLOSED SESSION CALENDAR

63. The Board of Supervisors will consider the following in closed session: Conference with Legal Counsel – Existing Litigation – Marqus Martinez and Daniel Banks v. County of Sonoma, et al. United States District Court – Northern District of California – Case No. 3:15-cv-04574.
64. The Board of Supervisors will consider the following in closed session: Conference with Legal Counsel – Existing Litigation - County of Sonoma v. William Barker and Carol Barker. - SCV 235983. 1470 Lawndale Road, Kenwood [District 1] (Government Code Section 54956.9(d)(1).)
65. The Board of Supervisors, the Board of Directors of the Water Agency, the Board Commissioners of the Community Development Commission, and the Board of Directors of The Agricultural Preservation and Open Space District will consider the following in closed session: Conference with Labor Negotiators: Christina Cramer/Carol Allen, County of Sonoma, and Rick Bolanos/Heather Coffman, Liebert Cassidy & Whitmore. Employee Organizations: All. Unrepresented employees: All, including retired employees. (Government Code section 54957.6).

VI. REGULAR AFTERNOON CALENDAR

66. RECONVENE FROM CLOSED SESSION

67. REPORT ON CLOSED SESSION

VII. BOARD MEMBER REPORTS ON ASSIGNED BOARDS, COUNCILS, COMMISSIONS OR OTHER ATTENDED MEETINGS

VIII. 1:30 P.M. - PRESENTATIONS/GOLD RESOLUTIONS

IX. PERMIT AND RESOURCE MANAGEMENT DEPARTMENT

68. **2:00 P.M.** - Amendments to Chapter 26 of the Sonoma County Code (Zoning Code) to Reduce Constraints and Expand Housing Opportunities:
- A) Hold a public hearing and adopt the attached ordinance (a) determining exemption from CEQA, and (b) amending the zoning code to:
 - 1) Increase the maximum size of accessory dwelling units to 1,200 square feet;
 - 2) Reduce the minimum rural parcel size for 1-bedroom accessory dwelling units to 1.0 acre when on public water or a community well;
 - 3) Reduce development fees for accessory dwelling units on a graduated scale;
 - 4) Delay the collection of affordable housing fees until occupancy;
 - 5) Allow the Permit Sonoma Director to approve Alternative Equivalent Affordable Housing plans that meet the criteria;
 - 6) Allow a larger percentage of residential floor space in mixed use projects;
 - 7) Allow transitional and supportive housing in all zones that allow single family dwellings;
 - 8) Provide a density bonus for units for foster youth, veterans and homeless residents; and
 - 9) Allow small Single Room Occupancy projects as a permitted use in two commercial zones and larger SRO facilities with a use permit; and,
 - 10) Make miscellaneous other housing-related changes.
 - B) Authorize as-needed budget adjustments via quarterly budget adjustments to cover the costs of waived fees.

HEALTH SERVICES

69. **3:30 P.M.** - Authorization to Implement Layoff Procedures within the Department of Health Services: Authorize the Department of Health Services, in coordination with and oversight by the Human Resources Department, to administer layoff proceedings and to mitigate layoffs to the extent possible in accordance with Civil Service Rule 11: Layoffs.
70. Permit and Resource Management Department: Review and possible action on the following:
Acts and Determinations of Planning Commission/Board of Zoning Adjustments
Acts and Determinations of Project Review and Advisory Committee
Acts and Determinations of Design Review Committee
Acts and Determinations of Landmarks Commission
Administrative Determinations of the Director of Permit and Resource Management
(All materials related to these actions and determinations can be reviewed at:
<http://www.sonoma-county.org/prmd/b-c/index.htm>)

71. **ADJOURNMENT**

NOTE: The next Board meeting will be a Special Closed Session held on May 15, 2018 at 8:30 a.m.

The next Regular meeting will be held on May 22, 2018, at 8:30 a.m.

Upcoming Hearings (All dates are tentative until each agenda is finalized)

June 5, 2018 – Consolidated Fee Hearings

June 12th through June 22nd – Budget Hearings



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 1
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors of the County of Sonoma,
Board of Directors of the Sonoma County Water Agency,
Board of Commissioners of the Community Development Commission, and
Board of Directors of the Sonoma County Agricultural Preservation and Open Space District

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Human Resources Department

Staff Name and Phone Number:

Janie Carduff (707) 565-3995

Supervisorial District(s):

Title: Recognition of Service Employees International Union as the exclusive representative of Park Ranger Assistants

Recommended Actions:

Adopt a Resolution recognizing Service Employees International Union, Local 1021 (SEIU) as the exclusive employee organization representing the job classification of Park Ranger Assistant.

Adopt a Concurrent Resolution amending Salary Resolution No. 95-0926, Salary Tables Scales, removing the classification of Park Ranger Assistant Extra Help, effective May 8, 2018.

Adopt a Concurrent Resolution amending the Memorandum of Understanding between the County and SEIU, Local 1021, Appendix A, SEIU Service & Technical Support Non-Supervisory Unit 0005, Salary Table Scales, to include the classification and salary for Park Ranger Assistant, effective May 8, 2018.

Executive Summary:

Employees of the County of Sonoma in the job classification of Park Ranger Assistants have been in the Unrepresented Bargaining Unit 0000. The County and SEIU have reached an agreement to recognize SEIU as the exclusive representative of the Park Ranger Assistants. The actions in this item administratively implement this agreement.

Discussion:

In February 2017, SEIU filed a Meyers Milius Brown Act (MMBA) recognition petition with the Public Employment Relations Board (PERB), seeking recognition as the exclusive bargaining representative for Park Ranger Assistants employed by the County. Park Ranger Assistants are an extra-help classification and SEIU represents extra-help for classifications in their bargaining units. The County responded to PERB on April 10, 2017, stating SEIU had not filed a recognition petition with the Employee Relations Officer, as required by the Article II – Representation Proceedings, of the County’s Employee Relation’s

Policy. On April 18, 2017, PERB dismissed SEIU’s petition for recognition because the County has adopted local rules, the Employee Relations Policy, which include the process for requests for representation recognition, and PERB therefore lacks authority to process the instant recognition petition.

On July 20, 2017, SEIU filed an unfair labor practice charge with PERB, against the County. On February 8, 2018, the County and SEIU reached the attached settlement agreement in this matter, whereby the County agreed to recognize and confirm that SEIU had effectively petitioned the County for modification of the existing bargaining unit via the MMBA Petition filed with PERB in 2017. The County also agreed to stipulate to the appropriateness of the proposed modified bargaining unit. The County and SEIU agreed to proceed in accordance with the County’s Employee Relations Policy (ERP) regarding SEIU’s unit modification petition.

In accordance with the County’s ERP, the County notified the appropriate parties and employees that the petition was properly filed and provided the required open window period to allow for competing petitions. No competing petition was filed and, as agreed in the settlement agreement, the required “card check” was conducted by the State Mediation and Conciliation Services on March 21, 2018, to verify the required number of signature cards for majority designation had been obtained by SEIU. State Mediation has certified that a majority of the eligible bargaining unit members, Park Ranger Assistants, have signed membership cards. All requirements of Article II of the ERP have been met.

Human Resources recommends the Board recognize Service Employees International Union (SEIU) as the exclusive employee organization representing the job classification of Park Ranger Assistant and that the classification be placed in SEIU Service & Technical Support Non-Supervisory Unit 0005.

Prior Board Actions:

None

Strategic Plan Alignment Not Applicable

Fiscal Summary			
Expenditures	FY 16-17 Adopted	FY 17-18 Projected	FY 18-19 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			
Narrative Explanation of Fiscal Impacts:			
There are no anticipated fiscal impacts related to this board item.			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
<ol style="list-style-type: none"> 1. Resolution recognizing Service Employees International Union, Local 1021 (SEIU) as the exclusive employee organization representing the job classification of Park Ranger Assistant. 2. Concurrent Resolution 1 amending the Salary Resolution No. 90-0926, Salary Table Scales 3. Concurrent Resolution 2 amending the Memorandum of Understanding SEIU, Local 1021, with Attachment A – Salary Table Scales 4. Settlement Agreement between the County and SEIU 			

Related Items "On File" with the Clerk of the Board:
N/A



County of Sonoma

State of California

Date: May 8, 2018

Item Number: _____
Resolution Number: _____

4/5 Vote Required

Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California To Recognize The Service Employees International Union, Local 1021 (SEIU) As The Exclusive Employee Organization Representing The Job Classification of Park Ranger Assistant.

Whereas, the classification of Park Ranger Assistant Extra Help was part of the Salary Resolution No. 95-0926, Unrepresented Unit #0000; and

Whereas, the County and Service Employees International Union, Local 1021 (SEIU) reached a settlement agreement whereby the County agreed to recognize and confirm that SEIU had effectively petitioned the County for modification of the existing bargaining unit; and

Whereas, Human Resources has determined the classification of Park Ranger Assistant is appropriately placed in the SEIU Service & Technical Support Non-Supervisory Unit 0005, and

Whereas, State Mediation and Conciliation Services has certified that the majority of eligible bargaining unit members, Park Ranger Assistants, have signed membership cards; and

Whereas, have met the requirements described above, the Employee Relations Policy requires that the County recognize SEIU as the exclusive employee organization representing of employees in the job classification of Park Ranger Assistants;

Now, Therefore, Be It Resolved that the Board of Supervisors of the County of Sonoma does hereby recognize SEIU as the exclusive employee organization representing employees in the job classification of Park Ranger Assistant, effective May 8, 2018.

Be It Finally Resolved that the County Administrator, Director of Human Resources, and Auditor-Controller-Treasurer-Tax Collector have the authority to take any necessary administrative actions to implement the provisions of this resolution, including the authority to execute administrative changes to plan documents and MOUs as needed and/or make corrections of a non-financial nature.

Resolution #

Date:

Page 2

Supervisors:

Gorin:

Rabbitt:

Zane:

Hopkins:

Gore:

Ayes:

Noes:

Absent:

Abstain:

So Ordered.



County of Sonoma
State of California

Date: May 8, 2018

Item Number: _____
Resolution Number: _____

4/5 Vote Required

Concurrent Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California, The Board Of Directors Of The Sonoma County Water Agency, The Board Of Commissioners Of The Community Development Commission, The Board Of Directors Of The Sonoma County Agricultural Preservation And Open Space District Amending Salary Resolution No. 95-0926, Appendix A - Salary Tables, Unrepresented – Bargaining Unit 0000, To Remove The Classification And Salary For Park Ranger Assistant Extra Help, Effective May 8, 2018.

Whereas, the classification of Park Ranger Assistant Extra Help was part of the Salary Resolution No. 95-0926, Unrepresented Unit #0000; and

Whereas, the County and Service Employees International Union, Local 1021 (SEIU) reached a settlement agreement whereby the County agreed to recognize and confirm that SEIU had effectively petitioned the County for modification of the existing bargaining unit; and

Whereas, Human Resources has determined the classification of Park Ranger Assistant is appropriately placed in the SEIU Service & Technical Support Non-Supervisory Unit 0005, and

Whereas, State Mediation and Conciliation Services has certified that the majority of eligible bargaining unit members, Park Ranger Assistants, have signed membership cards; and

Whereas, all requirements of Article II of the Employee Relations Policy have been met;

Now, Therefore, Be It Resolved that Salary Resolution No. 95-0926, Salary Tables, Unrepresented, Bargaining Unit #0000, be amended to remove the classification and salary of Park Ranger Assistant Extra Help, effective May 8, 2018.

Be It Finally Resolved that the County Administrator, Director of Human Resources, and Auditor-Controller-Treasurer-Tax Collector have the authority to take any necessary administrative actions to implement the provisions of this resolution, including the

Resolution #

Date:

Page 2

authority to execute administrative changes to plan documents and MOUs as needed and/or make corrections of a non-financial nature.

Supervisors:

Gorin:

Rabbitt:

Zane:

Hopkins:

Gore:

Ayes:

Noes:

Absent:

Abstain:

So Ordered.



County of Sonoma
State of California

Date: May 8, 2018

Item Number: _____
Resolution Number: _____

4/5 Vote Required

Concurrent Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California, The Board Of Directors Of The Sonoma County Water Agency, The Board Of Commissioners Of The Community Development Commission, The Board Of Directors Of The Sonoma County Agricultural Preservation And Open Space District Amending SEIU MOU, Appendix A, SEIU Service & Technical Support Non-Supervisory – 0005, To Add The Classification And Salary For Park Ranger Assistant Extra Help, Effective May 8, 2018.

Whereas, the classification of Park Ranger Assistant Extra Help was part of the Salary Resolution No. 95-0926, Unrepresented Unit #0000; and

Whereas, the County and Service Employees International Union, Local 1021 (SEIU) reached a settlement agreement whereby the County agreed to recognize and confirm that SEIU had effectively petitioned the County for modification of the existing bargaining unit; and

Whereas, Human Resources has determined the classification of Park Ranger Assistant is appropriately placed in the SEIU Service & Technical Support Non-Supervisory Unit 0005, and

Whereas, State Mediation and Conciliation Services has certified that the majority of eligible bargaining unit members, Park Ranger Assistants, have signed membership cards; and

Whereas, all requirements of Article II of the Employee Relations Policy have been met;

Now, Therefore, Be It Resolved that the SEIU MOU, Appendix A, SEIU Service & Technical Support Non-Supervisory – 0005, be amended to add the classification and salary of Park Ranger Assistant, as set forth in Attachment A, effective May 8, 2018.

Be It Finally Resolved that the County Administrator, Director of Human Resources, and Auditor-Controller-Treasurer-Tax Collector have the authority to take any necessary administrative actions to implement the provisions of this resolution, including the authority to execute administrative changes to plan documents and MOUs as needed

Resolution #

Date:

Page 2

and/or make corrections of a non-financial nature.

Supervisors:

Gorin:

Rabbitt:

Zane:

Hopkins:

Gore:

Ayes:

Noes:

Absent:

Abstain:

So Ordered.

APPENDIX A

SALARY TABLE SCALES

SEIU Service & Technical Support Non-Supervisory – 0005

Job Code	Job Title	Appendix A-3 A Step Rate (March 14, 2017)
4402	Park Ranger Assistant	\$20.11

BEFORE THE STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES
INTERNATIONAL UNION LOCAL
1021,

Charging Party,

v.

COUNTY OF SONOMA,

Respondent.

PERB Case No.: SF-CE-1503-M
SETTLEMENT AGREEMENT

In the interest of promoting harmonious labor relations between the parties and to avoid the uncertainty, inconvenience, and expense of litigation, Charging Party Service Employees International Union, Local 1021 ("SEIU") and Respondent County of Sonoma ("County"), collectively "the Parties," in settlement of the above-captioned unfair practice charge and complaint pending before the Public Employment Relations Board ("PERB"), agree as follows:

1. A dispute has arisen between the Parties regarding: (1) SEIU's February 2017 MMBA Representation Petition, filed with PERB, seeking recognition as the exclusive bargaining representative for all full-time, part-time, and extra-help Park Ranger Assistants employed by the County, and (2) the County's local rules governing representation and unit modification petitions;
2. On July 20, 2017, SEIU filed a charge against the County regarding the above-described dispute, to which the County responded on September 5, 2017. PERB subsequently issued a Complaint on November 13, 2017. On November 30, 2017, the County filed an Answer to the Complaint, denying any and all allegations of wrongdoing;
3. In consideration and exchange for the County's agreement in Paragraph 4 of this Agreement, SEIU hereby withdraws its pending Unfair Practice Charge and Case No. SF-CE-1503-M with prejudice and requests that PERB issue a Notice of Dismissal and Case Closure;

4. In consideration and exchange for SEIU's agreement in Paragraph 3 of this Agreement, the County agrees:
- a. The County recognizes and confirms that SEIU has effectively petitioned the County for modification of the existing bargaining unit via the MMBA Representation Petition Form filed with PERB in February 2017, thereby invoking the unit modification procedures set forth in the County's Employee Relations Policy ("ERP"). This stipulation is solely in furtherance of this Settlement Agreement and is non-precedential in terms of applying the ERP's unit modification procedures going forward;
 - b. The Parties will proceed in accordance with the ERP regarding SEIU's unit modification petition. For the purpose of effecting the terms of this Agreement, SEIU's petition will be deemed received by the County on the fifth business day from the date SEIU signs this Agreement. The County will stipulate to the appropriateness of the proposed modified bargaining unit;
 - c. Following completion of the applicable notice requirements in the ERP, including Article II, Section 4, the County will agree to contact the California State Mediation and Conciliation Service ("SMCS") to conduct a "card check" to determine representation of the newly added Park Ranger Assistant positions; and
 - d. In the event SMCS determines that SEIU has majority status, the County will recognize SEIU as the exclusive representative of all full-time, part-time, and extra-help Park Ranger Assistants and place those Park Ranger Assistants in the existing Service and Technical Support Non-Supervisory bargaining unit (Unit 0005). The Parties' agreement in this regard will be incorporated into the Parties' existing labor agreement upon completion of negotiations for a successor MOU.

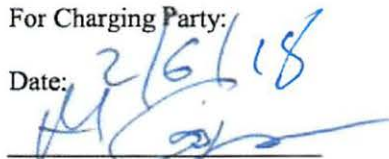
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5. This Agreement does not constitute an admission of wrongdoing, contract or statutory violation, or liability on the part of either party to this Agreement, and shall be non-precedential;
6. This Agreement represents a full and complete resolution of the claims and disputes between the Parties based upon the above-referenced matters;
7. All Parties shall bear their own costs of litigation associated with the unfair practice charge and complaint; and
8. The undersigned parties represent that they have read and understand the terms of this Agreement, and that they are authorized to execute this Agreement on behalf of their principles.

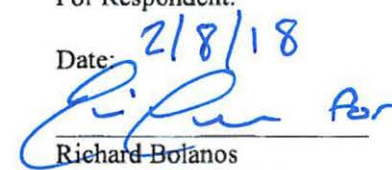
For Charging Party:

Date:


Matt Gauger
Weinberg, Roger and Rosenfeld
Attorneys for Service Employees International
Union Local 1021

For Respondent:

Date:


Richard Bolanos
Liebert Cassidy Whitmore
Attorneys for County of Sonoma



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 2
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors/Board of Directors of Sonoma County Water Agency/Board of Directors of Agricultural Preservation and Open Space District

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): County Administrator/County Counsel and Agricultural Preservation and Open Space District /Sonoma County Water Agency

Staff Name and Phone Number:

Sheryl Bratton 707/565-2241
Bruce Goldstein 707/565-2421

Supervisorial District(s):

First

Title: Sonoma Development Center (SDC) County Input in Transition Planning

Recommended Actions:

Sonoma Development Center Transition Planning:

- A) Approve a minute order authorizing staff from various County departments and agencies to engage in the Sonoma Development Center transition planning and governance structure development.
- B) Support legislation to implement recommended governance structure consistent with County interests.

(First District)

Executive Summary:

In May 2015, Governor Jerry Brown's budget proposal called for closure of California's remaining development centers. Patient care at the Sonoma Development Center (SDC) is now mandated by the State to be terminated by the end of 2018 and the buildings shut down. The State has indicated that while they want to maintain ownership of the property that it cannot continue to be a revenue drain. The annual costs of maintaining the site, even without the residential developmental services, is estimated at between \$12-18 million per year. The almost 900 acre site has important biological and natural resources as well as being the largest employer in Sonoma Valley.

Planning as to disposition of the property is now on a fast track as Governor Brown's Administration has indicated that a plan needs to be in place by the end of the calendar year and legislative proposals to address the SDC transition needs to be considered in this legislative session. Meaningful input into this process from the County requires participation by a number of County departments and agencies including Permit Sonoma, County Administrator, County Counsel, Recorder-Assessor's Office, General Services, Agricultural Preservation and Open Space District, Regional Parks, General Services, Auditor Controller Treasurer Tax Collector, Sonoma County Water Agency and Economic Development Board.

This item is to authorize dedication of County resources for this project and to support related legislation.

Discussion:

The transition of the Sonoma Development Center from a patient serving facility operated by the California Department of Development Services to a new use and controlling entity is on a fast track. With the closure of current operations scheduled for the end of 2018 there is an immediate need to create a governance structure, or process to arrive at a governance structure, to control the site and to engage in a resource protection and development process. On a regional scale, SDC represents a critical wildlife corridor while its 200 acre campus also has been an important local employer and represents economic development opportunities. Current proposals moving forward include a trust based loosely on the Presidio Trust in San Francisco that took over the military base from the federal government. Other governance models or process path are likely to also emerge from this dynamic broad stakeholder situation. County interests to be met by any shift in State control of the property, are numerous, and include the following:

1. Maintain local control and authority of land use planning (specifically including General Plan, zoning and building code laws) and entitlement process;
2. Insure robust public participation regarding development plans and approvals;
3. Require that at least half, if not a majority, of governance board members are from Sonoma County (with representation from the immediate Glen Ellen area) and appointed by the Board of Supervisors;
4. Structure future governance so that there is no County liability related to SDC;
5. Provide for tax collection consistent with current law e.g., possessory interest tax and Special District taxation;
6. Protect watershed and groundwater recharge;
7. Require that all water rights be maintained as public rights;
8. Maintain compliance of water and wastewater systems with all legal requirements;
9. Recommend that State complete site planning phases;
10. State/Trust/Governing Entity to pay for County land use process e.g., specific plan;
11. Clearly define and secure State's or other entity with financial capacity to be responsibility for environmental remediation on the site (e.g., asbestos removal, soil and groundwater contamination);
12. Secure and define adequate State appropriations for pre-development building security and immediate restoration of infrastructure, including but not limited to buildings, water and wastewater;
13. Insure permanent protection of natural resources through fee transfer of designated lands to State Parks, Regional Parks or other conservation entities; and
14. Authorize bond authority for the Trust or other controlling entity for County approved defined purposes and allow leveraging the land for bond security.

A key priority of the Sonoma County Legislative Platform is to support State and community stakeholders to develop future plans for the SDC site, leveraging locally-informed priorities and preserving critical environmental and recreational resources on the SDC site.

To fully engage in this initial governance design and legislative implementation effort will involve significant involvement of the multiple County departments and agencies mentioned above. Most involvement at this initial phase will be at the Department/Agency Head or senior manager level and

should not impact current operations. General Services will provide lead project management services, estimated to be 300 hours over the next six months. County Counsel will play an active role in drafting governance documentation and legislation which is estimated to be between 120-150 hours through the end of the legislative session (August). This likely can be absorbed with current capacity if there is a commitment to make up any year end revenue shortfalls. Similarly, the County Administrator’s Office will be significantly involved in community engagement and legislative support that is estimated to be 100 hours over the next six months. Following establishment of a governance model and depending on the outcome, Permit Sonoma may require additional staff and increased time commitment by the impacted departments.

Prior Board Actions:

Strategic Plan Alignment Goal 2: Economic and Environmental Stewardship

Fiscal Summary

Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses	15,000	85,000	TBD
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF	15,000		
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies		85,000	
Total Sources	15,000	85,000	

Narrative Explanation of Fiscal Impacts:

Over the next six months most department and agency costs can be absorbed in support of the project. This would include approximately \$30,000 – 40,000 of County Counsel time which might need reimbursement from contingencies at year end if otherwise supplants revenue necessary to meet budget. In addition, General Services lead project management support is estimated at up to \$60,000. Sufficient appropriations are available in FY 17-18 Non-Departmental budget based on third quarter estimates to cover \$15,000 of costs. In FY 18-19 staff will use general fund contingencies to cover up to \$85,000 of project costs. Impacts beyond six months are unknown due to uncertainties regarding final governance structure and development plan.

Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
Related Items “On File” with the Clerk of the Board:			



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 3
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors and Board of Commissioners

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Sonoma County Community Development Commission

Staff Name and Phone Number:

Benjamin Wickham, Affordable Housing Director
(707) 565-7542

Supervisorial District(s):

Fifth District

Title: Approval of California's Land Reuse and Revitalization Act (CLRRRA) Program Agreement for Roseland Village Environmental Remediation

Recommended Actions:

1. Authorize the Executive Director of the Community Development Commission (Commission) to
 - a. Execute A CLRRRA Program Agreement (Agreement) with the North Coast Regional Water Quality Control Board (Water Board) on behalf of the Commission regarding the environmental remediation of the Roseland Village redevelopment site (Site), and
2. As part of the Site remediation, prepare and submit a Response Plan to the Water Board in order to achieve a "No Further Action" notice from the Water Board. Site remediation work will be carried out by Mid-Pen Housing Corp., the master developer operating under an Exclusive Right to Negotiate with the Commission

Executive Summary:

This Board item approves staff's recommendation that the Executive Director of the Commission be authorized to enter into the CLRRRA Agreement on behalf of the Commission, and that staff work with the Water Board, environmental consultants and Mid-Pen Housing Corporation to complete all environmental remediation activities on the Site as required by this CLRRRA Agreement.

Discussion:

The California Land Reuse and Revitalization Act of 2004 (CLRRRA) was enacted by Assembly Bill No. 389, Montanez, on September 23, 2004. CLRRRA provides for an eligible bona fide purchaser (BFP) to qualify for specified immunities from liability response costs or damage claims under applicable state statutes. Under CLRRRA, a BFP seeking the immunities provided by this Act is required to enter into a CLRRRA Program Agreement. As a BFP, the Commission meets the CLRRRA requirement to enter into such an agreement.

Background:

Historically the Roseland Village Shopping Center site was used for low impact agricultural farming and during the past half century it has been used as neighborhood shopping center.

The Commission purchased the Site in 2011. Since that time, four commercial buildings have been removed from the Site that were used for a grocery store (former Alberston's); storage; laundromat; dry cleaner (Roseland Cleaners); and a bowling alley. A gasoline service station was also formerly located on the Site. The retail building that remains on the Site is used as a Dollar Tree store. The dry cleaner operated from 1965 until 1971 and was demolished in 2009. The neighboring bowling alley, warehouse, and Albertson's store were demolished in 2014/2015.

Since 1988 investigation and remedial activities have been undertaken pursuant to the Water Board's jurisdiction with respect to both the dry cleaner and the gasoline service station. The Water Board issued a notice of proposed no further action for the gasoline service station under the Water Board's Low Threat Closure Policy on November 18, 2016. After investigation into the polluting entities and consideration of possible remedies available from them, it was determined that CLRRRA provided the highest level of protection and remedy available here. The Commission previously entered into an Exclusive Right to Negotiate Agreement with Mid-Pen Housing Corp. while a Disposition and Development Agreement (DDA) is negotiated. The two parties are close to completing these negotiations, and a completed DDA will be brought back to the Board of Commissioners for review in early summer of 2018.

Key Considerations:

The Water Board has determined (1) that the Site is eligible under the CLRRRA and qualifies for the Agreement; and (2) the Commission is a bona fide purchaser (BFP). As such, the Commission will be entitled to the immunities provided for by CLRRRA, subject to its limitations and conditions, upon entry into this Agreement. Any successor-in-interest to the Site (such as Mid-Peninsula Housing or any other purchaser of a portion of the site) will also be entitled to the immunities set forth by the CLRRRA.

The major elements of the Agreement are summarized below.

Site Eligibility: In December 2016 the Commission submitted to the Water Board a complete application and All Appropriate Inquiries (AAI) report that provided sufficient information for the Water Board to prepare this Agreement; to determine the Site is an eligible site under Health and Safety Code section 25395.79.2, and to determine that the Commission meets the conditions that apply as of the effective date of the Agreement to qualify as a BFP pursuant to Health and Safety Code 25395.69.

Site Assessment Report: The Water Board has found that the Site Assessment Plan/Report of Findings, developed under the documents, "Work Plan for Additional Investigation: CPT Groundwater and Soil Gas Sampling," and a, "Health Risk Assessment," is adequate and contains all necessary information required pursuant to applicable regulations, and approved the Site Assessment plan/Report of Findings on January 19, 2018.

Response Plan. The Water Board has determined that a Response Action is necessary to prevent or eliminate an unreasonable risk to human health and/or the environment. As part of this Agreement, the Commission shall submit a Response Plan to the Water Board for approval. The Response Plan may include Interim Response Actions to reduce unreasonable risk to human health and safety for the

anticipated mixed-use development of the Site, and Final Response Actions, including a long-term operation and maintenance plan, to reduce unreasonable risk to the environment.

Notification of Prospective Change in Land Use: The Commission is required to seek approval from the Water Board in the event there are any future changes in the proposed land use program for the Site from mixed – use residential.

Land Use Controls: The Water Board retains the right to impose land use controls on the property as part of the final Certificate of Completion.

Operations and Maintenance: If the Water Board determines long-term Operations and Maintenance Plan (O & M) is required, as provided in an approved Response Plan, the Water Board may, as a condition of issuing a certificate of completion, enter into an O&M agreement with the Commission that governs long-term O&M activities and that provides for adequate financial assurance, if required of a government agency.

Further Response Actions. The Water Board may require the Commission to conduct further response actions **only** under the circumstances set forth in this Agreement.

Cost Recovery: The Commission is required to reimburse the Water Board for all Water Board Oversight Costs (Costs) of monitoring the Agreement. Costs under this Agreement are estimated to be \$68,500.

Actions Requested: The Commission seeks Board approval to authorize the Executive Director to enter into the CLRRRA Agreement. By approving this recommended course of action, the Board moves closer to providing additional affordable housing and to revitalizing the Roseland community.

Prior Board Actions:

07/19/16 - Authorized Commission to execute a Professional Services Agreement with Mid-Pen Housing Corporation, LLC, to use \$1.55 million of funds from the Successor Agency to the Sonoma County Redevelopment Agency to perform pre-development services required for the Commission to obtain entitlement approvals for public improvements to be made for the Roseland Village redevelopment project.

01/26/16 - Authorized the Commission to negotiate a Development and Disposition Agreement with Mid-Pen Housing Corporation for construction of a mixed-use development on the Roseland Village Site.

01/26/16 - Authorized the Commission to execute an Agreement for Professional Services with Harris & Lee Environmental Sciences, LLC, to continue Environmental Remediation, Monitoring, Testing, and related work for the Roseland Village Neighborhood Center Project.

07/21/15 – Authorized CDC/GSD to execute an amendment to the Interagency Agreement, to amend the term to 12/31/2018, to revise the scope of work and budget to include all anticipated project costs.

03/03/15 – Authorized CDC to issue a Request for Qualifications and Preliminary Proposals to identify development partner.

09/24/13 – Approved Inter-Agency Agreement between CDC and GSD for planning / project management.

01/18/11 – Approved \$6.92 million Public Improvements Agreement for the Roseland Redevelopment Project.

07/13/10 –Approved acquisition of the Roseland Village Shopping Center.

Strategic Plan Alignment Goal 2: Economic and Environmental Stewardship

By entering into the CLRRRA Agreement the Commission will take a major step towards the implementation of the Roseland Village project which will help support the goal of “Economic and Environmental Stewardship”. By investing in the Roseland neighborhood the Commission will support the creation of more affordable housing, more market rate housing and additional economic opportunities. It is incumbent on the Commission to manage its properties in an environmentally sustainable manner, and this cleanup effort is directly aimed at achieving that goal.

Fiscal Summary

Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses		\$68,500	
Additional Appropriation Requested			
Total Expenditures		\$68,500	
Funding Sources			
General Fund/WA GF			
State/Federal		\$68,500	
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources		\$68,500	

Narrative Explanation of Fiscal Impacts:

The anticipated cost associated with this CLRRRA Program Agreement is expected to occur in the FY18-19 Budget Year and is included in the Commission’s Requested Budget. This cost will be included in the redevelopment project costs and funded through previously designated Redevelopment Successor Agency funds.

Staffing Impacts

Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)

Narrative Explanation of Staffing Impacts (If Required):

Attachments:

1. Roseland Village CLRRRA Agreement

Related Items "On File" with the Clerk of the Board:

STANDARD AGREEMENT

for participating under California's Land Reuse and Revitalization Act (CLRRA) Program

Docket No. _____

Overview

The California Land Reuse and Revitalization Act of 2004 (CLRRA) was enacted by Assembly Bill No. 389, Montanez, on September 23, 2004.¹ CLRRA provides for an eligible bona fide purchaser (BFP), innocent landowner (ILO), or contiguous property owner (CPO) (a "Person" under this Agreement) to qualify for specified immunities from liability for certain response costs or damage claims under applicable state statutes. Under CLRRA, a Person seeking the immunities provided by this Act is required to enter into an agreement. By entering into this Agreement, Sonoma County Community Development Commission (SCCDC) meets the CLRRA requirement to enter into such an agreement, as a BFP. The CLRRA program is a voluntary program afforded to qualifying Persons and does not alter existing state law regarding liability for releases or discharges of hazardous substances or hazardous materials not addressed by this Agreement.

SCCDC and the North Coast Regional Water Quality Control Board (Water Board) hereby agree as follows:

1. Introduction

- 1.1 Parties. This Agreement is entered into by SCCDC and Water Board, who are collectively the "Parties" to this Agreement.
- 1.2 Site Description. This Agreement applies to the "Site" which is defined as the real property located at 650, 655, 665, 759, 761, 765, 777, 779, 805 Sebastopol Road in Santa Rosa, Sonoma County, California 95401, identified by Sonoma County Assessor's Parcel Number 125-111-037. The Site is approximately 6 acres in size and is located north of Sebastopol Road between Roseland Avenue and Dutton Avenue. The Site is surrounded with commercial and retail uses to the south, east and west. There is a former bulk oil facility to the north. Roseland Elementary School is located approximately 0.1 miles southwest of the Site. The closest residential housing is located about 300 feet south of the Site. A diagram of the Site and a location map are attached as Exhibit A.
- 1.3 Jurisdiction. CLRRA, as codified in Health and Safety Code (HSC) section 25395.92, authorizes Water Board to enter into an agreement with SCCDC with respect to the Site.

¹ Assembly Bill No. 389 added Chapter 6.82 (commencing with section 25395.60) and Chapter 6.83 (commencing with section 25395.110) to Division 20 of the Health and Safety Code. Section 25395.109 was amended by Stats. 2016, Ch. 166, Sec. 1. Effective January 1, 2017 to extend CLRRA until January 2027 unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

- 1.4 Purpose. The purpose of this Agreement is to implement CLRRRA for the assessment and remediation of the Site, so that SCCDC may qualify for the immunities afforded under CLRRRA and Water Board may be reimbursed for the costs incurred by Water Board.
- 1.5 Agreement Not an Admission. Entry into this Agreement by SCCDC does not constitute an admission of fact or liability or conclusion of law for any purpose or proceeding nor does it limit or waive any defense to responsibility or liability that may be available to SCCDC under any provision of law.
- 1.6 Agreement Not a Limitation. Nothing in this Agreement limits Water Board's authority to conduct a response action Water Board determines is necessary to protect public health and safety or the environment pursuant to an applicable statute. Except as otherwise expressly provided, nothing in this Agreement limits Water Board's authority to issue an order or take any other action under any provision of law to protect public health and safety or the environment or to pursue any existing legal, equitable or administrative remedies pursuant to state or federal law.

2. Definitions

- 2.1 Unless otherwise specified, definitions of terms used in this Agreement are those set forth in HSC, Division 20, Chapters 6.82 and 6.83.
- 2.2 "Applicable statute" means the statutory provisions listed in HSC §25395.66(a)-(e).

3. Findings

- 3.1 Site History. Historically the Site was used for low impact agricultural farming and during the past half century it has been used as neighborhood shopping center. Four commercial buildings have been removed from the Site that were used for a grocery store (former Alberston's); storage; laundromat; dry cleaner (Roseland Cleaners); and a bowling alley. A gasoline service station was also formerly located on the Site. The retail building that remains on the Site is used as a Dollar Tree store. The dry cleaner operated from 1965 until 1971 and was demolished in 2009. The neighboring bowling alley, warehouse, and Albertson's store were demolished in 2014/2015. Investigation and remedial activities have been undertaken pursuant to the Water Board's jurisdiction since 1988 with respect to both the dry cleaner and the gasoline service station. The Water Board issued a notice of proposed no further action for the gasoline service station under the Water Board's Low Threat Closure Policy on November 18, 2016. Investigation and remedial activities, including under the CLRRRA Agreement, continue with respect to the dry cleaner.
- 3.2 Site Eligibility. In December 2016, SCCDC submitted to Water Board a complete application and All Appropriate Inquiries (AAI) report that provides

sufficient information for Water Board, pursuant to HSC section 25395.92(c), to prepare this Agreement, to determine that the Site is an eligible site under HSC section 25395.79.2, and to determine that SCCDC meets the conditions that apply as of the effective date of this Agreement to qualify as a BFP pursuant to HSC §25395.69. Based on the information submitted in the application and the AAI report, Water Board has determined that the Site meets the definition of a "Site" specified under HSC section 25395.79.2 because it is real property located in an urban infill area and its redevelopment is complicated by the presence of hazardous materials and is not excluded as an NPL site or state superfund site and is not solely impacted by a petroleum release.

- 3.3 Eligibility of SCCDC. Based on the information submitted in the application and AAI report, Water Board has determined that SCCDC meets the definition of a BFP pursuant to HSC §25395.69 and that SCCDC made all appropriate inquiries pursuant to HSC section 25395.65 and meets the conditions under HSC section 25395.80 that apply as of the effective date of this Agreement. The AAI report consists of the following documents:

1. All Appropriate Inquiry- Phase I Environmental Site Assessment, 665 Sebastopol Rd, Santa Rosa, CA 95407 prepared by Harris & Lee Environmental Sciences, LLC, dated June 18, 2010.

4. Immunities, Withdrawal and Termination

- 4.1 Immunities. SCCDC will be entitled to the immunities provided for by CLRRRA, subject to its limitations and conditions, upon entry into this Agreement. Any successor-in-interest to the Site will also be entitled to the immunities set forth by the CLRRRA provided: (a) such successor-in-interest executes a written agreement (in the form attached hereto as Exhibit E) to assume any remaining obligations under the Agreement not performed by SCCDC, including, without limitation, long-term operation and maintenance; (b) Water Board finds that such successor-in-interest meets all of the qualifying conditions of HSC section 25395.80 and either section 25395.69 or 25395.70 of CLRRRA, as applicable; and (c) Water Board accepts the assumption by such successor-in-interest of the remaining obligations under this Agreement. Water Board's acceptance of the successor-in-interest qualifying under the conditions of HSC section 25395.80 and either section 25395.69 or section 25395.70 of CLRRRA, as applicable, shall be evidenced solely by Water Board's execution of the assumption agreement by such successor-in-interest. Such agreement shall then be incorporated into the Agreement as a subsequent Exhibit.
- 4.2 Withdrawal and Termination. The circumstances and procedures under which SCCDC or Water Board may withdraw from or terminate this Agreement, and the consequences of withdrawal or termination are as set forth in CLRRRA.
- 4.3 Opportunity to Cure. SCCDC shall be given an opportunity to cure within a reasonable period of time before Water Board terminates this Agreement for an unapproved material deviation from the Agreement pursuant to HSC

sections 25395.81(c)(1) and 25395.93(d) of CLRRA.

5. Activities

- 5.1 Activities. SCCDC and Water Board agree that the following activities are to be conducted under this Agreement in accordance with the schedule contained in Exhibit B.
- 5.2 Site Assessment. SCCDC has previously made all known data and information concerning contamination at the Site whether or not such data and information was developed pursuant to this Agreement to Water Board. SCCDC has provided the Water Board additional data, which was developed under a “Work Plan for Additional Investigation: CPT Groundwater and Soil Gas Sampling”. These documents, in addition to a Health Risk Assessment (HRA), were prepared in accordance with HSC §25356.1.5(b), (c), and (d) constitute the Site Assessment Plan/ Report of Findings required under HSC section 25395.94(b) and (c).
- 5.2.1 Approval of Site Assessment Plan. The Water Board finds the Site Assessment Plan/Report of Findings is adequate and contains all necessary information required pursuant to HSC §25395.94(b) and (c). The Water Board approved the plan on January 19, 2018 and notified appropriate persons, including the public drinking water system that relies on impacted groundwater for public drinking water purposes.
- 5.3 Response Plan. The Water Board has determined that a response action is necessary to prevent or eliminate an unreasonable risk to human health and/or the environment. SCCDC shall submit a Response Plan to Water Board for approval. The Response Plan may include Interim Response Actions to reduce unreasonable risk to human health and safety for the anticipated mixed use development of the Site, and Final Response Actions, including a long-term operation and maintenance plan, to reduce unreasonable risk to the environment. The Interim Response Actions may be completed concurrent with redevelopment of the Site. The Final Response Actions may be completed concurrent with and following redevelopment of the Site. Once the Response Plan is approved, SCCDC shall implement the plan. The Response Plan shall contain the information specified in HSC section 25395.96(a) and (b) and shall provide that implementation of the plan will place the site in condition that allows it to be used for its reasonably anticipated future land use without unreasonable risk to human health and safety and the environment. Public participation shall meet the requirements of HSC section 25395.96, including a Water Board public meeting if requested. Upon approval of the Response Plan, Water Board will notify all appropriate persons including the City of Santa Rosa and the County of Sonoma.
- 5.3.1 Agreement to Implement Response Plan. Pursuant to HSC section 25395.92(d)(1), SCCDC agrees to take all actions required for a response action pursuant to HSC, Division 20, Chapter 6.8 and Water

Code Division 7. Required actions may include actions necessary to prevent an unreasonable risk before approval of the Response Plan.

- 5.3.2 Schedule for Compliance. The Response Plan shall include a timetable that identifies a schedule for compliance with the response action activities required for the site.
 - 5.3.3 Determination of Appropriate Care. Within sixty (60) calendar days after Water Board receives the Response Plan submitted under Section 5.2, Water Board will make a written determination as to whether proper completion of the Response Plan will constitute appropriate care for the purposes of HSC section 25395.67(a).
 - 5.3.4 Certificate of Completion. If Interim Response Actions are completed, the Water Board will issue a Letter of Completion of Interim Response Actions upon a finding that unreasonable risk to human health and safety for the anticipated mixed use development of the Site have been achieved. Water Board will issue a certificate of completion upon determining that all response actions have been satisfactorily completed in accordance with the approved Response Plan and that, based upon the data provided to Water Board at the time of the determination, no further remedial action, except only compliance with operation and maintenance and land use restriction requirements, if any, is necessary. If the Response Plan includes long-term obligations that have not been completed, including operation and maintenance (O&M) requirements or monitoring, Water Board will not issue a certificate of completion unless Water Board determines that all response actions other than the long-term O&M requirements and monitoring in the Response Plan have been completed, SCCDC has submitted an adequate long-term O&M plan (O&M Plan) and SCCDC has demonstrated initial compliance with the O&M Plan.
 - 5.3.5 Notification of Prospective Change in Land Use. After the Response Plan is approved, SCCDC shall notify Water Board of any proposed change in the use or anticipated use of the property other than the anticipated mixed use residential project. If the proposed change in use or anticipated use of the property requires a higher level of protection than use or anticipated use identified in the Response Plan, Water Board may require SCCDC to prepare and implement a new response plan that takes into account the change in use or anticipated use of the property. SCCDC shall not make any change in use of the property inconsistent with any recorded land use control without the express approval of Water Board made in accordance with HSC section 25395.99(f).
- 5.4 Land Use Controls. SCCDC will execute and record any land use controls required under the approved Response Plan.

- 5.5 Operation and Maintenance. If Water Board determines long-term O&M is required, as provided in an approved Response Plan, Water Board may, as a condition of issuing a certificate of completion, enter into an O&M agreement with SCCDC that governs long-term O&M activities and that provides for adequate financial assurance, if required of a government agency. Under such circumstance, SCCDC shall select financial assurance provisions from the options available in Title 22, California Code of Regulations section 66264.145. Water Board may agree to the assignment and termination of SCCDC's O&M obligations, if any, if it is provided satisfactory evidence of financial assurance for the O&M obligations by the assignee and such successor enters into an acceptable O&M Agreement with Water Board. Such agreement shall not be unreasonably withheld.
- 5.6. CEQA Compliance. SCCDC shall submit to Water Board all documentation necessary for compliance with the California Environmental Quality Act, Public Resources Code sections 21000-21177 (CEQA).
- 5.7 Final Reports. For all final reports, SCCDC shall submit one hard (paper) copy and one electronic copy with all applicable signatures and certification stamps as a text-readable Portable Document Formatted (pdf) file Adobe Acrobat version 7.0 or lower or Microsoft Word 2003 formatted file (doc) or lower.
- 5.8 Endangerment.
- 5.8.1 SCCDC shall notify Water Board's Project Manager immediately upon learning of any previously unknown condition that endangers public health or safety or that poses an unreasonable risk to human health and safety or the environment.
- 5.8.2 In the event Water Board determines that any activity (whether or not pursued in compliance with the Agreement) may pose an imminent or substantial endangerment to the health and safety of people on the Site or in the surrounding area or to the environment, Water Board may order SCCDC to stop further implementation of the Agreement for such period of time as may be needed to abate the endangerment.
- 5.9 Further Response Actions. Water Board may require SCCDC to conduct further response actions only under the circumstances set forth in CLRRA.
- 5.10 Disclosure Provisions. SCCDC will provide all notices and satisfy reporting requirements required by state or federal law with respect to the discovery or release of hazardous substances at the site.
- 5.11 Exclusion from Permit Requirements. Water Board may exclude any portion of a response action conducted entirely on a site subject to an approved Response Plan from the hazardous waste facilities permit requirements if the Response Plan specifies that the response action will be conducted in

compliance with the standards, requirements, criteria or limitations specified in HSC section 25395.100(b), including any condition imposed by Water Board.

- 5.12 Access. While SCCDC is the owner of the Site, SCCDC shall provide access to the Site and take all reasonable efforts to obtain access to offsite areas to which access is necessary to implement the Agreement. Such access shall be provided to Water Board's employees, contractors, and consultants at all reasonable times. Nothing in this paragraph is intended or shall be construed to limit in any way the right of entry or inspection that Water Board or any other agency may otherwise have by operation of any law.
- 5.13 Notification of Field Activities. SCCDC shall inform Water Board at least seven (7) calendar days in advance of all field activities pursuant to the Agreement and shall allow Water Board and its authorized representatives to take duplicates of any samples collected pursuant to the Agreement.

6. Oversight, Management and Payment

- 6.1 Oversight Agreement Managers and Project Managers. Matthias St. John, is designated by Water Board as its manager for this Agreement. Benjamin Wickham is designated by SCCDC as its manager for this Agreement. Each SCCDC will provide at least ten (10) calendar day advance written notice to the other SCCDC of a change of its designated agreement manager. All notices, documents and communications unless otherwise specified will be sent to the following addresses:

To: Matthias St. John
North Coast Regional Water Quality Control Board
5550 Skylane Blvd. Suite A
Santa Rosa CA 95403-1072

To: Benjamin
Wickham
Sonoma County Community Development Commission
1440 Guerneville Road
Santa Rosa, CA 95403

- 6.2 Payment of Water Board's Costs. SCCDC shall follow the procedures for payment of Water Board's oversight costs.
- 6.2.1 Costs Included. SCCDC shall reimburse Water Board for all Water Board's costs. Subject to the provisions of section 6.2.6 below, SCCDC will reimburse Water Board costs in accordance with HSC Division 20, Chapter 6.66. Water Board's costs are recoverable pursuant to HSC section 25360.
- 6.2.2 Cost Estimate. An estimate of Water Board oversight costs is contained in Exhibit C. The cost estimate is the estimated cost of Water Board oversight of the activities discussed in Section 5, above. The Parties

acknowledge that the cost estimate is not the final cost figure. Water Board will provide an updated Cost Estimate if the estimated oversight cost increases or the scope of work changes. If the Parties revise the Cost Estimate in Exhibit C, such revision will be incorporated into this Agreement as an amendment to Exhibit C.

6.2.3 SPayment Procedures. Water Board will invoice SCCDC quarterly. SCCDC shall pay all invoices within sixty (60) calendar days of the mailing date of the invoice. If payment is not received by Water Board within sixty (60) calendar days of the date of the invoice, SCCDC may be deemed to be in material default of this Agreement. Any payment for billing not received by Water Board within sixty (60) calendar days is subject to interest based on applicable Federal and State laws and regulations, including but not limited to Health and Safety Code section 25360.1.

6.2.4 Billing Address. Water Board will provide a Statement of Account to SCCDC at least quarterly. SCCDC's billing address is:

Sonoma County Community Development Commission
1440 Guerneville Road
Santa Rosa, CA 95403

6.2.5 Payment Address. All payments made by SCCDC pursuant to this Agreement shall be by check made payable to Water Board, and bearing on its face the project code for the Site 2010082 and the docket number of this Agreement. Payments shall be sent to:

State Water Resources Control Board
SCP Program
P.O. Box 944212
Sacramento, California 94244-2120

6.2.6 Dispute Resolution. If SCCDC disputes Water Board's billing, or any part thereof, SCCDC shall notify Water Board's assigned project manager and attempt to informally resolve the dispute with Water Board's project manager [and supervisor or branch chief]. If SCCDC desires to formally request dispute resolution with regard to the billing, SCCDC shall file a request for dispute resolution in writing within forty-five (45) calendar days of the date of the billing in dispute. The written request shall describe all issues in dispute and shall set forth the reasons for the dispute, both factual and legal. If the dispute pertains only to a portion of the costs included in the invoice, SCCDC shall pay all costs that are undisputed in accordance with this section. The filing of a notice of dispute pursuant to this section shall not stay the accrual of interest on any unpaid costs pending resolution of the dispute. The written request shall be sent to:

State Water Resources Control Board-SCP Fees
1001 I Street, 18th Floor
Sacramento, CA 95814

A copy of the written request for dispute resolution shall also be sent to the person designated by Water Board to receive submittals under this Agreement. A decision on the billing dispute will be rendered by the Special Assistant for Cost Recovery and Reimbursement Policy or other Water Board designee.

- 6.2.7 Effect of Billing Dispute. The existence of a billing dispute shall not excuse, stay, or suspend any other compliance obligation or deadline required pursuant to this Agreement.

7. Additional Provisions

- 7.1 Exhibits. All Exhibits are incorporated into this Agreement by reference.
- 7.2 Liens. Water Board shall have a lien on the property constituting the Site for its unrecovered costs of any response action carried out at the Site, if the response action increased the fair market value of the site that existed before the response action was initiated. Water Board and SCCDC may agree to substitute a lien on another property or other assurance of payment for the unrecovered response costs.
- 7.3 Proponent Liabilities. Except as specified in CLRRRA, nothing in the Agreement shall constitute or be considered a satisfaction or release from liability for any condition or claim arising as a result of SCCDC's past, current, or future operations.
- 7.4 Government Liabilities. The State of California (State) shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by SCCDC or by related parties in carrying out activities pursuant to the Agreement, nor shall the State of California be held as a party to any contract entered into by SCCDC or its agents in carrying out the activities pursuant to the Agreement.
- 7.5 Third Party Actions. In the event that the SCCDC is a party to any suit or claim for damages or contribution to which Water Board is not a party, relating to the Site, SCCDC will notify Water Board in writing within ten (10) calendar days after service of the complaint in the third-party action. However, failure to give such notice within ten (10) calendar days will not be a material breach of the Agreement, and this requirement confers no rights on any third parties not party to the Agreement.
- 7.6 California Law. The Agreement shall be governed, performed and interpreted under the laws of the State of California.
- 7.7 Severability. If any portion of the Agreement is ultimately determined not to be enforceable, that portion will be severed from the Agreement and the severability shall not affect the enforceability of the remaining terms of the Agreement.
- 7.8 Parties Bound. The Agreement applies to and is binding, jointly and severally,

upon SCCDC and business entity successors and assigns, and upon any successor agency of Water Board that may have responsibility for and jurisdiction over the subject matter of the Agreement.

7.9 Amendment. This Agreement may be amended in writing by mutual agreement of Water Board and SCCDC. Any agreed upon amendment shall be in writing, shall be signed by both parties, shall be effective upon the date the amendment is signed by Water Board and, once signed by Water Board, is incorporated in this Agreement.

7.9.1 An amendment may include changes to the terms and conditions of this Agreement, including changes to the Schedule in Exhibit B and the Cost Estimate in Exhibit C and addition of another party in Exhibit D (provided that the party meets all of the qualifying conditions of HSC section 25395.80 and either section 25395.69 or section 25395.70, as applicable) and any other changes Water Board determines to be necessary. Such amendment shall then be incorporated into the Agreement as a subsequent Exhibit.

7.10 Effective Date. The effective date of this Agreement is the date when this Agreement is fully executed.

7.11 Representative Authority. Each undersigned representative of the Parties to this Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the Parties to this Agreement.

7.12 Counterparts. The Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

Matthias St. John, Executive Officer
North Coast Regional Water Quality
Control Board

Date: _____

Margaret Van Vliet, Executive
Director
SCCDC
Date: _____

LIST OF EXHIBITS

Exhibit A: Site Map

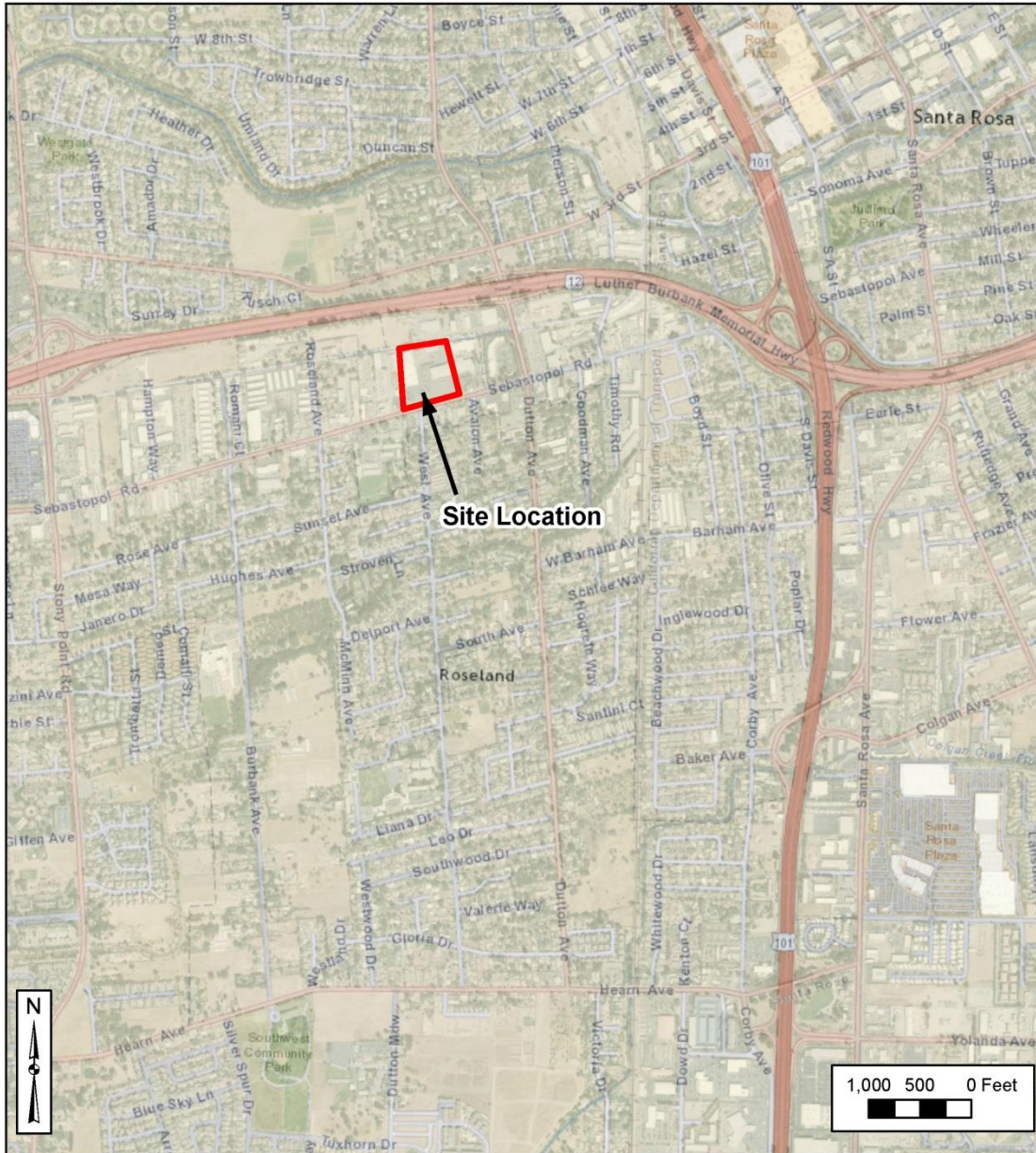
Exhibit B: Schedule

Exhibit C: Water Board Oversight Cost Estimate

Exhibit D: Amendment to Add an Additional Party

Exhibit E Successor Assignment and Assumption Agreement

EXHIBIT A
Site Location Map



Site Plan

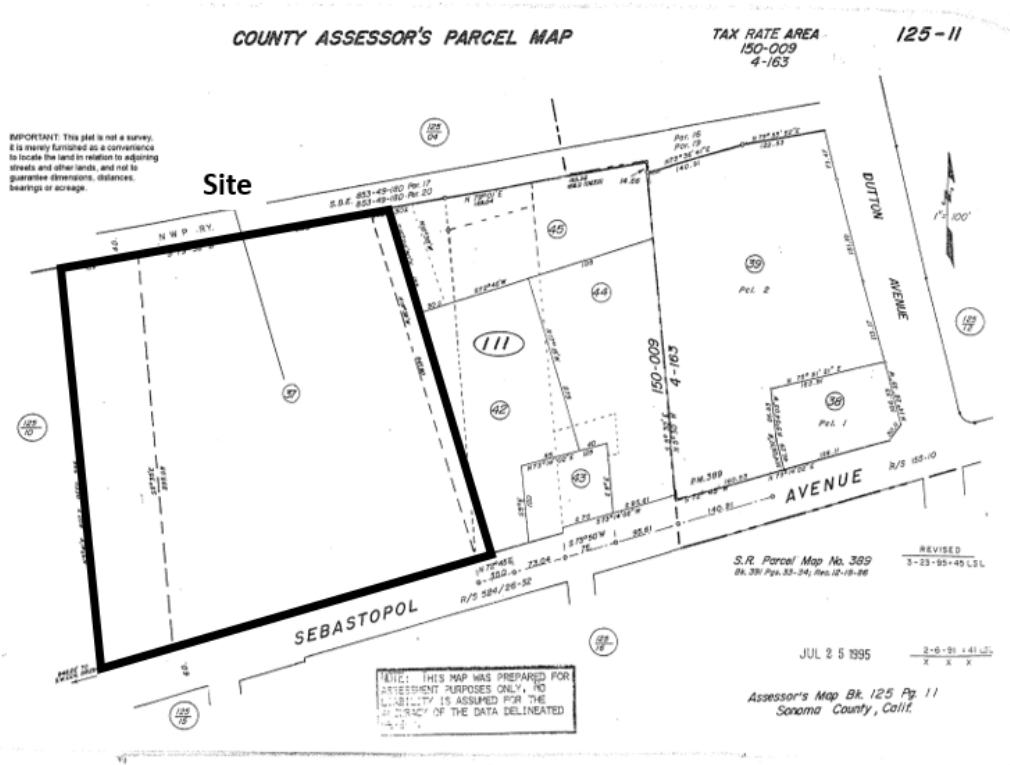


EXHIBIT B SCHEDULE

If SCCDC is unable to perform any activity or submit any document within the schedule outlined below, SCCDC shall notify Water Board's Project Manager prior to the date the task was to be completed in the schedule below. If Water Board determines that the revised schedule will have a significant effect on the schedule outlined below or upon its review schedule, the schedule shall be amended pursuant to Section 7.9.

<u>Activity</u>	<u>Schedule</u> (all time frames are in calendar days)
Submit Community Profile	Estimated submittal by June 30, 2017
Submit Draft Response Plan	60 days following Water Board approval of the Site Assessment Report
Water Board review and comment on Response Plan	Within 60 days of Draft Response Plan submittal including interim remedy (vapor intrusion mitigation system (VIMS)) and final remedy (groundwater/soil gas)
Submit Draft Final Response Plan	Within 30 days of receipt of Water Board comments
Prepare and submit CEQA documentation	45 days following Water Board approval of the Draft Final Response Plan
Submit public notice and fact sheet	30 days following Water Board approval of Draft Response Plan
Public Review/Comment Period, mailing of fact sheet to site mailing list and placement of public notice in local newspaper	Upon Water Board's approval of Response Plan, Public Notice and fact sheet for public review and comment
Address public comments and submit Final Response Plan	30 days after conclusion of public comment period
Water Board approval of Response Plan	Water Board to approve Response Plan, if appropriate, after addressing public comments
Implement Response Plan Interim Response Actions, if any	Implementation to begin concurrent with building foundation construction
Implement Response Plan Final Remedy	Implementation to begin within 180 days of approval of the Final Response Plan
Submit Interim Remedy Completion report, if any	Within 60 days of completion of building foundation construction
Submit Interim Remedy Operation, Monitoring Plan (O&M Plan); and draft Interim Land Use Covenant (LUC), if any	Concurrent with submittal of the Interim Remedy Completion Report
Water Board to approve Interim O&M Plan, LUC, and issues Letter of Completion of Interim Response Actions .	Within 30 days of DTSC's receipt of the Interim O&M Plan, LUC, and Completion Report
Submit Final Remedy Completion Report; draft LUC, modification to Interim LUC if any, and any necessary O&M Plan, along with any modification to the Interim O&M Plan	Within 120 days of achieving cleanup goals
Water Board approve Final Completion Report	Within 30 days of Water Board's acceptance of the

and any Final O&M Plan, and modify, as appropriate, to Interim O&M Plan and LUC.	Remedy Completion Report
Water Board issuance of a Certificate of Completion or No Further Action	Within 30 days of receipt of an acceptable: (1) Completion Report or Completion Reports identifying the completion of all response actions required by the Response Plan for the entire Site (both interim and final actions); (2) the Amended or rescinded O&M Agreement; and (3) the executed land use restriction(s) for the Site, if any.

EXHIBIT C

Water Board Oversight Cost Estimate

EXHIBIT C
Water Board Oversight Cost Estimate

Fiscal Year		2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023	2023-2024	TOTAL
Hourly Rate		\$170	\$170	\$170	\$170	\$170	\$170	\$170	
Billing Code	Description								
RR	<u>Report Review</u> 1. Review Draft Environmental Response Plan. 2. Review Public Notice & Fact Sheet. 3. Review CEQA documentation, if appropriate. 4. Review, approve Final Environmental Response Plan. 5. Review Interim Remedy Completion Report. 6. Review Interim Remedy O&M Plan, & Draft Interim Land Use Covenant (LUC), if any. 7. Review monitoring reports, confirm appropriate monitoring parameters, verify adequacy of reports. 8. Review additional work plans, feasibility studies, remedial action plans, corrective action plans, etc. if necessary. 9. Review Final Remedy Completion Report.	24	20	16	12	12	12	12	108
SI	<u>Site Inspection</u> 1. Inspect Implementation of Interim Response Actions, if any. 2. Inspect Response Plan Final Remedy. 3. Site inspections, monitoring and remedial system inspections.	8	32	40	24	6	6	6	122
TC	<u>Technical Communication</u> 1. Prepare meeting summaries, telephone conversation summaries, etc. to document the file record and site progress. 2. Technical communication: meetings, phone calls, or e-mail with responsible party or representatives;	6	4	4	4	4	4	4	30
EO	<u>Executive Orders</u> 1. Prepare staff reports and Board agenda items. 2. Respond to comments, and revise monitoring program, etc. 3. Issue a Certificate of Completion or No Further Action.	2	2	2	4	4	4	8	26
WC	<u>Written Communication</u> 1. Prepare written correspondence. 2. Comment on workplans and reports.	8	8	8	8	8	8	12	60
IC	<u>Internal Communication</u> Meetings, phone calls & e-mails	6	10	10	6	6	6	6	50
EST	<u>Estimates</u> 1. Prepare annual cost estimate letter.	1	1	1	1	1	1	1	7
Subtotal Hours		55	77	81	59	41	41	49	403
Total Salary Cost		\$9,350	\$13,090	\$13,770	\$10,030	\$6,970	\$6,970	\$8,330	\$68,510
TOTAL ESTIMATED COST (rounded to nearest \$100)									\$68,500

NOTES & DISCLAIMERS:

An Environmental Response Plan has not been submitted, therefore an accurate timeline or evaluation of oversight costs cannot be assessed. These costs should be regarded as **estimates**. Due to the various job classifications and salary rates that expend SCP resources, an average of \$170 per hour was used for projection purposes. The \$170 hourly rate does not reflect salary increases which cannot accurately be predicted.

In compliance with the California Water Code (Porter-Cologne), Section 13304 and Assembly Bill 2057, the Water Board will continue to separately send the SCCDC an *annual* estimate of costs that include:

1. A detailed estimate of the work to be performed or services to be provided;
2. A statement of the expected outcome of that work;
3. The billing rates of all individuals and classes or employees expected to engage in the work; and
4. An estimate of all expected charges to be billed to you by this agency.

EXHIBIT D

[MONTH, DATE, YEAR] AMENDMENT TO ADD AN ADDITIONAL PARTY

This Amendment is made and entered into, by and between the State of California, Water Resources Control Board (“Board”) and [Existing BFP, CPO or ILO] and [Name of Additional Party] (the " Additional Party") (collectively referred to as the “Parties”).

1. The Standard Agreement for participating under California's Land Reuse and Revitalization Act (CLRRA) Program, Water Board Docket No. ____ (the "Agreement") is amended to replace “[**Name of existing BFP, CPO, IO named in the Agreement**]” with “[**Name of existing BFP, CPO, ILO named in the Agreement**] and [**Name of Additional Party**]
2. The **Additional Party** agrees to comply with the amended Agreement.
3. The Board has verified that the **Additional Party** meets the requirements and conditions for a [**CHOOSE ONE: Bona fide purchaser pursuant to HSC section 25395.69, Contiguous Property Owner pursuant to HSC section 25395.70, or Innocent landowner pursuant to HSC section 25395.75**] and has made all appropriate inquiries pursuant to HSC section 25395.65 and section 25395.80.
4. Submittals to the **Additional Party**, pursuant to section 6.1 of the Agreement, shall be addressed as follows:

[Name of Company]
[Street Address]
[City, County, State, Zip Code]
Attention:
Telephone:
Fax:
Email address:
5. The Board reviewed the all appropriate inquiries documentation submitted by [Existing BFP, CPO, ILO] and updated as necessary by [Additional Party] and has determined that the documentation meets the requirements for a Site Assessment Plan, pursuant to section 5.2 of this Agreement, and that no changes to the existing Site Assessment Plan are necessary.

Each undersigned representative of the Parties to this Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the Parties to this Agreement.

_____ Dated: _____
[Typed Name of Person Authorized to

Sign on Behalf of existing BFP, CPO, ILO]
[Title]

_____ Dated: _____
[Typed Name of Person Authorized to
Sign on Behalf of Additional Party]
[Title]

[Name of Regional Board Executive
Officer], Executive Officer, North Coast
Regional Water Quality Control Board

Dated: _____

EXHIBIT E

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this “*Assumption Agreement*”) is dated as of [_____] [____], 2006 (the “*Effective Date*”), by and among [NAME OF ORIGINAL PARTY/PARTIES TO THE CLRRA AGREEMENT], a [_____] (“*Assignor(s)*”), [NAME OF ASSIGNEE/SUCCESSOR], a [_____] (“*Assignee*”), and, for purposes of consenting to this Assumption Agreement only, the State of California, Water Resources Control Board (“*Board*”).

RECITALS

WHEREAS, Assignor is a party to that certain Standard Agreement For Participating Under California’s Land Reuse and Revitalization Act Program, by and between Assignor and Department, dated as of [_____] (the “*CLRRA Agreement*”);

WHEREAS, Assignor wishes to assign to Assignee all of its obligations (from and after the Effective Date) pursuant to this Assumption Agreement effective as of the Effective Date, and Assignee wishes to assume all of Assignor’s obligations (to the extent arising from and after the Effective Date) with respect to the CLRRA Agreement effective as of the Effective Date; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the parties hereto agree as follows:

1. Assumption. Effective as of the Effective Date, Assignee agrees to hereby assume all of the remaining obligations (to the extent arising from and after the Effective Date) of the CLRRA Agreement.

2. Water Board’s Determinations. Water Board has determined that the Assignee meets all of the qualifying conditions of HSC Section 25395.80 and either Section 25395.69 or 25395.70 of CLRRA, as applicable, and is qualified to perform any remaining obligations under the CLRRA Agreement, including, without limitation, long- term operation and maintenance, and, by execution of this Assumption Agreement, has agreed to assume such obligations.

3. Further Actions. Water Board hereby consents to the Assumption by the Assignee of the Assignor’s remaining obligations under the CLRRA Agreement. Assignor and Assignee each covenants and agrees, at its own expense, to execute and deliver, at the request of the other party hereto, such further instruments of transfer and assignment and to take such other action as such other party may reasonably request

to more effectively consummate the assignments and assumptions contemplated by this Agreement.

4. Counterparts. This Assumption Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

5. Binding Effect. This Assumption Agreement shall be binding upon, and shall inure to the benefit of the parties, and each of their respective successors and permitted assigns.

6. Governing Law. This Assumption Agreement shall be governed by, and be construed in accordance with, the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Assumption Agreement on the date first set forth above.

_____ Dated: _____
[Assignor:]
[Title]

_____ Dated: _____
[Assignee:]
[Title]

_____ Dated: _____
[Name of Regional Board
Executive Officer], Executive
Officer, North Coast Regional
Water Quality Control Board



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 4
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors and Board of Commissioners

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Sonoma County Community Development Commission

Staff Name and Phone Number:

Benjamin Wickham, Affordable Housing Director
(707) 565-7542

Supervisorial District(s):

First District

Title: Disposition and Development Agreement with Satellite Affordable Housing Associates for an Affordable Housing Project at 20269 Broadway, Sonoma, California.

Recommended Actions:

Authorize the Executive Director of the Sonoma County Community Development Commission (Commission) to execute a Disposition and Development Agreement (DDA) with Satellite Affordable Housing Associates (SAHA) for construction of an affordable housing project at 20269 Broadway, Sonoma consisting of 48 apartments (the Development Project).

Executive Summary:

Approval of this agenda item will authorize the Executive Director of the Commission to execute a DDA with SAHA for an affordable housing project at 20269 Broadway in the City of Sonoma. Under the DDA, the Commission will transfer the property to SAHA for construction of 48 affordable rental apartments on the property.

Background:

In 2007, the City of Sonoma's Community Development Agency (CDA) purchased the vacant 1.9-acre property located at 20269 Broadway using Redevelopment Low & Moderate Income Housing Set-Aside Funds. In 2012, when the California Legislature dissolved redevelopment agencies, the City decided not to retain the former CDA's housing functions. Therefore, all of the CDA's non-cash housing assets, including the Broadway property, transferred by operation of law to the Sonoma County Housing Authority as "Housing Successor Entity". As the parent agency of the Housing Authority, the Commission manages the housing assets, which, under Community Redevelopment Law (CRL), must be used for affordable housing purposes.

Developer Selection Process:

The Commission issued a Request for Proposals (RFP) on September 14, 2015, soliciting a qualified developer for construction of an affordable housing project on the Broadway property. Seven developers responded to the RFP. A Technical Advisory Scoring Committee (TASC) comprised of Commission and City of Sonoma staff reviewed all of the proposals, conducted interviews of the developers, and ranked the proposals. SAHA's proposal was judged to be superior to the other finalists, and their focus on homeless and disabled veterans addresses a prioritized unmet need. In addition, their proposal provides a greater overall affordability to future tenants and a greater percentage of extremely low-income units.

At its meeting on January 12, 2016, the Commission's Community Development Committee reviewed the TASC recommendation and concurred with the selection of SAHA as the selected developer of the Broadway property. The Board approved the recommendation at its meeting on January 16, 2016.

Project Status:

The Development Project was approved by the Sonoma Planning Commission in late 2017, and has received all discretionary entitlements. The Development Project has received local financing commitments of over \$2 Million to date. SAHA has stated their intention to apply for 9% tax credits in the second competitive round of 2018; applications are due in July. Based on the Development Project's projected tie-breaker score and the fact that it fits into the Rural Set-Aside category, SAHA is very optimistic about their prospects for receiving a tax credit award.

Disposition and Development Agreement:

The Disposition and Development Agreement between the Commission and the Developer contains the following major provisions.

- The Development Project consists of 48 affordable housing units.
- The site will be conveyed to SAHA as the Developer for the Appraised Value.
- Prior to conveyance from the Commission SAHA must demonstrate the following: (1) that financing has been assembled; (2) that approval from the City of Sonoma for preliminary building permits has been secured; and (3) all necessary agreements for the development of the site have been properly executed.
- The Commission shall provide SAHA with Acquisition Assistance, in the form of a Low Moderate-Income Housing Asset Fund (LMIHAF) Loan for the Purchase Price of the Site, currently estimated at \$2 Million, to assist Developer in developing the Project (the "LMIHAF Loan").
- The developer will seek financing for the project from the Low Moderate-Income Housing Asset Fund program, the County Fund for Housing, the federal Community Development Block Grant program, and the federal HOME Investment Partnership program (in aggregate called "Commission Loans"). These programs offer financing through competitive application processes announced by published Notices of Funding Availability ("NOFAs").
- The Developer intends on utilizing other financing including a construction loan and Low Income Housing Tax Credits for the development of the project.
- The Commission shall have the right to review and approve all plans and drawings which may be required by the City of Sonoma with respect to any permits and entitlements which are required to be obtained to develop the Project.
- All costs of the Project shall be borne exclusively by the Developer.
- The Developer is solely responsible for the remediation of any hazardous materials on the Site.

- In the event of an uncured Developer default, and after the applicable mortgage holder has right to cure the default, the Commission may purchase the mortgage, deed of trust or other security interest by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest.
- The Commission has the right to terminate the Agreement if the Developer fails to perform under the Agreement prior to the Conveyance of the Site.
- The Commission has the Option to repurchase the Site if the Developer does not proceed in accordance with the Agreement.

Next Steps:

Following the execution of the DDA by both parties, SAHA will proceed to open escrow and commence the process of meeting the conditions precedent required for the conveyance of the Site. SAHA anticipates participating in applying for funding from the sources identified above, as well as applying for Tax Credits.

Alternatives:

Under alternative to approving the Executive Director to execute the Agreement, the Commission could reissue an RFP for the project, or direct staff to liquidate the Broadway property and use sales proceeds for other affordable housing or homelessness assistance activities in compliance with CRL.

Prior Board Actions:

01/16/16 – Approved the selection of Satellite Affordable Housing Associates as the developer of the Site.

05/14/13 – Approved sale of property located at 20269 Broadway, Sonoma, California

11/13/12 – Authorized CDC to perform all functions associated with ownership of real properties acquired through dissolution of redevelopment, in compliance with the CDC’s adopted Procurement Policy and all other applicable laws, regulations and policies.

Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community

The development of an affordable housing project at a vacant parcel in the City of Sonoma will promote economic development and affordable housing opportunities for the broader Sonoma Valley community. These investments will bring safe, healthy, and secure living environments for Sonoma County residents.

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested		\$	\$
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			
Narrative Explanation of Fiscal Impacts:			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
1. Broadway, Sonoma DDA			
Related Items “On File” with the Clerk of the Board:			

DISPOSITION AND DEVELOPMENT AGREEMENT
BY AND BETWEEN
SONOMA COUNTY COMMUNITY DEVELOPMENT COMMISSION
AND
SATELLITE AFFORDABLE HOUSING ASSOCIATES

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DISPOSITION AND DEVELOPMENT AGREEMENT

This Disposition and Development Agreement (“Agreement”) is entered into as of the _____ day of _____, 2018 (“Effective Date”) by and between the SONOMA COUNTY COMMUNITY DEVELOPMENT COMMISSION, a public body, corporate and politic (the “Commission”) and SATELLITE AFFORDABLE HOUSING ASSOCIATES (the “Developer”). The Commission and the Developer (sometimes individually referred to herein as a “Party” and collectively referred to herein as the “Parties”) hereby agree as follows:

1. SUBJECT OF AGREEMENT

1.1 Purpose of Agreement

The purpose of this Agreement is to facilitate the development of certain property (the “Site”) situated within the City of Sonoma, originally purchased with Redevelopment Low and Moderate Income Housing Funds, by assisting in the financing of an affordable rental housing development. The development shall consist of not less than forty-eight-(48) residential dwelling units, with forty-seven-(47) of the units restricted for rental and occupancy by “Eligible Tenants” at an “Affordable Rent,” (as those terms are defined in Section 1.4 below) and related improvements (collectively the “Project”).

The Commission financial assistance in this Agreement shall be utilized to effectuate a portion of the Commission’s overall affordable housing program pursuant to the requirements of California Health and Safety Code Section 33334.3 regarding use of Low and Moderate Income Housing Asset Funds to improve, increase and preserve the community’s supply of low-income housing. The conveyance to Developer of the Site and the Developer’s development thereon of an affordable rental housing project and subsequent occupancy thereof by households of limited incomes, all as provided in this Agreement, are in the vital and best interests of the Commission and the health, safety and welfare of Sonoma County residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements under which the Project has been undertaken.

1.2 The Site

The “Site” is currently owned by the Commission and consists of that certain real property located at 20269 Broadway (Assessor Parcel No. 128-181-001-000) in the City of Sonoma, County of Sonoma. The Site is zoned as mixed use and is classified as an historic site. The Site is depicted on the Site Map, which is attached hereto and incorporated herein as Attachment No. 1. The legal description of the Site is set forth on Attachment No. 2, which is attached hereto and incorporated herein by this reference.

1.3 Parties to the Agreement

A. The Commission

The Commission is a public body, corporate and politic, exercising governmental functions and powers pursuant to Health and Safety Section 34110 *et seq.* The principal office of the

Commission is located at 1440 Guerneville Road, Santa Rosa, CA 95403, or such other address as Commission shall hereafter designate in writing to Developer.

“Commission”, as used in this Agreement, includes the Sonoma County Housing Authority as the Successor Housing entity of the Sonoma Community Development Agency of the City of Sonoma, previous owner of the Property, and any and all assignees of or successors to the Commission’s rights, powers and responsibilities.

B. The Developer

The Developer is Satellite Affordable Housing Associates, a California nonprofit corporation. The principal office and mailing address of the Developer for purposes of this Agreement is 1835 Alcatraz Avenue, Berkeley, CA 94703.

By executing this Agreement, each person signing on behalf of the Developer warrants and represents to the Commission that the Developer has the full power and authority to enter into this Agreement, that all authorizations required to make this Agreement binding upon the Developer have been obtained, and that the person or persons executing this Agreement on behalf of the Developer are fully authorized to do so.

Whenever the term “Developer” is used in this Agreement, such term shall include any and all assignees, or successors in interest as herein provided.

1.4 Definitions

“Acquisition Assistance” means financial assistance from the Commission, in an amount which is the Purchase Price of the Site. The Acquisition Assistance shall be provided to Developer at the Close of Escrow, in the form of a credit towards the Purchase Price. Acquisition Assistance is also referred to as the Low and Moderate Housing Asset Fund Loan or the LMIHAF Loan.

“Affordable Rent” means the amount of monthly rent, including a reasonable utility allowance, that does not exceed the maximum allowable rent to be charged by Developer and paid by Extremely Low Income Households, Very Low Income Households, and Low Income Households, as the case may be, occupying the Units as determined pursuant to Health and Safety Code Section 50053(b), and the regulations promulgated pursuant to or incorporated therein.

“AHP Loan” means a loan to be made to the Developer by a financial institution reasonably approved by the Commission, pursuant to the Affordable Housing Program of the Federal Home Loan Bank of San Francisco, as described in the Financing Proposal.

“AMI” means the median family income (adjusted for family size) for the Sonoma County area as annually estimated by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937, and as published annually by the California Department of Housing and Community Development (“HCD”) pursuant to Title 25, Section 6932 of the California Code of Regulations. If HCD ceases annually to publish median incomes, the Commission shall reasonably determine an adequate substitute manner for determining the AMI.

“Annual Financial Statement” means the financial statements prepared by Developer for each calendar year, including a balance sheet, income statement, statement of retained earnings, statement of cash flow, and footnotes thereto, prepared in accordance with generally accepted accounting principles consistently applied, as audited by an independent certified public accountant.

“Appraisal” means an appraisal performed in accordance with the Uniform Standards of Professional Appraisal Practice (“USPAP”). The interest appraised in each appraisal shall be a fee simple interest in the Site. The Appraisal of the Site shall determine the “fair market value” or the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, as enumerated in the Appraisal Institute’s definition of “fair market value.” Each appraisal shall include industry-standard information and analysis to support such current fair market value determination.

“Appraiser” means an appraiser selected by the Commission, with the consent of the Developer, which consent will not be unreasonably delayed, withheld or denied.

“Assignment Agreement” means an Assignment and Assumption Agreement that may be entered into between SAHA and a limited partnership to be formed for the purpose of securing an Investor Limited Partner.

“City” means the City of Sonoma, a California municipal corporation, having its offices at #1 The Plaza, Sonoma, CA 95476. The City is not a party to this Agreement and shall have no obligations hereunder.

“Close of Escrow” or “Closing Date” shall have the meaning ascribed in Section 2.3 hereof].

“Commission Affordable Rental Housing Agreement” means a Regulatory Agreement and Declaration of Covenants and Restrictions, to be recorded as a covenant against the Site, substantially in the form attached hereto and incorporated herein as Attachment No. 10.

“Commission Deed of Trust” means a Deed of Trust With Assignment of Rents to secure a Commission Note, substantially in the form attached hereto and incorporated herein as Attachment No. 8.

“Commission Loan” means, collectively and if applicable, any Commission Loan which may derive from Low Moderate Income Housing Asset Funds, Community Development Block Grant funds, funds pursuant to the HOME Investment Partnerships Program (42 U.S.C. 12701, et seq.), funds from the County Fund for Housing, or any other source of funds administered by the Commission for development of the Project, as described in the Financing Plan.

“Commission Note” means a Promissory Note, substantially in the form attached hereto and incorporated herein as Attachment No. 7, in favor of Commission, evidencing the Commission Loan.

“Commission Title Policy” means the ALTA Lender’s Policy of Title Insurance that the Commission shall obtain from the Title Company, together with such endorsements as may be

reasonably requested by Commission with liability in the amount of the Commission Loan, covering the Site, showing title vested in Developer, and insuring the validity and priority of, respectively, the Commission Deed of Trust, Option Agreement, Commission Regulatory Agreement, Memorandum, and Notice of Affordability Restrictions, subject only to the exceptions authorized by this Agreement.

“Commission’s Conditions to Closing” means the conditions set forth in Section 2.4.A of this Agreement, which must be satisfied, or waived by the Commission in its sole and absolute discretion, on or before the Outside Closing Date.

“Construction Lender” means the first trust deed lender that provides the Construction Loan. The Construction Lender may or may not also be the Take-Out Lender. The Construction Lender shall be an Institutional Lender or a governmental entity.

“Construction Loan” means a loan to finance residential construction for the Project.

“Days” means calendar days and the statement of any time period herein shall be calendar days, and not business days, unless otherwise specified.

“Developer” means Satellite Affordable Housing Associates (“SAHA”), or a limited partnership formed by SAHA, in which SAHA or an affiliate of SAHA retains a general partner interest, and which assumes all Project assets and liabilities from SAHA.

“Developer Fee” means funds paid to the Developer as compensation for developing the Project, as specified in Section 3.4 of the Agreement.

“Developer’s Conditions to Closing” shall have the meaning ascribed in Section 2.4.B.

“Developer Title Policy” shall have the meaning ascribed in Section 2.6 hereof.

“Effective Date” means the later of the dates this Agreement is executed on behalf of Commission and Developer, which date shall be inserted in the preamble of this Agreement.

“Eligible Tenant” means a household which qualifies as an Extremely Low Income Household, a Moderate Income Household, or a Very Low Income Household.

“Environmental Response Actions” means any and all activities, data compilations, preparation of studies or reports, interaction with environmental regulatory agencies, obligations and undertakings associated with Phase I environmental investigations, removal activities, remediation activities or responses to inquiries and notice letters, as may be sought, initiated or required in connection with any local, state or federal governmental or private party claims, including any claims by the Developer.

“Environmental Response Costs” means any and all costs associated with Environmental Response Actions including, without limitation, any and all fines, penalties and damages.

“ERNA” means the Exclusive Right to Negotiate Agreement entered into between the Commission and SAHA, dated as of September 27, 2016.

“Escrow” is defined in Section 2.2A

“Escrow Agent” means Old Republic Title Company located at 555 12th St. Suite 2000, Oakland, CA 94607, Telephone (510) 272-1121, Escrow Officer, Julie Massey.

“Evidence of Financing” means evidence that the Developer has, or will have, prior to the Close of Escrow, the financial capability necessary for the development of the Project on the Site pursuant to this Agreement. The evidence of financing shall be submitted by the Developer to the Executive Director within the time set forth in the Schedule of Performance and shall include all of the requirements set forth in Section 4.7 of this Agreement.

“Executive Director” means the individual duly appointed to the position of Executive Director of the Commission, or his or her authorized designee. Whenever an administrative action is required by the Commission to implement the terms of this Agreement, the Commission’s Executive Director, or his or her authorized designee, shall have authority to act on behalf of the Commission, except with respect to matters reserved for the Commission Board’s determination.

“Extremely Low Income Household” shall have the meaning as set forth in Health & Safety Code Section 50106, as in effect as of the date of the Commission’s Regulatory Agreement.

“Financing Plan” means the Developer’s plan for financing the acquisition of the Site and the development of the Project, which is attached hereto and incorporated herein as Attachment No. 4. Developer may only make material revisions to the Financing Plan with the Commission’s prior written approval.

“Governmental Requirements” means all present and future laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city, or any other political subdivision in which the Site is located, and any other state, county, city, political subdivision, agency, Commission, instrumentality or other entity exercising jurisdiction over the Site.

“Grant Deed” shall have the meaning ascribed in Section 2.1 hereof.

“Hazardous Materials” means any substance, material or waste which is (1) defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” or “restricted hazardous waste” under any provision of California law; (2) petroleum; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; (6) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317); (7) defined as a “hazardous substance” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903) or its implementing regulations; (8) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601); or (9) determined by a California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property. Notwithstanding the foregoing, “Hazardous Materials” shall not include such products in quantities as are customarily used in the construction, maintenance, rehabilitation, management, operation and residence of residential developments or associated buildings and grounds, or typically used in residential activities in a manner typical of

other comparable residential developments, or substances commonly ingested by a significant population living within the community, including without limitation alcoholic beverages, aspirin, tobacco and saccharine.

“Indemnitees” shall have the meaning ascribed in Section 2.9.F hereof.

“Institutional Lender” means a state or federally chartered financial institution which is capable of providing service or otherwise aiding in the financing of the Project based on the reasonable determination of the Commission and the Developer.

“Investor Limited Partner” means a person or entity who (i) is an experienced limited partner and investor in multifamily housing developments receiving low income housing tax credits issued by the State of California or the United States federal government and (ii) has obtained or is contractually obligated to obtain a limited partnership or limited liability company membership interest in the Developer whereby it will receive ninety percent (90%) or more of the Tax Credits generated in connection with the Project. Commission shall have the right to reasonable prior approval of the identity of the Investor Limited Partner and of the terms and conditions of the Partnership Agreement or other agreement specifying the terms and conditions, including but not limited to terms and conditions concerning timing and amounts of cash contributions toward Project development costs in return for an interest in the owner of the Project and the right to receive Tax Credits.

“Low and Moderate Income Housing Asset Fund” (LMIHAF) means Commission funds and/or assets derived from Redevelopment Housing Assets as defined in Health & Safety Code Section 33000 *et seq.*

“LMIHAF Deed of Trust” means a Deed of Trust with Assignment of Rents to secure a LMIHAF Note, substantially in the form attached hereto and incorporated herein as Attachment No. 8.

“LMIHAF Loan” means the Commission Loan derived from LMIHAF Housing Assets to fund the Purchase Price of the Site; also referred to herein as Acquisition Assistance.

“LMIHAF Note” means a Promissory Note, substantially in the form attached hereto and incorporated herein as Attachment No. 7, in favor of Commission, evidencing the LMIHAF Loan.

“Management Agent” means a management agent retained by the Developer and approved by the Commission in accordance with the provisions of Section 5.2 of this Agreement and the Commission Regulatory Agreement

“Management Unit” means the one (1) Unit in the Project that may be occupied by on-site management and staff. The Management Unit shall be rented to and occupied by a Moderate Income Household.

“Memorandum” means a Memorandum of Disposition and Development Agreement, substantially in the form attached hereto and incorporated herein as Attachment No. 13, which is required to be recorded against the Site at the Close of Escrow.

“Moderate Income Household” shall have the same meaning as “persons and families of low or moderate income” as set forth in Health and Safety Code Section 50093, as in effect as of the date of the Commission Regulatory agreement.

“Notice of Affordability Restrictions” means a Notice of Affordability Restrictions on Transfer of Site, substantially in the form attached hereto and incorporated herein as Attachment No. 12, which is required to be recorded against the Site at the Close of Escrow.

“Option Agreement” shall have the meaning ascribed in Section 6.6 hereof.

“Outside Closing Date” means the date that is five (5) years from the Effective Date.

“Partnership Agreement” means the agreement governing the limited partnership entity that may comprise the Developer, as such agreement may be amended from time to time, so long as consistent with the requirements of this Agreement.

“Partnership Management Fee” is an operating expense of the Developer not to exceed the amount allowed in the Commission’s Loan Policies, currently \$32,500

“Phase 1” means the Phase I Environmental Site Assessment conducted by the Developer.

“Project” means the construction on the Site of an affordable rental housing development with not less than forty-eight (48) Units, with forty-seven (47) of such Units restricted for rental to and occupancy by Eligible Tenants, and related interior and exterior improvements, including, but not limited to, management office space and community recreational space. The Project is more particularly described in the Scope of Development.

“Project Budget” means that certain budget attached hereto and incorporated herein as Attachment No. 14, which budget may not be materially changed without the prior approval of the Commission Executive Director, which approval shall not be unreasonably withheld (a material change is one or more change(s) that cause the total Project cost to increase or decrease by a cumulative amount of ten percent (10%) or more from what is shown in Attachment No. 14).

“Project Entitlements” shall have the meaning ascribed in Section 4.4 hereof.

“Project Financing Disbursement Agreement” means an agreement among the Commission, Developer, Construction Lender, and Investor Limited Partner on the order of disbursement of the Project financing and the method and manner of disbursement of the Commission Loan.

“Project Proforma” means the financial information attached hereto and incorporated herein as Attachment No. 15, which is Developer’s best estimate of the costs to develop the Project and costs of ongoing operations based on the information available to Developer as of the Effective Date. The Project Proforma shall not undergo material change without the prior approval of Commission’s Executive Director, which approval shall not be unreasonably withheld (a material change is one or more change(s) that causes the difference between the “Annual Project Revenue” and “Operating Expenses” (as those terms are defined in the Commission Note) shown on Project

Proforma to increase or decrease by a cumulative amount of ten percent (10%) or more from what is shown in Attachment No. 15.

“Purchase Price” means the fair market value of the Site as determined by an Appraisal, which Appraisal shall be completed by the Appraiser prior to Developer making an application to the TCAC.

“PV Rebate” shall mean a rebate from the California Energy Commission, to be obtained by Developer after completion of the Project.

“SAHA” means Satellite Affordable Housing Associates, a California nonprofit public benefit corporation, and its permitted successors and assigns.

“Schedule of Performance” means that certain Schedule attached hereto and incorporated herein as Attachment No. 5.

“Scope of Development” means that certain Scope of Development attached hereto and incorporated herein as Attachment No. 3, which describes the scope and quality of the rental apartment development to be constructed by Developer pursuant to the terms and conditions of this Agreement.

“Site” means shall have the meaning ascribed in Section 1.2 hereof and is the real property located at 20269 Broadway (Assessor Parcel No. 128-181-001-000) in the City of Sonoma, County of Sonoma and owned by the Commission. The Site is depicted on the Site Map, which is attached hereto and incorporated herein as Attachment No. 1. The legal description of the Site is set forth on Attachment No. 2, which is attached hereto and incorporated herein by this reference.

“Take-Out Lender” means the lending institution that makes the Take-Out Loan. The Take-Out Lender may or may not also be the Construction Lender. The Take-Out Lender shall be an Institutional Lender or a governmental entity.

“Take-Out Loan” means the long-term loan made by the Take-Out Lender to Developer in order to take out the Construction Loan.

“Tax Credit Program” means the low-income housing tax credit program authorized pursuant to Internal Revenue Code Section 42, California Health and Safety Code Sections 50199.6-50199.19, Revenue and Taxation Code Sections 17057.5, 17058, 23610.4, 23610.5, and applicable federal and State regulations such as 4 California Administrative Code Sections 10300-10340.

“Tax Credits” shall refer to the low income housing tax credits granted by TCAC for the Project pursuant to Section 42 of the Internal Revenue Code and/or California Revenue and Taxation Code, Sections 17057.5, 17058, 23610.4, 23610.5 and California Health and Safety Code Section 50199, *et seq.*

“Tax Credit Regulatory Agreement” means that certain regulatory agreement to be recorded against the Site as a condition of the receipt by the Project of an allocation by TCAC of Tax Credits.

“TCAC” means the California Tax Credit Allocation Committee.

“Term” means the term of this Agreement, which shall consist of the period commencing on the date of execution of this Agreement and continuing until the later of (i) fifty-five (55) years following the date that the Take-Out Loan is recorded and at least seventy-five percent (75%) of the Units have been rented to and are occupied by Eligible Tenants at the applicable income level and for the applicable Affordable Rent; and (ii) repayment in full of the Commission Loan, including all interest due thereon.

“Title Company” means Old Republic Title Company.

“Unit” and “Units” means each of the forty-eight (48) rental dwelling units developed as part of the Project.

“Very Low Income Household” shall have the meaning as set forth in Health and Safety Code Section 50105, as in effect as of the date of the Commission Regulatory Agreement.

1.5 Prohibition Against Change in Ownership, Management and Control of Developer and Prohibition Against Transfer of the Site

The qualifications and identity of the Developer are of particular interest to the Commission. It is because of these qualifications and identity that the Commission has entered into this Agreement with the Developer. Consequently, no person, whether a voluntary or involuntary successor of Developer, shall acquire any rights or powers under this Agreement nor shall the Developer assign all or any part of this Agreement, the Site, or the Commission Regulatory Agreement without the prior written approval of the Commission. A voluntary or involuntary sale or transfer of any interest in the Developer or the Site during the term of this Agreement shall be deemed to constitute an assignment or transfer for the purposes of this Section 1.5, and the written approval of the Commission shall be required prior to effecting such an assignment or transfer. During the term of this Agreement and the Commission Regulatory Agreement the Developer shall not, except as permitted by this Agreement, assign or attempt to assign this Agreement or any rights or duties herein, nor make any total or partial sale, transfer, conveyance, or assignment of the whole or any part of the Site or any of the improvements thereon, nor take any action that results in a change in the ownership or with respect to the identity of the parties in control of the Developer, without the prior written approval of the Commission.

Notwithstanding any other provision of this Agreement to the contrary, Commission approval of an assignment or transfer of this Agreement or transfer of the Site or Project, or any part thereof or interest therein shall not be required in connection with any of the following:

(a) the conveyance or dedication of any portion of the Site to the City of Sonoma, or other appropriate governmental entity, including public utilities, where the granting of such easements permits or facilitates the development of the Project on the Site;

(b) the mortgage, deed of trust, sale and leaseback, or other form of conveyance required for any reasonable method of financing or refinancing the development of the Project on the Site that is set forth in the Financing Plan or has otherwise been approved, in writing, by the Executive Director;

(c) the transfer of the Site or Project or any part or interest therein from the Developer to a limited partnership controlled by SAHA or an affiliate of SAHA as its general partner (the “Tax Credit Limited Partnership”), for the purpose of admitting a tax credit investor as a limited partner;

(d) the transfer to the Investor Limited Partner of a limited partnership interest in Developer;

(d) the transfer by the Investor Limited Partner of a limited partnership interest to an entity that has the same general partner or managing member as the Investor Limited Partner;

(e) the removal by the Investor Limited Partner of the general partner for a default under the Partnership Agreement, provided the replacement general partner is approved, in writing, by the Commission.

(f) the transfer of the Site or Project or any part or interest therein from the Tax Credit Limited Partnership to SAHA or an entity owned and controlled by SAHA, and an assumption of the Commission Loan by such transferee at or before the end of the fifteen (15)-year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986 (26 U.S.C. Section 42 (i)(1)), pursuant to an option agreement as described in the Partnership Agreement (the “Partnership Agreement Option Agreement”), provided that the transferee expressly assumes the obligations of the Developer under this Agreement, the Commission Deed of Trust, the Commission Note, the Option Agreement, and the Commission Regulatory Agreement, utilizing a form of assignment and assumption agreement approved by Commission counsel;

Notwithstanding anything in this Section 1.5 to the contrary, in the absence of specific written agreement by Commission, no transfer or assignment by Developer or any successor in interest to Developer, whether or not requiring the approval by Commission, shall be deemed to relieve Developer or any successor party from the obligation to timely complete development of the Project, and no transfer or assignment by Developer or any successor in interest to Developer shall be effective unless and until the transferor and transferee execute and deliver to Commission an Assignment Agreement in a form and with content reasonably acceptable to Commission’s legal counsel.

This Section 1.5 shall not be applicable to the leasing of individual Units to Eligible Tenants (including the leasing of the Management Unit to the Management Agent) made in accordance with this Agreement and the Commission Regulatory Agreement and no Assignment Agreement shall be required in connection therewith.

1.6 Representations by the Developer

The Developer represents and warrants to the Commission as follows:

i. The Developer is a duly organized nonprofit public benefit corporation and is in good standing under the laws of the State of California and has duly authorized, executed and delivered this Agreement and any and all other agreements and documents required to be executed and delivered by the Developer in order to carry out, give effect to, and consummate the

transactions contemplated by this Agreement. This Agreement is enforceable against the Developer in accordance with its terms.

ii. The Developer does not have any contingent obligations or contractual agreements which will materially adversely affect the ability of the Developer to carry out its obligations hereunder.

iii. There are no pending or, so far as is known to the Developer, threatened, legal proceedings to which the Developer is or may be made a party to or to which it or any of its property is or may become subject, which have not been fully disclosed in the material submitted to the Commission, which will materially adversely affect the ability of the Developer to carry out its obligations hereunder.

iv. There is no action or proceeding pending or, to the Developer's best knowledge, threatened, looking toward the dissolution or liquidation of the Developer and there is no action or proceeding pending or, to the Developer's best knowledge, threatened, by or against the Developer which could affect the validity and enforceability of the terms of this Agreement, or adversely affect the ability of the Developer to carry out its obligations hereunder.

v. The execution and delivery of this Agreement and all other documents to be executed by Developer pursuant to this Agreement will not constitute or result in any default or event that with notice or the lapse of time, or both, would be a default, breach, or violation of any other agreement, instrument, or arrangement by which Developer is bound.

vi. The execution and delivery of this Agreement and all other documents to be executed by Developer pursuant to this Agreement and the consummation of the transactions contemplated herein will not violate any provision of or require any consent, authorization, or approval under any law or administrative regulation or any other order, award, judgment, writ, injunction or decree applicable to, or any governmental permit or license issued to Developer.

vii. No representation, warranty, or covenant of Developer in this Agreement, or in any document or certificate furnished or to be furnished to Commission pursuant to this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading.

viii. All financial information delivered to Commission, including, without limitation, information relating to the financial condition of Developer and the Project, accurately represents such financial condition and has been prepared in accordance with accepted accounting principles consistently applied, unless otherwise noted in such information. Developer shall notify Commission in writing of any material changes to such information delivered to the Commission.

ix. The Developer has, and will as required by its obligations hereunder, dedicate, allocate and otherwise make available, sufficient financial and other resources to perform its obligations under this Agreement.

Each of the foregoing items i to ix, inclusive, shall be deemed to be an ongoing representation and warranty and shall survive the Close of Escrow for the Site. The Developer

shall advise the Commission in writing if there is any material change pertaining to any matters set forth or referenced in the foregoing items i to ix, inclusive.

1.7 Representations by the Commission

The Commission represents and warrants to Developer as follows:

i. Commission is a public body, corporate and politic, which is authorized to transact business pursuant to Health and Safety Code Section 34143. Commission has full right, power and lawful authority to transfer the Site as provided herein and the execution, performance, and delivery of this Agreement by Commission has been fully authorized by all requisite actions on the part of Commission. The parties who have executed this Agreement on behalf of Commission are authorized to bind Commission by their signatures hereto.

ii. Commission does not, as far as is known to Commission, have any contingent obligations or contractual agreements which will materially adversely affect the ability of Commission to carry out its obligations hereunder.

iii. There are no pending or, so far as is known to Commission, threatened, legal proceedings to which Commission is or may be made a party or to which it or any of its property is or may become subject, which will materially adversely affect the ability of Commission to carry out its obligations hereunder.

iv. There is no action or proceeding pending or, to Commission's knowledge, threatened, looking toward the dissolution or liquidation of Commission and there is no action or proceeding pending or, to Commission's knowledge, threatened by or against Commission which could affect the validity and enforceability of the terms of this Agreement, or adversely affect the ability of Commission to carry out its obligations hereunder.

v. To Commission's knowledge, the Site is not currently in violation of any law, ordinance, rule, regulation or requirement applicable to its use and operation.

vi. Commission is not the subject of a bankruptcy proceeding.

vii. To Commission's knowledge, no Hazardous Materials, (as defined in Section 2.9 below) other than those identified in the Phase I, are now or have been released, used, or stored on or within any portion of the Site in violation of applicable laws or regulations governing the release, use, or storage of Hazardous Materials, and there has not been any federal, state, or local enforcement, clean-up, removal, remedial, or other governmental or regulatory actions instituted or completed affecting the Site.

viii. To Commission's knowledge, the execution and delivery of this Agreement and all other documents to be executed by Commission pursuant to this Agreement will not constitute or result in any default or event that with notice or the lapse of time, or both, would be a default, breach, or violation of any other agreement, instrument, or arrangement by which Commission is bound.

ix. To Commission’s knowledge, the execution and delivery of this Agreement and all other documents to be executed by Commission pursuant to this Agreement and the consummation of the transactions contemplated herein will not violate any provision of or require any consent, authorization, or approval under any law or administrative regulation or any other order, award, judgment, writ, injunction or decree applicable to, or any governmental permit or license issued to Commission.

x. To Commission’s knowledge, no representation, warranty, or covenant of Commission in this Agreement, or in any document or certificate furnished or to be furnished to Developer pursuant to this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading.

As used in this Section 1.7, the term “knowledge” or “known” means the actual (not constructive or imputed) knowledge of the Commission Executive Director, without any investigation or inquiry or duty of investigation or inquiry.

2. CONVEYANCE OF THE SITE

2.1 Acquisition of the Site; Purchase Price

The Developer shall acquire a fee simple title to the Site pursuant to a grant deed substantially in the form attached hereto and incorporated herein as Attachment No. 6 (“Grant Deed”). The purchase price for the Site (the “Purchase Price”), which is being credited to Developer in the form of the Acquisition Assistance, is the Appraised Value of the Site as established by an Appraisal conducted by an MAI prior to Developer making application to the TCAC.

2.2 Escrow

A. Opening of Escrow. Commission and Developer agree to open an escrow (the “Escrow”) with Old Republic Title Company, 630 3rd St. Suite 201, Santa Rosa, CA 95404 (the “Escrow Agent”), by the time established therefor in the Schedule of Performance. This Agreement constitutes Commission’s and Developer’s escrow instructions for the Commission’s sale and Developer’s purchase of the Site and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of the Escrow. The Escrow Agent is hereby empowered to act under this Agreement, and the Escrow Agent, upon indicating within five (5) days after the opening of the Escrow its acceptance of the provisions of this Article 2, in writing, delivered to the Commission and the Developer, shall carry out its duties as Escrow Agent hereunder. In the event of any conflict or inconsistency between the additional escrow instructions required by the Escrow Agent and the provisions of this Agreement, the provisions of this Agreement shall supersede and control. Any amendment of the escrow instructions set forth or described herein shall be in writing and signed by both Commission and Developer. At the time of any authorized amendment to the escrow instructions, the Escrow Agent shall agree, by signing below an appropriate statement on such an amendment, to carry out its duties as Escrow Agent under such an amendment. All communications from the Escrow Agent to Commission or Developer shall be in writing and directed to the addresses and in the manner established in Section

7.1 of this Agreement for notices, demands, and communications between Commission and Developer.

B. Deposits Into Escrow. Commission and Developer shall deposit the following documents and pay into the Escrow the following fees, charges and costs promptly after the Escrow Agent has notified the Commission of the total amount of such fees, charges and costs, but not earlier than five (5) days prior to the scheduled date for the Close of Escrow:

1. Developer shall deposit the amount of One Hundred Dollars (\$100) as a good faith deposit (the "Deposit"). In the event the Escrow closes, the Deposit shall be applied towards Developer's closing costs;

2. Developer shall pay the Escrow fee;

3. Developer shall pay the costs, if any, of drawing the Grant Deed;

4. Developer shall pay recording fees, if any;

5. Commission and Developer shall pay their respective Notary fees;

6. Developer shall pay all costs for the Developer Title Policy.

7. Developer shall pay for any transfer tax and any state, county or city documentary stamps.

Commission shall deposit with the Escrow Agent the fully executed Grant Deed, Commission Deed of Trust, Option Agreement, Commission Regulatory Agreement, Notice of Affordability Restrictions, and Memorandum.

C. Escrow Officer Obligations. The Escrow Officer shall notify the Commission and Developer when all outstanding documents, including the Grant Deed, Commission Deed of Trust, Option Agreement, Commission Regulatory Agreement, Notice of Affordability Restrictions, and Memorandum have been executed and submitted to Escrow by the applicable party.

Upon confirmation by the Escrow Agent that all of the Commission's Conditions to Closing and all of the Developer's Conditions to Closing have been satisfied, or waived by the appropriate party, the Escrow Agent shall record the following documents in the following order of recordation: (1) Grant Deed, (2) Commission Deed of Trust, (3) Option Agreement, (4) Commission Regulatory Agreement, (5) Memorandum, and (6) Notice of Affordability Restrictions. The date such documents are recorded shall be referred to herein as the "Close of Escrow" or the "Closing Date."

All funds received in the Escrow shall be deposited by the Escrow Agent, with other escrow funds of the Escrow Agent in an interest-earning general escrow account or accounts with any state or national bank doing business in the State of California. Such funds may be transferred to any other general escrow account or accounts. All disbursements shall be made by check of the Escrow Agent.

Any amendment to these escrow instructions shall be in writing and signed by the Commission. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

2.3 Conveyance of Title and Delivery of Possession

Provided that the Developer is not in default under this Agreement and all of Commission's Conditions to Closing and Developer's Conditions to Closing have occurred, and subject to any mutually agreed upon extensions of time, Commission shall convey to the Developer title to the Site. The Commission and the Developer agree to perform all acts necessary to conveyance of title on or before the Outside Closing Date.

Possession shall be delivered to the Developer concurrently with the conveyance of title at the Close of Escrow, except that limited access may be permitted before the Close of Escrow as permitted in Section 2.9 of this Agreement. The Developer shall accept title and possession on said date.

2.4 Conditions to Close of Escrow

A. Commission's Conditions to Closing. The Commission's obligation to convey the Site to Developer and the closing of the Escrow shall, in addition to any other condition set forth herein in favor of the Commission, be conditional and contingent upon the satisfaction, or waiver by the Commission in its sole and absolute discretion, on or before the Outside Closing Date, of each and all of the following conditions (collectively, "Commission's Conditions to Closing"):

i. Developer shall have delivered to Commission or deposited into Escrow the Commission Deed of Trust, duly executed and acknowledged by Developer, the Commission Regulatory Agreement, duly executed and acknowledged by Developer, the Option Agreement, duly executed and acknowledged by Developer, the Notice of Affordability Restrictions, duly executed and acknowledged by Developer, and the Memorandum, duly executed and acknowledged by Developer, and all other sums and documents required of Developer by this Agreement;

ii. Developer shall have submitted to the Executive Director the authorizing resolution approving this Agreement and the transactions contemplated hereby;

iii. Developer shall have submitted to the Executive Director the evidence of insurance required pursuant to Section 4.9 of this Agreement;

iv. Developer shall have submitted to the Executive Director the financial statements required by Section 3.7, and the Executive Director shall have approved the same;

v. Developer shall have submitted to the Executive Director Developer's Evidence of Financing, in accordance with Section 4.7 herein, and the Executive Director shall have approved the same;

vi. Developer shall have conducted a Phase I Environmental Site Assessment to identify potential environmental concerns that would need to be remediated prior to development activity on the Site;

vii. Developer shall have obtained all of the Project Entitlements;

viii. Developer shall have executed and delivered to Commission the Commission Note and the Assignment of Architectural Agreements and Plans and Specifications, in the form attached to the Commission Note as Exhibit "B" (the "Assignment of Plans") concurrently with Developer's execution of this Agreement, and Developer shall not be in default of any term or condition thereof;

ix. On the Closing Date, the Title Company shall be irrevocably committed to issue the Commission Title Policy;

x. The Project Financing Disbursement Agreement shall have been fully executed, and shall provide disbursement of the Commission Loan prior to disbursement of the Construction Loan.

xi. All representations of Developer contained herein shall be true and correct in all material respects;

xii. Escrow Agent holds and will deliver to Commission the instruments and funds to be delivered to Commission under this Agreement; and

xiii. Developer is not in material default of any term or condition of this Agreement.

B. Developer's Conditions to Closing. Developer's obligation to acquire the Site from Commission and the closing of the Escrow shall, in addition to any other condition set forth herein in favor of the Developer, be conditional and contingent upon the satisfaction, or waiver by the Developer in its sole and absolute discretion, on or before the Outside Closing Date, of each and all of the following conditions (collectively, "Developer's Conditions to Closing"):

i. Commission has deposited into Escrow the Grant Deed, duly executed and acknowledged by Commission, and all other sums and documents required of Commission by this Agreement;

ii. On the Closing Date, the Title Company shall be irrevocably committed to issue the Developer Title Policy insuring fee title to the Site is vested in Developer;

iii. Developer shall have obtained all of the Project Entitlements;

iv. Escrow Agent holds and will deliver to Developer the instruments to be delivered to Developer under this Agreement;

v. the Developer has approved the environmental condition of the Site and agrees to acquire the Site in its present condition;

vi. Developer has received a reservation of Tax Credits; and

vii. Commission is not in material default of any term or condition of this Agreement.

C. Waiver. Commission may at any time or times, at its election, waive any of the conditions set forth in Section 2.4.A above to its obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by Commission and delivered to Developer. Developer may at any time or times, at its election, waive any of the conditions set forth in Section 2.4.B above to its obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by Developer and delivered to Commission.

D. Failure of Conditions Precedent; Termination. In the event that by the Outside Closing Date each of the conditions set forth in Section 2.4.A is not fulfilled, or waived by Commission pursuant to Section 2.4.C, Commission may, at its option, terminate this Agreement and the Escrow opened hereunder, thereby releasing the parties from further obligations hereunder. In the event that by the Outside Closing Date each of the conditions set forth in Section 2.4.B are not fulfilled, or waived by Developer pursuant to Section 2.4.C, Developer may, at its option, terminate this Agreement and the Escrow opened hereunder, thereby releasing the parties from further obligations hereunder. In the event this Agreement is terminated, all documents and funds delivered by Developer to Commission or Escrow Agent shall be returned immediately to Developer and all documents and funds delivered by Commission to Developer or Escrow Agent shall be returned immediately to Commission. Nothing in this Section 2.4.D shall be construed as (i) releasing any party from liability for any default of its obligations hereunder or breach of its representations and warranties under this Agreement occurring prior to the termination of this Agreement and/or the Escrow to be opened hereunder, or (ii) releasing the Developer from its indemnifications obligations hereunder, all of which shall survive termination of this Agreement.

2.5 Condition of Title

The Commission shall convey to the Developer fee simple title to the Site free and clear of all recorded liens, encumbrances, encroachments, assessments, leases and taxes except the provisions of the Grant Deed, the Commission Deed of Trust, the Commission Regulatory Agreement, the Option Agreement, the Memorandum, the Notice of Affordability Restrictions and the standard printed conditions and exceptions contained in the American Land Title Association (ALTA) standard owner's policy of title insurance that is regularly issued by the Title Company in transactions similar to the one contemplated by this Agreement, as approved by Developer pursuant to this Section 2.4. Prior to the Effective Date, Commission has caused the Title Company to deliver to Developer a standard preliminary title report with respect to the Site as Order No. 4906-3688662, together with legible copies of the documents underlying the exceptions set forth in said report (collectively, the "Title Report"). Developer has approved of the condition of title as reflected in the Title Report.

2.6 Title Insurance

Concurrently with recordation of the Grant Deed, the Escrow Agent shall instruct the Title Company to provide and deliver to the Developer an ALTA standard form policy of title insurance that does not require a survey, together with such endorsements as may be reasonably requested by Developer, issued by the Title Company insuring that the title is vested in the Developer, or its assignee, as applicable, in the condition reflected in the Title Report (the “Developer Title Policy”). The Title Company shall provide the Commission with a copy of the Developer Title Policy. The Developer shall pay all costs of the Developer Title Policy.

Commission shall obtain from the Title Company an ALTA lender’s policy of title insurance, together with such endorsements as may be reasonably requested by Commission with liability in the amount of the Commission Loan, covering the Site, showing title vested in Developer, and insuring the validity and priority of, respectively, the Commission Deed of Trust, Option Agreement, Commission Regulatory Agreement, Memorandum, and Notice of Affordability Restrictions, subject only to the exceptions authorized by this Agreement (the “Commission Title Policy”).

2.7 Taxes and Assessments

Ad valorem taxes and assessments, if any, on the Site, and taxes upon this Agreement or any rights hereunder, levied, assessed or imposed for any period commencing prior to conveyance of title shall be borne by the Commission. All ad valorem taxes and assessments levied or imposed for any period commencing after close of the Escrow shall be paid by the Developer.

2.8 Conveyance Free of Possession

The Site shall be conveyed free of any possession or right of possession by any person except that of the Developer and the easements and other encumbrances of record (subject to Developer’s right to review the condition of title pursuant to Section 2.5). Inspections; Condition of Site

A. Right of Entry

i. In connection with Developer’s due diligence investigations of the Site, Commission hereby grants to Developer, and its affiliates, agents, contractors and employees, a license (the “License”) to enter upon the Site in order to conduct any and all inspections, investigations, tests and studies (including, without limitation, architectural inspections, engineering tests, soils, seismic and geologic reports and environmental testing) with respect to the Site (“Due Diligence Investigations”) as Developer may reasonably elect to make, all at Developer’s sole cost and expense. Developer shall notify the Commission Executive Director, which may be by written or telephonic notice, prior to a planned entry on the Site and provide information to the Commission Executive Director as to the purpose of the planned entry and the estimated time for completing the particular Due Diligence Investigation. All Due Diligence Investigations performed on the Site shall be undertaken in conformance with all applicable laws and requirements, including obtaining any and all permits, and the City’s Municipal Code, including but not limited to the City’s Noise Ordinance. Developer acknowledges that the Site is adjacent to a residential area and so no Due Diligence Investigations shall be performed other than

between the hours of 8 a.m. and 5 p.m. Monday through Saturday except as otherwise permitted or limited by the Commission Executive Director.

ii. Commission may revoke this License (i) upon written notice to Developer if, in the reasonable judgment of the Commission Executive Director, such revocation is necessary to protect public health, safety, or welfare; or (ii) upon two (2) business days' written notice to Developer that Developer is in violation of the terms of this Agreement or of any applicable law, statute, ordinance, rule, or regulation pertaining to the Due Diligence Investigations or Developer's entry upon the Site pursuant to this Agreement, if Developer has failed to cure such violation within that period of two (2) business days following Developer's receipt of notice from Commission.

iii. The License shall terminate and be void as of the termination of this Agreement.

iv. Developer shall cause to have its Due Diligence Investigations conducted in accordance with all laws applicable thereto, and in a good and workmanlike manner.

B. Lien Free. Developer shall keep the Site free and clear of any mechanic's or materialmen's liens arising out of Developer's Due Diligence Investigations. The provisions of this paragraph shall survive the termination of this Agreement for any reason whatsoever.

C. Obligations Upon Expiration/Termination. Upon the earlier of (i) the termination of the License, or (ii) the termination of this Agreement, Developer shall promptly (a) repair any damage to the Site caused by Developer's or any of its representatives' entry thereon, and (b) remove Developer's or any of its representatives' personal property from the Site. The provisions of this paragraph shall survive the expiration or early termination of this Agreement for any reason whatsoever.

D. Insurance

i. Without limiting Developer's indemnification obligations as set forth in this Agreement, Developer, prior to any entry on the Site by Developer or its employees, agents, representatives, consultants, or contractors, shall procure and maintain, at its sole cost and expense, for the period of such entry, policies of insurance in conformance with the Commission's requirements set forth in Attachment 11.

a. Commission reserves the right at any time during the term of this Agreement to reasonably change the amounts and types of insurance required by giving Developer not less than thirty (30) days advance written notice of such change.

ii. Prior to any entry onto the Site by Developer or its employees, agents, representatives, consultants, or contractors, Developer shall provide the Commission Executive Director with Certificates of Insurance evidencing the above insurance coverages and said Certificates of Insurance have been reasonably approved by Commission. Said Certificates are to reflect that the insurer will provide 30 days written notice to Commission of any cancellation of coverage and if the Accord certificate form is used the word "endeavor to" shall be stricken from the insurer's written notification section. In the event any of said policies of insurance are

reduced in limits or cancelled for any reason, Developer shall, prior to the cancellation date, submit new evidence of insurance, in conformance with this paragraph.

iii. Developer shall not enter upon the Site for the purpose of the Due Diligence Investigations until Developer has provided the Commission Executive Director with the required Certificate of Insurance and the Commission Executive Director has approved same.

iv. The provisions of any workers' compensation or similar act shall not limit the obligations of Developer under this Agreement. Developer expressly agrees not to use any statutory immunity defenses under such laws with respect to Commission or its officers, officials, members, employees, agents, representatives, or volunteers acting in an official capacity.

v. Developer agrees to provide immediate notice to Commission of any claim or loss against Developer arising out of any acts or omissions of Developer under this Agreement. Commission assumes no obligation or liability by such notice, but has the right to monitor the handling of any such claim or claims if they are likely to involve the Commission or any officer, official, member, employee, agent, representative, or volunteer acting in an official capacity.

E. "As Is". The Commission has provided the Developer with all information of which it has actual knowledge concerning the physical condition of the Site, including, without limitation, information about any "Hazardous Materials," as defined herein. The Developer acknowledges and agrees that any portion of the Site that it acquires from the Commission pursuant to this Agreement shall be purchased "AS IS" "WHERE IS" "WITH ALL FAULTS," in its current physical condition, with no warranties of any kind or nature, express or implied, except those warranties set forth in Section 1.7 above, as to the physical condition thereof, the presence or absence of any latent or patent condition thereon or therein, including, without limitation, any Hazardous Materials thereon or therein, and any other matters affecting the Site.

F. Indemnity. The Developer agrees, from and after the date of recordation of the Grant Deed, to defend (by counsel reasonably satisfactory to the Commission), indemnify, protect and hold harmless the Commission and its respective officers, directors, members, beneficiaries, employees, agents, attorneys, representatives, legal successors and assigns (collectively, the "Indemnitees") from, regarding and against any and all liabilities, obligations, orders, charges, decrees, judgments, liens, demands, actions, "Environmental Response Actions" (as defined in Section 2.9 I below), claims, losses, damages, fines, penalties, expenses, "Environmental Response Costs" (as defined in Section 2.9.I below), administrative and judicial proceedings, remedial action requirements, enforcement actions of any kind, or costs of any kind or nature whatsoever, together with fees (including, without limitation, reasonable attorneys' fees and experts' and consultants' fees), (collectively, "Claims") occurring during and caused by Developer's use and occupancy of the Site, and resulting from or in connection with the actual or claimed generation, storage, handling, treatment, transportation, use, presence, placement, migration, removal, release, storage, decontamination, cleanup, and /or disposal of Hazardous Materials at, on, in, beneath or from the Site after the Close of Escrow, unless (i) caused by the negligence or willful misconduct of Indemnitees, (ii) related to the underground storage tank identified in the Phase I, or (iii) related to the existence, prior to any removal activities of Developer, of the asbestos concrete pipe identified in the Phase 1 (but not if any such Claims were,

directly or indirectly, caused by the Developer, including during Developer's removal thereof). The Developer's defense, indemnification, protection and hold harmless obligations herein shall include, without limitation, the duty to respond to any governmental inquiry, investigation, claim or demand regarding the Hazardous Materials, at the Developer's sole cost. The foregoing indemnity shall further apply to any residual contamination on or under the Project, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials occurring after the Close of Escrow, and irrespective of whether any of such activities were or will be undertaken in accordance with all federal, state, and local laws, ordinances, regulations, orders, and directives pertaining to Hazardous Materials in, on, or under the Project or any portion thereof. The provisions of this section shall survive expiration of the Term, or the termination, of this Agreement, and shall remain in full force and effect.

G. Environmental Provisions. Developer hereby acknowledges and agrees that (i) this Section is intended as the Commission's written request for information (and Developer's response) concerning the environmental condition of the Site as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Site is intended by the parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

H. Release and Waiver. Developer hereby releases and waives all rights, causes of action and claims the Developer has or may have in the future against the Indemnitees arising out of or in connection with any Hazardous Materials at, on, in, beneath or from the Site, other than any Hazardous Materials identified in Phase I, that occur after the Close of Escrow. In furtherance of the intentions set forth herein, the Developer acknowledges that it is familiar with California Civil Code Section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED THIS SETTLEMENT WITH THE DEBTOR."

The Developer hereby waives and relinquishes any right or benefit which it has or may have under California Civil Code Section 1542, or any similar provision of the statutory or non-statutory law of any other applicable jurisdiction to the full extent that it may lawfully waive all such rights and benefits, with respect to Section 2.9H of this Agreement.

Developer's Initials: _____

I. Materiality. The Developer acknowledges and agrees that the defense, indemnification, protection and hold harmless obligations of the Developer for the benefit of the Commission set forth in this Agreement are a material element of the consideration to the Commission for the performance of its obligations under this Agreement, and that the Commission

would not have entered this Agreement unless the Developer's obligations were as provided for herein.

3. FINANCING

As set forth in Sections 3.1-3.5 below and in the Financing Plan, Developer contemplates financing the acquisition of the Site and development of the Project thereon with a combination of funds from the proceeds of the following: (i) the Acquisition Assistance utilizing a LMIHAF Loan; (ii) the Commission Loan(s); (iii) the Construction Loan; (iv) an AHP Loan; (v) the Investor Limited Partner's equity contribution to be obtained through the syndication of tax credits; (vi) any of various State of California programs that may be available; and (vii) City of Sonoma grants and loans and such other financing sources as may be obtained by Developer in accordance with the terms and conditions of this Agreement. Developer shall utilize all of such funding exclusively for the development of the Project on the Site, and not for any other purpose.

3.1 Acquisition Assistance

The "Acquisition Assistance" is financial assistance from the Commission, in an amount which is the Purchase Price of the Site. The Acquisition Assistance shall be provided to Developer at the Close of Escrow, in the form of a credit towards the Purchase Price.

3.2 Low Moderate Income Housing Asset Fund Loan; Subordination

Commission shall provide Developer with Acquisition Assistance, in the form of Low Moderate Income Housing Asset Fund (LMIHAF) Loan for the Purchase Price of the Site to assist Developer in developing the Project (the "LMIHAF Loan"). The LMIHAF Loan shall be secured against the Site by a recorded LMIHAF Deed of Trust, recorded upon transfer of fee simple title to the Site to Developer at Close of Escrow. Developer shall repay the LMIHAF Loan in accordance with the terms of the Commission Note. Repayment of the LMIHAF Loan shall be secured by the LMIHAF Deed of Trust. The Commission agrees to subordinate the LMIHAF Deed of Trust to the lien for the deed(s) of trust securing the Construction Loan and the Takeout Loan, as well as any loan from a State of California agency if so required, and to subordinate the Commission Regulatory Agreement to the lien for the deed(s) of trust securing the Construction Loan and the Takeout Loan and any loan from a State of California agency if so required. The LMIHAF Deed of Trust shall be in senior lien position with the deeds of trust securing the Commission Loan (if any) and AHP Loan (if any).

3.3 Commission Loans

The Commission administers several programs for financing affordable housing development, including the Low Moderate Income Housing Asset Fund program, the County Fund for Housing, the federal Community Development Block Grant program, and the federal HOME Investment Partnership program (in aggregate called "Commission Loans"). These program offer financing through competitive application processes announced by published Notices of Funding Availability ("NOFAs"). Commission acknowledges that Developer's Financing Plan envisions use of Commission Loan(s), subject to successful competitive application(s). Each of Commission's Loan programs have policies that define eligibility requirements for application, as

well as the eligible uses and procedures for documentation and disbursement of Commission Loan proceeds.

3.4 Developer Fee

The Developer shall be entitled to a Developer Fee in an amount not exceeding the maximum amount allowed under the TCAC regulations effective at the time the Developer receives a Tax Credit reservation; provided, however, that the amount of the Developer Fee that can be paid to the Developer shall not exceed One Million Four Hundred Thousand Dollars (\$1,400,000) or such greater amount allowed by any other funding source set forth in the Financing Plan if approved in writing by Commission. Except for the Developer Fee and the Partnership Management Fee, no compensation from any source shall be received by or be payable to the Developer or any affiliate of the Developer in connection with the provision of development and construction management services for the construction of the Project.

3.5 Other Developer Financing for the Project

A. AHP Loan. Developer shall timely submit a complete application for the AHP Loan and shall diligently pursue the receipt of the same.

B. Construction Loan. Developer shall obtain a Construction Loan in an amount that, when combined with the sum of the Tax Credits, the AHP Loan, the LMIHAF Loan, and the Commission Loan(s) (if any)) is sufficient to complete construction of the Project.

C. Tax Credits. Developer shall (i) prepare and submit a complete application to TCAC for an allocation of Tax Credits as soon as feasible following the Effective Date of this Agreement; and (ii) apply to reputable institutional investors qualified to act as the Investor Limited Partner. If Developer does not receive a reservation of Tax Credits by the Outside Closing Date, then Commission or Developer may terminate this Agreement pursuant to Section 2.4.D upon written notice to the other; provided, however, that Commission's Executive Director may, in her sole and absolute discretion, permit Developer to make additional reapplications. In the event there are subsequent applications for an allocation of Tax Credits, Commission reserves all rights to re-evaluate the amount of the Commission Loan, which evaluation shall be undertaken by the Executive Director and the Commission's financial advisor; therefore, the principal amount of the Commission Loan may change due to such re-evaluation, which would require further negotiations between the parties and the mutually agreeable amendment and/or restatement of this Agreement.

Developer agrees to promptly submit to Commission all of the following documents at such time as the same are submitted by Developer to the TCAC or other applicable body or when such documents are received by Developer, as applicable (any documents submitted prior to the Effective Date of this Agreement shall also have been submitted by Developer to Commission and reviewed by Commission prior to the Effective Date of this Agreement):

i. A true and correct copy of the preliminary reservation letter from TCAC, a copy of the letter of intent from the Investor Limited Partner reflecting the total amount of the syndication proceeds and the timing of the payment of such proceeds.

ii. A complete copy of the Tax Credit Regulatory Agreement (4 California Administrative Code § 10340(c)). (As more fully discussed in Section 3.11 of the Commission Regulatory Agreement, should Commission be prevented by a final order of a court of competent jurisdiction, applicable and binding appellate opinion, or regulatory body with jurisdiction from enforcing, for any reason, the affordability restrictions set forth in this Agreement, Commission shall be a third-party beneficiary under said agreement and shall have full authority to enforce any breach or default by Developer thereunder in the same manner as though it were a breach or default under this Agreement.)

iii. Complete copies of all correspondence or transmittals from the TCAC or other jurisdiction (such as the Internal Revenue Service) containing any notification regarding the Project's noncompliance with applicable provisions of the Tax Credit Program.

D. PV Rebate. Developer shall timely submit a complete application for the PV Rebate, if available, and shall diligently pursue the receipt of the same.

In addition to the foregoing sources of funding for the Project, Developer shall diligently seek other sources of funding that are or may be available to help fund the Project.

3.6 Project Budget; Project Pro Forma

The anticipated sources and uses of funds for the development of the Project are set forth in the Project Budget (Attachment No. 14). The financial projections for the Project are set forth in the Project Pro Forma (Attachment No. 15).

3.7 Developer Submittals

Promptly upon Developer's receipt of a notification of an award of any of the financing described in the Financing Plan, Developer shall submit to the Commission copies of all of the correspondence and other documentation received in connection with the same.

Within five (5) days after the Effective Date, Developer shall provide to Commission a copy of SAHA's most recently prepared Annual Financial Statement, and a copy of SAHA's most recent internally prepared, unaudited financial statement, which shall include a balance sheet, income statement, statement of retained earnings, statement of cash flows, and footnotes thereto, prepared in accordance with generally accepted accounting principles consistently applied.

4. DEVELOPMENT OF THE SITE

4.1 Scope of Development

The Project will be comprised of the construction of an affordable multifamily rental housing complex containing not less than forty-eight-eight (48) apartment dwelling units, and shall include all of the on-site private improvements necessary for the development and all public improvements required pursuant to the conditions of approval issued with the Project Entitlement issued by the City, and shall be in accordance with all approved plans and permits, all as set forth in this Agreement and in the Scope of Development.

4.2 Plans, Drawings, and Related Documents

By the time set forth for the applicable items in the Schedule of Performance, the Developer shall prepare and submit to the City for its approval, and shall obtain the City's approval of, all plans, drawings, and documents for the Project in conformance with all requirements of the City and which contain the overall plan for development of the Site in sufficient detail to enable the City to evaluate the proposal for conformity to the requirements of the Sonoma Municipal Code and this Agreement. The Site shall be developed as established in this Agreement and the aforementioned documents, except as changes may be mutually agreed upon between the Developer and the Commission; provided that any changes shall be consistent with the material terms of this Agreement.

The landscaping and finish grading plans, if any finish grading plans are required by the City, shall be prepared by a professional landscape architect or registered civil engineer who may be the same firm as the Developer's architect or civil engineer.

During the preparation of all drawings and plans, staff of the Commission and the Developer shall hold regular progress meetings to coordinate the preparation of, submission to, and review of drawings, plans and related documents by, the City. The staff of the Commission and the Developer shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to the Commission can receive prompt consideration.

Developer acknowledges that execution of this Agreement by the Commission does not constitute approval by the City of any of the required permits or applications, and the City retains unfettered discretion in the processing of the same.

4.3 Review and Approval of Plans, Drawings, and Related Documents

The Commission and the City shall have the right to review and approve all plans and drawings which may be required by the City with respect to any permits and entitlements which are required to be obtained to develop the Project, including any changes therein.

During each stage of the processing of plans for the Project, the Commission and the City shall have the right to require additional information. If the City determines that such a submittal is not complete or not in accordance with procedures, such tender shall not be deemed to constitute a submittal for purposes of satisfying the Schedule of Performance; provided, however, Developer shall prepare a detailed written report of any such deficiency or noncompliance with procedures and Developer shall revise and resubmit such plans in accordance with the Schedule of Performance and such written report.

If the Developer desires to make any substantial changes in the construction plans for the Project after the approval thereof by the Commission and the City, the Developer shall submit the proposed changes to the Commission and the City for their approval. If the construction plans, as modified by the proposed change, conform to the requirements of this Section 4.3 and the Scope of Development, the Commission will approve the proposed change and will endeavor to obtain, at no cost to Commission, the City's approval of the same.

4.4 Project Entitlements

Prior to, and as one of the Commission's Conditions to Close, as set forth in Section 2.4.A, Developer shall (i) obtain from the City of Sonoma approval for all plans, drawings, and related documents required for the Project, such that immediately after the Close of Escrow for the Site Developer shall be entitled to obtain grading and building permits for the Project; and (ii) obtain from the City of Sonoma all permits and entitlements necessary for the Project as required in this Agreement, by applicable State law, by City code, and all other applicable law, including but not limited to, Environmental Review, a Parking Exception, Site Design, Architectural Review, any conditional use permit, any zone change, any variance, and any vacation of public rights of way, the approval of which by the City of Sonoma is subject to the City's legislative discretion (all of the foregoing, the "Project Entitlements"). Commission agrees to fully cooperate with, and assist, at no cost to Commission, Developer in its pursuit of Project Entitlements, subject to Commission's exercise of its legislative discretion and without any representation, warranty, or guaranty by Commission that the City will issue, or will issue with conditions, any Project Entitlement. Without limiting the generality of the foregoing, Commission shall review all submittals by Developer in a timely manner and shall provide Developer with all information, in Commission's possession or control, that Developer may reasonably request in writing in connection with the Project Entitlements (or the pursuit thereof).

4.5 Cost of Development

All costs for planning, designing, and constructing the Project, including but not limited to all development and building fees, broker's fees and commissions, site remediation (if any), grading and preparation costs, off-site and on-site construction and improvement costs shall be borne exclusively by the Developer. The Developer shall also bear all costs related to discharging the duties of the Developer set forth in this Agreement.

4.6 Construction Schedule

The Developer shall commence and complete construction of the Project by the respective times established therefor in the Schedule of Performance in Attachment No. 5.

4.7 Evidence of Financing

Within the time set forth in the Schedule of Performance, and as a condition precedent to Commission's obligation to transfer the Site to Developer, Developer shall submit to the Executive Director evidence reasonably satisfactory to the Executive Director that Developer has, or will have, prior to the Close of Escrow, the financial capability necessary for the development of the Project on the Site pursuant to this Agreement. Such evidence of financial capability (collectively, the "Evidence of Financing") shall include all of the following:

Copies of executed letters of commitment or preliminary reservations or awards (if final commitment letters are not yet available) from the funding sources described in the Financing Plan in an amount sufficient, collectively, to complete construction of the Project, or reasonably final construction loan documents along with evidence reasonably satisfactory to the Executive Director that the sources of said financing intend to execute the same and provide an initial funding on or

before the Close of Escrow. Any such agreement shall provide for notice of default to Commission, and the right to cure required by Section 4.21.

Evidence of sufficient take out financing, including both permanent loan and any other funds, in a form reasonably satisfactory to the Executive Director, such that the Executive Director can determine that sufficient funding for the Project will be available.

A true and correct copy of the preliminary reservation letter from TCAC, a copy of the letter of intent from the Investor Limited Partner reflecting the total amount of the syndication proceeds and the timing of the payment of such proceeds, and evidence of the source and amount of any bridge financing that will be procured in an interim basis, and the terms under which the bridge financing is being provided.

A copy of Developer's most recently prepared Annual Financial Statement, and a copy of Developer's most recent internally prepared, unaudited financial statement, which shall include a balance sheet, income statement, statement of retained earnings, statement of cash flows, and footnotes thereto, prepared in accordance with generally accepted accounting principles consistently applied.

A copy of a fee-based construction contract or guaranteed maximum price construction contract between Developer and its general contractor for all of the improvements required to be constructed by Developer hereunder, certified by Developer to be a true and correct copy thereof; and

The Executive Director shall complete his or her review of and approve or disapprove Developer's Evidence of Financing within the time set forth in the Schedule of Performance. If the Executive Director shall disapprove such Evidence of Financing, he or she shall do so by written notice to Developer stating the reasons for such disapproval. In such event, Developer shall promptly resubmit its Evidence of Financing not less than thirty (30) days after receipt of the Executive Director's disapproval, the Executive Director shall reconsider such resubmittal within the same number of days allowed for the initial submittal, and the deadlines in the Schedule of Performance shall be extended accordingly.

4.8 Indemnity Requirements

The Developer shall indemnify, defend, and hold harmless the Indemnitees from all claims or suits for, and damages to, property and injuries to persons, including accidental death (including expert witness fees, attorneys fees, and costs), which may be caused by any of the Developer's activities under this Agreement except to the extent caused by the negligence or willful misconduct of any of the Indemnitees.

4.9 Insurance Requirements

General. Commencing on the Effective Date hereof and ending on the expiration date of the Commission Regulatory Agreement, Developer shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to the Executive Director, policies of insurance in conformance with the Commission's requirements set forth in Attachment No. 11.

4.10 City and Other Governmental Commission Permits

Before commencement of construction or development of any buildings, structures or other works of improvement upon the Site or in connection with any off-site improvement, the Developer shall, subject to Section 4.4, at its own expense, secure or cause to be secured any and all permits which may be required by the City or any other governmental agent affected by such construction, development or work. Developer shall be obligated to pay all necessary fees and to timely submit to the City final drawings with final corrections to obtain building permits; the Commission will, without obligation to incur liability or expense therefor, use reasonable efforts to assist Developer in obtaining issuance of building permits and certificates of occupancy for construction that meet the requirements of the Sonoma Municipal Code.

4.11 Maintenance During Construction

Developer shall, prior to completion of construction, maintain all portions of the Site undergoing construction in a neat and orderly condition to the extent practicable and in accordance with industry health and safety standards.

4.12 Rights of Access

For purpose of assuring compliance with this Agreement, officers, directors, members, employees, representatives, and agents of the Commission shall have the right of access to the Site without charges or fees, at normal business hours during the Term of this Agreement for the purposes of this Agreement, including, but not limited to, (i) the inspection of the work being performed in constructing the Project, so long as they comply with all safety rules, and (ii) following completion of construction, to inspect the ongoing operation and management of the Project to determine the same is in conformance with the requirements of this Agreement and the Commission Regulatory Agreement. The Commission shall not cause any delay in the construction or operation of the Project by its entry pursuant to this Section 4.12. The Developer acknowledges that the Commission is under no obligation to supervise, inspect, or inform the Developer of the progress of construction, or operations and the Developer shall not rely upon the Commission therefore. Any inspection by the Commission during the construction is entirely for its purposes in determining whether the Developer is in compliance with this Agreement and is not for the purpose of determining or informing the Developer of the quality or suitability of construction. The Developer shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers. Notwithstanding any provision of this Agreement to the contrary, Developer shall not bear any liability to the Commission for injury to any Commission employee or representative occurring during the exercise of the Commission's right of entry pursuant to this Section 4.12, unless caused by the willful misconduct of the Developer.

4.13 Compliance with Local, State and Federal Laws

The Developer shall carry out, and shall ensure that its contracts and subcontractors carry out the Project in conformity with all applicable federal, state, and local laws, ordinances, regulations, and rules, including but not limited to the Americans With Disabilities Act (42 U.S.C.

Section 12101, *et seq.*), California Government Code Section 4450, *et seq.*, California Government Code Section 11135, *et seq.*, the Unruh Civil Rights Act (California Civil Code Section 51, *et seq.*), and all applicable state and local labor and wage laws., now in force or that may be enacted hereafter.

4.12 Labor and Wage Standards,

The Developer shall perform under this Agreement and carry out its performance under this Agreement, including without limitation the construction of the Project, in conformity with all applicable federal, state, and local labor and wage standards, including, without limitation, the Sonoma Living Wage Ordinance (Sonoma Municipal Code Chapter 2.70), and all applicable federal and state labor and wage standards, as to the Site, provided, however, Developer and its contractors, successors, assigns, transferees, and lessees are not waiving their rights to contest any such laws, rules or standards.

Developer shall perform the contract in conformity with the Sonoma Living Wage Ordinance (Sonoma Municipal Code Chapter 2.70). Developer expressly acknowledges and agrees that this contract is subject to the provisions of the County of Sonoma Living Wage Ordinance (Article XXVI of Chapter 2 of the Sonoma County Code), requiring payment of a living wage to covered employees. Noncompliance during the term of the Funding Agreement will be considered a material breach and may result in termination of the Funding Agreement or pursuit of other legal or administrative remedies.

The Developer acknowledges that the provision of the Acquisition Assistance, in combination with any other public funding Developer may obtain to develop the Project, constitutes financial assistance that may cause the Project to be a “public work” as defined in California Labor Code Section 1720(a) and (b). Developer acknowledges that Labor Code Section 1720(c)(4) provides that the construction or rehabilitation of affordable housing units for low- or moderate-income persons that are paid for solely with moneys from the Low and Moderate Income Housing Fund established pursuant to Health and Safety Code Section 33334.3, or that are paid for by a combination of private funds and funds available pursuant to Health and Safety Code Section 33334.2 or 33334.3, do not constitute a project that is paid for in whole or in part out of public funds, and therefore may not be considered a “public work” for purposes of Labor Code Section 1720(a) or (b). Nothing in this Agreement constitutes a representation or warranty by the Commission that the Project is not subject to Labor Code Section 1720(a), and all applicable statutory and regulatory provisions related thereto. The Developer waives any right of reimbursement for any “increased costs” under Labor Code Section 1781 with respect to the Project. If required by applicable law, the Developer must pay, and shall cause the contractor and subcontractors, to pay prevailing wages in the construction of the Project as required by Labor Code, Division 2, Part 7, Chapter 1, commencing with Section 1720 *et seq.* If required by applicable law, the Developer must, and shall cause the contractor and subcontractors, to comply with all other applicable provisions of Labor Code Section 1720 *et seq.* and implementing regulations of the California Department of Industrial Relations. The Developer expressly waives any right of reimbursement for any “increased costs” under Labor Code Section 1781 with respect to the Project. The Developer shall indemnify, protect, defend and hold harmless the Indemnitees, with counsel reasonably acceptable to the Commission, from and against any and all loss, liability, damage, claim, fines, penalties, cost, expense and/or “increased costs” (including reasonable

attorneys fees, court and litigation costs, and fees of expert witnesses) arising out of the failure or alleged failure of any person or entity (including a Developer, its contractors and subcontractors) to pay prevailing wages pursuant to California Labor Code, Division 2, Part 7, Chapter 1, commencing with Section 1720 *et seq.*, and the implementing regulations of the California Department of Industrial Relations, in connection with Project. The indemnification provided herein survives the Term or termination of this Agreement.

4.14 Anti-Discrimination

Pursuant to Section 33435 and 33050 of the California Community Redevelopment Law, the Developer for itself and its successors and assigns, agrees, that in the construction of the Project on the Site or other performance under this Agreement, the Developer shall not discriminate against any employee or applicant for employment on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code.

4.15 Taxes and Assessments

After the conveyance of title by Commission to Developer or its assignee, the Developer shall pay prior to delinquency all real estate taxes and assessments on the Site for any period subsequent to the conveyance of title and possession, so long as the Developer retains any ownership interest therein. The Developer shall remove or have removed any levy or attachment made on the Site or any part thereof, or assure the satisfaction thereof within a reasonable time but in any event prior to any sale or transfer of all or any portions thereof. Notwithstanding the above, the Developer shall have the right to contest the validity or amounts of any tax, assessment, or encumbrance available to the Developer in respect thereto, and nothing herein shall limit the remedies available to the Developer in respect thereto.

4.16 Right of the Commission to Satisfy Other Liens on the Site After Title Passes

After the conveyance of title by Commission and prior to the completion of construction, and after the Developer has had written notice and has failed after a reasonable time, to challenge, cure, or satisfy any liens or encumbrances on the Site which are not otherwise permitted under this Agreement, the Commission shall have the right but no obligation to satisfy any such liens or encumbrances and receive immediate reimbursement of the costs thereof from the Developer. Notwithstanding the above, the Developer shall have the right to contest the validity or amounts of any tax, assessment, or encumbrance available to the Developer in respect thereto.

4.17 Limitation on Encumbrances

Except as otherwise permitted by this Agreement, including but not limited to Section 3.5, Developer shall not mortgage the Site or any portion thereof or any interest therein, any other mortgages or conveyances for financing that encumber the Site or any portion thereof, without the prior written approval of the Executive Director, which approval shall not be unreasonably withheld

4.18 Holder Not Obligated to Construct Improvements

The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion, nor shall any covenant or any other provision in the Grant Deed for the Site, the Commission Regulatory Agreement or the Option Agreement be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Site to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by the City of Sonoma General Plan, any applicable specific plan, and applicable zoning, as the same may be amended from time to time.

4.19 Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure

Whenever the Commission shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in completion of construction of the Project, the Commission shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement who has previously made a written request to the Commission therefor; provided, however, that the Commission shall have no liability to any such holder for failure by the Commission to provide notice to such holder. Each such holder shall (insofar as the rights of the Commission are concerned) have the right, at its option, within sixty (60) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien on its security interest. In the event there is more than one such holder, the right to cure or remedy a breach or default of the Developer under this Section 4.19 shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of the Developer under this Section 4.20. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to the Commission by written agreement satisfactory to the Commission. The holder in that event must agree to complete, in the manner provided in this Agreement, the construction to which the lien or title of such holder relates and submit evidence satisfactory to the Commission that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder properly completing such improvements shall be entitled, upon written request made to the Commission, to a Release of Construction Covenants from the Commission.

4.20 Failure of Holder to Complete Improvements

In any case where, sixty (60) days after an uncured default by the Developer in completion of construction under this Agreement, the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon the Site has not exercised the option to construct, or if it has exercised the option and has not proceeded diligently with construction, the Commission may purchase the mortgage, deed of trust or other security interest by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest. If the ownership of the Site has

vested in the holder, the Commission, if it so desires, shall be entitled to a conveyance of the Site from the holder to the Commission upon payment to the holder of an amount equal to the sum of the following:

1. The unpaid mortgage, deed of trust or other security interest debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
2. All expenses with respect to foreclosure, including reasonable attorneys' fees and trustee's fees;
3. The net expenses, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Site or part thereof;
4. The costs of any authorized improvements made by such holder; and
5. An amount equivalent to the interest that would have accrued on the aggregate of the amounts in Subparagraphs 1-4 had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the Commission.

4.21 Right of Commission to Cure Mortgage, Deed of Trust or Other Security Interest Default.

In the event of a default or breach by the Developer of a mortgage, deed of trust or other security interest with respect to the Site prior to the completion of the Project, and the holder has not exercised its option to complete the construction, the Commission may cure the default prior to completion of any foreclosure. In such event, the Commission shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the Commission in curing the default. The Commission shall also be entitled to a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be subject to mortgages, deeds of trust or other security interests executed for the sole purpose of obtaining funds to purchase and develop the Site as authorized herein.

5. USE OF THE SITE

5.1 Affordable Housing

Developer hereby covenants and agrees, for itself and its successors and assigns, to use and maintain the Site during the term of the Commission Regulatory Agreement only as a rental apartment housing project with forty-eight-eight (48) Units, with forty-seven (47) of such Units to be rented to and occupied by Eligible Tenants at the applicable Affordable Rent, all as more fully described in the Commission Regulatory Agreement.

5.2 Management Agreement and Procedures

The Developer shall submit to the Commission for approval the proposed management agreement with the Management Agent and written guidelines or procedures for tenant selection,

operation and management of the Project, implementation of the income certification, and reporting requirements of the Commission Regulatory Agreement. Commission shall review and approve, conditionally approve, or deny any proposed management agreement within fifteen (15) days after submittal. Any written disapproval shall specify the reasons for such disapproval. In the event the Commission disapproves of the written guidelines, the Developer shall thereafter submit revised guidelines and procedures to the Commission, and the same timelines and procedures for approval or disapproval shall apply to the revised guidelines and procedures as set forth above for the original submission.

5.3 Uses In Accordance with Redevelopment Plan

The Developer covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Site or any part thereof that the Developer and such successors and assignees, shall devote the Site to the uses specified in California Redevelopment Law, the Grant Deed, the Commission Regulatory Agreement, and this Agreement for the periods of time specified therein. The foregoing covenants shall run with the land.

5.4 Nondiscrimination

Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person, or group of persons on any basis listed in California Government Code Section 12955(a), as defined in Government Code Section 12925 *et seq.* and Section 12955 *et seq.*, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, or any part thereof, nor shall Developer, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site, or any part thereof. The foregoing covenants shall run with the land.

Developer agrees for itself and any successor in interest that Developer shall refrain from restricting the rental, sale, or lease of any portion of the Site, or contracts relating to the Site, on the basis of race, color, creed, religion, sex, marital status, ancestry, or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

A. In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. With respect to familial status, this covenant shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code, nor shall it be construed to affect

Sections 51.2, 51.3, 51.4, 51.10, 51.11 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to this covenant. The foregoing covenants shall run with the land.”

B. In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: “That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased. With respect to familial status, this covenant shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code, nor shall it be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to this covenant. The foregoing covenants shall run with the land.”

C. In contracts pertaining to the realty: “There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. With respect to familial status, this covenant shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code, nor shall it be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to this covenant. The foregoing covenants shall run with the land.”

The covenants established in this Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Commission, its successors and assigns, and any successor in interest to the Site, together with any property acquired by the Developer pursuant to this Agreement, or any part thereof. The covenants against discrimination shall remain in effect in perpetuity. The Commission agrees that the provisions of this Section 5.4 shall not prevent the application of a preference for applicants living or working in the City of Sonoma to the extent such a preference does not violate federal or state fair housing statutes and regulations.

5.5 Effect of Violation of the Terms and Provisions of this Agreement After Completion of Construction

The Commission is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. The Agreement and the covenants shall run in favor of the Commission, without regard to whether the Commission has been, remains or is an owner of any land or interest therein in the Site or in the Project Area. The Commission shall have the right, if this Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other property proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled.

5.6 Maintenance of the Site

The Developer shall maintain the Project on the Site in conformity with the Sonoma Municipal Code and the requirements of the Commission Regulatory Agreement, and shall keep the Site free from any graffiti and from any accumulation of debris or waste materials.

The Developer shall also maintain the landscaping required to be planted under the Scope of Development in a healthy and attractive condition. If, at any time, Developer fails to maintain the Site or any portion thereof, and said condition is not corrected as soon as reasonably possible after written notice from the Commission, either the Commission may enter the Site or applicable portion thereof to perform the necessary maintenance thereon and Developer shall pay such costs as are reasonably incurred for such maintenance plus a fifteen percent (15%) administrative fee. This covenant shall run with the land and shall remain in effect for the term of the Redevelopment Plan.

5.7 Duty to Prevent Hazardous Materials Contamination

Developer shall take all reasonable precautions to prevent the release of any Hazardous Materials into the environment. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with the standards generally applied by apartment complexes in Sonoma County, California as respects the disclosure, storage, use, removal, and disposal of Hazardous Materials in, on, under or about the Site.

5.8 Obligation of Developer to Remediate Premises

Notwithstanding the obligation of Developer to indemnify Commission and its officers, officials, members, employees, agents, and representatives pursuant to Section 2.9.F, Developer shall, at its sole cost and expense, promptly take (i) all actions required by any federal, state, regional, or local governmental Commission or political subdivision or any Governmental Requirements, and (ii) all actions necessary to make full economic use of the Site for the purposes contemplated by this Agreement and the Commission Regulatory Agreement, which requirements or necessity arise from the presence upon, about or beneath the Site, prior to Commission's conduct

of a foreclosure sale or acceptance of a deed in lieu thereof, of any Hazardous Materials or “Hazardous Materials Contamination” for which Developer is responsible. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Site, the preparation of any feasibility studies or reports and the performance of any cleanup, remedial, removal or restoration work. As used in this Agreement, the term “Hazardous Materials Contamination” means the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, in or of the Site by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Materials at any time emanating from the Site.

5.9 Environmental Inquiries

Developer, when it has received any notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, or cease and desist orders related to Hazardous Materials or Hazardous Material Contamination, or when Developer is required to report to any governmental Commission any violation or potential violation of any Governmental Requirement pertaining to Hazardous Materials or Hazardous Material Contamination, shall concurrently notify Commission’s Executive Director, and provide to him/her a copy or copies, of the environmental permits, disclosures, applications, entitlements or inquiries relating to the Site, the notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements, and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks, and Developer shall report to the Executive Director, as soon as possible after each incident, any unusual, potentially important incidents.

In the event of a responsible release of any Hazardous Materials into the environment, Developer shall, as soon as possible after it becomes aware of the release, furnish to the Executive Director a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of the Executive Director, Developer shall furnish to the Executive Director a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Site including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential.

6. DEFAULTS AND REMEDIES

6.1 Defaults – General

Subject to the extensions of time set forth in Section 7.3, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. If either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured or commenced to be cured by the defaulting party within thirty (30) days after service of the notice of default (or within such other period as is set forth herein), the non-defaulting party shall be entitled to pursue whatever remedies to which such party is entitled under this Agreement.

6.2 Legal Actions

A. Specific Performance. The non-defaulting party, upon expiration of applicable notice and cure periods, shall be permitted, but not obligated, to commence an action for specific performance of the terms of this Agreement, or to cure, correct or remedy any default hereunder or to obtain any other legal or equitable remedy consistent with the purpose of this Agreement. In this regard, Developer specifically acknowledges that Commission is entering into this Agreement for the purpose of assisting in the redevelopment of the Site and the provision of affordable housing and not for the purpose of enabling Developer to speculate in land. Commission shall also have the right to pursue damages for Developer's defaults but in no event shall Developer be entitled to damages of any kind from Commission, including, without limitation, damages for economic loss, lost profits, or any other economic or consequential damages of any kind.

B. Institution of Legal Actions; Attorney's Fees. Any legal actions must be instituted in the Superior Court of the County of Sonoma, State of California, or in the Federal District Court in the Northern District of California. In the event of any litigation between the parties hereto, the prevailing party shall be entitled to receive, in addition to the relief granted, its reasonable attorney's fees and costs and such other costs incurred in investigating the action and prosecuting the same, including costs for expert witnesses, costs on appeal, and for discovery.

C. Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to conflict of law principles.

D. Acceptance of Service of Process. In the event that any legal action is commenced by the Developer against the Commission, service of process on the Commission shall be made by personal service upon the Executive Director or in such other manner as may be provided by law.

In the event that any legal action is commenced by the Commission against the Developer, service of process on the Developer shall be made by personal service upon any officer or director of the Developer and shall be valid whether made within or without the State of California or in such other manner as may be provided by law.

6.3 Rights and Remedies Are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

6.4 Inaction Not a Waiver of Default

Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

6.5 Termination

A. Termination by the Developer. In the event that prior to the Close of Escrow:

a. Commission is in material default of this Agreement, and any such failure is not cured within thirty (30) days, or for those defaults which cannot reasonably be cured within thirty (30) days, commenced to be cured within said thirty (30) day period and thereafter diligently prosecuted to completion, after written demand by the Developer; or

b. the Commission fails to satisfy any or all of Developer's Conditions to Close by the time established therefor in the Schedule of Performance; then, at the option of the Developer, upon written notice thereof to the Commission, all provisions of this Agreement shall terminate and be of no further force and effect. Thereafter, except as provided in the next sentence, neither the Commission nor the Developer shall have any further rights against or liability to the other with respect to this Agreement. Nothing in this section shall be construed as (i) releasing any party from liability for any default of its obligations hereunder or breach of its representations and warranties under this Agreement occurring prior to the termination of this Agreement and/or the Escrow to be opened hereunder, or (ii) releasing the Developer from its indemnifications obligations hereunder, all of which shall survive termination of this Agreement.

B. Termination by the Commission. In the event that prior to the Close of the Escrow:

a. The Developer does not submit certificates of insurance, Evidence of Financing, construction plans, drawings and related documents, or any other submittals as required by this Agreement, in the manner and by the dates respectively provided in this Agreement therefor; or

b. The Developer fails to satisfy any or all of Commission's Conditions to Close by the time established therefor in the Schedule of Performance (including any extensions to the dates in the Schedule of Performance); or

c. Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the Commission in connection with this Agreement proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the Commission; then, at the option of the Commission, upon such written notice thereof to the Developer as may be set forth above, this Agreement shall be terminated. Thereafter, except as provided in the next sentence, neither party shall have any further rights or liability against the other under this Agreement. Nothing in this section shall be construed as (i) releasing any party from liability for any default of its obligations hereunder or breach of its representations and warranties under this Agreement occurring prior to the termination of this Agreement and/or the Escrow to be opened hereunder, or (ii) releasing the

Developer from its indemnifications obligations hereunder, all of which shall survive termination of this Agreement.

In the event that at any time during the Term of this Agreement:

d. The Developer (or any successor in interest) assigns or attempts to assign the Agreement or any rights therein or in the Site in violation of this Agreement; or

e. There is a change in the ownership of the Developer contrary to the provisions of Section 1.5 hereof; or

f. The Developer is in material default hereof, and such default or failure is not cured within thirty (30) days, or for those defaults which cannot reasonably be cured within thirty (30) days, commenced to be cured within said thirty (30) day period and thereafter diligently prosecuted to completion, after the date of written demand therefor by the Commission; or

g. A court having jurisdiction shall have made or entered any decree or order (1) adjudging the Developer or Developer's general partner to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for the Developer under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of their properties, or (4) directing the winding up or liquidation of the Developer, if any such decree or order described in clauses (1) to (4), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days unless a lesser time period is permitted for cure under any other mortgage on the Site, in which event such lesser time period will apply under this subsection (f) as well; or prior to sooner sale pursuant to such sequestration, attachment, or execution. The occurrence of any decree or order in this subsection shall act to accelerate automatically, without the need for any action by the Commission, the indebtedness evidenced by the Commission Note; or

h. The Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Site, in which event such lesser time period shall apply under this subsection (g) as well) or prior to sooner sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the items or actions in this subsection shall act to accelerate automatically, without the need for any action by the Commission, the indebtedness evidenced by the Commission Note; or

i. The Developer shall have voluntarily suspended its business or, if the Developer is a partnership, the partnership shall have been dissolved or terminated; or

j. There shall occur any default declared by any lender under any loan document related to any loans, other than the Commission Loan(s), secured by a deed of trust on the Project, all cure periods provided by such loan document has expired without a remedy of

default and the default has not been waived by the lender and, as a result, such lender has the right to accelerate repayment of such loan. The occurrence of any such default under this subsection shall act to accelerate automatically, without the need for any action by the Commission, the indebtedness evidenced by the Commission Note; then, at the option of the Commission, upon such written notice thereof to the Developer as may be set forth above, this Agreement shall be terminated. Thereafter, except as provided in the next sentence, neither party shall have any further rights or liability against the other under this Agreement. Nothing in this section shall be construed as (i) releasing any party from liability for any default of its obligations hereunder or breach of its representations and warranties under this Agreement occurring prior to the termination of this Agreement and/or the Escrow to be opened hereunder, or (ii) releasing the Developer from its indemnifications obligations hereunder, all of which shall survive termination of this Agreement./

6.6 Option Agreement

In addition to any rights and remedies available to Commission hereunder, Commission shall be entitled, in its sole and absolute discretion, to repurchase the Site, or a portion thereof, with all of the improvements thereon, from Developer in the event that, (i) Developer fails to commence construction of the Project within certain specified timeframes (“Repurchase Option I”), (ii) after commencement of construction, Developer fails to continuously proceed with, and complete, construction of the Project (“Repurchase Option II”) within certain specified timeframes, or (iii) Developer transfers or suffers an involuntary transfer of the Site, or a portion thereof, in violation of the terms hereof (“Repurchase Option III”). Said repurchase rights shall be as set forth in an option agreement to be recorded against the Site at the Closing, substantially in the form attached hereto and incorporated herein as Attachment No. 9 (“Option Agreement”).

6.7 Right of Reverter and Power of Termination

In addition to any other rights and remedies available to Commission hereunder, Commission shall be entitled, in its sole and absolute discretion, to reenter and take possession of the Site, subject to all liens and other matters of record, with all of the improvements thereon, from Developer in the event that prior to Commission’s issuance of a Release of Construction Covenants for the Project, (i) Developer fails to commence construction of the Project prior to the Outside Closing Date, or (ii) after commencement of construction, Developer fails to continuously proceed with, and complete construction of the Project within certain specified timeframes, or (iii) Developer transfers or suffers an involuntary transfer of the Site, or a portion thereof, in violation of the terms hereof. Said rights shall be as set forth in the Grant Deed pursuant to which Commission shall convey the Site to Developer.

6.8 Commission’s Option to Acquire Plans

Subject to the rights of any senior lenders, if this Agreement is terminated for any reason other than as a result of an Commission default, at the option of the Commission, which may be exercised in the Commission’s sole and absolute discretion, the Developer shall deliver to the Commission an executed assignment in a form reasonably acceptable to the Commission of the Developer’s right to use all plans, blueprints, drawings, sketches, specifications, tentative or final subdivision maps, landscape plans, utilities plans, soils reports, noise studies, environmental assessment reports, grading plans and any other materials relating to the construction of the Project

on the Site (the “Plans”), together with copies of all of the Plans, as have been prepared for the development of the Site to date of the termination. Notwithstanding the foregoing, however, Developer does not covenant to convey to the Commission the copyright or other ownership rights of third parties. Commission understands and agrees that the assignment to Commission under this Section 6.8 is subject and subordinate to any assignment which Developer may make to the Construction Lender, and Commission agrees to execute any documents required by such lender acknowledging and effectuating such subordination of Commission’s rights in and to the assignment. Commission’s acquisition or use of the Plans or any of them shall be without any representation or warranty by Developer as to the accuracy or completeness of any such Plans, and Commission shall assume all risks in the use of the Plans.

7. GENERAL PROVISIONS

7.1 Notices, Demands and Communications Between Parties

Written notices, demands and communications between the Commission and the Developer shall be sufficiently given if (i) delivered by hand, (ii) delivered by reputable same-day or overnight messenger service that provides a receipt showing date and time of delivery, or (iii) dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the Commission and the Developer at the addresses specified in Section 1.3.A and 1.3.B, respectively. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section 7.1.

Any written notice, demand, or communication shall be deemed received immediately if delivered by hand or delivered by messenger in accordance with the preceding paragraph, and shall be deemed received on the third (3rd) day from the date it is postmarked if delivered by registered or certified mail in accordance with the preceding paragraph.

Copies of any such written notice, demand, or communication shall also be sent to the following entities:

If notice is sent to Commission, then to: Office of County Counsel
575 Administration Drive #105A
Santa Rosa, CA 95403
Attn: Alegria De La Cruz, Esq.

If notice is sent to Developer, then to: Goldfarb & Lipman LLP
1300 Clay Street, 9th Floor
Oakland, CA 94612
Attn: Karen Tiedemann, Esq.

And

7.2 Conflicts of Interest

No member, officer, official, or employee of the Commission shall have any personal interest, direct or indirect, in this Agreement, nor shall any member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

7.3 Enforced Delay; Extension of Times of Performance

In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor; subcontractor or supplier; acts or omissions of the other party; acts or failures to act of the City of Sonoma, or the Commission, or any other public or governmental agency or entity (except that the acts or failures to act of the Commission shall not excuse performance by the Commission); or any other causes beyond the control or without the default of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days after the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of Commission and Developer. The Commission Executive Director shall also have the authority on behalf of Commission to administratively approve extensions of time not to exceed a cumulative total of two (2) years.

Notwithstanding the foregoing portion of this Section 7.3, the Developer is not entitled pursuant to this Section 7.3 to an extension of time to perform because of past, present, or future difficulty in obtaining suitable construction financing for the development of the Site, or because of economic or market conditions.

7.4 Provision Not Merged with Deeds None of the provisions of this Agreement are intended to or shall be merged by any grant deed transferring title to any real property which is the subject of this Agreement from Commission to Developer or any successor in interest, and any such grant deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

7.5 Non-Liability of Officials and Employees of the Commission

No member, official or employee of the Commission shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Commission or the City or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

7.6 Parties Not Co-Venturers Nothing in this Agreement is intended to or does establish the Commission and the Developer as partners, co-venturers, or principal and agent with one another.

7.7 Warranties The Commission expresses no warranty or representation to the Developer as to fitness or condition of the Site for the building or construction to be conducted thereon.

7.8 Interpretation; Entire Agreement, Waivers; Attachments

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the Commission and the Developer, and all amendments hereto must be in writing by the appropriate authorities of the Commission and the Developer. Except as otherwise expressly provided, in any circumstance where under this Agreement either party is required to approve or disapprove any matter, approval shall not be unreasonably withheld.

The exhibits and attachments to this Agreement are incorporated herein and made a part hereof.

7.9 Time of Essence

Time is of the essence in the performance of this Agreement.

7.10 No Brokers

Each party represents to the other party that it has not had any contact or dealings regarding the Site, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, the party through whom the broker or finder makes this claim shall indemnify, defend with counsel of the indemnified party's choice, and hold the indemnified party harmless from all expense, loss, damage and claims, including the indemnified party's attorneys' fees, arising out of the broker's or finder's claim. The provisions of this section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

7.11 Maintenance of Books and Records

Developer shall prepare and maintain all books, records, and reports necessary to substantiate Developer's compliance with the terms of this Agreement.

7.12 Right to Inspect

Commission shall have the right, upon not less than twenty-four (24) hours' notice, at all reasonable times during business hours, to inspect the books and records of the Developer pertinent to the purposes of this Agreement. Said right of inspection shall not extend to documents privileged under attorney-client or other such privileges.

7.13 Binding Effect of Agreement

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their legal representatives, successors, and assigns. This Agreement shall likewise be binding upon and obligate the Site and the successors in interest, owner or owners thereof, and all of the tenants, lessees, sublessees, and occupants of such Site. Each and every contract, deed, or other instrument hereafter executed covering or conveying the Site shall be held conclusively to have been executed, delivered, and accepted subject to the terms and provisions hereof, regardless of whether such terms and provisions are set forth in such contract, deed, or other instrument, unless the Commission expressly releases the Site from the requirements of this Agreement.

7.14 Severability

Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

7.15 Counterparts

This Agreement may be executed in counterparts, each of which, when this Agreement shall have been signed by all the parties hereto, shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

7.16 Amendments to this Agreement

The Developer and the Commission agree to mutually consider reasonable requests for amendments to this Agreement which may be made by either of the Parties hereto, the Investor Limited Partner, or the Construction Lender, provided such requests are consistent with this Agreement and would not substantially alter the basic business terms included herein. The Commission's Executive Director shall have the authority to approve, on behalf of the Commission, amendments to this Agreement that would not substantially alter the basic business terms or substantially increase the cost or risk of this Agreement to the Commission. All other amendments shall require the action of the Commission Board. All amendments, including those authorized to be approved by the Commission's Executive Director, shall be in writing and shall be signed by authorized representatives of Commission and Developer. The Commission's Executive Director shall have the authority, on behalf of the Commission, to approve extensions of time in Developer's performance under this Agreement, including, but not limited to, times of performance set forth in the Schedule of Performance, for a cumulative period of up to two (2) years.

IN WITNESS WHEREOF, the Commission and the Developer have signed this Agreement on the respective dates set forth below.

SONOMA COUNTY COMMUNITY DEVELOPMENT COMMISSION, a public body corporate and politic

Dated: _____, 2018

By: _____
Its: Margaret Van Vliet
Executive Director

APPROVED AS TO FORM:

Alegria De La Cruz
Attorney for the Sonoma County Community Development Commission

SATELLITE AFFORDABLE HOUSING ASSOCIATES, a California nonprofit public benefit corporation

Dated: _____, 2018

By: _____
Susan Friedland
Its: Executive Director



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 5
(This Section for use by Clerk of the Board Only.)

To: Board of Directors, Sonoma Valley County Sanitation District, Board of Directors, Russian River County Sanitation District

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Sonoma Valley County Sanitation District, Russian River County Sanitation District

Staff Name and Phone Number:

Joan Hultberg, 547-1902

Supervisorial District(s):

1, 5

Title: Resolutions to Apply for Disaster Assistance Grants

Recommended Actions:

- A) Adopt a Resolution designating the Water Agency's General Manager, Assistant General Managers, and Chief Engineer/Director of Groundwater Management, on behalf of the Sonoma Valley County Sanitation District, to file applications and execute agreements for federal and/or state disaster financial assistance, effective for all open and future disasters for up to three (3) years from the date of approval.
- B) Adopt a Resolution designating the Water Agency's General Manager, Assistant General Managers, and Chief Engineer/Director of Groundwater Management, on behalf of the Russian River County Sanitation District, to file applications and execute agreements for federal and/or state disaster financial assistance, effective for all open and future disasters for up to three (3) years from the date of approval.

Executive Summary:

The presidential disaster declaration following the October 2017 wildfires resulted in a \$200 million allocation of federal funds to California's Hazard Mitigation Grant Program. This statewide competitive grant program makes funds available for activities that will lessen damage to people, structures, and infrastructure in the event of a future disaster.

The Sonoma Valley County Sanitation District (Sonoma Valley District) and the Russian River County Sanitation District (Russian River District) each would like to apply to this grant program to help fund the seismic retrofit of secondary treatment clarifiers at their respective wastewater treatment plants. As part of natural hazard reliability assessments conducted by both the Sonoma Valley District and the Russian River District in 2013, the clarifiers located at the wastewater treatment plants for the two respective districts have been identified as the primary vulnerable elements of the treatment processes. In the event of a major earthquake, the clarifiers would likely sustain substantial damage, rendering them inoperable,

and posing significant risks to public health and the environment. Grant funding could provide up to 75% of the estimated costs of these projects.

The Water Agency is coordinating its disaster assistance applications with the County and other agencies by participating on the Grants Steering Committee. In the wake of the October wildfires, the County Administrator's Office and its Office of Recovery and Resilience convened a steering committee to help vet and prepare disaster assistance applications across the County family of departments, districts, and agencies. The Grants Steering Committee has reviewed the two grant projects proposed herein.

This item requests the Sonoma Valley County Sanitation District's Board of Directors (Sonoma Valley Board) and the Russian River County Sanitation District's Board of Directors (Russian River Board) to adopt Resolutions designating the Sonoma County Water Agency's General Manager, Assistant General Managers, and Chief Engineer/Director of Groundwater Management as duly authorized representatives of each Board to apply for and receive grant funding from FEMA and/or the California Governor's Office of Emergency Services, and to provide the assurances and agreements required by these funding agencies for all open and future disasters for a period of up to three (3) years following the date of approval. The language and form of this resolution are provided by the California Governor's Office of Emergency Services.

Discussion:

The Sonoma Valley District and the Russian River District have each prepared a Local Hazard Mitigation Plan (Local Plan) for their respective jurisdictions. The Local Plans are part of the Districts' efforts to be prepared for natural and other disasters by identifying physical vulnerabilities and developing strategies to alleviate their impacts. As a condition of receiving certain FEMA grant funds, FEMA requires that the Local Plan be formally updated and adopted every five years. Sonoma Valley District's Local Plan was prepared, approved by FEMA, and adopted by its Board in September 2016. The Russian River District's Local Plan is currently under FEMA review, and when it is approved staff will submit it to its Board for adoption.

The Local Plans set forth the goals the Sonoma Valley District and the Russian River District, respectively, want to achieve in terms of hazard and loss prevention for their infrastructure and systems. Sonoma County is located in an area impacted by multiple natural hazards, including floods, wildfires, landslides, and mudflows. Recent hazard assessments have shown that earthquakes and flooding represent the largest threats to sanitation districts. California Geological Survey maps show that vulnerability to earthquakes is elevated in both Districts' service areas.

Seismic Retrofit of Secondary Treatment Clarifiers

A clarifier is a circular settling tank with interior steel components that are intended to slow down flow and allow solids from the raw water to settle out before the treated water exits the tank and moves on to tertiary treatment. The clarifiers are reinforced concrete structures, and the projects entail replacement of the interior mechanical components. Construction will be limited to work within the concrete tanks, and will involve removal of mechanical components, likely by crane or excavator with assistance by laborers removing anchor bolts and fasteners, as necessary. Following removal of all interior mechanical components, the surface will be prepared and the new mechanical components will be installed within the clarifiers. All staging for construction and parking areas will be located onsite at the

wastewater treatment facility. At each site, the clarifiers will be retrofitted one at a time to provide for continuity in wastewater treatment.

Mitigation goals for the proposed projects include: 1) increase operational resilience and the reliability of the wastewater treatment plant's process facilities during natural disasters; 2) reduce risks to public health and safety; 3) mitigate potential water quality impacts from the discharge of either raw or partially treated wastewater; and 4) maintain the continued production of tertiary treated recycled water for beneficial reuse and offset of potable/groundwater use. Project activities will include design, environmental documentation, and construction.

Sonoma Valley County Sanitation District Project

The Sonoma Valley District is the sole entity providing public wastewater collection and, treatment for the City of Sonoma and the nearby communities of Agua Caliente, Boyes Hot Springs, Eldridge, El Verano, Fetter Hot Springs, Glen Ellen, Vineburg, and Temelec. The Sonoma Valley District's Local Plan identifies secondary treatment clarifiers at high risk of catastrophic damage in the event of significant ground shaking during an earthquake. There are two 2 million gallon, 140 foot diameter, secondary clarifiers in use at the District's treatment facility.

The proposed project will allow the Sonoma Valley District to continue to provide wastewater collection and treatment, and recycled water distribution and disposal services to a population of approximately 42,000 people in the Sonoma Valley portion. There are approximately 17,030 equivalent single family dwelling units in the Sonoma Valley District's service area. In addition, those living in the vicinity of the treatment facility and outside of the service area will also benefit from the project, because the project is preventing catastrophic damage that will likely result in partially treated wastewater being discharged to Schell Creek, a tributary to Sonoma Creek that flows to San Pablo Bay, and with attendant fines and significant public health and safety risks. The public relies on the domestic and industrial sanitation services supplied by the Sonoma Valley District to be functional in both emergency and non-emergency circumstances.

In addition, the Sonoma Valley District's recycled water users will also benefit from the project, because the project is preventing catastrophic damage that will likely result in loss of service of recycled water. The Sonoma Valley District provides recycled water for agricultural irrigation (vineyards, pastureland, and environmental enhancement), rural residential irrigation, and environmental restoration of North San Pablo Bay wetlands. Several projects have been completed or are underway to provide urban reuse for schools and a park. Without operational clarifiers, the wastewater sent to the clarifiers would be adversely affected to the point of being non-compliant and unsuitable for recycled water distribution purposes. The clarifiers represent a critical part of the treatment process that allows the Sonoma Valley District to provide recycled water in compliance with federal and state regulations, to offset peak water demand in Sonoma Valley, and offset groundwater use for potable or agricultural purposes that may be stressing aquifer conditions in some areas of Sonoma Valley.

Cost and Schedule

The project is estimated be completed within 36 months of award and to cost approximately \$3,022,000, with 75% (\$2,266,000) in federal grant money and 25% (\$754,000) paid in local cost share. The source of

the local cost share will be provided by the Sonoma Valley District's construction fund. Grant applications are due July 1, 2018 and successful projects are anticipated to be awarded 12 to 18 months after the application deadline.

Russian River County Sanitation District

The Russian River District is the sole entity providing public wastewater collection and, treatment for the communities of Rio Nido, Guerneville, Guerneville Park, and Vacation Beach. The Russian River District's Local Plan identifies secondary treatment clarifiers at high risk of catastrophic damage in the event of significant ground shaking during an earthquake. There are three clarifiers at the Russian River District facility: two 115,000 gallon, 40-foot diameter clarifiers and one 320,000 gallon, 60-foot diameter clarifier.

The proposed project will allow the Russian River District to continue to provide wastewater collection and treatment, and recycled water distribution and disposal services to a population of approximately 3,160 equivalent single family dwelling units in its service area. In addition, those living downriver from the treatment facility and outside of the service area will also benefit from the project, because the project is preventing catastrophic damage that will likely result in partially treated wastewater being discharged to the Russian River and with attendant fines and significant public health and safety risks. The public relies on the domestic and industrial sanitation services supplied by the Russian River District to be functional in both emergency and non-emergency circumstances.

Cost and Schedule

The project is estimated be completed within 36 months of award and to cost approximately \$2,984,000, with 75% (\$2,239,000) in federal grant money and 25% (\$746,000) paid in local cost share. The source of the local cost share will be provided by the Russian River District's construction fund. Grant applications are due July 1, 2018 and successful projects are anticipated to be awarded 12 to 18 months after the application deadline.

County-Wide Grant Steering Committee

In the wake of the October wildfires, the County Administrator's Office and its Office of Recovery and Resilience convened a Grants Steering Committee to help vet and prepare disaster assistance applications across the County family of departments, districts, and agencies. The Water Agency is coordinating its disaster assistance applications with the County and other agencies and is participating on the Grants Steering Committee, which has reviewed the two grant projects proposed herein.

Recommendations

Staff recommends that the Board of Directors of the Sonoma Valley County Sanitation District and the Board of Directors of the Russian River County Sanitation District each adopt resolutions designating the Water Agency's General Manager, Assistant General Managers, and Chief Engineer/Director of Groundwater Management as authorized agents of the Boards to apply for, accept awards, and enter into agreements for Federal and/or State disaster funds.

The resolutions can be adopted as either a disaster-specific resolution or a "universal" resolution that is effective for all open and future disasters up to three years of the date of approval. The disaster-specific

option limits the designated agents’ authority to a particular grant or project. Additional resolutions would be required for any subsequent grant or disaster approved for funding. Staff recommends adopting the “universal” version to enable the Districts’ staff to efficiently interact with FEMA in the wake of disasters such as our recent flood and fire events. Federally declared disasters, such as the Napa earthquake, the Valley fire in Lake County, and the state-wide floods and wildfires of 2017, activate numerous potential funding programs that often have short windows to apply. If the universal option is adopted, staff will keep the Districts’ Boards informed of any subsequent grant awards via staff update reports.

Prior Board Actions:

12/15/2015: Resolution to formally adopt the Sonoma Valley County Sanitation District’s Local Hazard Mitigation Plan.

Strategic Plan Alignment Goal 3: Invest in the Future

County Goal 3: Invest in the Future: Retrofitting these clarifiers is an investment in our infrastructure that identifies vulnerabilities requiring mitigation measures to ensure minimal damage in the event of a natural disaster.

Water Agency Organizational Goals and Strategies, Goal 1: Increase organizational efficiency, effectiveness, and resilience to natural disasters.

Fiscal Summary

Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			

Narrative Explanation of Fiscal Impacts:

There is no fiscal impact at this time. Grant applications are due on July 1, 2018, and successful projects are anticipated to be awarded 12 to 18 months after the application deadline.

If one or both grants are awarded, the projects will be included in the appropriate fiscal year’s budgets under Russian River County Sanitation District’s construction fund and/or Sonoma Valley County Sanitation District’s construction fund.

Staffing Impacts

Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)

Narrative Explanation of Staffing Impacts (If Required):

Attachments:

Resolution R-1 – Sonoma Valley County Sanitation District
 Resolution R-2 – Russian River County Sanitation District

Related Items “On File” with the Clerk of the Board:

nw\\S:\Agenda\misc\05-08-2018 WA Disaster Assistance Grants_summ.docm

CF/70-700-16 California Office of Emergency Services (FEMA Grant Application for RRCSD & SVCSD Seismic Retrofit of Secondary Treatment Clarifiers) FP-00224 & FP-00225 (ID 6961)

**DESIGNATION OF APPLICANT'S AGENT RESOLUTION
FOR NON-STATE AGENCIES**

BE IT RESOLVED BY THE Dqctf "qhF ktgevqtu OF THE Uqpqo c "Valley Eqwpv{ "Sanitation District
(Governing Body) (Name of Applicant)

THAT vj g'I gpgtcrnO cpci gt, OR
(Title of Authorized Agent)

Assistant General Manager, OR
(Title of Authorized Agent)

Chief Engineer/Director of Groundwater Management
(Title of Authorized Agent)

is hereby authorized to execute for and on behalf of the Sonoma Valley County Sanitation District, a public entity
(Name of Applicant)
established under the laws of the State of California, this application and to file it with the California Governor's Office of Emergency Services for the purpose of obtaining certain federal financial assistance under Public Law 93-288 as amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, and/or state financial assistance under the California Disaster Assistance Act.

THAT the Sonoma Valley County Sanitation District, a public entity established under the laws of the State of California,
(Name of Applicant)
hereby authorizes its agent(s) to provide to the Governor's Office of Emergency Services for all matters pertaining to such state disaster assistance the assurances and agreements required.

Please check the appropriate box below:

- This is a universal resolution and is effective for all open and future disasters up to three (3) years following the date of approval below.
- This is a disaster specific resolution and is effective for only disaster number(s) _____

Passed and approved this _____ day of _____, 20 _____

James Gore, Director

Susan Gorin, Director

Madolyn Agrimonti, Director

CERTIFICATION

I, _____, duly appointed Clerk of the Board of
Sonoma Valley County Sanitation District (Title)

_____, do hereby certify that the above is a true and correct copy of a
(Name of Applicant)

Resolution passed and approved by the Board of Directors of the Sonoma Valley County Sanitation District
(Governing Body) (Name of Applicant)

on the _____ day of _____, 20 _____.

(Signature)

(Title)

Cal OES Form 130 Instructions

A Designation of Applicant's Agent Resolution for Non-State Agencies is required of all Applicants to be eligible to receive funding. A new resolution must be submitted if a previously submitted Resolution is older than three (3) years from the last date of approval, is invalid or has not been submitted.

When completing the Cal OES Form 130, Applicants should fill in the blanks on page 1. The blanks are to be filled in as follows:

Resolution Section:

Governing Body: This is the group responsible for appointing and approving the Authorized Agents.

Examples include: Board of Directors, City Council, Board of Supervisors, Board of Education, etc.

Name of Applicant: The public entity established under the laws of the State of California. Examples include: School District, Office of Education, City, County or Non-profit agency that has applied for the grant, such as: City of San Diego, Sacramento County, Burbank Unified School District, Napa County Office of Education, University Southern California.

Authorized Agent: These are the individuals that are authorized by the Governing Body to engage with the Federal Emergency Management Agency and the Governor's Office of Emergency Services regarding grants applied for by the Applicant. There are two ways of completing this section:

1. **Titles Only:** If the Governing Body so chooses, the titles of the Authorized Agents would be entered here, not their names. This allows the document to remain valid (for 3 years) if an Authorized Agent leaves the position and is replaced by another individual in the same title. If "Titles Only" is the chosen method, this document must be accompanied by a cover letter naming the Authorized Agents by name and title. This cover letter can be completed by any authorized person within the agency and does not require the Governing Body's signature.
2. **Names and Titles:** If the Governing Body so chooses, the names **and** titles of the Authorized Agents would be listed. A new Cal OES Form 130 will be required if any of the Authorized Agents are replaced, leave the position listed on the document or their title changes.

Governing Body Representative: These are the names and titles of the approving Board Members.

Examples include: Chairman of the Board, Director, Superintendent, etc. The names and titles **cannot** be one of the designated Authorized Agents, and a minimum of two or more approving board members need to be listed.

Certification Section:

Name and Title: This is the individual that was in attendance and recorded the Resolution creation and approval.

Examples include: City Clerk, Secretary to the Board of Directors, County Clerk, etc. This person **cannot** be one of the designated Authorized Agents or Approving Board Member (if a person holds two positions such as City Manager and Secretary to the Board and the City Manager is to be listed as an Authorized Agent, then the same person holding the Secretary position would sign the document as Secretary to the Board (not City Manager) to eliminate "Self Certification.")

**DESIGNATION OF APPLICANT'S AGENT RESOLUTION
FOR NON-STATE AGENCIES**

BE IT RESOLVED BY THE Board of Directors OF THE Russian River County Sanitation District
(Governing Body) (Name of Applicant)

THAT Water Agency General Manager, OR
(Title of Authorized Agent)
Water Agency Assistant General Manager, OR
(Title of Authorized Agent)
Water Agency Chief Engineer/Director of Groundwater Management
(Title of Authorized Agent)

is hereby authorized to execute for and on behalf of the Russian River County Sanitation District, a public entity
(Name of Applicant)
established under the laws of the State of California, this application and to file it with the California Governor's Office of Emergency Services for the purpose of obtaining certain federal financial assistance under Public Law 93-288 as amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, and/or state financial assistance under the California Disaster Assistance Act.

THAT the Russian River County Sanitation District, a public entity established under the laws of the State of California,
(Name of Applicant)
hereby authorizes its agent(s) to provide to the Governor's Office of Emergency Services for all matters pertaining to such state disaster assistance the assurances and agreements required.

Please check the appropriate box below:

- This is a universal resolution and is effective for all open and future disasters up to three (3) years following the date of approval below.
 This is a disaster specific resolution and is effective for only disaster number(s) _____

Passed and approved this _____ day of _____, 20 _____

James Gore, Chair
(Name and Title of Governing Body Representative)

Shirlee Zane, Director
(Name and Title of Governing Body Representative)

Susan Gorin, Director
(Name and Title of Governing Body Representative)

Lynda Hopkins, Director
(Name and Title of Governing Body Representative)

David Rabbitt, Director
(Name and Title of Governing Body Representative)

CERTIFICATION

I, _____, duly appointed and Clerk of the Board of
(Name) (Title)
Russian River County Sanitation District, do hereby certify that the above is a true and correct copy of a
(Name of Applicant)

Resolution passed and approved by the Board of Directors of the Russian River County Sanitation District
(Governing Body) (Name of Applicant)

on the _____ day of _____, 20____.

(Signature)

Clerk of the Board
(Title)

Cal OES Form 130 Instructions

A Designation of Applicant's Agent Resolution for Non-State Agencies is required of all Applicants to be eligible to receive funding. A new resolution must be submitted if a previously submitted Resolution is older than three (3) years from the last date of approval, is invalid or has not been submitted.

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Examples include: Board of Directors, City Council, Board of Supervisors, Board of Education, etc.

Name of Applicant: The public entity established under the laws of the State of California. Examples include: School District, Office of Education, City, County or Non-profit agency that has applied for the grant, such as: City of San Diego, Sacramento County, Burbank Unified School District, Napa County Office of Education, University Southern California.

Authorized Agent: These are the individuals that are authorized by the Governing Body to engage with the Federal Emergency Management Agency and the Governor's Office of Emergency Services regarding grants applied for by the Applicant. There are two ways of completing this section:

1. **Titles Only:** If the Governing Body so chooses, the titles of the Authorized Agents would be entered here, not their names. This allows the document to remain valid (for 3 years) if an Authorized Agent leaves the position and is replaced by another individual in the same title. If "Titles Only" is the chosen method, this document must be accompanied by a cover letter naming the Authorized Agents by name and title. This cover letter can be completed by any authorized person within the agency and does not require the Governing Body's signature.
2. **Names and Titles:** If the Governing Body so chooses, the names **and** titles of the Authorized Agents would be listed. A new Cal OES Form 130 will be required if any of the Authorized Agents are replaced, leave the position listed on the document or their title changes.

Governing Body Representative: These are the names and titles of the approving Board Members.

Examples include: Chairman of the Board, Director, Superintendent, etc. The names and titles **cannot** be one of the designated Authorized Agents, and a minimum of two or more approving board members need to be listed.

Certification Section:

Name and Title: This is the individual that was in attendance and recorded the Resolution creation and approval.

Examples include: City Clerk, Secretary to the Board of Directors, County Clerk, etc. This person **cannot** be one of the designated Authorized Agents or Approving Board Member (if a person holds two positions such as City Manager and Secretary to the Board and the City Manager is to be listed as an Authorized Agent, then the same person holding the Secretary position would sign the document as Secretary to the Board (not City Manager) to eliminate "Self Certification.")



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 6
(This Section for use by Clerk of the Board Only.)

To: Boards of Directors, County of Sonoma, Sonoma County Water Agency, and Sonoma Valley County Sanitation District

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Sonoma County Water Agency, Sonoma Valley County Sanitation District, and General Services

Staff Name and Phone Number:

Kris Loomis (707) 524-1165
Liz Yager (707) 565-6167

Supervisorial District(s):

Title: Funding of Green Business Program

Recommended Actions:

- a) Authorize Water Agency's General Manager and the Director of General Services to execute an agreement between the Sonoma County Water Agency and the County of Sonoma through its General Services department to provide funding for business-related water quality and conservation efforts for the amount of \$30,000 for one year, agreement terminates on June 30, 2019.
- b) Authorize Water Agency's General Manager and the Director of General Services to execute an agreement between the Sonoma Valley County Sanitation District and the County of Sonoma through its General Services department to provide funding for business related water quality and conservation efforts for the amount of \$20,000 for one year, agreement terminates on June 30, 2019.

Executive Summary:

This item requests approval to enter into two agreements with the General Services Green Business Program; \$30,000 and \$20,000, respectively, through June 30, 2019, for water conservation and the reduction of sanitation inflows.

Discussion:

HISTORY OF ITEM/BACKGROUND

The long-term management of water resources is important in the Sonoma County Water Agency's (Water Agency) service area. The implementation of proven practices and approaches for achieving long-term reductions in per capita water demand which may improve supply reliability, reduce the impact of short-term water shortage conditions, and provide a more accurate basis for future water management planning efforts. Water Agency is committed to assisting the region through financial support, technical support, and program management of water use efficiency for the Water Agency's water retailers through the Sonoma-Marin Saving Water Partnership.

In 2001, the Economic Development Board inherited the Green Business Program (Program) in collaboration with the Water Agency and the Sonoma Valley County Sanitation District (District). The Economic Development Board housed and supported the Program until 2015, at which point the General Services Department (General Services) assumed responsibility for administering the Program via two separate agreements with the Water Agency and the District. Under a separate two-year agreement with the Water Agency, the Economic Development Board continued to play an auxiliary role to General Services to offer its expertise in event coordination and marketing to Sonoma County businesses. General Services has gained experience working with businesses and implementing environmental programs. Currently, General Services manages Sonoma County Energy Watch, Energy Upgrade California, and the Property Assessed Clean Energy program (including the Sonoma County Energy Independence Program).

The Program is part of the California Green Business Network, whose mission is to assist businesses to operate sustainably as well as profitably. General Services works with local government agencies to provide assistance to small-to- medium sized businesses who choose to go through the process of becoming "Green". To be certified, participants must be in compliance with all environmental regulations and meet program standards for saving water, conserving energy, preventing pollution, and minimizing waste.

The Water Agency and the District collaborate with General Services to implement the Program to reduce water demands, reduce waste water flows, and educate business customers on water saving opportunities.

AGREEMENTS

Agreement between Water Agency and General Services

Under the proposed agreement, General Services will be responsible for:

1. Administration of the Program.
2. Collaboration with the Water Agency on the development and distribution of a quarterly newsletter.
3. Marketing of water use efficiency programs focused on commercial customers.
4. Collaboration with the County of Sonoma to deliver the annual award certificate program for businesses that are leaders in water use efficiency.

The agreements will not exceed \$30,000 in fiscal year 2017/2018 for Sonoma County Water Agency.

Agreement between the Sonoma Valley County Sanitation District (District) and General Services

Under the proposed agreement, General Services will be responsible for:

1. Working with the District to implement the Program.
2. Encouraging businesses receiving water audits to reduce consumption through fixture replacement or retrofit.
3. Collaboration with the Water Agency on the development and distribution of a quarterly newsletter.
4. Marketing of water use efficiency programs focused on commercial customers in District service area to reduce wastewater flows to the District, reduce Total Suspended Solids (TSS) and Biochemical Oxygen Demand (BOD).

The agreement will not exceed \$20,000 in fiscal year 2017/2018 for Sonoma Valley County Sanitation District.

RECOMMENDATIONS

Water Agency, District, and General Services staff recommend that the Boards authorize the Water Agency General Manager and the Director of General Services to execute agreements between the Sonoma County Water Agency and the County, and the District and the County to implement the Program in the amounts of \$30,000 and \$20,000, respectively. The term end date for each agreement is June 30, 2019.

Prior Board Actions:

05/19/2015: Approved agreements between Water Agency and County of Sonoma General Services Department, and Sonoma County Valley Sanitation District and County of Sonoma General Services to fund the Green Business Program. Costs were \$100,000 and \$60,000, respectively; term end for both is June 30, 2017.

From 2001 to 2015 the Board of Directors of the Water Agency, and Sonoma Valley County Sanitation District authorized annual agreements for funding Economic Development Board for the program.

Strategic Plan Alignment Goal 2: Economic and Environmental Stewardship

These agreements support Goal 2 because General Services, through the Green Business Program promotes water use efficiency in the Water Agency service area.

Water Supply and Transmission System, Goal 1: Protect drinking water supply and promote water-use efficiency.

Water Agency Water Supply Goals and Strategies, Goal 3: Ensure that water will be available to customers at all times, including during short- term emergencies, such as earthquakes, and long-term challenges caused by extended droughts and global climate change.

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses	\$50,000		
Additional Appropriation Requested			
Total Expenditures	\$50,000		
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other	\$50,000		
Use of Fund Balance			
Contingencies			
Total Sources	\$50,000		
Narrative Explanation of Fiscal Impacts:			
Water Agency/General Services Agreement: Budgeted amount of \$30,000 is available from FY 2017/2018 appropriations for the Water Conservation fund.			
District/General Services Agreement: Budgeted amount of \$20,000 is available from FY 2017/2018 appropriations for the Sonoma Valley County Sanitation District Operations fund.			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
Agreement (SVCSA) Agreement (SCWA)			
Related Items "On File" with the Clerk of the Board:			

Agreement for Funding of the Green Business Program

This agreement (“Agreement”) is by and between Sonoma County Water Agency (“Water Agency”) and County of Sonoma (“County”). The Effective Date of this Agreement is the date the Agreement is last signed by the parties to the Agreement, unless otherwise specified in Article 6 (Term of Agreement).

RECITALS

- A. Water Agency and County mutually desire to educate and assist the private sector business community with environmental issues including, but not limited to, water quality and efficiency of use within the commercial, industrial, and institutional (CII) sector of the Water Agency’s service area.
- B. County has existing relationships with local businesses and expertise in identifying and researching efficiency of water use activities and opportunities for businesses that will assist Water Agency in accomplishing its water quality, conservation, and educational goals.
- C. Water Agency desires to fund County to provide support to assist area businesses in adopting water-efficient, cost-effective practices through contacting business owners and arranging for water audits.
- D. The Sonoma Green Business Program began through the Bay Area Association of Governments (ABAG) in 1996. The Sonoma Green Business Program works with the following sectors: Office/Retail, Restaurants, Small Manufacturers, Wineries, Home Offices, Printers, Hotels, Automotive (body and shop), Janitorial Cleaning Services, Property Managers, Car Washes, Grocery Stores, Dentists and Schools.
- E. The Sonoma Green Business Program certifies local businesses that adopt water- efficient, cost effective practices and other sustainability measures, including conserving energy, preventing pollution and minimizing waste.

In consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1. RECITALS

- 1.1. The above recitals are true and correct.

2. COORDINATION

2.1. Cooperation with Water Agency. County shall coordinate the work with Water Agency’s Project Manager. Contact information and mailing addresses:

Water Agency	County
Project Manager: Kris Loomis 404 Aviation Boulevard Santa Rosa, CA 95403-9019 Phone: (707) 524-1165 Email: Kris.Loomis@scwa.ca.gov	Contact: Liz Yager 2300 County Center Drive, Suite A105 Santa Rosa, CA 95403-9019 Phone: (707) 565-6167 Email: Liz.Yager@sonoma-county.org
Remit invoices to: Susan Bookmyer Same address as above or Email: susan.bookmyer@scwa.ca.gov	Remit payments to: Liz Yager Same address as above or Email: Liz.Yager@sonoma-county.org

3. COUNTY RESPONSIBILITIES

3.1. County is responsible for the following tasks:

- a. Administer and maintain the Sonoma Green Business Program.
- b. Coordinate the Sonoma Green Business Program and its purchases. This shall include:
 - i. Verifying that participants are in compliance with all environmental regulations that meet program standards for saving water, conserving energy, preventing pollution, and minimizing waste.
 - ii. Maintaining a database to include applicant, certified, recertified, denied, and revoked businesses.
 - iii. Developing and printing program marketing materials including:
 - a) Window decals
 - b) Sonoma Green Business Program checklists and business reports for both certified and denied businesses.
 - iv. Publicity, education, and outreach.
 - v. Verification that an applicant business has met program standards through permit and compliance confirmation and collection of checklists from relevant audits of the applicant business.
 - vi. Annually recognize the businesses that have obtained the Green Business Certification.

3.2. Records. County shall maintain complete and accurate records of all transactions in compliance with generally accepted accounting principles for enterprise accounting as promulgated by the American Institute of Certified Public Accountants and the Governmental Accounting Standards Board. Such

records shall be available to Water Agency at all reasonable times for inspection and analysis.

- 3.3. Reporting. County shall supply an annual report which includes a summary of the number of newly certified and recertified businesses broken down by category, reflecting any pertinent data as far as quantifiable water saved, waste-water saved, energy conserved, pollution prevention, and solid waste minimization.
- 3.4. Newsletter and Public Relations Content. Green business will develop newsletter and public relations publications. If requested, Water Agency will work with County to develop content.
- 3.5. Content Online Accessibility.
 - a. *Accessibility*: Water Agency policy requires that all documents that may be published to the Web meet accessibility standards to the greatest extent possible, and utilizing available existing technologies.
 - b. *Standards*: Those responsible for preparing content intended for use or publication on a Water Agency/County-managed or Water Agency/County-funded web site must comply with applicable federal accessibility standards established by 36 C.F.R. section 1194, pursuant to section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. section 794(d)), and Water Agency's Web Site Accessibility Policy located at <http://webstandards.sonoma-county.org>.
 - c. *Certification*: With each final receivable intended for public distribution (report, presentations posted to the Internet, public outreach materials), County shall include a descriptive summary describing how all deliverable documents were assessed for accessibility (e.g. Microsoft Word accessibility check; Adobe Acrobat accessibility check, or other commonly accepted compliance check).
 - d. *Alternate Format*: When it is strictly impossible due to the unavailability of technologies required to produce an accessible document, County shall identify the anticipated accessibility deficiency prior to commencement of any work to produce such deliverables. County agrees to cooperate with Water Agency staff in the development of alternate document formats to maximize the facilitative features of the impacted document(s); e.g., embedding the document with alt-tags that describe complex data/tables.
 - e. *Noncompliant Materials; Obligation to Cure*: Remediation of any materials that do not comply with Water Agency's Web Site Accessibility Policy shall be the responsibility of County. If Water Agency, in its sole and absolute discretion, determines that any deliverable intended for use or publication on any Water Agency/County-managed or Water Agency/County-funded Web site does not comply with Water Agency Accessibility Standards, Water Agency will promptly inform County in writing. Upon such notice, County shall, without charge to Water Agency, repair or replace the non-compliant materials within such period of time as specified by Water Agency in writing.

If the required repair or replacement is not completed within the time specified, Water Agency shall have the right to do any or all of the following, without prejudice to Water Agency's right to pursue any and all other remedies at law or in equity:

- i. Cancel any delivery or task order;
 - ii. Terminate this Agreement pursuant to the provisions of Paragraph 7; and/or
 - iii. In the case of custom Electronic and Information Technology (EIT) developed by County for Water Agency, Water Agency may have any necessary changes or repairs performed by itself or by another contractor. In such event, County shall be liable for all expenses incurred by Water Agency in connection with such changes or repairs.
- f. *Water Agency's Rights Reserved:* Notwithstanding the foregoing, Water Agency may accept deliverables that are not strictly compliant with Water Agency Accessibility Standards if Water Agency, in its sole and absolute discretion, determines that acceptance of such products or services is in Water Agency's best interest.

4. WATER AGENCY'S RESPONSIBILITIES

- 4.1. Coordination. Water Agency shall coordinate with County's staff to attend meetings.
- 4.2. Collaborate with County and EDB. Share progress of work detailed in this Agreement to allow collaboration between partners.
 - a. Green Business Program Site Assessments. If County requests, Water Agency will perform a water audit of the applicant business within 30 days of audit request. Water Agency will coordinate with the applicant business directly to schedule a convenient water audit time and date.
 - b. During the audit of the business, Water Agency will complete the water audit as per internal Bay Area Green Business Program Business requirements, as well as the "Water Conservation" portion of the Bay Area Green Business Program Checklist (Checklist).
 - c. Upon completion of the audit, Water Agency will return the completed program checklist to County.
 - d. If a business fails a component of the Sonoma Green Business Program and is not recognized, or becomes derecognized and requires recertification, there will be no requirement by Water Agency for an additional water audit or additional checklist completion.
- 4.3. Site Assessment Training. If requested by County, Water Agency will offer training or job shadow to the Green Business staff that need to conduct a site visit to determine if water efficiency standards are met

- 4.4. Newsletter and Public Relations Content. If requested, Water Agency will work with County's staff to develop newsletter and public relations content.
- 4.5. Reimbursement. Water Agency shall process for requests for reimbursements as described in Section 5.4.
- 4.6. Items to be Provided. Water Agency logo or other identifying material, as requested by County.

5. FUNDING AND REIMBURSEMENT

- 5.1. Water Agency's maximum obligation to County under this Agreement shall not exceed **\$30,000**.
- 5.2. Availability of Funding in Subsequent Fiscal Years.
 - a. Water Agency's performance under this Agreement in subsequent years is contingent upon appropriation of funds by Water Agency's Board of Directors. Water Agency shall have no liability under this Agreement if sufficient funds are not appropriated in subsequent fiscal years by Water Agency's Board of Directors for the purpose of this Agreement. Amount of funding planned for appropriation for this Agreement is as follows:

<i>Fiscal Year</i>	<i>Planned Appropriation</i>
2017/2018	\$30,000

- b. If funding for this Agreement for any fiscal year is reduced or eliminated by Water Agency's Board of Directors, Water Agency shall have the option to either terminate this Agreement in accordance with Article 7 (Termination) or offer an amendment to County to reflect the reduced amount
- 5.3. Invoices. County shall annually submit an invoice to Water Agency that shows or includes Water Agency's Project-Activity Code T0315P006.
- 5.4. Reimbursement. Upon approval of each invoice, Water Agency will reimburse County by initiating a cost-applied expenditure transfer of funds, or journal voucher transfer, from Water Agency to County. All approved payment requests and subsequent cost-applied transfer of funds will be submitted to the County Auditor within 30 calendar days of receipt of the invoice.

6. TERM OF AGREEMENT

- 6.1. This Agreement shall expire on June 30, 2019, unless terminated earlier in accordance with the provisions of Paragraph 7 (Termination).

7. TERMINATION

- 7.1. At any time and without cause, Water Agency has the right, in its sole discretion, to terminate this Agreement by giving five calendar days' written notice to County. In the event of such termination, Water Agency will pay County for

services satisfactorily rendered to the date of termination. In addition, should County fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, Water Agency may immediately terminate this Agreement by giving County written notice of such termination, stating the reason for termination. In the event of such termination, Water Agency will pay County for services satisfactorily rendered to the date of termination. However, Water Agency will deduct from such amount the amount of damage, if any, sustained by Water Agency by virtue of the breach of the Agreement by County. Water Agency's

MUTUAL INDEMNIFICATION

- 8.1. Each party shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees and witness costs) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying party or its agents, employees, contractors, subcontractors, or invitees. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefit acts, or other employee benefit acts.

9. ADDITIONAL REQUIREMENTS

- 9.1. Bottled Water. In accordance with Sonoma County Water Agency Board of Directors Resolution No. 09-0920, dated September 29, 2009, no Water Agency funding shall be used to purchase single-serving, disposable water bottles for use in Water Agency facilities or at Water Agency-sponsored events. This restriction shall not apply when potable water is not available.
- 9.2. Authority to Amend Agreement. Changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Changes to lengthen time schedules or make minor modifications to the scope of work, which do not increase the amount paid under the Agreement, may be executed by the Water Agency's General Manager in a form approved by County Counsel.
- 9.3. No Waiver of Breach. The waiver by Water Agency of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.
- 9.4. Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be

affected, impaired, or invalidated thereby. County and Water Agency acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. County and Water Agency acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

- 9.5. No Third-Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 9.6. Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California excluding the law of conflicts. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Sonoma.
- 9.7. Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 9.8. Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure section 1856. Each Party acknowledges that, in entering into this Agreement, it has not relied on any representation or undertaking, whether oral or in writing, other than those which are expressly set forth in this Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
- 9.9. Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- 9.10. Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date last signed by the parties to the Agreement.

Reviewed as to funds:

TW 16/17-116

By: _____
Water Agency Division Manager -
Administrative Services

Approved as to form:

By: _____
Cory, O'Donnell, Deputy County Counsel

Sonoma County Water Agency

County of Sonoma

By: _____
Grant Davis
Water Agency General Manager
Authorized per Water Agency's Board of
Directors Action on May 8, 2018

By: _____
Caroline Judy
General Services Director

Date: _____

Date: _____

Agreement for Funding of the Green Business Program

This agreement (“Agreement”) is by and between Sonoma Valley County Sanitation District (“District”) and County of Sonoma (“County”). The Effective Date of this Agreement is the date the Agreement is last signed by the parties to the Agreement, unless otherwise specified in Article 6 (Term of Agreement).

RECITALS

- A. District and County mutually desire to educate and assist the private sector business community with environmental issues including, but not limited to, water quality and efficiency of use within the commercial, industrial, and institutional (CII) sector of the District’s service area.
- B. County has existing relationships with local businesses and expertise in identifying and researching efficiency of water use activities and opportunities for businesses that will assist District in accomplishing its water quality, conservation, and educational goals.
- C. The Sonoma Green Business Program (Program) began through the Bay Area Association of Governments (ABAG) in 1996. The Program works with the following sectors: office/retail, restaurants, small manufacturers, wineries, home offices, printers, hotels, automotive (body and shop), janitorial cleaning services, property managers, car washes, grocery stores, dentists and schools.
- D. The Sonoma Green Business Program certifies local businesses that adopt water- efficient, cost effective practices and other sustainability measures including conserving energy, preventing pollution and minimizing waste.
- E. District desires to fund County to provide support to assist area businesses in adopting water use efficiency programs focused on commercial customers in District service area to reduce wastewater flows to the District, reduce Total Suspended Solids (TSS) and Biochemical Oxygen Demand (BOD).
- F. Sonoma County Water Agency operates the District under contract with District. References to District employees are understood to be Sonoma County Water Agency employees acting on behalf of the District.

In consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1. RECITALS

- 1.1. The above recitals are true and correct.

2. COORDINATION

2.1. Cooperation with District. County shall coordinate the work with District’s Project Manager. Contact information and mailing addresses:

District	County
Project Manager: Kris Loomis 404 Aviation Boulevard Santa Rosa, CA 95403-9019 Phone: (707) 524-1165 Email: Kris.Loomis@scwa.ca.gov	Contact: Liz Yager 2300 County Center Drive, Suite A105 Santa Rosa, CA 95403-9019 Phone: (707) 565-6167 Email: Liz.Yager@sonoma-county.org
Remit invoices to: Susan Bookmyer Same address as above Email: susan.bookmyer@scwa.ca.gov	Remit payments to: Liz Yager Same address as above Email: Liz.Yager@sonoma-county.org

3. COUNTY’S RESPONSIBILITIES

3.1. In addition to implementing the Program, the County shall provide education and outreach of the Program in the District service area. County shall cooperate with District to do the following:

- a. Develop and distribute public information materials relating to water audits, high water using fixture replacement through the Program newsletter.
- b. Promote and market water use efficiency programs focused on commercial customers in District service area to reduce wastewater flows to the District, reduce Total Suspended Solids (TSS) and Biochemical Oxygen Demand (BOD).

3.2. Records. County shall maintain complete and accurate records of all transactions in compliance with generally accepted accounting principles for enterprise accounting as promulgated by the American Institute of Certified Public Accountants and the Governmental Accounting Standards Board. Such records shall be available to District at all reasonable times for inspection and analysis.

3.3. Coordination. County shall coordinate meetings in which the District staff shall attend.

3.4. Content Online Accessibility.

- a. *Accessibility:* District policy requires that all documents that may be published to the Web meet accessibility standards to the greatest extent possible, and utilizing available existing technologies.
- b. *Standards:* Those responsible for preparing content intended for use or publication on a District/County-managed or District/County-funded web site must comply with applicable federal accessibility standards established by 36

C.F.R. section 1194, pursuant to section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. section 794(d)), and District's Web Site Accessibility Policy located at <http://webstandards.sonoma-county.org>.

- c. *Certification*: With each final receivable intended for public distribution (report, presentations posted to the Internet, public outreach materials), County shall include a descriptive summary describing how all deliverable documents were assessed for accessibility (e.g. Microsoft Word accessibility check; Adobe Acrobat accessibility check, or other commonly accepted compliance check).
- d. *Alternate Format*: When it is strictly impossible due to the unavailability of technologies required to produce an accessible document, County shall identify the anticipated accessibility deficiency prior to commencement of any work to produce such deliverables. County agrees to cooperate with District staff in the development of alternate document formats to maximize the facilitative features of the impacted document(s); e.g., embedding the document with alt-tags that describe complex data/tables.
- e. *Noncompliant Materials; Obligation to Cure*: Remediation of any materials that do not comply with District's Web Site Accessibility Policy shall be the responsibility of County. If District, in its sole and absolute discretion, determines that any deliverable intended for use or publication on any District/County-managed or District/County-funded Web site does not comply with District Accessibility Standards, District will promptly inform County in writing. Upon such notice, County shall, without charge to District, repair or replace the non-compliant materials within such period of time as specified by District in writing. If the required repair or replacement is not completed within the time specified, District shall have the right to do any or all of the following, without prejudice to District's right to pursue any and all other remedies at law or in equity:
 - i. Cancel any delivery or task order;
 - ii. Terminate this Agreement pursuant to the provisions of Paragraph 7; and/or
 - iii. In the case of custom Electronic and Information Technology (EIT) developed by County for District, District may have any necessary changes or repairs performed by itself or by another contractor. In such event, County shall be liable for all expenses incurred by District in connection with such changes or repairs.
- f. *District's Rights Reserved*: Notwithstanding the foregoing, District may accept deliverables that are not strictly compliant with District Accessibility Standards if District, in its sole and absolute discretion, determines that acceptance of such products or services is in District's best interest.

4. DISTRICT’S RESPONSIBILITIES

- 4.1. Reimbursement. District shall expedite and process all requests for reimbursements as described in Section 5.4.
- 4.2. Items to be Provided. District logo or other identifying material, as requested by County.

5. FUNDING AND REIMBURSEMENT

- 5.1. District’s maximum obligation to County under this Agreement shall not exceed **\$20,000**.
- 5.2. Availability of Funding in Subsequent Fiscal Years.
 - a. District’s performance under this Agreement in subsequent years is contingent upon appropriation of funds by District’s Board of Directors. District shall have no liability under this Agreement if sufficient funds are not appropriated in subsequent fiscal years by District’s Board of Directors for the purpose of this Agreement. Amount of funding planned for appropriation for this Agreement is as follows:

<i>Fiscal Year</i>	<i>Planned Appropriation</i>
2017/2018	\$20,000

- b. If funding for this Agreement for any fiscal year is reduced or eliminated by District’s Board of Directors, District shall have the option to either terminate this Agreement in accordance with Article 7 (Termination) or offer an amendment to County to reflect the reduced amount
- 5.3. Invoices. Annually submit an invoice to District that shows or includes the District’s, Project-Activity Code “V0041P006.”
- 5.4. Reimbursement. Upon approval of each invoice, District will reimburse County by initiating a cost-applied expenditure transfer of funds, or journal voucher transfer, from District to County. All approved payment requests and subsequent cost-applied transfer of funds will be submitted to the County Auditor within 30 calendar days of receipt of the invoice.

6. TERM OF AGREEMENT

- 6.1. This Agreement shall expire on June 30, 2019, unless terminated earlier in accordance with the provisions of Paragraph 7 (Termination).

7. TERMINATION

- 7.1. At any time and without cause, District has the right, in its sole discretion, to terminate this Agreement by giving five calendar days’ written notice to County. In the event of such termination, District will pay County for services satisfactorily rendered to the date of termination. In addition, should County fail

to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, District may immediately terminate this Agreement by giving County written notice of such termination, stating the reason for termination. In the event of such termination, District will pay County for services satisfactorily rendered to the date of termination. However, District will deduct from such amount the amount of damage, if any, sustained by District by virtue of the breach of the Agreement by County. District's right to terminate may be exercised by Water Agency's General Manager.

8. MUTUAL INDEMNIFICATION

- 8.1. Each party shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees and witness costs) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying party or its agents, employees, contractors, subcontractors, or invitees. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefit acts, or other employee benefit acts.

9. ADDITIONAL REQUIREMENTS

- 9.1. Bottled Water. In accordance with Sonoma County Water Agency Board of Directors Resolution No. 09-0920, dated September 29, 2009, no Water Agency funding shall be used to purchase single-serving, disposable water bottles for use in Water Agency facilities or at Water Agency-sponsored events. This restriction shall not apply when potable water is not available.
- 9.2. Authority to Amend Agreement. Changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Changes to lengthen time schedules or make minor modifications to the scope of work, which do not increase the amount paid under the Agreement, may be executed by the Water Agency's General Manager in a form approved by County Counsel.
- 9.3. No Waiver of Breach. The waiver by District of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.
- 9.4. Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of

the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. County and District acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. County and District acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

- 9.5. No Third-Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 9.6. Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California excluding the law of conflicts. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Sonoma.
- 9.7. Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 9.8. Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure section 1856. Each Party acknowledges that, in entering into this Agreement, it has not relied on any representation or undertaking, whether oral or in writing, other than those which are expressly set forth in this Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
- 9.9. Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- 9.10. Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date last signed by the parties to the Agreement.

Reviewed as to funds:

TW 16/17-115

By: _____
Water Agency Division Manager -
Administrative Services

Approved as to form:

By: _____
Cory O'Donnell, Deputy County Counsel

Sonoma Valley County Sanitation District

County of Sonoma

By: _____
Grant Davis
Water Agency General Manager
Authorized per Water Agency's Board of
Directors Action on May 8 , 2018

By: _____
Caroline Judy
General Services Director

Date: _____

Date: _____



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 7
(This Section for use by Clerk of the Board Only.)

To: Board of Directors, Sonoma County Water Agency

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Sonoma County Water Agency

Staff Name and Phone Number:

Kevin Campbell 547-1921

Supervisorial District(s):

Fourth

Title: Summary Vacation of Hydraulic Maintenance and Access Easement for Oak Creek Subdivision

Recommended Actions:

- A) Adopt a resolution determining that vacating any remaining interests in the hydraulic maintenance and access easement granted to the Sonoma County Water Agency in 1978, located in the Town of Windsor on Assessor's Parcel Numbers 163-190-023, 163-190-024, 163-190-025, 163-190-026, and 163-190-027 will not have a significant adverse effect on the environment; and
- B) Authorize the summary vacation of a hydraulic maintenance and access easement that is not required for purposes of the Water Agency and has not been used for the purpose for which it was dedicated or acquired for five consecutive years immediately preceding the proposed vacation.

Executive Summary:

This item will allow for the summary vacation of the remaining easement rights associated with a hydraulic maintenance and access easement that was granted to the Sonoma County Water Agency (Water Agency) in 1978. Portions of the easement rights have already been vacated to allow for the development of the property encumbered by the easement. However, a portion of the original easement is still retained by the Water Agency. A property owner affected by the remaining easement rights has requested that Water Agency vacate the remaining portions of the hydraulic maintenance and access easement.

Discussion:

The Sonoma County Water Agency was requested by the property owner of 6166 Lockwood Drive to vacate the remaining portions of a hydraulic maintenance and access easement affecting lots located on Lockwood Drive, Windsor. The hydraulic maintenance and access easement was granted to the Water Agency on August 2, 1978, and recorded in Book 3433, Page 589 of Official Records of the County of Sonoma for the construction and maintenance of flood detention reservoirs relating to the Oak Creek Subdivision Project. As the reservoirs were not constructed and the easement was not being used for the purpose that it was acquired, portions of the easement were vacated to allow for development of the property. On September 1, 1987, and on September 8, 1999, two separate portions of the easement were vacated at the request of property owners to allow for development of the properties. The only apparent

portion of the easement still held by the Water Agency is for access across Assessor's Parcel Numbers 163-190-023 (6166 Lockwood Drive), 163-190-024 (6162 Lockwood Drive), 163-190-025 (6158 Lockwood Drive), 163-190-026 (6154 Lockwood Drive), and 163-190-027 (6150 Lockwood Drive). All parcels are located in the Town of Windsor. The access has not been used for the purpose that it was acquired for a minimum of five years preceding the request to vacate the easement rights. Although the Water Agency has identified some properties still encumbered by the 1978 hydraulic maintenance and access easement, it is the intent of this vacation to vacate any and all remaining rights in the easement.

As the easement has not been used for the purpose for which it was dedicated or acquired for five consecutive years immediately preceding the proposed vacation, Section 8333(a) of the Streets and Highways Code authorizes the Board of Directors to summarily vacate a public service easement under such circumstances. Water Agency staff has determined that vacating the easement will have no adverse effect on the Water Agency.

In accordance with Section 65402 of the Government Code, the Water Agency requested the Town of Windsor Community Development Department to determine whether the vacation of the easement would comply with the Town's General Plan. As the Community Development Department did not respond within 40 days to the request, per Section 65402 of the Government Code, the vacation of the easement is deemed to be in conformance with the County's General Plan.

The General Manager has determined that declaring the afore stated properties surplus is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15312 (Surplus Government Property Sales) because the properties are no longer necessary for the operations of a hydraulic maintenance and access easement and the parcels are not in an area of statewide, regional, or area wide concern and due to its size and shape, it is incapable of independent development. Water Agency staff has prepared a Notice of Exemption in accordance with CEQA, the State CEQA Guidelines, and the Water Agency's Procedures for the Implementation of CEQA.

Water Agency staff recommends that the Board adopt the attached Resolution, determining that the Water Agency no longer requires the easement for the purposes of the Water Agency and vacation of the easement will not have a significant impact on the environment, because the property is not located in an area of statewide concern and does not have significant values for wildlife or other environmental purposes, and authorizing summary vacation of the Water Agency hydraulic maintenance and access easement.

Prior Board Actions:

08/31/1999 Resolution Ordering Summary Vacation of portion of Hydraulic Maintenance and Access Easement Recorded in Book 3433 Page 589

09/01/1987 Resolution Ordering Summary Vacation of portion of Hydraulic Maintenance and Access Easement Recorded in Book 3433 Page 589

Strategic Plan Alignment Goal 2: Economic and Environmental Stewardship

Water Agency Organizational Goals and Strategies, Goal 1: Increase organizational efficiency, effectiveness, and resilience to natural disasters.

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses	\$5,000		
Additional Appropriation Requested			
Total Expenditures	\$5,000		
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other	\$5,000		
Use of Fund Balance			
Contingencies			
Total Sources	\$5,000		
Narrative Explanation of Fiscal Impacts:			
This item has been budgeted in the Sonoma County Water Agency Flood Control Zone 1A Maintenance budget.			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
Resolution			
Related Items "On File" with the Clerk of the Board:			

Date: May 8, 2018

Item Number: _____
Resolution Number: _____

4/5 Vote Required

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA COUNTY WATER AGENCY (WATER AGENCY) DETERMINING THAT VACATING A HYDRAULIC MAINTENANCE AND ACCESS EASEMENT LOCATED IN THE TOWN OF WINDSOR WILL NOT HAVE A SIGNIFICANT ADVERSE EFFECT ON THE ENVIRONMENT; AND AUTHORIZING THE SUMMARY VACATION OF AN EASEMENT THAT HAS NOT BEEN USED

Whereas, Division 9, Part 3, Chapters 2 through 4 (commencing with Section 8310) of the California Streets and Highways Code provides for summary vacation when certain conditions are met; and

Whereas, on August 2, 1978, the Water Agency was granted a hydraulic maintenance and access easement for the construction and maintenance of flood detention reservoirs, recorded in Book 3433, Page 589 of Official Records of the County of Sonoma; and

Whereas, a property owner affected by the easement has requested the Water Agency to vacate said easement as it adversely affects their property; and

Whereas, the property interest described below has been found to be a public service easement and has not been used for the purpose that it was acquired for five years immediately preceding the proposed vacation, meeting the requirements of Section 8333 of the California Streets and Highways Code; and

Whereas, portions of the easement have already been vacated by previous Board actions; and

Whereas, it is the intent of this vacation to vacate all remaining portions/rights of said easement; and

Whereas, pursuant to Section 65402 of the California Government Code, the proposed vacation has been submitted to the Community Development Department of the Town of Windsor within whose jurisdiction the proposed vacation is situated, and has been deemed to be in conformance with the general plan of said agency; and

Resolution #

Date:

Page 2

Whereas, the Water Agency's General Manager has determined that the proposed vacation of easement is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15312, Surplus Government Property Sales, because the property is not located in an area of statewide concern, does not have significant values for wildlife or other environmental purposes, and due to its size and shape, it is incapable of independent development; and

Whereas, the Water Agency, as the Lead Agency under CEQA, has prepared a Notice of Exemption for the summary vacation for the Project in accordance with CEQA, the State CEQA guidelines, and the Water Agency's Procedures for the Implementation of CEQA; and

Now, Therefore, Be It Resolved that the Board of Directors, hereby finds, determines, declares, and resolves that:

1. The foregoing recitals are true and correct.
2. Based on review of the Notice of Exemption prepared by Water Agency staff, this Board hereby determines that the Summary Vacation of the Sonoma County Water Agency Hydraulic Maintenance and Access Easement in the Town of Windsor recited in item number 5 (below) is hereby exempt from the requirements of CEQA pursuant to Section 15312 Surplus Government Property Sales, because the property is not located in an area of statewide concern, does not have significant values for wildlife or other environmental purposes and due to its size and shape, it is incapable of independent development.
3. The Board of Directors of the Sonoma County Water Agency finds that the Water Agency no longer requires the easement referred to below for the purposes of the Water Agency.
4. The Board of Directors of the Sonoma County Water Agency finds the need for the easement referred to below to be unnecessary because the easement has not been used for the purpose for which it was acquired for five consecutive years immediately preceding the proposed vacation, and that this resolution is prima facie evidence of the facts stated.
5. That from and after the date of recording, the following described property rights no longer constitutes a hydraulic maintenance and access easements:

Being all that right, title and interest in and to that certain real property as described in instruments recorded on August 2, 1978, in Book 3433, Beginning at Page 589, Official Records of Sonoma County, California

Resolution #

Date:

Page 3

6. The vacation of the easement is hereby ordered, and that the Clerk of the Board of Directors is authorized and directed to record a certified copy of this resolution at the Office of the County Recorder.

Directors:

Gorin:

Rabbitt:

Zane:

Hopkins:

Gore:

Ayes:

Noes:

Absent:

Abstain:

So Ordered.



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 8
(This Section for use by Clerk of the Board Only.)

To: Board of Directors, Sonoma County Water Agency

Board Agenda Date: May 8, 2018

Vote Requirement: 4/5

Department or Agency Name(s): Sonoma County Water Agency

Staff Name and Phone Number:

Kevin Booker / 521-1865

Supervisorial District(s):

Fourth and Fifth

Title: Sonoma County Water Agency Procurement of two Vacuum Trucks

Recommended Actions:

Adopt a Resolution Authorizing Adjustments to the Board Adopted Budget for Fiscal Year 2017-2018 for the Sonoma County Water Agency General Fund and Equipment Fund, each in the Amount of \$448,733 for the procurement of two vacuum trucks for hauling wastewater.

Executive Summary:

This item requests that the Board of Directors (Board): Adopt a Resolution Authorizing the Sonoma County Water Agency (Water Agency) to purchase to Vacuum Trucks to facilitate the daily hauling of raw wastewater from the Occidental County Sanitation District Wastewater lift station to the Airport-Larkfield-Wikiup Sanitation Zone treatment plant.

Discussion:

The Occidental County Sanitation District (District) service area covers approximately 55 acres and provides service to approximately 120 parcels. Treated wastewater is sent to Graham's Pond which has been utilized as a year-round storage reservoir since 1977 and is located on private property at 5502 Graton Road, near Occidental. However, North Coast Regional Water Quality Control Board (Regional Board) analysis has determined that Graham's Pond is a water of the United States due to its construction and location at the headwaters of Dutch Bill Creek. The pond was originally constructed as an agricultural pond.

The District's wastewater treatment facility is permitted by the Regional Board under the Waste Discharge Requirements adopted in Order No. R1-2012-0101 (Order), dated December 6, 2012. The Order implements provisions of the North Coast Regional Board Water Quality Control Plan (Basin Plan), whereby no wastewater treatment facility is allowed to discharge waste to the Russian River or its tributaries during the period of May 15 through September 30. Since Graham's Pond is considered a water of the United States subject to National Pollutant Discharge Elimination System permit requirements and a tributary to the Russian River, it is not permissible to discharge secondary-treated effluent into the pond

from May 15 through September 30. However, because Graham’s Pond is the only storage pond currently available to the District, it is not possible for the District to meet this requirement of Order No. R1-2012-0101, and the District continues to discharge secondary-treated effluent into the pond year-round.

On February 6, 2018, the Board approved of the Occidental County Sanitation District Wastewater Transport Compliance Project, which will allow for wastewater from the District to be transferred to and treated at the Airport-Larkfield-Wikiup Sanitation Zone treatment plant located at 800 Aviation Blvd in an unincorporated area of Sonoma County. By transferring the District wastewater to the Airport-Larkfield-Wikiup Sanitation Zone, Project would eliminate the discharge and storage of secondary-treated effluent into Graham’s Pond, and eliminate direct discharge to Dutch Bill Creek during the wet season.

Through analysis, staff has determined two vacuum trucks are required to facilitate the daily (typically Monday-Friday) hauling of raw wastewater from the District lift station to the Airport-Larkfield-Wikiup treatment plant. In addition, staff has determined that this is the most cost effective way to haul the wastewater. The Water Agency’s fleet does not currently possess the trucks necessary to implement the District’s hauling operations and needs to purchase the two tanker trucks. The procurement will be made through the National Joint Powers Alliance Contract 081716-NAF for the purchase of two new 2018 Peterbilt 4,200 gallon vacuum trucks for a total of \$448,733.

The Water Agency recommends the Board Authorize the General Manager of the Water Agency to procure vacuum trucks necessary to haul wastewater.

ALTERNATIVES

Failure to purchase vacuum trucks will result in higher hauling cost.

Prior Board Actions:

- 02/06/2018 Board Action approving the Occidental County Sanitation District Wastewater Transport Compliance Project
- 12/12/2017 Resolution 17-0483 determining that the Occidental County Sanitation District to Airport-Larkfield-Wikiup Sanitation Zone Wastewater Transport Project will not have a significant adverse effect on the environment; adopting the Initial Study and Negative Declaration of Environmental Impact for the project; approving the Project, making certain related findings, and authorizing the filing of a Notice of Determination.

Strategic Plan Alignment Goal 2: Economic and Environmental Stewardship

Waste Water Treatment and Water Reuse, Goal 1: Improve operational reliability of wastewater treatment and water reuse systems. This items supports this goal by eliminating the discharge of secondary treated wastewater into Dutch Bill Creek and will now discharge treated wastewater through land irrigation.

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested	\$448,733		
Total Expenditures	\$448,733		
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance	\$448,733		
Contingencies			
Total Sources	\$448,733		
Narrative Explanation of Fiscal Impacts:			
Additional appropriations of \$448,733 will be made available in the Equipment Fund through a Board-approved Budgetary Resolution for FY 17/18. These appropriations are offset by \$488,733 in Water Agency General Fund fund balance (attachment R1) resulting in \$916,407 in ending fund balance for the equipment fund, and \$15,520,162 for the General Fund.			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
N/A			
Narrative Explanation of Staffing Impacts (If Required):			
None			
Attachments:			
Resolution R1			
Related Items “On File” with the Clerk of the Board:			

Date: May 8, 2018

Item Number: _____
Resolution Number: _____

4/5 Vote Required

**Resolution Of The Board Of Directors of the Sonoma County Water Agency
Authorizing Adjustments to the Board Adopted Budget for Fiscal Year 2017-2018
for the General Fund and the Equipment Fund, each in the Amount of \$448,733**

Whereas, the Board of Directors of the Sonoma County Water Agency (Water Agency) adopted the Water Agency Fiscal Year 2017-2018 budget on June 15, 2017; and

Whereas, Sections 29088 through 29092 of the Government Code, State of California allow for adjustments to the Fiscal Year 2017-2018 Adopted Budget; and

Whereas, the Water Agency desires to adjust the Fiscal Year 2017-2018 Adopted Budget for the General Fund to make an operating transfer to the Equipment Fund for the purchase of two vacuum trucks of \$448,733 to facilitate the daily hauling of raw wastewater from the Occidental County Sanitation District wastewater lift station to the Airport-Larkfield-Wikiup Sanitation Zone treatment plant; and

Whereas, a resolution from the Water Agency's governing board authorizing such budget adjustment is required.

Now, Therefore, Be It Resolved that the County Auditor-Controller-Treasurer-Tax Collector and the County Administrator are hereby authorized and directed to complete the budgetary and accounting transfers and adjustments to the Water Agency Fiscal Year 2017-2018 budget as follows:

Resolution #

Date:

Page 2

Fiscal Year 2017-2018 Expenditures		Amount
14015-33010100	General Fund	
57012	Transfers Out - btw Govtl Fund	448,733
Total Expenditures		448,733
Fiscal Year 2017-2018 Funding Sources		
14015-33010100	General Fund	
	Fund Balance	448,733
Total Funding Sources		448,733
Fiscal Year 2017-2018 Expenditures		
54004-33050100	Equipment Fund	
19822	Mobile Equipment	448,733
Total Expenditures		448,733
Fiscal Year 2017-2018 Funding Sources		
54005-33050100	Equipment Fund	
47102	Transfers IN - btw Govtl Fund	448,733
Total Funding Sources		448,733

Be It Further Resolved

Directors:

Gorin:

Rabbitt:

Zane:

Hopkins:

Gore:

Ayes:

Noes:

Absent:

Abstain:

So Ordered.



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 9
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors & Board of Directors

Board Agenda Date: May 8, 2018

Vote Requirement: 4/5

Department or Agency Name(s): County Administrator's Office

Staff Name and Phone Number:

Niki Berrocal (707) 565-2431

Supervisorial District(s):

All

Title: Fiscal Year 2017-18 Third Quarter Budget Adjustments

Recommended Actions:

Adopt a Concurrent Budget Resolution adjusting departmental budgets by approximately \$582,000 to carry out operations and delivery of services through the end of the current fiscal year, which are consistent with prior board actions. Of the total, \$10,000 is within the General Fund budgets, and approximately \$572,000 in Other Funds.

Executive Summary:

Throughout the fiscal year many County Departments, Agencies and Districts experience the need to make adjustments to the revenues and/or expenditure appropriations in their budgets. As a result, the County Administrator's Office coordinates with all County departments and agencies on a quarterly basis to summarize and present a consolidated request for appropriations changes that align with prior Board direction. The proposed consolidated budgetary adjustments do not include any new programs or initiatives not previously approved by the Board.

Following these adjustments, the FY 2017-18 revised budget will be \$1.8 billion. Staff is requesting that the Board approve approximately \$582,000 in this third quarterly consolidated budget adjustments necessary to carry out operations and delivery of services through the end of the current fiscal year.

Discussion:

The FY 2017-18 total current revised budget is \$1.817 billion. This report includes a recommendation to increase budgeted expenses by approximately \$582,000, revenues/reimbursement by approximately \$513,000 and use of accumulated non-General Fund balances by \$68,000. If budget changes are approved, the total revised county-wide FY 2017-18 Budget will be approximately \$1.818 billion (including transfers within county departments/agencies). Additionally, contingencies will be utilized to finance various fee waivers previously approved by the Board.

At the direction of the County Administrator, budget changes include only adjustments that are consistent with prior board direction. A complete list totaling \$582,160 in budgetary changes is included as Exhibit A of the attached Budget Resolution.

While the Gross Expenditure change totals \$582,160, this consolidated adjustment package also includes a transfer in the amount of \$200,000 in salary savings in the Main Adult Detention Facility in the Sheriff's Department to Sheriff's Training. Typically, the Sheriff's Training budget is funded with salary savings from the Patrol budget; however, due to the personnel expenses incurred as a result of the October Wildfires, these savings are not available. Detention salary savings is available due to unbudgeted savings from employees in leave without pay status and unanticipated vacancies. This transfer allows the Sheriff's Department to carry out the programs and services approved in the FY 2017-18 budget.

In addition to the above transfer, the most significant budgetary adjustments associated with the \$582,000 gross expenditure change are as follows:

1. Appropriating \$250,000 in Regional Parks Capital Projects from the State Parks Habitat Conservation Fund Program to Hood Mountain McCormick; consistent with Board item #12 on 9/27/16.
2. Appropriate \$160,000 in the Roads Division from Countywide Mitigation Fund accumulated balance to the Capital Improvement fund for costs associated with the Dry Creek Road at Highway 101 Interchange Congestion Relief project, pursuant to the Intergovernmental Funding Agreement with the City of Healdsburg; consistent with Board item #23 on 12/5/17.

Prior Board Actions:

10/24/17: Fiscal Year 2017-18 First Quarter Budget Adjustments
3/20/18: Fiscal Year 2017-18 Second Quarter Budget Adjustments

Strategic Plan Alignment Goal 4: Civic Services and Engagement

Periodic review of the County budget supports uninterrupted services to County residents, and provides fiscal transparency to the public.

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested	582,160		
Total Expenditures			
Funding Sources			
General Fund/WA GF	0		
State/Federal	76,000		
Fees/Other	424,869		
Use of Fund Balance	68,358		
Contingencies	12,933		
Total Sources	582,160		
Narrative Explanation of Fiscal Impacts:			
Please refer to Exhibit A for departmental budget changes by General Fund and Other Funds.			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
Attachment 1: Concurrent Resolution with Exhibit A			
Related Items “On File” with the Clerk of the Board:			
None			



County of Sonoma
State of California

Date: May 8, 2018

Item Number: _____
Resolution Number: _____

4/5 Vote Required

Concurrent Resolution Of the Board Of Supervisors of the County Of Sonoma, State Of California, the Board Of Directors of the Sonoma County Community Development Commission, the Board Of Directors of the Agricultural Preservation and Open Space District, the Board Of Directors of the Sonoma County Water Agency, the Board Of Directors of the Occidental County Sanitation District; and the Board Of Directors of the Russian River County Sanitation District Adjusting the Revised FY 2017-18 Budget. (4/5 Vote Required.)

Whereas, the Board has adopted the Fiscal Year 2017-18 Budget for all Governmental Entities within its jurisdiction, in accordance with Section 29088 of the Government Code of the State of California, and

Whereas, the Government Code allows for adjustments to the Adopted Budget during the 2017-18 Fiscal Year.

Now, Therefore, Be It Resolved that the County Auditor-Controller is hereby authorized and directed to adjust the Fiscal Year 2017-18 Adopted Budget for the attached increases/decreases listed in Exhibit "A" for the governmental entities within its jurisdiction. Also, in order to reconcile financial data between the County's systems, authorize the Auditor-Controller-Treasurer-Tax Collector and County Administrator to complete minor budgetary corrections that do not cumulatively increase spending authority in any one departmental budget.

Supervisors/Directors:

Gorin: Rabbitt: Zane: Hopkins: Gore:
Ayes: Noes: Absent: Abstain:

So Ordered.

FY 2017-18 3rd QUARTER CONSOLIDATED BUDGET ADJUSTMENTS

Exhibit A

Description	Gross Expenditure Change	Revenue and Reimbursement Change	Net Cost Change
<u>Administrative Services</u>			
Non-Departmental - General Fund			
Add expenditure appropriations for previously approved fee waivers: \$4,636 waiver of health and permit fees for Forestville Youth Park's Fundraiser (3/13/18, #21); \$847 waiver of fees for Occidental Center for the Arts Fool's Day Parade (3/13/18, #22); \$2,400 Guerneville Veteran's Bldg Rental fee waiver for Redwood Empire Food bank (3/13/18, #23); \$2,310 Santa Rosa Veteran's Bldg Rental fee waiver for Redwood Empire Food bank (3/13/18, #24); \$2,740 Sebastopol Center for the Arts Bldg Rental sponsorship for Redwood Empire Food bank (3/13/18, #20).	12,933	0	12,933
Reduce the Board's General Fund Contingency appropriation to offset fee waiver & sponsorship expenditures cited above.	(12,933)	0	(12,933)
<u>Development Services</u>			
Regional Parks - Other Fund			
Transfer an additional \$10,000 from the Del Rio Woods Operations fund to the Del Rio Woods capital project fund to complete the construction of parks improvements, including parking and accessibility improvements. (10/6/15,#26)	10,000	0	10,000
Transportation and Public Works - Other Fund			
Roads Division - Increase appropriations for operating transfer from Countywide Mitigation Fund, from available fund balance, to the Capital Improvement fund for costs associated with the Dry Creek Road at Highway 101 Interchange Congestion Relief project, pursuant to the Intergovernmental Funding Agreement with the City of Healdsburg (12/5/17 #23).	160,000	160,000	0
CSA #41 Freestone Water Operations - Increase expenditure appropriations from available fund balance to support remaining FY 17-18 contract costs for operation and maintenance services needed to comply with State drinking water standards (6/6/17 #21).	30,033	0	30,033
CSA #41 Jenner Water Operations - Increase expenditure appropriations from available fund balance to support remaining FY 17-18 contract costs for operation and maintenance services needed to comply with State drinking water standards (6/6/17 #21).	28,325	0	28,325
<u>Justice Services</u>			
Sheriff - General Fund			
Transfer \$200,000 from Detention Division's Main Adult Detention Facility salary and benefits to Sheriff's Training. Typically, the Sheriff's Training budget is funded with salary savings from the Patrol budget; however, due to the personnel expenses incurred as a result of the October Wildfires, these savings are not available. Detention salary savings is available due to unbudgeted savings from employees in leave without pay status and unanticipated vacancies. Transfer is needed to carryout programs and services in the Sheriff's Adopted FY 2017-18 Budget.	200,000	0	200,000
	(200,000)	0	(200,000)
Appropriate additional revenues and expenditures in the Sheriff's Fire Disaster Recovery budget section to record expenses and the offsetting insurance reimbursement related to restoring telecommunications functionality at the County's Mt. Barham telecommunications site damaged by the October Wildfires.	10,000	10,000	0
District Attorney - Other Fund			
Increase to Public Safety Realignment Revocation budget to use actual revenue received to provide Parole Revocation services; consistent with Adopted FY17-18 Budget.	76,000	76,000	0

FY 2017-18 2nd QUARTER CONSOLIDATED BUDGET ADJUSTMENTS

Exhibit A

Capital Projects

Capital Projects - Other Fund

Transfer \$5,775 unused funds from Central Mechanical Plant to County Government Center Development [Board direction at Budget hearings and re-affirmed on 1/16/18 Strategic Planning]. Transfer \$2,027 from completed Fleet and Materials Lab relocation to Motor Pool Lot relocation [projects were approved as a consolidated project, then split for implementation purposes, still original intent of funding]. Transfer \$3,237 Criminal Justice Construction Fund from completed Main Adult Detention Facility Laundry Conveyor to the Main Adult Detention Facility Housing Safety and Security Project [approved as part of the annual Capital Projects Plan].

7,802 7,802 0

Regional Parks Capital Project Adjustments: appropriate \$250,000 from the State Parks Habitat Conservation Fund Program to Hood Mountain McCormick (9/27/16,#12). Appropriate \$10,000 from the Parks Del Rio Woods fund to complete construction at Del Rio Woods (10/6/15,#26).

260,000 260,000 0

Regional Parks Capital Project Adjustments: Move \$20,000 of Park Mitigation Area 6 Sonoma Valley Sonoma Valley funds from Sonoma Schellville trail to Sonoma Valley Expansion to complete Master Plan and initial public access (9/12/17,#25) and move \$20,000 of Measure L funds from Tolay Master Plan to Central Sonoma Valley Trail (6/20/17,#45).

40,000 40,000 0

(40,000) (40,000) 0

GRAND TOTAL ADJUSTMENTS	582,160	513,802	68,358
General Fund	10,000	10,000	0
Other Funds	572,160	503,802	68,358
All Funds	582,160	513,802	68,358



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 10
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors and Board of Commissioners

Board Agenda Date: May 8, 2018

Vote Requirement: 4/5

Department or Agency Name(s): County Administrator's Office, Community Development Commission

Staff Name and Phone Number:

Michael Gossman 707-565-7056
Margaret Van Vliet 707-565-7505

Supervisorial District(s):

All

Title: Housing Recovery Ballot Measure

Recommended Actions:

A) Accept the budget plan needed to develop and place a housing recovery ballot measure on the November 2018 ballot, and direct staff to draft ballot measure options for consideration by the Board of Supervisors no later than July 10, 2018.

B) Adopt Budgetary Resolution programming \$92,000 of available fund balance from the General Fund Dissolved Redevelopment Areas Residual Tax (also known as Reinvestment and Revitalization) to cover current year estimated costs to develop draft ballot measure options. (4/5 vote)

Executive Summary:

Community stakeholders and leaders concerned about the severe shortage of affordable and workforce housing have been discussing placing a General Obligation Housing Recovery Bond or a similar measure on the November 2018 ballot in the approximate amount of \$300 million.

The fire disaster exacerbated an already severe shortage of housing in Sonoma County. Your Board has been working closely with elected officials from the nine cities and other community leaders on ways to address the problem, and has directed staff to create new and more effective structures to facilitate the development of substantially greater numbers of homes at all income levels over the next five years.

County tools and assets including land, regulatory and permitting authority, as well as the capacity to pool financial resources, are being readied for deployment in new and more urgent ways. Your Board has further expressed a desire for the housing strategies to be undertaken at a regional level and with a county-wide perspective, consistent with planning work being carried out in the broader nine-county Bay Area region. Addressing the housing shortage through this lens will not only aid the affordability

crisis facing Sonoma County, but will also facilitate broad economic revitalization, mitigate the effects of climate change, and lead to resilience at the regional, neighborhood and homeowners scale.

Sonoma County has been offered assistance from investors, funders, planners, and regulators at the regional, state and national levels. These added resources can be strategically leveraged through bond proceeds.

The resources needed to develop and place a measure on the ballot in November include staff time in the following departments: County Administrator's Office, the Community Development Commission, the Auditor Controller Treasurer Tax Collector, and County Counsel. The total department expense is estimated at \$98,000. Other pre-election expenses include a Financial Advisor, Bond Counsel, and educational outreach with a combined estimated expense of \$25,000. Finally, there is an estimated election cost of \$300,000. If the policy direction is to pursue a general obligation bond measure, in an abundance of caution to ensure compliance with state constitutional restrictions on GO bonds, staff recommends elections costs should not be charged back to the issuance even if the measure passes.

It is anticipated that staff will bring back draft ballot measure options on July 10, 2018 for Board of Supervisors' consideration. If the Board desires to place a measure on the ballot, the Board would need to call the election on the measure on or before August 10, 2018.

Discussion:

Community stakeholders and leaders have been discussing placing a Housing Recovery Bond or a similar measure on the November 2018 ballot. There is recognition that Sonoma County lost nearly 5,300 homes in the 2017 wildfires, in addition to a pre-fire severe shortage of homes countywide for households of all income levels. Recent discussions by the Santa Rosa City Council, Sonoma County Transportation Authority, and the Board of Supervisors have begun to center on a goal of adding 30,000 new housing units in the County within five years. A significant, and as-yet undetermined portion of new homes will need to be affordable to households of modest means, and developing housing that's affordable to low-income working families as well as seniors and people with disabilities on fixed incomes requires substantial public subsidies. Proceeds of a housing recovery measure would be leveraged and blended with other sources of public and private capital to the greatest extent possible, to maximize the number of homes that can be produced. A to-be-determined portion will also be set aside to assist property owners with rebuilding lost homes.

The County Administrator's Office, the Community Development Commission, the Auditor Controller Treasurer Tax Collector, and County Counsel have evaluated the County resources and processes necessary to assess the feasibility of a county-wide General Obligation Housing Recovery Bond or a similar ballot measure in order to help determine the feasibility of such a ballot measure being called.

The policy framework that will guide development of the housing recovery measure has been created through a collaborative process involving numerous stakeholders and interested parties. The current version of this policy framework, Version 5 from April 6, 2018, is attached to this report. With this framework established, County professional staff will ensure that the policy framework meets the legal

restrictions placed on GO bond or similar measures, and develop both the ballot language and guidelines for administration of the ensuing program.

If it is considered feasible, the Board of Supervisors may direct staff to develop the specifics of the housing recovery measure for consideration on or before the July 10, 2018 board meeting.

The total department expense is estimated at \$98,000. Other pre-election expenses include a Financial Advisor, Bond Counsel, and educational outreach with a combined estimated expense of \$25,000. Finally, there is an estimated election cost of \$300,000. If a general obligation bond measure is pursued, staff recommends election cost should not be charged back to the bond issuance out of an abundance of caution to ensure compliance with state constitutional restrictions on GO bonds. Of the \$423,000 estimated expenses, \$31,000 is already budgeted staff time, \$92,000 is requested from FY17/18 to perform pre-election efforts, and the remaining \$300,000 is recommended to come from FY18/19 Contingency.

The estimated resources needed are:

Department Cost Estimates	Expense	Hours
Community Development Commission	\$ 15,000	160
County Administrator's Office	\$ 16,000	175
County Counsel	\$ 51,000	200
Auditor Controller Treasurer Tax Collector	\$ 16,000	175
Department Sub-total	\$ 98,000	710

Non-departmental Cost Estimates	Expense
Pre-election Financial Advisor contract	\$ 15,000
Pre-election Bond Counsel contract	\$ 5,000
Pre-election educational outreach	\$ 5,000
Register of Voters election cost	\$ 300,000*
Non-department Sub-total	\$ 325,000

Total Estimated Cost	\$ 423,000
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** Will be included in the FY 2018-19 Supplemental Budget and financed through the use of FY 2018-19 General Fund Contingencies*

To place a measure on the ballot requires a process that includes developing the ballot measure, the formal approval process to place that measure on the ballot, and the date by which a final decision must be made in order to meet the November 2018 election date.

The next step in this process is for your Board to direct staff to develop a draft ballot measure options for the Board of Supervisors to consider. It is anticipated that the draft measure options would be ready for consideration by the Board of Supervisors on or before July 10, 2018.

If directed, it is anticipated that a final measure would be considered by your Board on July 24, 2018, with a final deadline to place the measure on the ballot for November 2018 on or before August 10th 2018.

Prior Board Actions:

April 17, 2018 - the Board of Supervisors approved a Minute Order Resolution directing the County Administrator’s Office, the Community Development Commission, the Auditor Controller Treasurer Tax Collector, and County Counsel to evaluate the County resources and processes necessary to assess the feasibility of a county-wide General Obligation Housing Recovery ballot measure and present that information at the May 8, 2018 Board of Supervisors meeting.

Strategic Plan Alignment Goal 3: Invest in the Future

Fiscal Summary

Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses	\$31,000		
Additional Appropriation Requested	\$92,000		
Total Expenditures	\$123,000		
Funding Sources			
General Fund/WA GF	\$31,000		
State/Federal			
Fees/Other			
(Reinvestment & Revit.) Use of Fund Balance	\$92,000		
Contingencies			
Total Sources	\$123,000		

Narrative Explanation of Fiscal Impacts:

In addition to the pre-referral expenses, and assuming passage of the measure, there will be post issuance expenses for administering the bonds by the Auditor Controller Treasurer Tax Collector, as well as administrative expenses by the Commission to manage the proceeds over time. The scope of work will depend upon the how the measure is structured and how the use of the proceeds are designed. Some portion of these expenses, to be determined with bond counsel’s assistance, will be coverable through proceeds. While the portion not covered through proceeds may be subject to a future cost sharing from those jurisdictions, such agreements have not yet been considered.

At this time it is premature to provide a cost estimate for this body of post issuance related work.

Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
Draft Resolution and Statement of Principles Version 5 (April 9, 2018)			
Related Items “On File” with the Clerk of the Board:			



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 11
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors, County of Sonoma

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): County Administrator / Fire and Emergency Services

Staff Name and Phone Number:

Peter Bruland / 565-3086
Jim Colangelo / 565-1152

Supervisorial District(s):

All Districts

Title: Fire Services Advisory Council Appointments and Unpaid ABH Reimbursements

Recommended Actions:

- A) Reappoint Leonard Thompson as a full member of the Fire Services Advisory Council, and reappoint Nick Silva and Nance Jones as alternate members.
- B) Appoint Mark Heine, Mike Nicholls, and Jason Boaz as a full members of the Fire Services Advisory Council, and Tony Gossner and Justin McNulty as alternates.
- C) Appoint full members to the Second At-Large seat and Alternate seat of the Fire Advisory Council as directed by the Fire Services Ad Hoc.
- D) Authorize the Director of Fire and Emergency Services to execute agreements with Sonoma County fire agencies for October fires unreimbursed expenses incurred fighting the Sonoma Complex Fires, as approved by the Fire Advisory Council at the March 8, 2018, meeting. Total amount of all reimbursements not-to-exceed \$500,000.

Executive Summary:

The Fire Services Advisory Council (Council) was created to advise the Board of Supervisors on matters related to Fire Services. The initial appointments were made on April 19, 2016, and four members and their alternates have terms that are expiring on April 30, 2018.

Region 5, located in the western portion of the county, has selected Mike Nicholls as the primary member, and Nance Jones to continue as the alternate. Region 6, located in the northern portion of the county, has selected Jason Boaz as the primary member and Justin McNulty as the alternate. Region 7, located in the central portion of the county, has selected Mark Heine as the new primary member, and Tony Gossner to now serve as the alternate. Region 9, located in the southwest portion of the county, has chosen to reappoint Leonard Thompson as the primary member, and Nick Silva as the alternate.

Doug Williams was appointed to one of the At-large seat 2 by the Board of Supervisors, with Chuck Abshear as his alternate. Staff recommend that Doug Williams and Chuck Abshear be reappointed to full terms as the Primary and Alternate members for the second At-large seat. Staff recommend that the Board confirm these appointments. The devastating Sonoma Complex Fires that started early in the

morning of October 9, 2017, are considered the most devastating in California's history. Through the California Office of Emergency Services, local fire agencies provide support to combat large wildland fires throughout the State. Support is administered under the California Master Mutual Aid Agreement, and agencies are reimbursed for Assistance By Hire (ABH) costs associated with this effort. Due to the magnitude of this event, reimbursement from the state may not fully cover expenses that agencies incurred, which may lead to cash-flow issues. Funding the gaps created by ABH unreimbursed expense shortfalls will allow agencies to recoup monies arising from these shortfalls.

The Fire Service ad hoc, in conjunction with the Fire Service Advisory Council, will be returning to the Board for a full update on the status of the Fire Service Project on June 11, 2018.

Discussion:

Regional Councilmember Appointments

As part of the 2014 Board priorities the county launched a multi-year project to create a more efficient, effective, and sustainable fire services in Sonoma County. In December 2015 staff returned to the Board to present consensus recommendations from the project's stakeholder Advisory Committee regarding a governance model for the fire system. The Advisory Council has been meeting for two years and is currently engaged in a process to develop a longer-term plan for fire service delivery improvement in Sonoma County.

While the governance model recommendations saw a single agency as a long-term vision, it was not deemed practical in the short term. Instead, it opted for a Regional Model to assist with coordination and incentivize collaboration between agencies. The model consists of seven geographical regions based on existing dispatch zones and the establishment of a countywide Fire Services Advisory Council.

On April 19, 2016, the Board created the Council to advise the Board of Supervisors on matters related to Fire Services. The Council originally consisted of 9 members, including 7 selected by agencies providing fire services in geographic regions of the county and 2 at large members selected by the Board of Supervisors. A map of the regions is attached. On February 21, 2017, the Board approved creation of a 10th seat to represent the Sonoma County Volunteer Fire Companies Association. Each member has an alternate. Going forward, all members will serve two-year terms. To ensure continuity, four members and their alternates were initially assigned one-year terms in order to ensure that future terms will be staggered. These one-year terms were selected by lot at the first meeting of the Council, in accordance with the bylaws of the Council. The seats that drew two-year terms were those for Region 5, Region 6, Region 7, and Region 9, as well as the second at large seat.

Regions 5, 6, 7, and 9 held public meetings of their regional councils in order to select members for the next 2-year terms beginning in May 2018. Region 5 voted to appoint Mike Nicholls, Cazadero Community Services District Board Member, as its primary member and reappointed Nance Jones, Russian River Fire Protection District Board Member as the alternate. Mike Nicholls will replace Russian River FPD Board member Mark Emmett.

Region 6 voted to appoint Jason Boaz, Fire Chief of Healdsburg Fire Department, as its primary member and Justin McNulty, Battalion Chief of Cloverdale FPD, as the alternate. Region 7 voted to appoint Mark Heine, Fire Chief of Rincon Valley/Windsor FPD, as its primary member, and appoint Tony Gossner, Fire Chief of Santa Rosa Fire Department as the alternate. Region 9 voted to continue with Leonard Thompson, Fire Chief of Petaluma FD as its primary member and Nick Silva, Fire Chief of Lakeville Volunteer Fire Company as the alternate.

For the second at-large seat, after careful review of the applications, staff recommends continuing with Doug Williams as the primary member and Chuck Abshear as the alternate. Both have provided excellent service on the Board and Doug Williams has played a key role in acting as the appointed Council Chair since the inception of the Advisory Council. With a key report due to the Board of Supervisors' Fire Advisory Council Ad-Hoc, and critical work being done via the Council's Planning and Finance Committees, staff feel that it is important to continue with the current members who have been engaged in the process for another term.

ABH Reimbursements

The 2017 Sonoma Complex Fires have taxed local agencies that responded to these incidents. State reimbursements for ABH expenses have not fully covered the total expenses that County fire agencies have absorbed in response to the Complex Fires. The local effects of the fires came on top of a long, difficult season in which County agencies have provided support to other agencies throughout the state. While County agencies will receive reimbursement, the gap in unreimbursed ABH expenses is causing agency cash-flow issues. The Board of Supervisors has allocated \$1.3 million of Proposition 172 Public Safety Funding and \$1 million of Measure L Transient Occupancy Tax revenue toward the Fire Service Project for fiscal 2017-18, in addition to approximately \$850,000 dedicated to paying for dispatch fees. Of this total, nearly \$2 million remains to be allocated. The Council voted at its March 8, 2018, meeting to recommend agency reimbursements as properly documented and presented to the Council. As of April 19, 2018, eight departments had submitted requests totaling \$155,341. Additional requests may be received and staff are reviewing documentation, so the final number is not certain and staff are requesting authorization to meet potential submissions.

With Board approval today, the Director of Fire and Emergency Services would be authorized to sign reimbursement agreements to cover unreimbursed ABH expenses incurred fighting the Sonoma Complex Fires. Total amount of agreements not-to-exceed \$500,000.

Prior Board Actions:

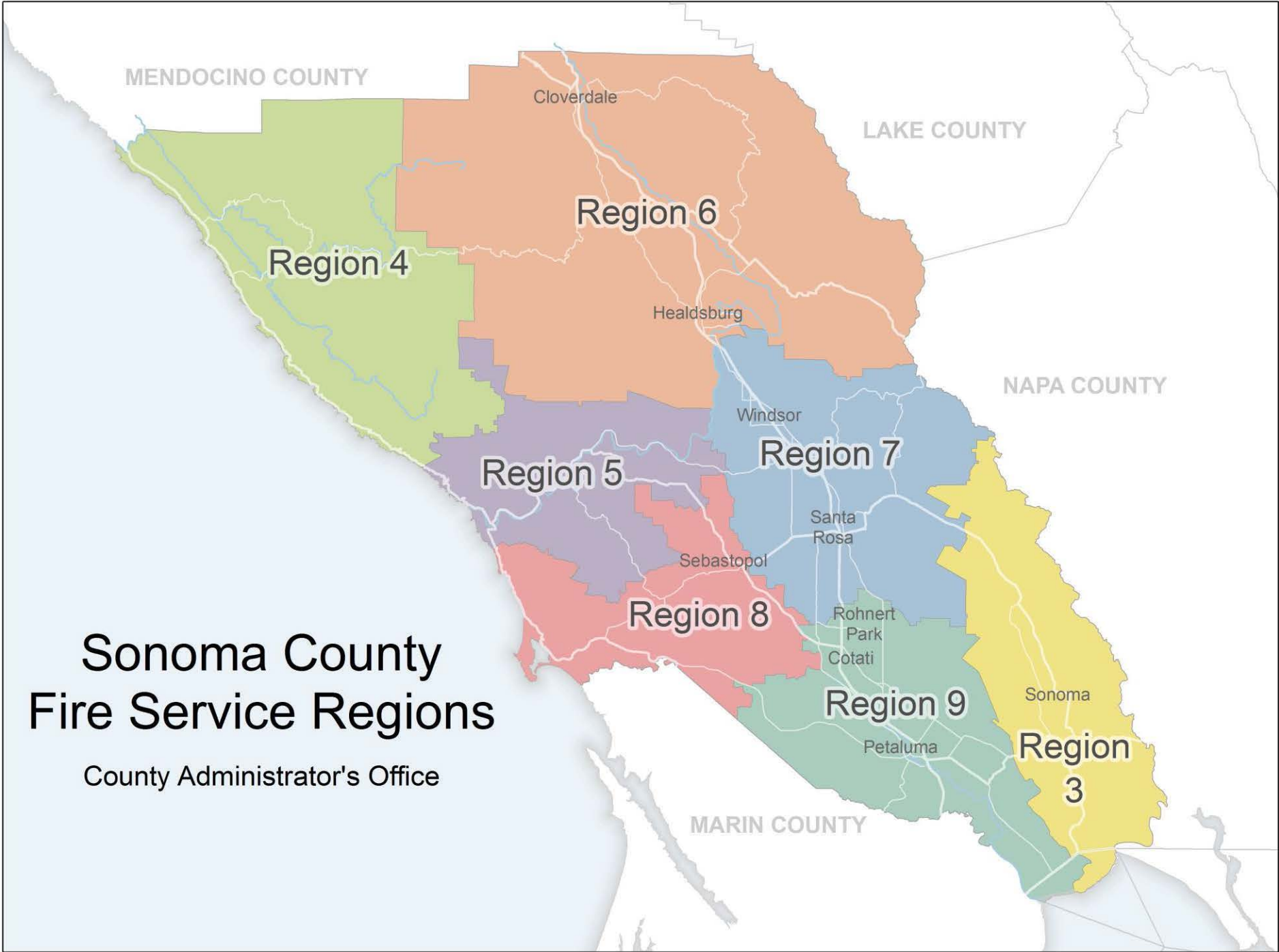
- 09-12-2017: Appointed Nick Silva to the Fire Services Advisory Council, Region 9 alternate.
- 04-25-2017: Fire Advisory Council one-year term seats were reappointed.
- 02-21-2017: Added a seat to the Fire Services Advisory Council to represent the Sonoma County Volunteer Fire Companies Association.
- 04-19-2016: Adopted a resolution creating the Fire Services Advisory Council and appointing its initial members.

Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community

Fire and emergency services are critical to the safety, health, and well-being of Sonoma County's residents and visitors.

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses	-0-		
Additional Appropriation Requested	-0-		
Total Expenditures	-0-		
Funding Sources			
General Fund/WA GF	-0-		
State/Federal	-0-		
Fees/Other	-0-		
Use of Fund Balance	-0-		
Contingencies	-0-		
Total Sources	-0-		
Narrative Explanation of Fiscal Impacts:			
Funding for the ABH reimbursements will come from the existing FY 2017-2018 Fire Services Advisory Council budget and will have no fiscal impact on the General Fund.			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
None.			
Attachments:			
Fire Services Advisory Council Region Map (A1)			
Related Items “On File” with the Clerk of the Board:			
None.			

S:\BOS AGENDA\Fire\Fire Services Project\05-08-2018 CAO FES Fire Advisory Council Appts ABH Reimb\05-08-2018 CAO FES Fire Advisory Council Appts ABH Reimb_Summ.docm



Sonoma County Fire Service Regions

County Administrator's Office



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 12
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: 4/5

Department or Agency Name(s): County Administrator
Fire & Emergency Services

Staff Name and Phone Number:

Sheryl Bratton, 565-2241
Christopher Godley, 565-2052

Supervisory District(s):

All

Title: Extend Proclamation of Local Emergency Due to Sonoma Complex Fire

Recommended Actions:

Adopt a Resolution Extending the Proclamation of Local Emergency Issued on October 9, 2017, for another 30 Days Due to Damage Arising from the Complex Fire.

Executive Summary:

This item requests the Board of Supervisors adopt a resolution approving a 30-day extension of the October 9, 2017 Proclamation of a Local Emergency in the Sonoma County Operational Area due to the effects of the Complex Fire. The Complex Fire began on Sunday, October 9, 2017, causing extreme property damage and health and safety concerns. The County Administrator proclaimed the Existence of a Local Emergency on October 9, 2017, and the Board of Supervisors adopted Resolution No. 17-0389 ratifying that proclamation on October 10, 2017. The fires left a large debris field in their wake. The removal of debris from a wildfire disaster creates unique concerns due to the potential presence of hazardous materials and the large scale of the incident and will require significant resources to remove. As long as the residential and commercial fire debris remains on the ground, it poses an imminent and extensive threat to public health and safety, the environment (including creating serious concerns for water quality and supply due to the presence of hazardous materials and the damage to sewer service laterals), public infrastructure, and undamaged property. As required by Government Code section 8630, the Board must review the proclamation of local emergency every 30 days and determine if there is a need for continuing the local emergency.

Discussion:

The Complex Fire began on Sunday, October 9, 2017. In response, the Emergency Operations Center (EOC) was activated at approximately 12:00 a.m. on Monday, October 9, 2017, to assist with managing the impacts. In the early morning hours on Monday, the County issued advisory evacuation notices to various impacted

areas of Sonoma County. Shelter was made available at various locations throughout the County, and first responders were actively engaged in multiple areas throughout the County as the complex fires' advanced.

The County Administrator/Director of Emergency Services issued a Proclamation of Existence of Local Emergency in Sonoma County Operational Area in the early morning hours of Monday, October 9, 2017, as soon as reports of quickly-moving fires and health and safety concerns arrived. Later that day, the County Administrator supplemented that Proclamation and requested state and federal assistance. The Board of Supervisors ratified the County Administrator's Proclamation of the Existence of a Local Emergency on October 10, 2017. California Government Code section 8630 of Article 14, Local Emergency, of Chapter 7 of the Emergency Services Act requires that the County review the need for continuing the local emergency at least once every 30 days until the governing body terminates the local emergency.

The scope of disaster caused by the fast-moving fire and widespread scale of the destruction instigated the Governor of the State of California to proclaim a State of Emergency (declaring eligibility for State assistance) and brought about the President of the United States to issue a Declaration of a Major Disaster for the State of California, making the Complex Fires eligible for Federal assistance. The Sonoma Complex Fires resulted in the most devastating wildfires in the history of the State of California. In Sonoma County alone, the fires caused the death of at least 24 people, charred 110,720 acres, destroyed 6,950 structures (including 5,091 housing structures), and displaced more than 100,000 Sonoma County residents.

The Sonoma Complex Fires left a large debris field in their wake, which creates unique removal concerns due to the potential presence of hazardous materials and the large scale of the incident and poses a threat to public health and safety. Debris cleanup has proceeded via both public and private cleanup programs. The total number of properties included within the debris removal program was 4,866, including 3,691 properties that participated in the public-cleanup program, and 1,175 properties that participated in the private program.

As of May 2, 2018, 3,684 properties have participated in the public debris cleanup program. All properties within the public program have been cleaned or are in the process of being cleaned. The final two properties—which required bridge installation—began work on May 1, 2018. Approximately 90 of the public-program properties are being revisited to remove additional newly eligible debris. Staff anticipated that all cleanup of the public properties will be completed by mid- to late-May.

Additionally, a total of 1,177 properties participated in the private debris cleanup program—755 County, 540 City. Roughly 75 percent of the properties in the private-cleanup program—884 (422 County, 344 City) of the 1,177 properties—have received approved clearance letters from the City and County. Many of the remaining 593 private-cleanup properties have cleaned up the properties but are still in the process of preparing and correcting final submittals.

The cleanup efforts in Sonoma County were aided by a relatively light rainy season, a series of late season rainstorms have dropped more than 10 inches of rain on the fire burned areas in a short amount of time. As long as the fire debris properties remain to be cleared on the ground, it poses an imminent and extensive threat to public health and safety, the environment (including creating serious concerns for water quality and supply due to the presence of hazardous materials and the damage to sewer service laterals), public infrastructure, and undamaged property.

Staff recommend that the Board adopt the attached Resolution finding that the severity and pervasiveness of the Sonoma Complex Fires disaster poses an ongoing and imminent threat to public safety and undamaged property that warrants the need to extend the local emergency as authorized by Government Code section 8630.

Prior Board Actions:

April 17, 2018: Board adopted Resolution No. 18-0131 Declaring the Need For Continuing The Local Emergency Pursuant to Government Code Section 8630 Due To The Sonoma Complex Fires
March 20, 2018: Board adopted Resolution No. 18-0095 Declaring the Need For Continuing The Local Emergency Pursuant to Government Code Section 8630 Due To The Sonoma Complex Fires
February 20, 2018: Board adopted Resolution No. 18-0068 Declaring the Need For Continuing The Local Emergency Pursuant to Government Code Section 8630 Due To The Sonoma Complex Fires
February 13, 2018: Board adopted Resolution NO. 18-0056 Declaring the Need For Continuing The Local Emergency Pursuant to Government Code Section 8630 Due To The Sonoma Complex Fires
January 23, 2018: Board adopted Resolution No. 18-0022 Declaring the Need For Continuing The Local Emergency Pursuant to Government Code Section 8630 Due To The Sonoma Complex Fires
December 29, 2017: Board adopted Resolution No. 17-0515 Declaring the Need For Continuing The Local Emergency Pursuant to Government Code Section 8630 Due To The Sonoma Complex Fires
December 5, 2017: Board adopted Resolution No. 17-0457 Declaring the Need For Continuing The Local Emergency Pursuant to Government Code Section 8630 Due To The Sonoma Complex Fires
November 7, 2017: Board adopted Resolution Modifying Resolution No. 17-0839 To Comply With Federal Assistance Requirements and Declaring the Need For Continuing The Local Emergency Pursuant to Government Code Section 8630 Due To The Sonoma Complex Fires.
October 10, 2017: Board adopted Resolution No. 17-0389 ratifying the County Administrator’s proclamation of the existence of a local emergency with the Sonoma County Operation Area.

Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			
Narrative Explanation of Fiscal Impacts:			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
Attachment A: Resolution Declaring Need for Continuing The Local Emergency			
Related Items “On File” with the Clerk of the Board:			



County of Sonoma
State of California

Date: May 8, 2018

Item Number: 11
Resolution Number: _____



**RESOLUTION OF BOARD OF SUPERVISORS OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA
DECLARING THE NEED FOR CONTINUING THE LOCAL EMERGENCY PURSUANT TO GOVERNMENT
CODE SECTION 8630 DUE TO THE SONOMA COMPLEX FIRES AND CONCURRENTLY EXTENDING THE
PROVISIONS OF CALIFORNIA PENAL CODE SECTION 396 PROHIBITING PRICE GOUGING IN TIMES
OF EMERGENCY FOR ANOTHER 30 DAYS**

WHEREAS, California Government Code section 8630 and Section 10.5, Chapter 10 of the Sonoma County Code, empowers the County Administrator to proclaim the existence of a local emergency when the county is affected or likely to be affected by a public calamity is subject to ratification by the Board of Supervisors at the earliest practicable time; and

WHEREAS, conditions of extreme peril to the safety of persons and property arose within the County caused by threat of the existence of multiple fires, referred to as the Sonoma Complex Fire, commencing on or about midnight on the 9th day of October, 2017, at which time the Board of Supervisors of the County of Sonoma was not in session; and

WHEREAS, the County Administrator of the County of Sonoma did proclaim the existence of a local emergency within the Sonoma County Operational Area on the 9th day of October, 2017 and then made another proclamation with a request that the Governor of the State of California make available California Disaster Act Assistance and seek all available forms of disaster assistance and relief programs, including a request for a Presidential Declaration of a Major Disaster; and

WHEREAS, the scope of disaster caused by the fast-moving and widespread scope of the destruction of the fire, including loss of many homes and evacuation of thousands of people, caused the Governor of the State of California to proclaim a State of Emergency and declare eligibility for Fire Management Assistance Grant and other relief programs; and

WHEREAS, the Federal Government made a Presidential Declaration of the existence of a major disaster for the State of California (FEMA-4344-DR), dated October 10, 2017, and related determinations and amendments; and

WHEREAS, on October 10, 2017, the Board of Supervisors of the County of Sonoma adopted Resolution No. 17-0389 ratifying the County Administrator's Proclamations of the existence of a local emergency relating to the Sonoma Complex Fires; and

WHEREAS, California Government Code section 8630 of Article 14, Local Emergency, of Chapter 7 of the Emergency Services Act requires that the County review the need for continuing the local emergency at least once every 30 days until the local governing body terminates the local emergency; and

WHEREAS, the Sonoma Complex Fires resulted in the most devastating wildfires in the history of the State of California, causing the death of at least 24 people, charring 110,720 acres, destroying 6,950 structures (including 5,091 housing structures), and displacing thousands of Sonoma County residents; and

WHEREAS, the Sonoma Complex Fires left a large debris field in their wake, creating unique removal concerns due to the potential presence of hazardous materials and the large scale of the incident; and

WHEREAS, the total number of properties included within the debris removal program is 4,866, including 3,691 properties that participated in the public cleanup program, and 1,175 properties that participated in the private program; and

WHEREAS, as of May 2, 2018, 3,684 properties have participated in the public debris cleanup program; and

WHEREAS, all properties within the public program have been cleaned or are in the process of being cleaned; and

WHEREAS, approximately 90 of the public-program properties are being revisited to remove additional newly eligible debris, which the County anticipates will be completed by mid- to late-May; and

WHEREAS, as of May 2, 2018, 1,177 properties have participated in the private debris cleanup program—755 County, 540 City; and

WHEREAS, approximately 75 percent of the properties in the private-cleanup program—884 (422 County, 344 City) of the 1,177 properties—have received approved clearance letters from the City and County; and

WHEREAS, despite the remarkable efforts of the debris removal forces, 593 private-program properties still remain to be cleared and/or released back to the respective property owners; and

WHEREAS, the cleanup efforts in Sonoma County were aided by a relatively light rainy season, a series of late season rainstorms have dropped more than 10 inches of rain on the fire burned areas in a short amount of time; and

WHEREAS, as long as the fire debris properties remain to be cleared on the ground, it poses an imminent and extensive threat to public health and safety, the environment (including creating serious concerns for water quality and supply due to the presence of hazardous materials and the damage to sewer service laterals), public infrastructure, and undamaged property; and

WHEREAS, due to the severity and pervasiveness of the Sonoma Complex Fires disaster, there is an ongoing and imminent threat to public safety and undamaged property that support the need to continue the local emergency.

NOW, THEREFORE, IT IS HEREBY DECLARED that the Board of Supervisors hereby finds there is an ongoing and imminent threat to public safety and undamaged property that warrant the need to extend the local emergency as authorized by Government Code section 8630; and

IT IS FURTHER PROCLAIMED AND ORDERED that the local emergency ratified by Resolution No. 17-0389, as previously amended and extended by Resolution No. 17-0431 on November 7, 2017, and subsequently extended for a further 30 days by Resolution No. 17-0457 on December 5, 2017, and for a further 30 days by Resolution No. 17-0515 on December 29, 2017, and for a further 30 days by resolution No.18-0022 on January 23, 2018, and for a further 30 days by resolution No.18-0056 on February 13, 2018, and for a further 30 days by resolution No.18-0068 on February 27, 2018, for a further 30 days by resolution No.18-0095 on March 20, 2018, and for a further 30 days by resolution No.18-0131 on April 17, 2018, is hereby extended for a another 30 days in accordance with Government Code section 8630 and shall continue in full force and effect as originally proclaimed by the County Administrator on October 9, 2017, and nothing contained herein shall be construed modify, invalidate, or otherwise affect any provision of said Proclamation of local emergency.

PASSED AND ADOPTED by the Board this 8th day of May, 2018.

Supervisors:

Gorin: Rabbitt: Zane: Hopkins: Gore:

Ayes: Noes: Absent: Abstain:

So Ordered.



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 13
(This Section for use by Clerk of the Board Only.)

To: Sonoma County Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Unanimous

Department or Agency Name(s): Economic Development Board

Staff Name and Phone Number:

Ben Stone: (707) 565-7170 / EDB

Supervisorial District(s):

All

Title: Sonoma County Outdoor Recreation Economic Impact Report

Recommended Actions:

Accept The 2018 Sonoma County Outdoor Recreation Economic Impact Report

Executive Summary:

The item to present for acceptance by the Board, is the completed 2018 Sonoma County Outdoor Recreation Economic Impact Report. This initiative was proposed by the Outdoor Recreation Business Council, forming part of the 12-Month Action Plan.

Discussion:

The Sonoma County Economic Development Board (EDB), in partnership with the Outdoor Recreation Business Council, Sonoma County Regional Parks and Sonoma County Tourism is pleased to present the County's first Outdoor Recreation Industry Report. This report examines the current state of the outdoor recreation industry in Sonoma County and considers future opportunities to grow and support this emerging sector in the years ahead. The report is also posted on the EDB website at the following link: <http://sonomaedb.org/Current-Projects/Outdoor-Recreation/>.

The Outdoor Recreation sector in Sonoma County comprises more than 330 outdoor recreation-related businesses across a broad array of activities, including biking, hiking, golfing, water sports, and equestrian activities, and is home to national outdoor recreation manufacturers such as CamelBak, Marmot, and Yuba Bikes.

While Sonoma County is best known for its internationally-acclaimed food and wine, the natural beauty and pastoral landscapes also draw outdoors enthusiasts to the region. According to the 2017 Sonoma County Tourism Industry Survey, "Scenery" is the top reason for visitors to come to Sonoma County. As its reputation for outdoor recreational pursuits continues to grow, Sonoma County has the opportunity to harness and support the continued health of its tourism industry by fostering its reputation as a premier destination for outdoor tourism. By strengthening the visibility of Outdoor Recreation, we hope to increase revenues for local outdoor recreation businesses and at the same time- increase tourism spending by extending visitors stays and promoting off-season outdoor pursuits. The goal of the EDB and the Outdoor Recreation Business Council over the next 12 months is to

spotlight Outdoor Recreation as a vital part of our local economy.

For the report’s methodology, we surveyed outdoor businesses directly to measure the economic impact of outdoor recreation. Of the 330 businesses we identified – encompassing outdoor and outdoor-related businesses – we had a total of 76 survey responses (23% response rate).

Key Findings:

- The outdoor recreation sector has an economic impact of \$731 million and employees 4,500 people in Sonoma County.
- The \$731 million measures only the economic impact of those businesses surveyed and offers a rough estimation of the greater outdoor recreation economy of 330 businesses. If taking into account visitor spending related to outdoor activities and endurance event spending, the economic impact number would likely be significantly higher.
- To bolster our understanding of the outdoor recreation sector, the report also includes the economic impact of one of the County’ premier endurance events-- the 2017 IRONMAN Santa Rosa. We found that this event alone generates in \$2.8 million in total economic impact. This gives you an idea of the impact outdoor recreation and endurance events has on the County’s economy.
- Survey highlights:
 - Top three challenges reported by businesses: Seasonality of business, Workforce and Marketing/sales.
 - 70% were optimistic about their business outlook in the upcoming year.
 - 74% of businesses maintained or improved sales in 2016 compared to 2015.
 - 89% of survey responses see “high potential” for attracting outdoor enthusiasts to Sonoma County.

This report was released at the inaugural Outdoor Recreation Business Summit on March 28th at CamelBak headquarters in Petaluma. Firstly, we were honored to have Supervisor David Rabbitt speak, along with Senator McGuire, Tara Moeller (Senior Director of Marketing at CamelBak), and Tim Zahner (Chief Operation Officer at Sonoma County Tourism). Secondly, a select and diverse panel of influential outdoor recreation businesses communicated insightful stories to the audience of launching and growing their businesses in Sonoma County, and thoughts for the future.

In collaboration with Sonoma County Tourism, we are pleased to announce the first ever Sonoma County Outdoors Recreation Month, occurring in May this year. The month presents opportunities for all outdoor recreation businesses to utilize SCT’s tools, and are encouraged to provide specially priced goods and or services for the outdoor recreation marketplace to attract both visitors and locals in similar fashion to our annual Sonoma County Restaurant Week.

These two initiatives represent part of the approved 12-Month Action Plan formed by the Outdoor Recreation Business Council.

Prior Board Actions:

None.

Strategic Plan Alignment Goal 2: Economic and Environmental Stewardship			
The Sonoma County Economic Development Board strives to enhance the value of local, domestic, and international demand for Sonoma County produced goods and to promote tourism and growth in Sonoma County.			
Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			
Narrative Explanation of Fiscal Impacts:			
None.			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
Attachment 1: 2018 Outdoor Recreation Economic Impact Report			

Related Items "On File" with the Clerk of the Board:



OUTDOOR RECREATION

INDUSTRY REPORT

2018



ECONOMIC DEVELOPMENT BOARD

BOARD OF DIRECTORS

PAM CHANTER, CHAIR ▫ JORGE ALCAZAR ▫ SKIP BRAND
 TERRI DENTE ▫ TERRY GARRETT ▫ KATHRYN HECHT ▫ LINDA KACHIU
 WAYNE LEACH ▫ MICHAEL NICHOLLS ▫ MICHAEL TOMASINI
 BEN STONE, Executive Director

EDB FOUNDATION SPONSORS

FOUNDATION LEVEL



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Savings

PRESENTING LEVEL



PREMIER LEVEL



EXECUTIVE LEVEL

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| ▫ AMERICAN RIVER BANK | ▫ SONOMA COUNTY ALLIANCE |
| ▫ COMCAST | ▫ SUMMIT STATE BANK |
| ▫ KEEGAN & COPPIN CO. | ▫ VANTREO INSURANCE |
| ▫ MIDSTATE CONSTRUCTION | ▫ WELLS FARGO |
| ▫ NORBAR | ▫ ZAINER RINEHART CLARKE |

MEDIA LEVEL



SONOMA COUNTY BOARD OF SUPERVISORS



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 - II) SONOMA COUNTY
- 9. OUTDOOR RECREATION AND TOURISM
- 11. SONOMA COUNTY OUTDOOR ATTRIBUTES
- 13. IMPACT OF OUTDOOR ECONOMY
- 14. BUSINESS SURVEY
- 19. LOOKING AHEAD
- 21. APPENDIX
- 21. SOURCES
- 22. METHODOLOGY
- 23. ACKNOWLEDGMENTS

EXECUTIVE SUMMARY

April 2018

LEVERAGING SONOMA COUNTY'S NATURAL BEAUTY

The Sonoma County Economic Development Board (EDB), in partnership with the Outdoor Recreation Business Council, Sonoma County Regional Parks and Sonoma County Tourism is pleased to present the County's first Outdoor Recreation Industry Report.

Over the last decade, the Outdoor Recreation sector has shown robust growth at the national level. According to the Outdoor Industry Association, outdoor recreation generated \$887 billion in direct spending for the U.S. economy in 2017, a 37% increase from its 2012 valuation. In California alone, Outdoor Recreation generated \$92 billion in direct consumer spending, the highest state spending in the nation, producing 691,000 direct jobs and \$6.2 billion in state and local taxes in 2017.

The Outdoor Recreation sector in Sonoma County comprises more than 330 outdoor recreation-related businesses across a broad array of activities, including biking, hiking, golfing, water sports, and equestrian activities, and is home to national outdoor recreation manufacturers such as CamelBak, Marmot, and Yuba Bikes.



74%
of businesses
improved or
maintained sales

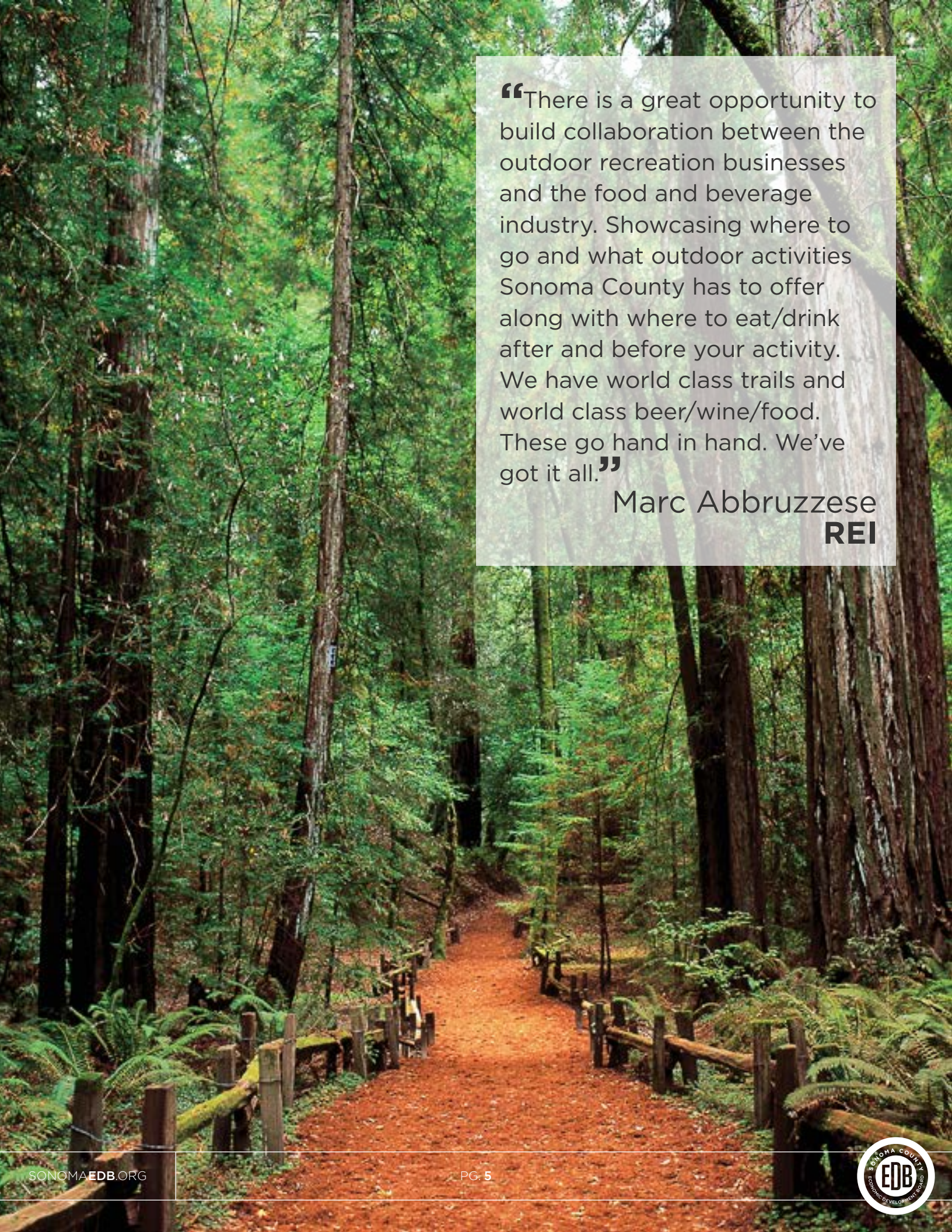


89%
see high potential for
attracting outdoor
enthusiasts



70%
of businesses
optimistic about
upcoming year

While Sonoma County is best known for its internationally-acclaimed food and wine, the natural beauty and pastoral landscapes also draw outdoors enthusiasts to the region. According to the 2017 Sonoma County Tourism Industry Survey, "Scenery" is the top reason for visitors to come to Sonoma County. As its reputation for outdoor recreational pursuits continues to grow, Sonoma County has the opportunity to harness and support the continued health of its tourism industry by fostering its reputation as a premier destination for outdoor tourism. This report will examine the current state of the outdoor recreation industry in Sonoma County and consider future opportunities to grow and support this emerging sector in the years ahead.



“There is a great opportunity to build collaboration between the outdoor recreation businesses and the food and beverage industry. Showcasing where to go and what outdoor activities Sonoma County has to offer along with where to eat/drink after and before your activity. We have world class trails and world class beer/wine/food. These go hand in hand. We’ve got it all.”

Marc Abbruzzese
REI

OUTDOOR RECREATION BY THE NUMBERS

\$731 MILLION

ECONOMIC IMPACT OF OUTDOOR RECREATION IN SONOMA COUNTY

4,530

FULL-TIME EQUIVALENT JOBS

PUBLIC RECREATION

OUTDOOR RECREATION BUSINESS SURVEY

LIFESTYLE & TOURISM

56

Sonoma County Parks and beaches and 11 California State Parks

89%

of businesses rate Sonoma County with high potential to attract outdoor enthusiasts

9th

best county

for outdoor activities in the USA

(NICHE.COM)

35%

increase

in Sonoma County Park visits over the last 5 years

74%

of businesses improved or maintained year-over-year sales

7th

healthiest county

in California

(ROBERT WOOD JOHNSON FOUNDATION)

Over 5 million

Sonoma County Park visits each year

70%

of businesses are optimistic about their business outlook

Sonoma County

5th

most active

region in the USA

(WELL-BEINGINDEX.COM)

INDUSTRY SNAPSHOT

NATIONAL IMPORTANCE

Over the last decade, outdoor recreation has become one of the fastest-growing sectors in the United States. According to the Outdoor Industry Association (OIA), outdoor recreation generated \$887 billion in direct spending for the U.S. economy in 2017, a 37% increase from its 2012 spending and supports 7.6 million jobs in the process. In California alone, Outdoor Recreation generated \$92 billion in direct consumer spending in 2017, the highest spending in the nation, with 691,000 direct jobs and \$6.2 billion in state and local taxes.

Recognizing outdoor recreation’s growing influence in the national economy, the federal government recently authorized outdoor recreation activities to be counted as a unique part of the United States gross domestic product (GDP). This milestone means that starting in 2018, the Bureau of Economic Analysis (BEA) will measure and benchmark the outdoor recreation sector against other well-established industries.

In February 2018, the BEA released its preliminary numbers for outdoor recreation and reports that

outdoor recreation accounts for \$373 billion, or two percent of the entire United States GDP. Moreover, the outdoor recreation sector grew at 3.8% in 2016, outpacing the overall U.S. economy’s growth rate of 2.8% for that year.

Amy Roberts, executive director of Outdoor Industry Association, states, “We are extremely excited that outdoor recreation is now counted as an official U.S. industry and a major contributor to the U.S. economy—this further validates our broad and growing economic impact.”

Most Popular Outdoor Recreation Activities (Percent of U.S. population by participation rate)

Running	18%
Fishing	16%
Biking (Road/Mountain)	15%
Hiking	14%
Camping	14%

Source: 2017 Outdoor Recreation Participation Report, OIA



INDUSTRY SNAPSHOT

OUTDOOR ECONOMY IN SONOMA COUNTY

Sonoma County is well-known as a world-class tourist destination due to its internationally-recognized wine, food and scenic outdoors. The county's \$1.93 billion tourism industry supports 11% of the workforce, and is directly tied to the success of the local economy. The continued health of the county's tourism industry and the local economy relies heavily on its ability to create unique experiences that not only attract new visitors, but encourage them to return. It is also vital for the county to continue to invest in emerging business sectors as the economic recovery continues its momentum.

In the 2017 Sonoma County Tourism Industry Survey, tourism businesses identified outdoor recreation, culinary tourism, and eco-tourism as three promising areas for growth for the county. These results reflect the tourism industry's awareness of the growth potential in the county's array of outdoor recreation offerings. Embracing outdoor recreation businesses and the activities they support is a lucrative opportunity for the county's tourism industry and the local economy.

According to the Outdoor Industry Association, outdoor enthusiasts spend \$92 billion annually on outdoor recreation related activities in California. Other regions, including Utah, Portland, OR, and Bend, OR, have successfully marketed themselves as outdoor destinations and have helped their regions to capture more of the \$887 billion national outdoor recreation economy. The result is a growing outdoor industry that strengthens the regional economy by increasing tourism and creating new jobs. Sonoma County has the opportunity to harness these outdoor recreation dollars to enhance and support our outdoor recreation businesses and activities.



OUTDOOR RECREATION AND TOURISM

MAJOR IMPACT IN SONOMA COUNTY

According to the 2017 Annual Tourism Report, Sonoma County welcomed a record number of tourists in 2016 and is on track to post even larger numbers in 2017. While tourism is on the rise nationally, Sonoma County has distinguished itself from state and competing wine counties with additional visitors. Outdoor recreation pursuits, wellness establishments, craft breweries and farm-to-table restaurants complement the traditional draw of wine tastings, bringing in a greater tourist mix to Sonoma County compared to other wine-growing counties.

KEY FINDINGS

- Retail and hospitality establishments are benefiting from the buoyant Bay Area economy as well as the overall national economy, which has drawn an increase in both day trips and overnight stays.
- Hotel occupancy rates rose for the seventh consecutive year in 2016 reaching an all-time high of 78%.
- Visitor spending is on the rise. Average daily room (ADR) rates rose 20% from 2014-2016, along with an increase in expenditures on food, wine, and activities.
- Businesses have a positive outlook for tourism in the coming year, seeing a high potential for growth in the industry.



OUTDOOR RECREATION AND TOURISM

ATTRACTING VISITORS TO SONOMA COUNTY

The 2017 Annual Tourism Industry Report asked local businesses to rate local assets (excluding wine) between 1 and 5 based on their ability to attract visitors to the region. Scenery, Culinary Offerings, and Outdoor Recreation were ranked as the top three draws in the survey, with outdoor recreation ranking 4.45 out of 5. Taken alone, the high score is an excellent sign of the health of the outdoor recreation sector, particularly as Outdoor Recreation also outscored the thriving Craft Beer, Cider, & Spirits and the Spa/Wellness categories.

As visitors to Sonoma County continue to discover and enjoy outdoor pursuits, such as hiking, biking, camping, and water sports, maintaining the county’s scenic beauty and bucolic landscapes will be integral to visitors’ enjoyment of the County and the overall health of the tourism industry.

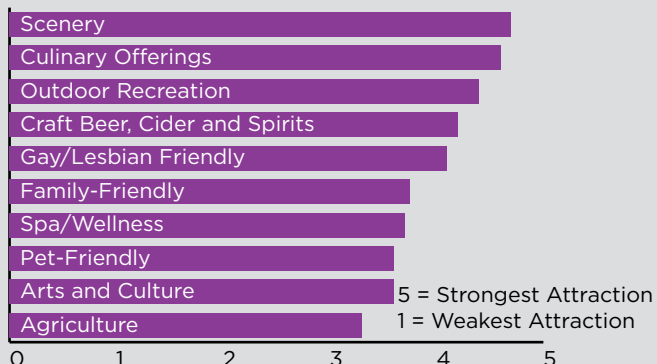
NICHE MARKET OPPORTUNITIES

The 2017 Annual Tourism Report asked tourism-related businesses to indicate what activities might be successful niche market opportunities in Sonoma County.

Three of the ten activities identified as having the most growth potential were outdoor recreation activities. Over 50% of respondents identified Cycling as one of the top market opportunities, ranking it third overall. Hiking was ranked fourth as 48%, and Water Recreation was ranked eighth at 31%. Taken together, these results indicate an increased marketing opportunity for outdoor recreation activities.

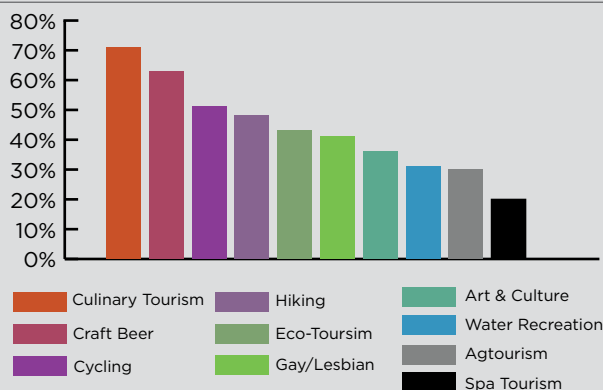
The report also finds that younger cohorts, Millennials (those born 1982 - 2000) and Generation Z (those born after 1995), display similar spending patterns and place a premium on experiences rather than consumer products. As these cohorts grow older, they will likely demand more outdoor recreation activities and experiences when visiting Sonoma County.

Pull Attractions Excluding Wine, Scored 1-5
Sonoma County, 2017



Source: Sonoma County 2017 Annual Tourism Report

Top 10 Rated Niche Market Opportunities
Sonoma County, 2017, Excludes Wine



Source: Sonoma County 2017 Annual Tourism Report

SONOMA COUNTY OUTDOOR ATTRIBUTES

DIVERSITY OF OFFERINGS

Sonoma County's picturesque landscape lends itself to an array of outdoor pursuits. The winding trails of Sonoma County provide miles of scenic beauty for runners, cyclists, and equestrians alike. Biking and trail sports enthusiasts benefit from the many nearby regional and state parks in Sonoma County, including Annadel State Park, which boasts rugged trails while equestrian boarding and training facilities are ensconced throughout the county.

Watersports businesses, including fishing, boating, paddle sports, and surfing, can be found along Sonoma County's rivers, lakes, and 55 miles of pristine coastline of the Pacific Ocean.

Sonoma County's 16 golf courses can accommodate every skill level and are located in some of Sonoma County's most beautiful landscapes. Outdoor retailers give a face to outdoor recreation in the downtown areas of cities and towns throughout the county.

Camping is a popular subsector in the county, with many private, state, and regional parks offering year-round camping facilities. The Russian River is a popular base for summer camping, as tourists often pair their camp stay with other outdoor pursuits as part of their Sonoma County vacation.

Motorized Sports (defined as car, motorcycles, and all-terrain vehicles) has a smaller presence in Sonoma County, most notably through Sonoma Raceway, a year-round motorsport complex and host to several well-established annual racing events.

With Sonoma County known for its scenic beauty, it's no surprise that many local operators have found success in running an array of sightseeing and nature tours, from ballooning and zip-lining to birding and walking tours.

Manufacturing outdoor recreation products is a noteworthy subsector of the outdoor recreation industry, with products designed and produced in Sonoma County being sold throughout the

United States and internationally. Well-known firms such as CamelBak, Marmot, and Yuba Bikes give Sonoma County a national reputation as a hub for outdoor recreation.



SONOMA COUNTY OUTDOOR ATTRIBUTES

ABUNDANT PUBLIC LANDS

Sonoma County has an array of publicly-owned land that is enjoyed for outdoor recreational pursuits. Covering roughly 95,000 acres (8.4% of the county's acreage), these lands allow visitors and residents to appreciate the diversity of landscapes throughout the county, from redwood groves and bucolic valleys to scenic hiking trails and dramatic coastline.

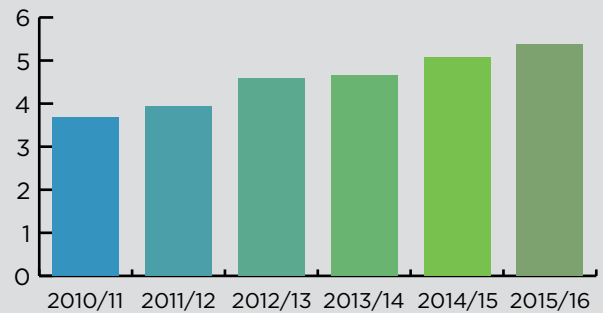
Sonoma County is home to 11 California State parks and 56 Sonoma County Regional Parks. Lake Sonoma, a popular boating, fishing, and equestrian destination, is operated on federal lands. There are also several noteworthy city parks—such as Howarth Park in Santa Rosa and Shollenberger Park in Petaluma—that offer a plethora of outdoor recreation pursuits.

The parks system and the natural beauty are important resources for the outdoor recreation economy in Sonoma County. The Sonoma County Regional Park system alone draws more than 5 million visitors a year, an increase of 35% over the last five years. For 2018, the Regional Park system sold 26,000 annual passes, an increase of 42% since 2012, illustrating the strong demand for access to outdoor recreation pursuits. A recent survey conducted by Sonoma County Regional Parks of its members, found that the three most popular activities when visiting a regional park are:

- Hiking (including walking and trail running)
- Bird Watching
- Dog-friendly activities

The county is a nationally significant site for geographical and biodiversity. Calculating the economic impact of the county's public lands is greater than the sum of its attendance figures. Public lands contribute a real dollar value, beyond the intangible benefits. Fresh air, beautiful landscapes, and unforgettable experiences attract not only tourists, but also new residents coming to settle in Sonoma County, who bring skills vital to a strong economy. With a vast array of public lands, Sonoma County's economy and character are greatly enhanced.

Annual Attendance Estimates to Regional Parks
2010/11 - 2015/16, in millions of visitors



Source: Sonoma County Regional Parks
(<http://parks.sonomacounty.ca.gov/>)

SONOMA COUNTY WILDFIRES

While the devastating wildfires of October 2017 burned several parks in eastern Sonoma County, the vast majority of parkland in the county was not touched by the fires. Parks along the Sonoma Coast, the Russian River, and the county's central corridor were not harmed and are attracting hikers, campers, fishers, birdwatchers, paddlers, and other visitors from throughout the region and state.

Of the Regional parks impacted by the fires, all but one, are fully reopened. Because Sonoma County's parks are all situated in fire-adapted ecosystems, the burned parkland will largely recover on its own. As it does, it will likely attract visitors from around the state who want to see the outstanding wildflower displays found only after wildfires. The landscapes' recovery also presents a unique opportunity for park managers to offer hiking tours and outdoor recreation programming focused on healing and rejuvenation.

An area of economic impact that shouldn't be overlooked is the role parks played in preventing further fire devastation in communities. Parks like Hood Mountain and Shiloh Ranch border city boundaries and gave firefighters the buffer needed to keep flames from reaching surrounding neighborhoods.

IMPACT OF OUTDOOR RECREATION

In May 2017, the Economic Development Board conducted a survey of Sonoma County’s outdoor recreation businesses to gain a better understanding of this sector. A total of 76 outdoor recreation businesses responded to the survey, a response rate of approximately 23%.

INDUSTRY VALUE

The 76 businesses that participated in the 2017 Outdoor Recreation Survey together generate an economic impact of \$249 million in the county. The majority of this stems from \$142 million of direct economic effect, which represents the wages and sales of final goods and services. These businesses also generate \$59 million in indirect economic effect, which refers to the wages and cost of production for those products and services in the intermediary supply chain that ultimately help produce final goods and services. Finally, the surveyed businesses generate \$48 million in induced economic effect, which refers to the unrelated businesses like restaurants, physicians, and grocery stores which are not a part of the supply chain but still depend on the wages of the Outdoor Recreation industry’s workforce. The total tax revenue generated for the state and county is \$7.53 million.

WORKFORCE

The 76 surveyed businesses support 4,530 full time equivalent jobs when scaled up to 333 companies. The top five industries whose employment positively benefits from outdoor recreation are Real Estate, Full-Service Restaurants, Employment Services, Services to Businesses, and Wholesale Trade.

PROJECTIONS

The surveyed businesses produce \$249 million in economic effect, roughly \$92,500 per employee. This generally reflects national data; the OIA measures the national economic impact of outdoor recreation at \$887 billion, or \$117,000 per employee. After removing survey outliers and assuming the remaining 61 surveyed businesses are a fair representation of the outdoor recreation sector, the total economic impact of outdoor recreation in Sonoma County is \$731 million.

ECONOMIC IMPACT TOTAL INDUSTRY PROJECTIONS

\$731 million

Indirect Effect

\$181 million

Induced Effect

\$143 million

Local and State Tax Revenue

\$12.3 million

Direct FTE Outdoor Recreation Jobs

4,530

FTE Jobs Created in Other Industries

2,340

Top Non-Outdoor Recreation Industries Positively Affected by Outdoor Recreation

1. **Real Estate**
2. **Full-Service Restaurants**
3. **Services to Buildings**
4. **Employment Services**
5. **Wholesale Trade**

Methodology

The EDB surveyed 76 Outdoor Recreation businesses, and used the employment data from 61 (excluding 15 outliers) to find the economic impact and jobs data for the entire outdoor recreation industry by scaling up findings to the estimated 333 Outdoor Recreation businesses in Sonoma County. Jobs are measured in Full-Time Equivalent (FTE), the sum of full-time jobs plus part-time hours divided by 40.

Source: EDB 2018 Outdoor Recreation Survey, IMPLAN



BUSINESS SURVEY: BUSINESS PROFILE

BUSINESS ACTIVITY

The graph on this page illustrates the primary business activity of the surveyed businesses. Outdoor Tours/Sightseeing companies comprise the largest percentage of survey respondents at 21.7%, Golfing at 15.1%, and Bicycling and Water Sports, both at 12.3%.

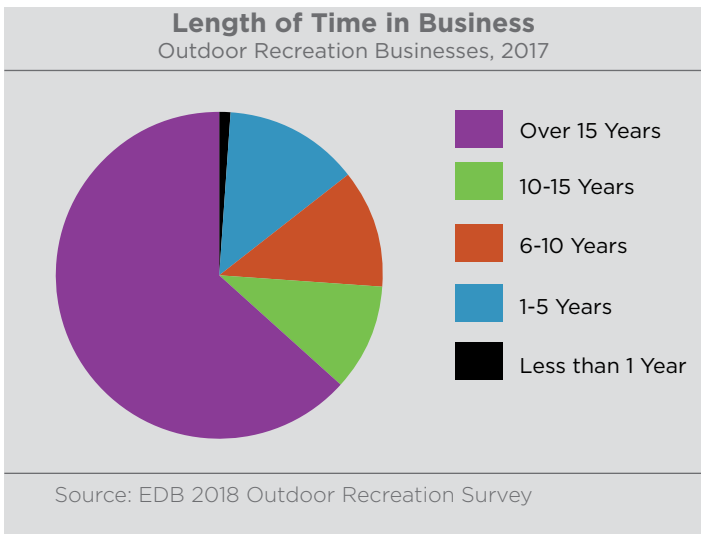
BUSINESS SIZE

Almost 77% of surveyed businesses have 10 or fewer employees. Of the 76 businesses surveyed, the largest employers were those in golfing, making up 42% of full-time, and 23% of part-time workers. This is likely due to the large number of staff required to run a golf course. Motorized Sports employ the largest share of part-time workers at 36%.

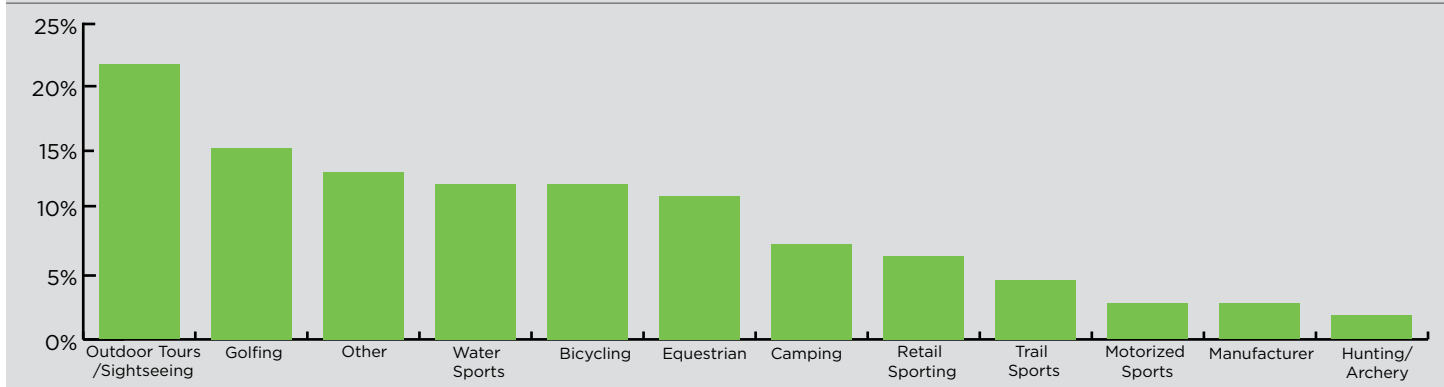
YEARS IN OPERATION

Nearly 74% of businesses have been in operation 10 or more years, a strong sign of the industry’s fit for the county. This suggests businesses have adequate demand for their goods or services to buffer economic volatility or changes in consumer preference (e.g. increased usage of online shopping).

Interestingly, 15% of respondents have been in operation five years or less, which points to an increase in entrepreneurial activity since the end of the recession in 2012.



Outdoor Recreation Businesses by Subsector in Sonoma County
Of the 76 businesses surveyed, 2018



Source: EDB 2018 Outdoor Recreation Survey

BUSINESS SURVEY: BUSINESS OUTLOOK

SALES REVENUE

Outdoor recreation businesses in Sonoma County cover a wide range of activities, from smaller-scale businesses to companies with significantly larger business operations.

- 29% have annual sales over \$1 million
- 20% have annual sales \$500,000 - \$1 million
- 51% have annual sales \$500,000 or less

SALES OPERATIONS

Overall, 74% of businesses maintained or improved sales in 2016 compared to the previous twelve months. 40% of surveyed businesses saw an increase in their sales, while 34% were constant in year-over-year sales. Only one-quarter (26%) of businesses saw a decrease in sales.

FINDING EMPLOYEES

Businesses were split in their ability to find qualified employees, with 62% reporting difficulties and 38% reporting no difficulties.

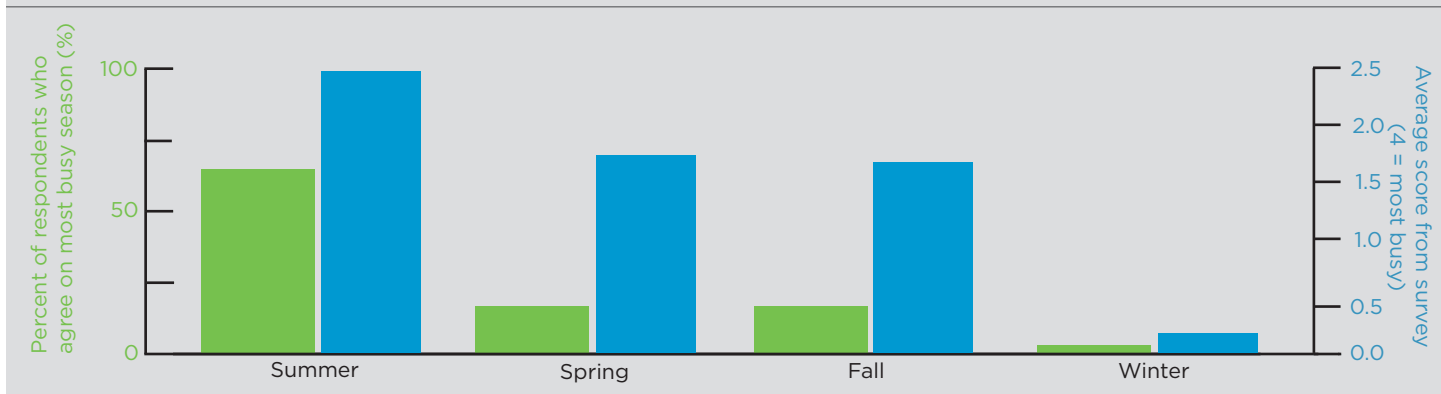
SEASONALITY

As one might expect, 65% of surveyed businesses list Summer as their busiest season. However, Spring (16%) and Fall (16%) had strong showings. Off-peak season offers huge potential for growth in Sonoma County, as only 3% of respondents list Winter as their busiest season.



Busiest Season of Outdoor Recreation Businesses

Of the 76 businesses surveyed, 2018



Source: EDB 2018 Outdoor Recreation Survey

BUSINESS SURVEY: CUSTOMER PROFILE

CUSTOMER BASE

Businesses report that the top consumers of outdoor recreation products and services are people ages 35-54, accounting for 51% of all purchases. This “mid-professional” cohort are higher earners and expected to remain a top spending group throughout the decade.

The second highest group of customers are people ages 55-65+, which accounts for 32% of all purchases.

Finally, the youngest age group (18-34 year olds) accounts for only 17% of current purchases.

BUSINESS SALES

Overall, Sonoma County’s outdoor recreation businesses report a customer base coming from a healthy mix of local residents and visitors (non-Sonoma County residents).

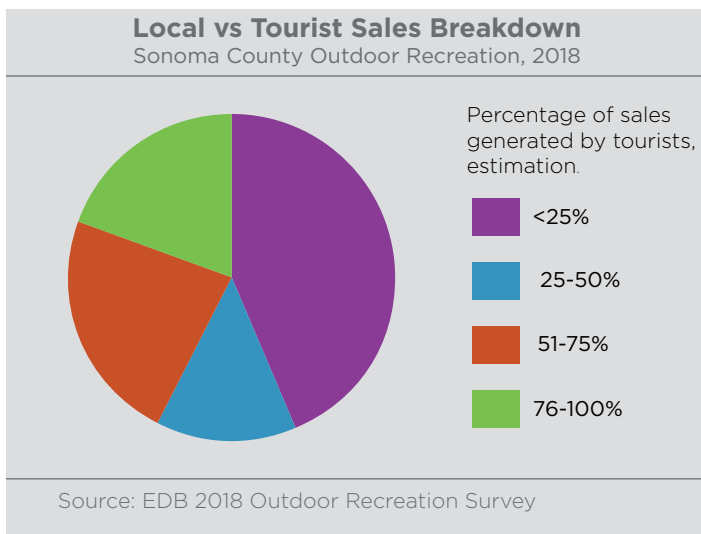
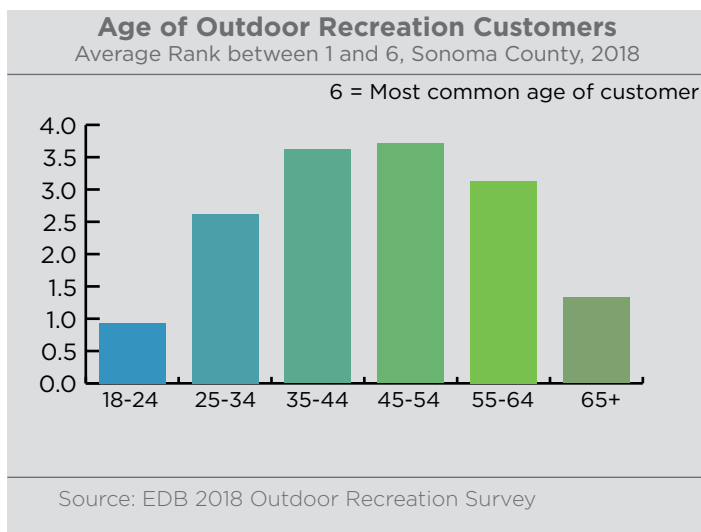
Sales Revenue from Local versus Visitors:

- 58% generate more sales from locals
- 42% generate more sales from visitors

Strong local demand is important for the sector and is larger than tourist spending for outdoor recreation products and services. Of the 58% of businesses reporting more sales from locals, 44% of these estimate that more than three-quarters of their sales come from locals.

At the same time, over 42% of businesses report that the majority of their sales (over half) comes from visitors. Of that, 19% of businesses rely on visitors for more than three-quarters of their annual sales.

Maintaining a balance between local and visitor outdoor recreation spending will contribute to the overall health and continued growth of outdoor recreation businesses.



BUSINESS SURVEY: CHALLENGES

BUSINESS CHALLENGES

The 2017 Sonoma County Outdoor Recreation Survey asked outdoor recreation business owners to rank their biggest challenges from 1 (biggest challenge) to 8 (smallest challenge).

TOP BUSINESS CHALLENGES

1. Seasonality of Business

Seasonality was the top business challenge reported in the survey. Summer remains the high season for outdoor recreation businesses. Winter could provide a growth opportunity for the outdoor recreation sector and lead to innovation during the low season to attract off-peak business. How businesses respond to the “winter gap” for outdoor recreation in Sonoma County may contribute to their success and expansion.

2. Workforce Issues

The survey examined workforce issues and found that 62% of businesses report difficulty in finding qualified employees, a jump of 10% since businesses were last surveyed in 2015. It should be noted that this workforce trend is common across many industries in Sonoma County and is not likely to abate soon. If the industry cannot find a path forward in attracting and retaining talent, its growth may suffer as a result.

For those businesses reporting difficulty finding employees, reasons include:

- Difficulty finding good people who want to work seasonally
- Difficulty finding reliable employees
- Lack of specialized skills and/or expertise for outdoor business needs (bike mechanic, equestrian, etc.)
- Lack of affordable housing

A bright spot on the horizon—38% of businesses reported no difficulty in finding employees. This workforce confidence is considerably stronger than many other industries in the county, which suggests that the outdoor recreation sector may be insulated from other more impacted sectors such as agriculture and hospitality.

3. Marketing/Sales

Respondents point to “increased competition from online services” and “managing the multiple ways that customers contact businesses—by social media, email, website, and telephone” as contributing to the challenges of marketing and increasing their business sales. Others reported changing consumer preferences, such as the “declining popularity of some outdoor activities, such as golf.”



BUSINESS SURVEY: OPPORTUNITIES

ATTRACTING OUTDOOR ENTHUSIASTS

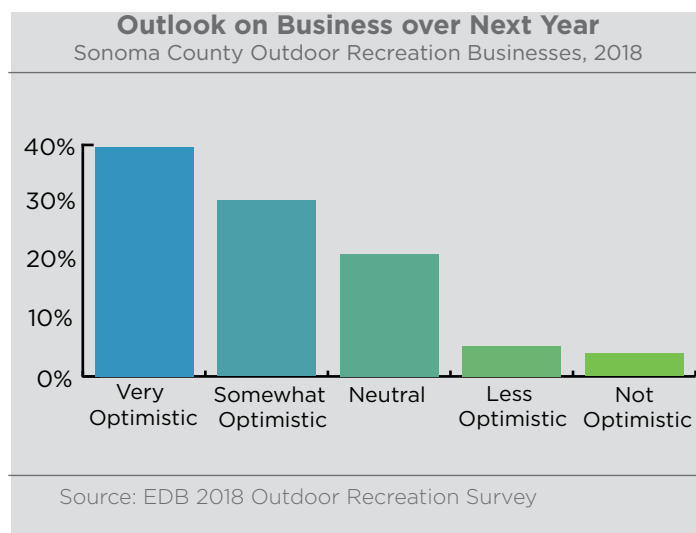
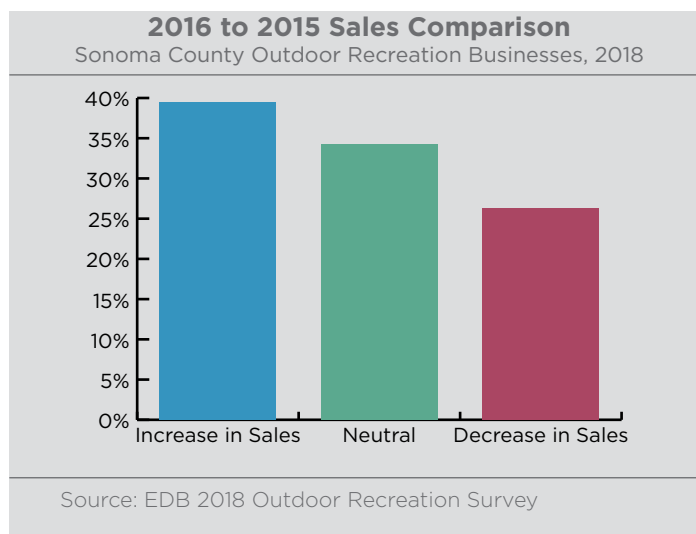
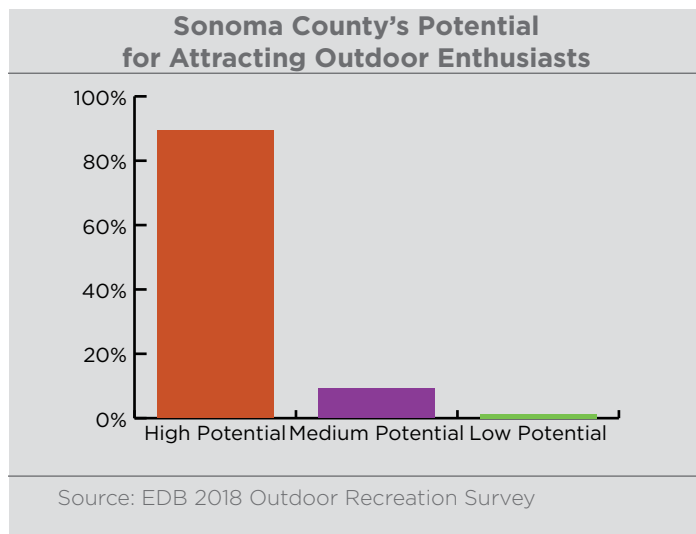
Over 89% of respondents rate Sonoma County as having “high potential” for attracting outdoor recreation enthusiasts, an undeniably positive sign for the industry. With nearly two-thirds (63%) of responding businesses in operation for over 15 years, the optimism from these long-established businesses reflects the current state of the industry and bodes well for the long term health of the outdoor recreation sector.

2016 TO 2015 SALES COMPARISON

Businesses were asked to compare their sales in 2016 with 2015. Overall, 74% of businesses maintained or improved sales over the year. Almost 40% of businesses reported an increase in sales in 2016 compared to the previous year. Approximately 34% maintained the same sales as the previous year. Only one-quarter (26%) saw a decline in sales.

FUTURE OUTLOOK

The final graph supports the positive takeaways from the graphs above. 70% of businesses are optimistic in their business outlook over the next year.



LOOKING AHEAD

INTEGRATING PUBLIC LANDS

Sonoma County Integrated Parks Plan is a planning document outlining future parks and outdoor recreation infrastructure projects envisioned for the county. Sonoma County Regional Parks has identified a proposed 13-mile bicycle and pedestrian trail that would link Santa Rosa and Sonoma, and the wineries, restaurants, and inns between the two cities. The trail will be pursued as public funding becomes available. Similar trail studies are in progress for proposed bicycle trails between Petaluma and Sebastopol and along the Russian River, again with future construction dependent on a funding source.

SMART MULTI-USE PATHWAY CONSTRUCTION

Along with the completion of the Sonoma-Marín Area Rail Transit (SMART) linking Sonoma and Marin counties, progress continues on a multi-use walking and biking pathway that will run parallel to the transit line. When completed in 2021, the 70-mile pathway can be used by outdoor recreation enthusiasts to explore Sonoma County's outdoor offerings.



LOOKING AHEAD

GROWTH OF OUTDOOR ENDURANCE EVENTS

With its varied terrain and scenic back-country roads, Sonoma County has become one of the nation’s leading regions for hosting outdoor endurance events. Some of Sonoma County’s most well-known events include the IRONMAN Santa Rosa, Levi’s Gran Fondo (rated #1 Gran Fondo in the United States), and the Santa Rosa Marathon, as well as an assortment of smaller but equally well-loved sporting events. Collectively, these events bring in millions of dollars in commerce and expenditure for not only outdoor-recreation businesses, but also hospitality and retail businesses throughout the County.

MEASURING ECONOMIC IMPACT: 2017 IRONMAN SANTA ROSA

The Sonoma County EDB recently partnered with the City of Santa Rosa and Chamber to measure the economic impact of one the county’s premier events—IRONMAN Santa Rosa (formerly Vineman).

ATHLETES

- 1,763 athletes participated (71% males and 29% females).
- Athletes came from 29 countries across six continents. The top five participating countries were the U.S. (1,637), Canada (32), Japan (19), the United Kingdom (14), and Mexico (13).

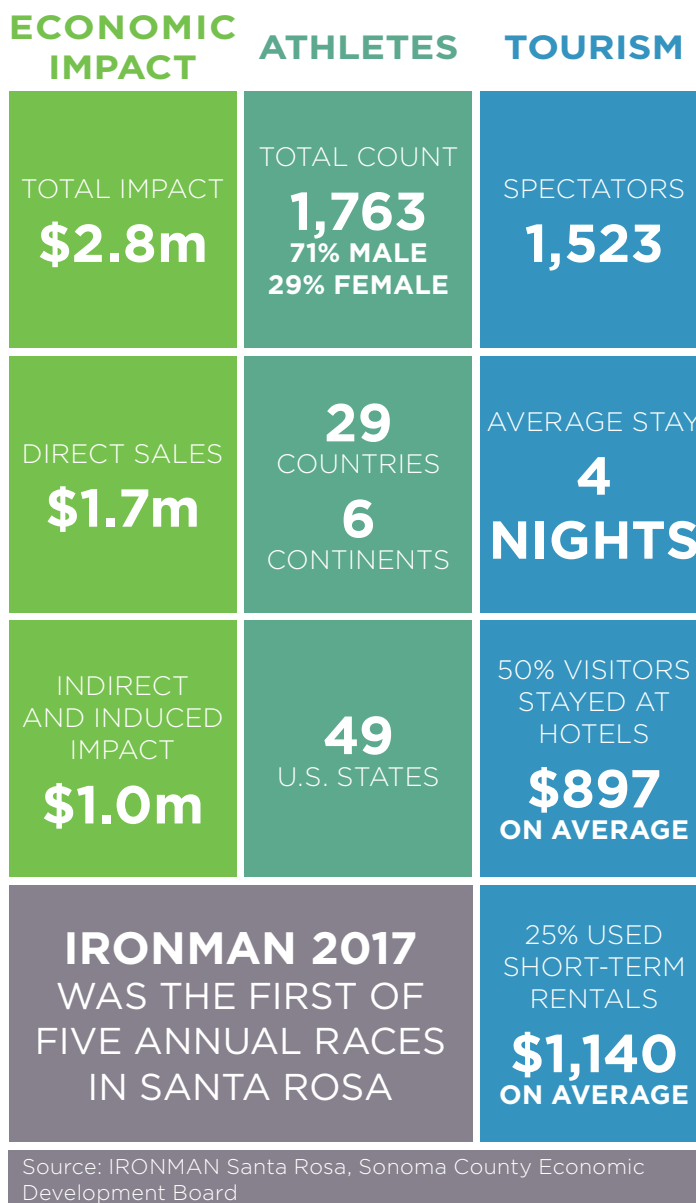
SPECTATORS

In all, the event attracted over 1,500 non-athlete tourists and spectators. These visitors stayed for an average of four nights. Half of visitors stayed at hotels and spent \$897 on average, while a quarter of visitors spent an average of \$1,140 on short-term rentals.

The number of non-athlete tourists attending the IRONMAN indicates a niche market opportunity to create activities and experiences for this group and increase tourist dollars.

ECONOMIC IMPACT

The race generated \$2.8 million of total economic impact for Sonoma County businesses and residents. \$1.7 million of the impact was in direct sales to hotels, restaurants, wineries, bars, retail stores, and other local businesses. This initial direct infusion of funds resulted in \$1.0 million as a consequence of indirect and induced consumption from local grocery, financial services, advertisement, media, and printing companies.



APPENDIX

SONOMA COUNTY OUTDOOR RECREATION BUSINESS COUNCIL

Bill Carson , Chair Windsor & Rooster Run Golf Clubs	Marc Abbruzzese REI	Craig Anderson LandPaths
Skip Brand Healdsburg Running Company	Diana Brennan Sonoma Raceway	Trevor Cherr CamelBak
Rick Herbert Lake Sonoma Resort Area	Randy Johnson Getaway Adventures	Deborah Klein Sonoma Canopy Tours
Carlos Perez Bike Monkey	Lisa Thomas Sonoma County Horse Council	Don Winkle SMT Law

Background of the Outdoor Recreation Business Council

In 2017, the Economic Development Board joined with outdoor recreation businesses to launch the County’s first Outdoor Recreation Business Council to address key issues and emerging opportunities within this emerging sector.

Goals and Objectives

The key aims of the Council are to:

- Create recognition of the importance of the outdoor recreation sector in Sonoma County.
- Support and grow outdoor sector by providing networking and development opportunities.
- Help brand Sonoma County as a premier destination to experience outdoor activities.
- Connect with other businesses within the industry for strength in numbers.
- Develop high-impact initiatives to cultivate the outdoor recreation and hospitality sectors.
- Tackle issues and opportunities related to workforce development, permits, licensing, etc.
- Facilitate the benefits of shared resources and experience.
- Be a valued voice representing one of the fastest-growing sectors in the county.

SOURCES

- Outdoor Industry Association: 2017 National Outdoor Recreation Economy Report, 2017 California Outdoor Recreation Economy Report, and 2017 Outdoor Recreation Participation Report
- Sonoma County Economic Development Board: 2017 Outdoor Recreation Business Survey
- Sonoma County Economic Development Board: 2017 Sonoma County Annual Tourism Report
- Sonoma County Regional Parks
- United States Bureau of Economic Analysis
- United States Census Bureau



METHODOLOGY

The outdoor recreation economic impact number was derived from data collected in the Outdoor Recreation Survey. The survey was conducted from 2017-2018 and asked an array of questions; namely, for data on 2016 employment. Businesses were asked how many full-time and part-time staff they employed over the past year, as well as the estimated average hours per week each of their part-time staff worked. These numbers were used to total the number of “full-time equivalent workers” by calculating the number of 40-hour work weeks which each business employed.

The next step involved IMPLAN modeling. This required each business to be assigned an IMPLAN industry code depending on its subsector. The number of “full-time equivalent workers” and businesses’ respective industry codes were then input into IMPLAN to allow it to analyze the Outdoor Recreation industry’s impact on the Sonoma County economy.

IMPLAN generated results showing the top industries affected, the amount of state and county tax revenue, as well as the direct effect, indirect effect, and induced effect on the county economy. The latter three are summed to give the final economic impact value.

To estimate the total industry value for both jobs and economic impact, the report extrapolated total industry numbers under the assumption that the 76 businesses surveyed were a reasonable representation of the whole industry. There is an approximated 333 Outdoor Recreation businesses, currently in business in Sonoma County. For the extrapolation, the report scaled up its data collected from the 76 respondents to 333 businesses. This report emphasizes that these extrapolations are estimates. Additional survey participation in future years will further refine this number.



METHODOLOGY

OUTDOOR RECREATION ACTIVITY CATEGORIES

This report uses similar categories used by the Outdoor Industry Association in determining the outdoor recreation activities that encompass the outdoor recreation economy. These include:

Bicycling	
Camping	RV, tent or rustic cabin
Fishing	
Golfing*	
Hunting	
Motor Sports**	Motorcycle riding or outdoor car racing
Off-Roading	All terrain vehicles (ATVs), recreational off-highway vehicles (ROVs), dune buggies, four-wheel drive vehicles
Sightseeing/Nature Tours***	
Snow Sports	
Trail Sports	Walking, trail running, hiking, backpacking, climbing, and horseback riding
Water Sports	Canoeing, kayaking, kiteboarding, paddle boarding, power boating, rafting, sailing, and surfing

* The Outdoor Industry Association does not include “golfing” as an activity, but it has been used in the Sonoma County report.

**This report uses “Motor Sports”, which includes motorcycle riding and outdoor car race events. The Outdoor Industry Association activity is “Motorcycle Riding”.

*** This report uses “Sightseeing/Nature Tours”, which includes ballooning, garden tours and wildlife viewing. The Outdoor Industry Association activity is “Wildlife Viewing”.

ACKNOWLEDGMENTS

Matthew Stokes, Craig Dermody, and Robbie Shaw collected the data, conducted the analysis of the data, and constructed the report.

The Outdoor Recreation surveying work was completed by Christine Palmer and Robbie Shaw. Matthew Stokes, and Craig Dermody collaborated on the economic impact analysis.

Francesca Schott, Matthew Stokes, Craig Demody, and Christine Palmer all helped edit the report. Christine Palmer directed the report.

GET INVOLVED

For more information about the Sonoma County Outdoor Recreation Business Council or to learn how to get involved, please contact the Sonoma County Economic Development Board at (707) 565-7170.





SONOMA**EDB**.ORG

707 - 565 - 7170

141 STONY CIRCLE, STE. 110, SANTA ROSA, CA 95401



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 14
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors, County of Sonoma

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Fire and Emergency Services

Staff Name and Phone Number:

Jim Colangelo / 565-1152

Supervisorial District(s):

All Districts

Title: Hazardous Materials Equipment Purchase

Recommended Actions:

Adopt a Resolution authorizing budgetary adjustments to the FY 2017-18 Final Budget for the Fire and Emergency Services Department totaling \$50,000 to provide funding for the purchase of Self-Contained Breathing Apparatus cylinders for use by Hazardous Materials field staff during response to hazardous materials emergencies.

Executive Summary:

The air cylinders for Self-Contained Breathing Apparatus (SCBA) used by the Sonoma County Hazardous Materials (Hazmat) Response Team are due for replacement starting in July 2018. The \$50,000 requested to fund this purchase is available in the reserve account of the Hazardous Materials Division.

Discussion:

A one-hour air cylinder is used with each SCBA maintained by the County's Hazmat Team (Team). The Team has twelve SCBAs, requiring twelve air cylinders and an equal number of spares. The Hazmat Team has an additional twelve air cylinders on its spill response trailer and other vehicles used by qualified staff to respond to hazardous materials emergencies and to assist with fire investigations. A total of thirty-six air bottles are due for replacement.

Air bottles such as those used by the Hazmat Team must be hydrostatically tested (hydro-tested) on a regular basis. During a hydro-test, an SCBA cylinder is examined to ensure it can safely hold its rated pressure. The Hazmat Team uses one-hour bottles, which are filled to 3500 pounds per square inch (PSI). This regular testing is crucial because SCBA cylinders can rupture if there is degradation in structural integrity. According to Department of Transportation regulations, after fifteen years, air bottles no longer qualify for hydro-testing and must be decommissioned. The air bottles used by the Hazmat Team will reach their 15-year lifespan in July 2018. As a result, they must be replaced to ensure the safety of Hazmat Personnel when conducting investigations and responding to emergency spills countywide.

Prior Board Actions:			
None.			
Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community			
The ability for Hazardous Materials response personnel to safely perform their job functions ensures the safety of residents and the environment in the event of a hazardous materials spill.			
Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses	-0-		
Additional Appropriation Requested	\$50,000		
Total Expenditures	\$50,000		
Funding Sources			
General Fund/WA GF	-0-		
State/Federal	-0-		
Fees/Other	-0-		
Use of Fund Balance	\$50,000		
Contingencies	-0-		
Total Sources	-0-		
Narrative Explanation of Fiscal Impacts:			
The funds will come from an existing reserve fund balance in the Hazardous Materials Fund and will have no impact on the general fund balance.			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
None.			
Attachments:			
Resolution (A1)			
Related Items “On File” with the Clerk of the Board:			
None.			



County of Sonoma
State of California

Date: May 8, 2018

Santa Rosa, CA 95043

Item Number: _____

Resolution Number: _____



4/5 Vote Required

**Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California,
Authorizing A Budgetary Adjustment To The 2017-2018 Final Budget For The FIRE AND
EMERGENCY SERVICES DEPARTMENT In The Amount Of \$50,000.**

Whereas, the Board of Supervisors has adopted a Fiscal Year 2017-2018 Final Budget for the County of Sonoma **FIRE AND EMERGENCY SERVICES DEPARTMENT**; and

Whereas, the Government Code allows for adjustments to the Final Budget during the 2017-2018 Fiscal Year.

Now, Therefore, Be It Resolved that the County Auditor-Controller-Treasurer-Tax Collector is hereby authorized and directed to make all necessary operating transfers, accounting entries, and the following budgetary adjustments:

Fiscal Year 2017-2018 Expenditures		Amount
11146-20010300	Hazardous Material Fund	
52141	Minor Equipment/Small Tools	50,000.00
Total Expenditures		50,000.00
Fiscal Year 2017-2018 Funding Sources		
11146-20010300	Hazardous Material Fund	
	Fund Balance	50,000.00
Total Funding Sources		50,000.00

Supervisors:

Gorin:

Rabbitt:

Zane:

Hopkins:

Gore:

Ayes:

Noes:

Absent:

Abstain:

So Ordered.



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 15
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors, County of Sonoma

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Fire and Emergency Services

Staff Name and Phone Number:

Jim Colangelo / 565-1152

Supervisorial District(s):

First District

Title: Sonoma Raceway Fire Protection Services Agreement

Recommended Actions:

Approve and authorize the Chair to execute a four-year agreement for supplemental fire protection services with Sonoma Raceway for 2018 through 2021 large events. The contract is estimated annually at \$195,505 and is fully reimbursed by Sonoma Raceway.

Executive Summary:

The Fire and Emergency Services Department has been providing special event services under agreement for supplemental fire protection services to Sonoma Raceway for the past 15 years. Provided services provided include: fire code inspections, code enforcement, fire suppression and standby, emergency medical and rescue service, hazardous materials inspection and mitigation, incident command, and situation management. The population increase resulting from event visitors and participants creates a significantly greater demand for said services. Enhanced service levels are necessary to ensure that there is adequate response capabilities present to provide for public safety. During the prescribed event periods, fire service levels are increased to the Sonoma Raceway service area by Fire and Emergency Services Department resources.

Discussion:

Contractual agreements have been used between the County and Sonoma Raceway to define terms and conditions for the provision of specific service level enhancements. The previous agreement provided a four year term, commencing on January 1, 2014 and ending on October 31, 2017 with the ability to extend the agreement to December 31, 2017. The proposed agreement provides a four year term, commencing on January 1, 2018 and ending on December 31, 2021. The contract covers the largest events: NASCAR, NHRA, and IndyCar. Per the provisions of the agreement, the County has the right, at any time and without cause, to terminate the agreement by giving thirty (30) days written notice to Sonoma Raceway.

The Sonoma Raceway currently reimburses the County of Sonoma for all direct and indirect costs for providing agreement defined services through the Department's authorized fee schedule. This

agreement, along with the Raceway's Use Permit and Incident Action Plans, formalize the fees and provide guidelines for both parties as to the roles and responsibilities for events held at Sonoma Raceway.

The estimated cost of the provision of supplemental fire protection services for the 2018 race season events is \$195,505. Direct costs are in addition to the noted expenditures and include the rental costs of RV campers, mule response transportation units, automatic electronic defibrillator, communication equipment and meal expenses. The agreement allows for additional costs to be recovered over the contract limits for the term of agreement that are outside the control of the Fire and Emergency Services Department. All direct, indirect, personnel, equipment and other expenses shall be reimbursed to the Fire and Emergency Services Department as specified in the agreement and per the Department's fee schedule. Exhibits B1-B4 of the Sample Agreement (A1) reflect planned staffing levels for each event.

Staffing levels are based upon actual attendance at each event and the volume of overnight camping and may be increased or decreased as necessary. Proposed staffing levels are of sufficient quantity to deliver an effective initial attack force to control and mitigate most situations. During raceway events, Fire and Emergency Services Logistics staff are utilized and staggered throughout the day. Fire and Emergency Services Hazmat and Fire Inspector staff are utilized each day for Operations and Incident Command coverage. The remainder of the personnel is made up of Volunteer Fire Company volunteers and Sonoma County fire district staffing. Total county personnel varies from five to six staff per day, three are Extra Help. Should emergency situations create a demand for additional resources, they would be acquired through normal operating processes. These additional resources would be subject to terms and conditions of regularly existing cost recovery agreements such as the California Master Mutual Aid Agreement or local automatic aid agreements. The services provided at the events will not interfere with the regular fire and emergency services that is provided by the Fire and Emergency Services Department countywide.

The Department Director requests that the Board of Supervisors approves and authorizes the Chair to execute the agreement for supplemental fire protection services with the Sonoma Raceway for the 2018-2021 major events.

Prior Board Actions:

07/30/2013: Executed a four year agreement with the Raceway from January 2014 through December 2017.

Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community

Provide quick, effective emergency response for a concentrated, temporary population.

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses	\$195,505		
Additional Appropriation Requested			
Total Expenditures	\$195,505		
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other	\$195,505		
Use of Fund Balance			
Contingencies			
Total Sources	\$195,505		
Narrative Explanation of Fiscal Impacts:			
All costs associated with staffing the Sonoma Raceway events are fully reimbursed by Sonoma Raceway and have no impact on the General Fund.			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
None.			
Attachments:			
Sample Agreement (A1)			
Related Items "On File" with the Clerk of the Board:			
Agreement (4 Copies)			

AGREEMENT FOR SUPPLEMENTAL FIRE PROTECTION SERVICES

This Agreement for Supplemental Fire Protection Services (“Agreement”), dated as of _____, 20__ (“Effective Date”) is entered into by and between the County of Sonoma, a political subdivision of the State of California, Sonoma County’s Fire and Emergency Services Department (“County”), a division of the County, and Speedway Motorsports, Inc./Sonoma Raceway (“Racetrack”), a North Carolina Incorporated Company. For purposes of this Agreement, the County and Racetrack shall be collectively referred to as “parties” or “the parties.”

RECITALS

WHEREAS, Racetrack has requested supplemental fire protection services that are considered to be beyond the normal and regular fire protection services that the County would otherwise provide to Racetrack; and

WHEREAS, the parties agree and recognize that, pursuant to Sonoma County Municipal Code, California Fire Code, California’s Health and Safety Code, and all other applicable laws, County has sole and exclusive jurisdiction over fire prevention and California Fire Code enforcement for the entire Racetrack during Major Events, including but not limited to: the racetrack, hot pit, grand stand, racecar garages, and all existing facilities located in the unincorporated areas of Sonoma County; and

WHEREAS, Racetrack represents that all persons with firefighting training or experience, whether paid or volunteer, who render services at Racetrack and who are not employed by, and on-duty for, County on the day of an event, are covered by Racetrack’s Workers’ Compensation Insurance; and,

WHEREAS, this Agreement covers events requiring supplemental fire protection services in accordance with terms and conditions of the Conditional Use Permit and the Racetrack’s Major Event Schedule. Events are set forth in Exhibit A (“Exhibit A”), attached hereto for calendar years 2018 thru 2021, for which Racetrack states the projected attendance estimate, including the public participants, staff and all people that will be present on the Racetrack Property and the Lakeville Property. These attendance estimates will be updated as needed.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1. SCOPE OF SERVICES.

1.1. **Supplemental Fire Protection Services.** County shall utilize qualified firefighters, who are employed or contracted by County to render fire protection services as set forth in this Agreement. Fire protection services shall include, but are not limited to:

- a. (1) Fire prevention; (2) fire suppression; (3) rendering emergency medical aid as a first responder; (4) planning activities and participating in safety-related planning sessions, roundtables or drills for Raceway events; and, (5) any other fire protection activity or item, which in the sole discretion of the County Chief, or his/her on-site representative or designee, is prudent or necessary.
- b. The County shall not have first responder obligation for any incident occurring on the racetrack or in the hot pit.
- c. Providing primary fire and emergency services off track, the rendition of such services, the standard of performance thereof in accordance with applicable laws and County Fire SOP's, and the immediate control of assigned personnel so employed shall at all times remain the responsibility of the Director/County Fire Chief ("County Chief"), or his/her on-site representative or designee.
- d. Requiring all firefighting personnel to meet the policy, training, safety guidelines and procedures as established in consultation with the County Chief and County Training Officer.

Exhibits B1-B4 ("Exhibit B"), attached hereto and incorporated herein by this reference, set forth the specific levels of staffing, resources and services to be provided, as well as the date(s) services are scheduled. The specified hours of service include travel time to and from the event location and shall be defined in the Incident Action Plan ("IAP"). The IAP shall be made available by County to Racetrack prior to the event. All IAPs developed by the County shall be provided to the Racetrack, within 30 days prior to each event.

The requirements of County, whether normal or extraordinary, shall be deemed paramount in this Agreement. In the event of an unanticipated emergency which, at the sole discretion of the County Chief, or his/her on-site representative or designee, requires the use of any employees, vehicles, and/or equipment contemplated by this Agreement, the County Chief, or his or her designee, may withdraw personnel, vehicles, and/or equipment without the consent of Racetrack, and without any liability therefrom. Minimum staffing to remain one engine and one mule.

- 1.2 Supervision. The County Chief, or his/her on-site representative or designee, will operate under the California Incident Command System (ICS) and will be present at all times and a designated County Fire employee as designated by the County Chief, or his/her designee, will serve as Incident Commander. Overall Incident Command will remain with County, unless and until County delegates responsibility, at which time command will be transferred per standard ICS protocol.

In recognition of County's professional expertise in the area of fire protection, the parties agree that, in the event of a dispute between the parties as to the manner of performance of fire protection services, the determination by the County Chief, or his/her on-site representative or designee, shall be final and conclusive. County is bound to abide by bargaining agreements covering its employees rendering services pursuant to this Agreement.

At the conclusion of each event, County will provide emergency response data and to Racetrack within 60 days following the last day of each event. This data will be collected from dispatch records of emergency responses that occurred during the event. The copies of the dispatch records will be provided at least 30 days to the Racetrack by the County at the conclusion of each event.

- 1.3 Racetrack's Use of Non-County Fire Fighters. As set forth in the IAP, Racetrack shall have the obligation to provide certain staffing and equipment for the racing events in accordance with this Agreement. Should Racetrack fail to comply with its obligations under this Agreement to provide the identified staffing and/or equipment, the County Chief, or his or her on-site representative or designee, shall have the right, but not the obligation, to backfill for any missing staff or equipment. In the event that this occurs, Racetrack shall reimburse County for the costs of such additional staffing or equipment. Such costs shall be considered a "Direct Cost" as outlined in Section 2 'Payment'.

Racetrack warrants and represents that all personnel and equipment that it provides in accordance with this Agreement shall meet all qualifications of the IAP. Racetrack shall, upon County request, provide the County Chief with a written certification that it has reviewed the qualifications of all its personnel that are scheduled to staff the particular event and certifies to County that all personnel on the list meet the minimum qualifications and training requirements under this Agreement.

Racetrack warrants and represents that it provides all personal protective equipment to its personnel for use at the events covered by this Agreement. Racetrack shall appoint a properly qualified person to inspect and maintain all such personal protective equipment in accordance with the applicable National Fire Protection Association standards.

For medical emergencies, Racetrack personnel shall review, learn, understand and conform to all Sonoma County's Emergency Medical Services protocols. All medical emergencies shall be immediately reported to the Fire Dispatch Center located in the Multiple Agency Command Center (MACC) following the incident reporting and response requirements in accordance with the specific Incident Action Plan.

2. PAYMENT. The Racetrack shall pay the Service Costs of Fire and Emergency Services staff providing services at Racetrack events. These costs are set forth in Exhibit B. For each event, Exhibit B (1, 2, 3 or 4) will outline an estimate of the Service Costs for the level of event attendance projected. Exhibit B will be updated based on the IAP prior to each event. After each event, the corresponding final Exhibit B (1, 2, 3, or 4) will provide the actual Service Costs for that event.

- 2.1. The Racetrack shall additionally pay Direct Cost items as set forth in Exhibit C "Exhibit C". Items designated as Direct Costs include, but are not limited to:

- meals, beverages, Automatic Electronic Defibrillators (“AEDs”), communications equipment, motor home rentals, mule response vehicles and, miscellaneous supplies. Charges for Direct Cost items are in addition to the Service Costs. In March of each year of this Agreement, County shall provide to the Racetrack updated projections of staffing costs reflecting any changes in compensation of County employees or its contracted agents resulting in increased rates for staff, engine companies, and other County provided resources.
- 2.2 Racetrack shall make payment for services rendered by County or its agent, to the specific payee as described by the billing invoice provided by County. County shall prepare written invoice statement following each event from which the payee information is clearly provided. County will provide timecard/hours worked information for the Grandstand Crewmembers following each event. Racetrack agrees to provide workers’ compensation coverage and payroll for all Grandstand Crewmembers.
- 2.3 County invoice will be provided to Racetrack upon completion of each Racetrack event. County must receive full payment within thirty (30) days of the date that the invoice is mailed. County shall include receipts for any Direct Cost item for which County is invoicing Racetrack. In the event that Racetrack disputes any invoice, invoice amount or Direct Cost item, Racetrack shall provide written notice of the dispute and all grounds for the dispute within thirty (30) days of the date that the invoice is mailed. Within ten (10) days of receiving notice of a disputed invoice, the Parties shall meet at a mutually agreed time and place to attempt to resolve the disputed invoice. Any undisputed portion of the invoice and all undisputed Direct Cost items shall be due and payable within thirty (30) days that the invoice is mailed as is required earlier in this paragraph.
3. TERM OF AGREEMENT. The term of this Agreement shall be from January 1, 2018 to December 31, 2021, unless terminated earlier in accordance with the provisions of Article 4 below. The County Chief shall have the right, on behalf of County, to enter into an extension of the term of this Agreement for additional events within the term of the Agreement, upon such terms and conditions that are acceptable to the County Chief and Racetrack. At the end of the term, the County Chief shall review the Agreement for consideration of renewal.
4. TERMINATION.
- 4.1 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving thirty (30) days written notice to Racetrack.
- 4.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should Racetrack fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving Racetrack written notice of such termination, stating the reason for termination.

4.3 Delivery of Work Product and Final Payment Upon Termination.

In the event of termination, Racetrack, within 14 days following the date of termination, shall deliver to County all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Racetrack or Racetrack's subcontractors, consultants, and other agents in connection with this Agreement and shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

4.4 Payment Upon Termination. Upon termination of this Agreement by County, County shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by County bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, County shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to the termination times the applicable hourly or daily rate; and further provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by Racetrack by virtue of the breach of the Agreement by Racetrack.

4.5 Authority to Terminate. The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or County Chief, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. INDEMNIFICATION. Racetrack agrees to accept all responsibility for loss or damage to any person or entity, including County, and to indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Racetrack, that arise out of, pertain to, or relate to Racetrack's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Racetrack agrees to provide a complete defense for any claim or action brought against County based upon a claim relating to such Racetrack's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Racetrack's obligations under this Section apply whether or not there is concurrent or contributory negligence on County's part, but to the extent required by law, excluding liability due to County's conduct. County shall have the right to select its legal counsel at Racetrack's expense, subject to Racetrack's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Racetrack or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. INSURANCE. With respect to performance of work under this Agreement, Racetrack shall maintain and shall require all of its subcontractors, Racetracks, and other agents to maintain, insurance as described in Exhibit C, which is attached hereto and incorporated herein by this reference.
7. PROSECUTION OF WORK. The execution of this Agreement shall constitute County's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for County's performance of this Agreement shall be extended by a number of days equal to the number of days Racetrack has been delayed.
8. EXTRA OR CHANGED WORK. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Changes which do not exceed the delegated signature authority of the Department may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors or Purchasing Agent must authorize all other extra or changed work which exceeds the delegated signature authority of the Department Head. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Racetrack to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Racetrack shall be entitled to no compensation whatsoever for the performance of such work. Racetrack further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.
9. REPRESENTATIONS OF RACETRACK.

9.1 Standard of Care. County has relied upon the professional ability and training of Racetrack as a material inducement to enter into this Agreement. Racetrack hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Racetrack's work by County shall not operate as a waiver or release.

9.2 Status of Racetrack. The parties intend that Racetrack is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Racetrack expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment. Racetrack warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Racetrack also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Racetrack becomes debarred, Racetrack has the obligation to inform the County.

9.4 Taxes. Racetrack agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Racetrack agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Racetrack's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Racetrack agrees to furnish County with proof of payment of taxes on these earnings.

9.5 Records Maintenance. Racetrack shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Racetrack shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest. Racetrack covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Racetrack further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by County, Racetrack shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Racetrack's or such other person's financial interests.

9.7 Statutory Compliance/Living Wage Ordinance. Racetrack agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Racetrack expressly acknowledges and agrees that this Agreement may be subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8 Nondiscrimination. Without limiting any other provision hereunder, Racetrack shall comply with all applicable federal, state, and local laws, rules, and regulations in

regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.9 AIDS Discrimination. Racetrack agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.10 Assignment of Rights. Racetrack assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Racetrack in connection with this Agreement. Racetrack agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Racetrack's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County. Racetrack shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.11 Ownership and Disclosure of Work Product. All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Racetrack or Racetrack's subcontractors, Racetracks, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Racetrack shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Racetrack may retain copies of the above- described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.12 Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Racetrack.

10. DEMAND FOR ASSURANCE. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with

respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. ASSIGNMENT AND DELEGATION. Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments. All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

TO: COUNTY: Fire and Emergency Services Department
2300 County Center Drive, Ste. 220B
Santa Rosa, CA 95403
Fax: (707) 565-1172

TO: RACETRACK: Speedway Motorsports, Inc./
Sonoma Raceway
29355 Arnold Drive
Sonoma, CA 95476

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. MISCELLANEOUS PROVISIONS.

13.1 No Waiver of Breach. The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Racetrack and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Racetrack and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

13.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8. Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

RACETRACK: _____

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE WITH AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By: _____

By: _____
Department Head

Name: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM FOR COUNTY:

By: _____
County Counsel

Date: _____

By: _____
Chair
Board of Supervisors

Date: _____

ATTEST:

Clerk of the Board of Supervisors

Exhibit A: Attendance Estimates

EVENT	DATE	ESTIMATE*
NASCAR Toyota/Save Mart 350	June, Thursday, Day 1	3,000
	June, Friday, Day 2	16,000
	June, Saturday, Day 3	24,000
	June, Sunday, Day 4	60,000
NHRA Sonoma Nationals	July, Friday, Day 1	20,000
	July, Saturday, Day 2	22,000
	July, Sunday, Day 3	25,000
IndyCar Grand Prix of Sonoma	September, Friday, Day 1	4,000
	September, Sat., Day 2	4,000
	September, Sunday, Day 3	20,000

*Based on 5-year average

Exhibit B Services Cost Estimate 2018**Master Rate List**

Position	Rate
Division Chief (Safety)	\$59.32
Fire Dispatcher	\$36.57
Fire Engine/3	\$156.33
Grandstand Crew/6	\$19.91
Grandstand Div. Lead	\$31.04
Grandstand Fire Engine	\$85.00
Inspector	\$165.00
IC	\$235.18
Material Handlers	\$28.71
Operations Chief	\$184.53
Patrols	\$50.00
Wildland Engine/4	\$156.33

Exhibit B1 -- Services

A1-14

NASCAR			June 22 -- June 24		Rate	Projected
	Base		Actual			
	Hours	Qty	Hours	Qty		
Thursday						
Dispatcher	12	1			\$0.00	\$0.00
Division Chief(Safety)	12	0			\$59.32	\$0.00
Fire Engine/3	0	1			\$156.33	\$0.00
Fire Engine/3	12	1			\$156.33	\$1,875.96
Fire Inspector	8	1			\$165.00	\$1,320.00
Fueling Engine	12	1			\$156.33	\$1,875.96
Grandstand Crew/6	0	0			\$19.91	\$0.00
Grandstand Fire Engine	0	0			\$85.00	\$0.00
Grandstand Leader	0	0			\$31.04	\$0.00
Hazmat Officer	4	1			\$165.00	\$660.00
IC	12	0			\$235.18	\$0.00
Material Handlers	10	3			\$28.71	\$861.30
Operations Chief	12	1			\$184.53	\$2,214.36
Patrol	12	0			\$50.00	\$0.00
Patrol	12	0			\$50.00	\$0.00
Wildland Engine/3	12	1			\$0.00	\$0.00
Total						\$8,807.58
Friday						
Day Fire Engine/3	12	1			\$156.33	\$1,875.96
Dispatcher	12	1			\$0.00	\$0.00
Division Chief (Safety)	12	1			\$59.32	\$711.84
Fire Engine/3	24	1			\$156.33	\$3,751.92
Fire Inspector	8	2			\$165.00	\$2,640.00
Fueling Engine	12	1			\$156.33	\$1,875.96
Grandstand Crew/6	12	6			\$19.91	\$1,433.52
Grandstand Fire Engine	12	1			\$85.00	\$1,020.00
Grandstand Leader	12	1			\$31.04	\$372.48
Hazmat Officer	4	1			\$165.00	\$660.00
IC	12	1			\$235.18	\$2,822.16
Material Handlers	10	3			\$28.71	\$861.30
Night Fire Engine/3	12	1			\$156.33	\$1,875.96
Operations Chief	24	1			\$184.53	\$4,428.72
Patrol	12	1			\$50.00	\$600.00
Patrol	12	1			\$50.00	\$600.00
Water Tender	12	1			\$156.33	\$1,875.96
Wildland Engine/3	12	1			\$0.00	\$0.00
Total						\$27,405.78
Saturday						
Day Fire Engine/3	12	1			\$156.33	\$1,875.96
Dispatcher	12	1			\$0.00	\$0.00
Division Chief(Safety)	12	1			\$59.32	\$711.84
Fire Engine/3	24	1			\$156.33	\$3,751.92
Fire Inspector	8	2			\$165.00	\$2,640.00

Exhibit B1 -- Services

NASCAR	June 22 -- June 24					
Fueling Engine	12	1			\$156.33	\$1,875.96
Grandstand Crew/6	12	1			\$19.91	\$238.92
Grandstand Fire Engine	12	1			\$85.00	\$1,020.00
Grandstand Leader	12	1			\$31.04	\$372.48
Hazmat Officer	4	1			\$165.00	\$660.00
IC	12	1			\$235.18	\$2,822.16
Material Handlers	10	3			\$28.71	\$861.30
Night Fire Engine/3	12	1			\$156.33	\$1,875.96
Operations Chief	24	1			\$184.53	\$4,428.72
Patrol	12	1			\$50.00	\$600.00
Patrol	12	1			\$50.00	\$600.00
Water Tender	12	1			\$156.33	\$1,875.96
Wildland Engine/3	12	1			\$0.00	\$0.00
Total						\$26,211.18
Sunday						
Dispatcher	12	1			\$36.57	\$438.84
Division Chief(Safety)	12	1			\$59.32	\$711.84
Fire Engine/3	20	1			\$156.33	\$3,126.60
Fire Engine/3	12	1			\$156.33	\$1,875.96
Fire Inspector	8	2			\$165.00	\$2,640.00
Fueling Engine	12	1			\$156.33	\$1,875.96
Grandstand Crew/6	12	1			\$31.04	\$372.48
Grandstand Fire Engine	12	1			\$85.00	\$1,020.00
Grandstand Leader	0	0			\$59.32	\$0.00
Hazmat Officer	4	1			\$165.00	\$660.00
IC	12	1			\$235.18	\$2,822.16
Material Handlers	10	3			\$28.71	\$861.30
Operations Chief	12	1			\$184.53	\$2,214.36
Patrol	12	1			\$50.00	\$600.00
Patrol	12	1			\$50.00	\$600.00
Wildland Engine/3	12	1			\$0.00	\$0.00
Total						\$19,819.50
Monday						
Material Handlers	6	2	0	0	\$28.71	\$344.52
Total						\$344.52
GRAND TOTAL						\$82,588.56

Exhibit B2 -- Services Cost Estimate 2018

NHRA			July 27 -- July 29			
	Base Staffing		Actual		Rate	Projected Cost
	Hours	Qty	Hours	Qty		
Friday						
Day Fire Engine/3	12	1			\$156.33	\$1,875.96
Dispatcher	12	1			\$0.00	\$0.00
Division Chief(Safety)	24	1			\$59.32	\$1,423.68
Fire Engine/3	24	1			\$156.33	\$3,751.92
Fire Inspector	8	2			\$165.00	\$2,640.00
Fueling Engine	12	1			\$156.33	\$1,875.96
Grandstand Crew/5	15	5			\$19.91	\$1,493.25
Grandstand Fire Engine	15	1			\$85.00	\$1,275.00
Grandstand Leader	15	1			\$31.04	\$465.60
Hazmat Officer	4	1			\$165.00	\$660.00
IC	12	1			\$235.18	\$2,822.16
Material Handlers	10	3			\$28.71	\$861.30
Night Fire Engine/3	12	1			\$156.33	\$1,875.96
Operations Chief	12	1			\$184.53	\$2,214.36
Patrol	12	1			\$50.00	\$600.00
Patrol	12	1			\$50.00	\$600.00
Water Tender	12	1			\$156.33	\$1,875.96
Wildland Engine/3	12	1			\$0.00	\$0.00
					Total	\$26,311.11
Saturday						
Day Fire Engine/3	12	1			\$156.33	\$1,875.96
Dispatcher	12	1			\$0.00	\$0.00
Division Chief(Safety)	12	1			\$59.32	\$711.84
Fire Engine/3	24	1			\$156.33	\$3,751.92
Fire Inspector	8	2			\$165.00	\$2,640.00
Fueling Engine	12	1			\$156.33	\$1,875.96
Grandstand Crew/5	12	5			\$19.91	\$1,194.60
Grandstand Fire Engine	12	1			\$85.00	\$1,020.00
Grandstand Leader	12	1			\$31.04	\$372.48
Hazmat Officer	4	1			\$165.00	\$660.00
IC	12	1			\$235.18	\$2,822.16
Material Handlers	10	3			\$28.71	\$861.30
Night Fire Engine/3	12	1			\$156.33	\$1,875.96
Operations Chief	24	1			\$184.53	\$4,428.72
Patrol	12	1			\$50.00	\$600.00
Patrol	12	1			\$50.00	\$600.00
Water Tender	12	1			\$156.33	\$1,875.96
Wildland Engine/3	12	1			\$0.00	\$0.00
					Total	\$27,166.86

Exhibit B2 -- Services Cost Estimate 2018

NHRA			July 27 -- July 29			
Sunday						
Dispatcher	12	1			\$0.00	\$0.00
Division Chief(Safety)	12	1			\$59.32	\$711.84
Fire Engine/3	20	1			\$156.33	\$3,126.60
Fire Engine/3	12	1			\$156.33	\$1,875.96
Fire Inspector	8	2			\$165.00	\$2,640.00
Fueling Engine	12	1			\$156.33	\$1,875.96
Grandstand Crew/5	12	5			\$19.91	\$1,194.60
Grandstand Fire Engine	12	1			\$85.00	\$1,020.00
Grandstand Leader	12	1			\$31.04	\$372.48
Hazmat Officer	4	1			\$165.00	\$660.00
IC	12	1			\$235.18	\$2,822.16
Material Handlers	10	3			\$28.71	\$861.30
Operations Chief	12	1			\$184.53	\$2,214.36
Patrol	12	1			\$50.00	\$600.00
Patrol	12	1			\$50.00	\$600.00
Water Tender	12	0			\$156.33	\$0.00
Wildland Engine/3	12	1			\$0.00	\$0.00
					Total	\$20,575.26
Monday						
Material Handlers	5	2			\$28.71	\$287.10
					Total	\$287.10
					GRAND TOTAL	\$74,340.33

Exhibit B3 -- Services Cost Estimate 2018

A1-18

IndyCar			September 14 -- September 16			
Description	Base Staffing		Actual		Rate	Projected Cost
	Hours	Qty	Hours	Qty		
Friday						
Division Chief/(Safety)	12	1			\$59.32	\$711.84
Fire Engine/3	12	1			\$156.33	\$1,875.96
Fire Inspector	8	1			\$165.00	\$1,320.00
Fueling Engine	12	1			\$156.33	\$1,875.96
Hazmat Officer	4	1			\$165.00	\$660.00
IC/Operations Chief	12	1			\$235.18	\$2,822.16
Material Handlers	12	3			\$28.71	\$1,033.56
Operations Chief	12	0			\$184.53	\$0.00
Patrol	12	1			\$50.00	\$600.00
Wildland Engine/3	12	1			\$0.00	\$0.00
Total						\$10,899.48
Saturday						
Division Chief(Safety)	12	1			\$59.32	\$711.84
Fire Engine/3	12	1			\$156.33	\$1,875.96
Fire Inspector	8	1			\$165.00	\$1,320.00
Fueling Engine	12	1			\$156.33	\$1,875.96
Hazmat Officer	4	1			\$165.00	\$660.00
IC/Operations Chief	12	1			\$235.18	\$2,822.16
Material Handlers	12	3			\$28.71	\$1,033.56
Operations Chief	12	0			\$184.53	\$0.00
Patrol	12	1			\$50.00	\$600.00
Wildland Engine/3	12	1			\$0.00	\$0.00
Total						\$10,899.48
Sunday						
Dispatcher	12	0			\$0.00	\$0.00
Division Chief(Safety)	12	1			\$59.32	\$711.84
Fire Engine/3	15	1			\$156.33	\$2,344.95
Fire Engine/3	12	1			\$156.33	\$1,875.96
Fire Inspector	8	1			\$165.00	\$1,320.00
Fueling Engine	12	1			\$156.33	\$1,875.96
Grandstand Crew/3	12	1			\$19.91	\$238.92
Grandstand Fire Engine	12	1			\$85.00	\$1,020.00
Grandstand Leader	12	1			\$31.04	\$372.48
Hazmat Officer	4	1			\$165.00	\$660.00
IC	12	1			\$235.18	\$2,822.16
Material Handlers	10	3			\$28.71	\$861.30
Operations Chief	12	1			\$184.53	\$2,214.36
Wildland Engine/3	12	1			\$0.00	\$0.00
Total						\$16,317.93
Monday						
Material Handlers	8	2			\$ 28.71	\$459.36
Total						\$ 459.36
GRAND TOTAL						\$ 38,576.25

Exhibit B4 -- Services Cost Estimate 2018

A1-19

MotoAmerica			August XX --August XX			
Description	Base Staffing		Actual		Rate	Projected Cost
	Hours	Qty	Hours	Qty		
Friday						
Dispatcher	12	0			\$0.00	\$0.00
Division Chief	12	0			\$59.32	\$0.00
Fire Engine/3	24	0			\$156.33	\$0.00
Fire Engine/3	12	0			\$156.33	\$0.00
Fire Inspector	8	0			\$165.00	\$0.00
Fueling Engine	12	0			\$156.33	\$0.00
Hazmat Officer	4	0			\$165.00	\$0.00
IC	12	0			\$235.18	\$0.00
Material Handlers	20	0			\$28.71	\$0.00
Operations Chief	24	0			\$184.53	\$0.00
Wildland Engine/3	12	0			\$156.33	\$0.00
Total						\$0.00
Saturday						
Dispatcher	12	0			\$0.00	\$0.00
Division Chief	12	0			\$59.32	\$0.00
Fire Engine/3	12	0			\$156.33	\$0.00
Fire Engine/3	12	0			\$156.33	\$0.00
Fire Inspector	8	0			\$165.00	\$0.00
Fueling Engine	12	0			\$156.33	\$0.00
Grandstand Crew/3	12	0			\$19.91	\$0.00
Grandstand Fire Engine	12	0			\$85.00	\$0.00
Grandstand Leader	12	0			\$31.04	\$0.00
Hazmat Officer	4	0			\$165.00	\$0.00
IC	12	0			\$235.18	\$0.00
Material Handlers	10	0			\$28.71	\$0.00
Operations Chief	24	0			\$184.53	\$0.00
Wildland Engine/3	12	0			\$156.33	\$0.00
Total						\$0.00
Sunday						
Dispatcher	12	0			\$0.00	\$0.00
Division Chief	12	0			\$55.82	\$0.00
Fire Engine/3	24	0			\$156.33	\$0.00
Fire Engine/3	12	0			\$156.33	\$0.00
Fire Inspector	8	0			\$165.00	\$0.00
Fueling Engine	12	0			\$156.33	\$0.00
Grandstand Crew/4	12	0			\$19.91	\$0.00
Grandstand Fire Engine	12	0			\$85.00	\$0.00
Grandstand Leader	12	0			\$31.04	\$0.00
Hazmat Officer	4	0			\$165.00	\$0.00
IC	12	0			\$229.35	\$0.00
Material Handlers	10	0			\$25.52	\$0.00
Operations Chief	12	0			\$171.32	\$0.00
Wildland Engine/3	12	0			\$156.33	\$0.00

Exhibit B4 -- Services Cost Estimate 2018

A1-20

MotoAmerica				August XX --August XX			
Total							\$0.00
Monday							
Operations Chief	5	0			\$171.32	\$0.00	
Total							\$0.00
GRAND TOTAL							\$0.00

2018	Projected	Actual
NASCAR		
Thursday	\$ 8,807.58	\$ -
Friday	27,405.78	-
Saturday	26,211.18	-
Sunday	19,819.50	-
Monday	344.52	-
Total	\$ 82,588.56	\$ -

NHRA		
Friday	\$ 26,311.11	\$ -
Saturday	27,166.86	-
Sunday	20,575.26	-
Monday	287.10	-
Total	\$ 74,340.33	\$ -

IndyCar		
Friday	\$ 10,899.48	\$ -
Saturday	10,899.48	-
Sunday	16,317.93	-
Monday	\$ 459.36	\$ -
Total	\$ 38,576.25	\$ -

World Touring		
Friday	\$ -	\$ -
Saturday	-	-
Sunday	-	-
Monday	-	-
Total	\$ -	\$ -

All		
Thursday	\$ 8,807.58	\$ -
Friday	64,616.37	-
Saturday	64,277.52	-
Sunday	56,712.69	-
Monday	1,090.98	-
Total	\$ 195,505.14	\$ -
Average	\$ 65,168.38	\$ -

Exhibit C – Direct Costs 20181) Salary Information:

- a) County has agreed to provide fire protection and inspection services for the specified events at Sonoma Racetrack. Hourly rates are adjusted each year based upon the current Sonoma County billable rate for each position.
 - i) Actual hours worked are dependent upon the need during the specific operational period. Staffing duration will be determined by the Incident Commander (IC) in consultation with a Racetrack representative.
- b) The Fire Company hourly rate is compensation for a fire apparatus, fire officer and two firefighters. The hourly rate for the 2018 events will be \$156.33, based on the Cal OES Fire Salary Survey Rates (1 Engine, 2 Firefighters, and one Battalion Chief).
- c) Dispatch fees to be billed by and paid directly to REDCOM.
- d) Grandstand Crew will be paid directly by Racetrack at the hourly rate listed in the 2018 Rate Information.

2) 2018 Rate Information:

Staff Description	Billing Rate	Comment
Division Chief (Safety)	\$59.32	Operations, Division/Group Supervisor, Engine Captain; Safety Officer
Fire Dispatcher	\$36.57	Fire Radio Operator
Fire Engine Crew*	\$156.33	Fire Engine Staffed w/3 or 4
Grandstand Crew*	\$19.91	Paid by the track
Grandstand Div. Lead	\$31.04	Division Group Supervisor
IC	\$235.18	IC, Operations, Fire Chief
Inspector	\$165.00	Fire & Hazmat Inspector
Material Handler	\$28.71	Support Roles
Operations Chief	\$184.53	IC, Operations, Inspector
Patrols	\$50.00	Med Calls/Public Assist
Unstaffed Fire Engine (1001-1250 GPM)*	\$85.00	Based upon the Rate set by Cal EMA Fire and Rescue Branch
Wildland/Engine Crew*	\$156.33	Engine Staffed w/ 4

* Annual Rate in Accordance with the Agency Cal OES Fire Salary Survey Rate.

- 3) Direct Costs Paid by Racetrack and/or Reimbursable Charges Paid to the County:
- a) Racetrack shall provide the following in the quantity necessary to sustain assigned staff as recommended by the IC.
 - i) Racetrack shall provide the following:
 - (1) Meals - breakfast, lunch and dinner for assigned crews and staff working the operational period. Racetrack and County staff will meet prior to each event to determine the menu and number to be fed.
 - (a) Meals will normally be provided at the Racetrack Cafeteria for all assigned crew members. To-go containers shall be available when the IC desires to transport food and beverages to feed crews in the field.
 - (b) Meals shall include an entree, side dish, dessert, and beverage (non-alcoholic), other than water.
 - (2) Mule Response Units shall be provided in the quantity listed below for the specified event. County will provide the firefighting and medical equipment to outfit these response vehicles.
 - (a) NASCAR Toyota/Save Mart 350 – 13 mule vehicles
 - (b) NHRA Sonoma Nationals – 13 mule vehicles
 - (c) IndyCar Grand Prix of Sonoma – 10 mule vehicles
 - (3) RV campers shall be provided in the quantity listed below for the specified event.
 - (a) NASCAR Toyota/Save Mart 350 – 4 RVs
 - (b) NHRA Sonoma Nationals – 4 RVs
 - (c) IndyCar Grand Prix of Sonoma – 2 RVs (Sunday only)
 - (4) Racetrack will provide electrical, water and septic services for the provided RV campers and any camper or specialized vehicle (Hazmat and Logistics trailers) provided by the County.
 - ii) Racetrack shall reimburse County for specific items purchased by the County upon submission of the receipt included with the event billing:
 - (1) Breakfast items such as, but not limited to: coffee, orange juice, pastries, donuts, fruit, etc.
 - (2) Expenses for Automatic Electronic Defibrillators (“AED”):
 - (a) 10 AED units total – three (3) AEDs to be provided to Racetrack off-track fire resources.
 - (3) Expenses for communication equipment:

Exhibit D – Insurance Requirements

Racetrack shall maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*.

County reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Racetrack from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the term of this Agreement.

1. Workers Compensation and Employers Liability Insurance

- a. Required if Racetrack has employees.
- b. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c. Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against County.
- e. Required Evidence of Insurance:
 - i. Subrogation waiver endorsement; and
 - ii. Certificate of Insurance.

2. General Liability Insurance

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$10,000,000 per Occurrence; \$10,000,000 General Aggregate; \$10,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Umbrella Liability Insurance. If Racetrack maintains higher limits than the specified minimum limits, County requires and shall be entitled to coverage for the higher limits maintained by Racetrack.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by County. Racetrack is responsible for any deductible or self-insured retention and shall fund it upon County's written request, regardless of whether Racetrack has a claim against the insurance or is named as a party in any action involving the County.
- d. County of Sonoma, its officers, agents and employees shall be additional insureds for liability arising out of the Racetrack's ongoing operations. (ISO endorsement CG 20 26 or equivalent.)
- e. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- f. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against County.
- g. The policy shall cover inter-insured suits between County and Racetrack and include a "separation of insureds" or "severability" clause which treats each insured separately.

- h. Required Evidence of Insurance:**

 - i.** Copy of the additional insured endorsement or policy language granting additional insured status;
 - ii.** Copy of the endorsement or policy language indicating that Insurance is primary and non-contributory; and
 - iii.** Certificate of Insurance.

- 3. Automobile Liability Insurance**
 - a.** Minimum Limits: \$10,000,000 combined single limit per accident.
 - b.** Insurance shall apply to all owned, hired and non-owned vehicles.
 - c. Required Evidence of Insurance:** Certificate of Insurance.

- 4. Standards for Insurance Companies**

Insurers shall have an A.M. Best's rating of at least A:VII.

- 5. Documentation**
 - a.** The Certificate of Insurance must include the following reference to these events of the racing season:
NASCAR Toyota/Save Mart 350
NHRA Sonoma Nationals
IndyCar Grand Prix of Sonoma
 - b.** All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Racetrack agrees to maintain current Evidence of Insurance on file with County for the required period of insurance.
 - c.** The name and address for Additional Insured endorsements and Certificates of Insurance is: The County of Sonoma, its officers, agents and employees, Fire and Emergency Services Department, 2300 County Center Drive, B220, Santa Rosa, CA 95403-3010
 - d.** Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
 - e.** Racetrack shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
 - f.** Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

- 6. Policy Obligations**

Racetrack's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

- 7. Material Breach**

If Racetrack fails to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. County, at its sole option, may terminate this Agreement and obtain damages from Racetrack resulting from said breach.



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 16
(This Section for use by Clerk of the Board Only.)

To: Sonoma County Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): General Services Facility Development and Management,
Sonoma County Sheriff's Office

Staff Name and Phone Number:

Bruce Oveson: 707-565-3665
Vince Hurst: 707-565-2667

Supervisorial District(s):

Title: Sonoma Raceway Radio Communications Site

Recommended Actions:

- A) Approve construction plans and specifications prepared by GHD, dated 2/26/18, for public bid.
- B) Approve Notice of Categorical Exemption prepared by Permit and Resource Management Department, Environmental Review Division.

Executive Summary:

This project is an 80' tall Radio Tower and Equipment Vault located at Sonoma Raceway. Currently there are no county radio facilities at this location which creates a gap in the essential services telecommunication network at and around the Raceway, Marin County, Sonoma Valley, and the Petaluma area. The work will consist of the installation of an 80 foot radio tower, emergency generator, and construction of an 18'X40' communication vault to house radio equipment. This new site will provide better communications for emergency response personnel and others resulting in better service to the surrounding community.

Discussion:

Project Description

The County of Sonoma maintains a network of wireless communication facilities that provides voice radio and wireless data communication for essential services, including the 911 dispatch system, emergency fire services, emergency medical response services, law enforcement, and other first responder, public safety and public works agencies. Sonoma Raceway will be a new communication site with an 80 foot tower to provide radio coverage in the south eastern area of the county.

Stantec was the initial architect of record when the project started in 2012. The project was shelved in 2015 due to lack of funding. Capital funding for design and construction was allocated in FY 17/18 and

on 12/18/2017 a Master Service Agreement with GHD was used to provide the redesign, construction drawings and specifications.

The project has been reviewed by Permit and Resource Management Department, Environmental Review Division for compliance with the California Environmental Quality Act. The recommendation of the review is a Categorical Exemption under Section 15303 of the State CEQA Guidelines. The project consists of the construction of new, small structures.

The project is scheduled to be advertised, for two consecutive weeks, and released for bidding on May 27, 2018 through the County’s Purchasing Portal. General Services will return to the Board of Supervisors for authorization to contract for construction on July 24, 2018.

Prior Board Actions:

12/11/2012 - Authorize the Chair of the Board to execute a consulting contract with Stantec for design and construction administration services for the Sears Point Radio Tower & Vault project.

Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community

The radio tower upgrade projects support the public safety needs of the residents of Sonoma County by providing continued, and improved communication coverage through this and surrounding areas. These projects also provide needed infrastructure for future communications systems expansion and upgrades.

Fiscal Summary

Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses	\$1,380,000		
Additional Appropriation Requested			
Total Expenditures	\$1,380,000		

Funding Sources

General Fund/WA GF	\$1,380,000		
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources	\$1,380,000		

Narrative Explanation of Fiscal Impacts:

FY 11/12: \$35,250 General Fund, FY 12/13: \$204,874, General Fund, FY 14/15: (\$100,000), General Fund, FY 15/16: (\$30,177.18), FY17/18: \$1,200,000 General Fund

\$1,309,946.82 have been allocated to this project. Cost and encumbrances for project to date are \$222,057.12 leaving a balance of \$1,087,889.70. The balance is sufficient for the completion of the project.

Staffing Impacts

Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)

Narrative Explanation of Staffing Impacts (If Required):

None

Attachments:

Attachment 1: CEQA Letter

Related Items “On File” with the Clerk of the Board:

On File #1: Front End Specs

On Files #2-5: Construction Drawings/Reports



NOTICE OF CATEGORICAL EXEMPTION -

Sonoma County Permit and Resource Management Department

2550 Ventura Avenue, Santa Rosa, CA 95403

(707) 565-1900

Fax (707) 565-1103

Sonoma County proposes to carry out the following project. Pursuant to Section 23A-11 of the Sonoma County Code, it has been determined that this project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA):

Project Title: Sears Point Communications Tower Site Project

Lead Agency / County Agency of Filing: Sonoma County

Project Proponent (Applicant): Sonoma County Department of General Services

Project Location: Sonoma Raceway, 29355 Arnold Drive, southeast of Sonoma, APN 068-150-056

Date of Approval:

Exemption Filed With: Sonoma County Clerk

PROJECT DESCRIPTION: The Sonoma County Department of General Services proposes to lease land and construct a new 80-foot tall communication tower and a 20 x 20-foot equipment building, including a diesel emergency generator, at the Sears Point Raceway, southeast of the city of Sonoma, near the intersection of Highway 37 and 121. The new tower will provide improved radio coverage for all Disciplines: Communications, Inter Operability, Animal Control, County Parks, and the Sonoma County Water Agency. The site is located in the hilly western portion of the site above the race track, on the flanks of Cougar Mountain, and near existing water tanks, and will provide coverage from Schellville to east of Skaggs Island. This location is critical to the County's ability to provide a reliable communications network for emergency services.

The new tower will be a triangular steel lattice tower, approximately eight feet wide at the base, and six feet wide at the top. The tower will not include lighting for aircraft, as that is not required for towers under 200 feet. The equipment building will be painted a brown to dark brown color for blending into the surrounding hillside, and the tower and mounting hardware will be painted a non-reflective gray color to blend with the skyline. An existing access road to the proposed site will require minor grading and rocking to have an all weather surface. The pad for the building and the tower will be cut into the hillside to create a flat area, requiring an approximately five-foot high retaining wall. The pad will be approximately 1,188 square feet in size to support the new tower, the 200 square foot equipment building, a new generator, and a surrounding walkway. Utility trenching will be needed to connect the tower to power from a nearby location down slope from the tower site, near the MACC building. No trees or shrubs will be removed to construct the proposed project.

REASON WHY THIS PROJECT IS EXEMPT: The proposed project is categorically exempt under Section 15303 of the State CEQA Guidelines. The project consists of the construction of new, small structures.

This Notice of Exemption is filed pursuant to the provisions of Section 15062 of the State CEQA Guidelines.

Lead Agency Contact Person:

Chris Seppeler
Senior Environmental Specialist
Permit and Resource Management Department
Environmental Review Division
(707) 565-8353

Project Proponent:

Caroline Judy
Director, Department of General Services



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 17
(This Section for use by Clerk of the Board Only.)

To: Sonoma County Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): General Services / Probation

Staff Name and Phone Number:

Marc McDonald, General Services: 565-3468
Kris Hoyer, Probation: 565-2891

Supervisorial District(s):

Title: Lease Amendment for Probation Department at 2777 Cleveland Avenue

Recommended Actions:

Authorize the General Services Director to execute a lease amendment with 2777 Cleveland Ave., LLC (Landlord), in order to: 1) redefine the leased premises, consisting of 2,953 sq. ft. of office space, located at 2777 Cleveland Avenue, Santa Rosa and leased by the Probation Department Adult Investigations Unit; 2) provide for additional tenant improvements; and 3) specify rent. 2nd Action

Executive Summary:

This matter involves a proposed lease amendment to provide for additional tenant improvements, reconfiguration of the Premises, and rent reduction for the Probation Department lease at 2777 Cleveland Avenue, Santa Rosa. On August 15, 2017, your Board approved execution of a lease with 2777 Cleveland Ave., LLC (the Landlord), for 3,529 sq. ft. of office space. Additional tenant improvements were requested by Probation staff to address safety concerns. Requested improvements included the provision of a restroom for the sole use by County, by partitioning it from the common areas of this multi-tenant building, and installation of additional exterior lighting in the parking lot associated with the Premises. In exchange for the loss of use of the common-area restroom, the Landlord requested use of Suite 105, previously included in the Premises leased by County. The reconfigured Premises would be reduced from 3,529 sq. ft. to 2,953 sq. ft. of office space, and the rent would be reduced from \$6,352 per month to \$5,315 per month, retroactive to March 1, 2018. If your Board takes the requested action, this matter will return to the Board on or about May 8, 2018, for consideration and consummation of the proposed lease amendment.

Discussion:

General. On August 15, 2017, your Board approved execution of a lease with 2777 Cleveland Ave., LLC (the Landlord), for 3,529 sq. ft. of office space located in Suites 5 through 9, at 2777 Cleveland Avenue, Santa Rosa (the Premises), for the purposes of providing the primary office space for the Probation Department's Adult Investigations Unit, who were relocated from the Family Justice Center at 2755

Mendocino Avenue, Santa Rosa. This unit is composed of 13 Deputy Probation Officers, two Supervising Probation Officers and one clerical support staff member. The Adult Investigations Unit prepares pre-sentence reports on cases involving felonies or misdemeanor crimes of a violent or sexual nature. Officers assigned to this unit also support the Superior Court by preparing reports that cover a variety of sentencing related issues, which includes the calculation of custodial credits and requests for the expungement of criminal records.

The Landlord for the Premises performed tenant improvements as originally provided in the Lease, and the Lease commenced on December 1, 2017. However, prior to moving Probation staff into the Premises, the labor representative for Probation staff requested additional tenant improvements be completed to address and satisfy Probation staff safety concerns. The Landlord agreed to perform these tenant improvements in order to expedite the move of Probation staff from the Family Justice Center.

Proposed Lease Amendment. Staff has negotiated terms for the proposed lease amendment as follows:

- Revised Premises: 2,953 sq. ft. of office space, located in Suites 6 through 9, at 2777 Cleveland Avenue, Santa Rosa. Please see Attachment 1.
- Rent: \$5,315 per month, or \$1.80 per sq. ft. The \$1.80 per sq. ft. rent rate approximates fair market value for similar-sized offices within a 1-mile radius of the Premises (central Santa Rosa area). Lease rates within this radius range from \$1.60 to \$2.00 per sq. ft. Rent will be increased annually by 3% in Year 3 and each year of the term, pursuant to the proposed lease amendment, and concurrent with the original Lease. As the additional tenant improvements will be completed on or about March 1, 2018. Rent would be reduced from \$6,352 per month to \$5,315 per month, effective and retroactive to March 1, 2018.
- Tenant Improvements: The tenant improvements include the provision of a restroom for County use only, separated from the building common areas by a wall and locking door; additional exterior lighting; installing covers over existing mail slots to prohibit public access to the interior Premises; and additional door hardware for security purposes. These improvements will be completed by the Landlord at Landlord's sole cost and expense.
- Termination: County may terminate the lease for any reason with 365 days' notice, without penalty.

Funding. The lease costs to fund the Probation Department's Adult Investigations Unit would be paid for by a combination of AB109 and General fund based sources.

Procedural Authority. A notice of intent for this lease transaction was published for the required three-week period pursuant to Government Code Section 25350 and the Board's action of April 10, 2018.

Prior Board Actions:

04-10-18—Declared intent to enter into the subject amendment

08/15/17—Authorized the General Services Director to execute the Lease
 07/11/17—Declared intent to enter into the Lease for 2777 Cleveland Avenue, Santa Rosa

Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community

The leased Premises at 2777 Cleveland Avenue, Santa Rosa, California will serve to promote the Board’s Work Priorities and further the Board’s goal of increasing public confidence in County safety and justice services through more efficient and effective delivery of Probation Adult Investigation Unit program services by providing the Probation Adult Investigations Unit staff the office space to prepare pre-sentencing reports for the Courts, which include recommendations for the removal from the community of those individuals that pose a threat to public safety as well as the conditions under which individuals will be re-integrated into the community.

Fiscal Summary

Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses	127,289	63,785	64,901
Additional Appropriation Requested			
Total Expenditures	127,289	63,785	64,901
Funding Sources			
General Fund/WA GF	127,289	63,785	64,901
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources	127,289	63,785	64,901

Narrative Explanation of Fiscal Impacts:

On 08/15/17, The Board originally approved one-time moving expenses and lease rent for the Fiscal Year 17-18 as follows:

1-time move expenses	\$ 86,971
Lease rent (September 2017-June 2018)	<u>63,522</u>
Total Fiscal Year 17-18 costs	\$150,493.

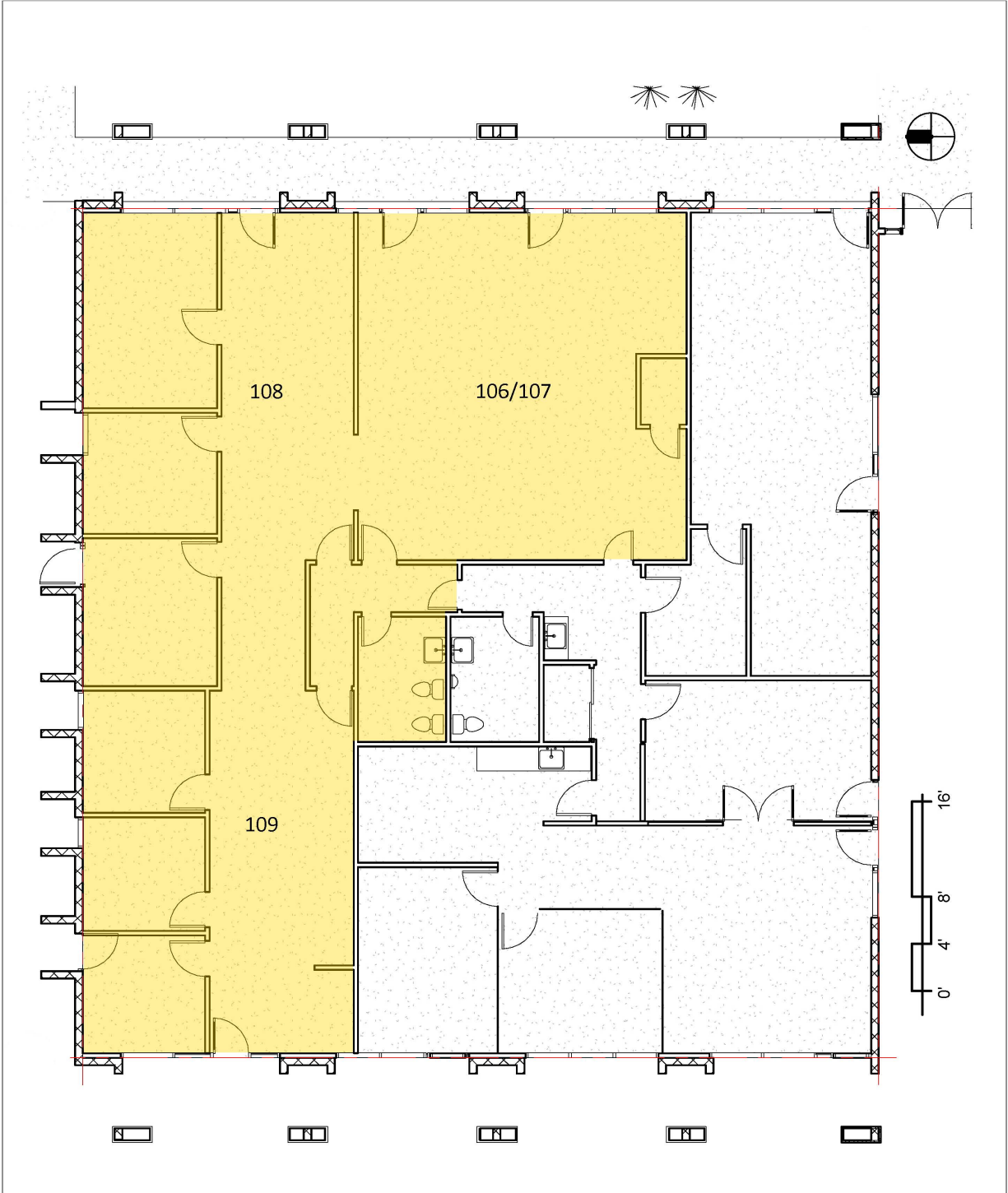
The commencement date for the original Lease occurred on 12/01/17. The original Rent per month was \$6,352. To date, Probation has made rent payments for the months of December, 2017 through February, 2018, for a total of \$19,056.

The total expenses for the Fiscal Years 2017-18, 2018-19 and 2019-20 are re-calculated, per the proposed lease amendment, as follows:

	Approved by Board on 08/15/17	Proposed (new)	Difference
FY17-18 Expenses (1-time Moving costs and rent)	\$150,493	\$127,289	\$ 23,204 Savings
FY18-19 Expenses (rent)	\$ 76,226	\$ 63,785	\$ 12,441 Savings
FY19-20 Expenses (rent)	\$ 78,132	\$ 64,801	\$ 13,331 Savings
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
None.			
Attachments:			
Attachment 1: Floor Plan Attachment 2: Proposed Amendment			
Related Items "On File" with the Clerk of the Board:			
None.			

EXHIBIT A - 2

PREMISES



FIRST AMENDMENT TO OFFICE LEASE

This First Amendment ("First Amendment"), dated as of _____, 2018 ("Effective Date"), is by and between **2777 CLEVELAND AVE., LLC**, a California limited liability company (hereinafter called "Landlord"), and the **COUNTY OF SONOMA**, a political subdivision of the State of California (hereinafter called "Tenant"). All capitalized terms used herein shall, unless otherwise defined, have the meaning ascribed to those terms in the Lease (as defined below). Landlord and Tenant are sometimes collectively referred to herein as the "parties" and singularly, as "party."

R E C I T A L S

WHEREAS, Landlord and Tenant entered into that certain Lease dated August 24, 2017 ("Lease"), for premises located at 2777 Cleveland Avenue, Suites 105 through 109, California ("Premises"), which are situated within that certain office building, commonly known as the North Building (the "North Building"); and

WHEREAS, Landlord and Tenant desire to amend the Lease in order to: (i) redefine the Premises, for the addition of the North Building restroom, and the elimination of Suite 105 from the Premises; (ii) provide for additional work of improvement for the Premises; (iii) recalculate the Rent based upon the modified Premises as of March 1, 2018; and (iv) modify other certain terms of the Lease as more particularly set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

A G R E E M E N T

1. The foregoing Recitals are true and correct.
2. Effective as of the Effective Date of this First Amendment, the Lease is hereby modified as follows:
 - A. Section 1.1 of the Lease is hereby deleted in its entirety and replaced with the following:

"1.1 Landlord hereby leases to Tenant and Tenant leases from Landlord those certain premises located at **2777 Cleveland Avenue, Suites 106, 107, 108 and 109**, described in Exhibit A-2 attached hereto ("Premises"), which are situated in that certain office building ("Building"), which Building is situated on that certain real property commonly known as Sonoma County Assessor's Parcel Number 015-492-004, located in the City of Santa Rosa, County of Sonoma, State of California ("Real Property"). Subject to verification as provided in Subsection 1.4.2, the Rentable Area (as defined in Section 1.4) and Usable Area (as defined in Section 1.4) of the Premises are two thousand nine hundred fifty-three (2,953) sq. ft. and two thousand six hundred thirty (2,630) sq. ft., while the Rentable Area of the Building is nine thousand six hundred eight (9,608) square feet. The Building, the areas servicing the Building, and the land on which the Building and those

areas are located (as shown on the site plan attached to this Lease as **Exhibit B**) are sometimes collectively referred to as the "Real Property".

B. Section 1.3 of the Lease is hereby deleted in its entirety and replaced with the following:

"1.3 Preparation of Premises; Acceptance. Landlord, at Landlord's sole cost and expense, shall prepare the Premises for Tenant's occupancy as described in **Exhibit C and Exhibit C-1**, attached hereto and by this reference made a part hereof. If this Lease conflicts with **Exhibit C and Exhibit C-1**, **Exhibit C and Exhibit C-1** shall prevail. Landlord hereby represents and warrants to Tenant that Landlord shall complete the Premises in accordance with the terms and conditions of **Exhibit C and Exhibit C-1**, even in the event that Landlord fails to obtain financing for some or all of the improvements. The general contractor (shall comply with the applicable provisions of California Labor Code Sections 1720.2 and 1770 et seq., regarding prevailing wages. Landlord shall cause all work under **Exhibit C and Exhibit C-1** to be performed in accordance with Tenant's sustainability practices, including any third-party rating system concerning the environmental compliance of the Building or the Premises, as the same may change from time to time. Landlord further agrees to engage a qualified third-party CalGreen or similarly qualified professional during the design phase through implementation of all work set forth in **Exhibit C and Exhibit C-1** to review all plans, material procurement, demolition, construction and waste management procedures to ensure the leasehold improvement project is in full conformance with Tenant's sustainability practices, and to obtain and maintain compliance with CalGreen on or promptly after the date of Substantial Completion (as defined below)."

C. Section 2.3.3 is hereby added to the Lease as follows:

2.3.3 Evidence of when the Landlord's work, as specified in **Exhibit C-1**, has been substantially performed shall be an acknowledgement to that effect in the form shown in **Attachment C-4**, Certificate of Substantial Performance of Tenant Improvements performed by Landlord, attached hereto and by this reference made a part hereof, signed by Landlord's representative and Tenant's representative. Substantial Completion of Landlord's Work or "substantially completed" is when: (a) construction of the Tenant Improvements have been substantially completed in accordance with **Exhibit C-1**; (b) Landlord's representative has confirmed that the Tenant Improvements have been constructed in accordance with **Exhibit C-1**; (c) Landlord's Representative and Tenant's Representative agree that all work has been substantially performed, such agreement not to be unreasonably withheld; (d) there is no incomplete or defective work that unreasonably interferes with Tenant's use of the Premises; (e) the Tenant Improvements are ready for occupancy by Tenant (including the signed **Attachment C-4**), except for the completion of Tenant's Work; and (f) water and sewer utilities and garbage services are hooked up and available for use by Tenant in the Premises.

D. Section 4.3 of the Lease is hereby deleted in its entirety and replaced with the following:

"4.3 Rental Adjustments. Rent for Year 1 shall be adjusted as outlined below. Beginning on the second anniversary of the Commencement Date and on each successive anniversary thereafter during the Lease Term, Base Rent shall be increased by three percent (3%), as follows:

Year 1:	December 1, 2017 - February 28, 2018	\$ 6,352.20 per month
	March 1, 2018 - November 30, 2018	\$ 5,315.40 per month
Year 2:	December 1, 2018 - November 30, 2019	\$ 5,315.40 per month
Year 3:	December 1, 2019 - November 30, 2020	\$ 5,474.86 per month
Year 4:	December 1, 2020 - November 30, 2021	\$ 5,639.11 per month
Year 5:	December 1, 2021 - November 30, 2022	\$ 5,808.28 per month.”

E. **Exhibit A** is hereby deleted and replaced with **Exhibit A-2**. **Exhibit C-1, Attachment C-3** and **Attachment C-4** are hereby deemed attached to the Lease.

3. Except to the extent the Lease is specifically amended or supplemented hereby, the Lease, together with exhibits is, and shall continue to be, in full force and effect as originally executed, and nothing contained herein shall, or shall be, construed to modify, invalidate or otherwise affect any provision of the Lease or any right of Landlord or Tenant arising thereunder.

4. This First Amendment shall be governed and construed under the internal laws of the State of California, and any action to enforce the terms of this First Amendment or for the breach thereof shall be brought and tried in the County of Sonoma.

LANDLORD AND TENANT HAVE CAREFULLY READ AND REVIEWED THIS FIRST AMENDMENT AND EACH TERM AND PROVISION CONTAINED HEREIN AND, BY EXECUTION OF THIS FIRST AMENDMENT, SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the Effective Date.

“LANDLORD”: **2777 CLEVELAND AVE., LLC**, a California limited liability company

By: _____
Print Name: _____
Title: _____

“TENANT”: **COUNTY OF SONOMA**, a political subdivision of the State of California

By: _____
Caroline Judy, Director
General Services Department

The General Services Director is authorized to execute this First Amendment to Office Lease, pursuant to the Board of Supervisors’ Summary Action dated _____, 2018.

APPROVED AS TO FORM FOR TENANT:

Elizabeth Coleman With
Deputy County Counsel

APPROVED AS TO CONTENT FOR TENANT:

David Koch, Chief Probation Officer
Department of Probation

Marc McDonald, Real Estate Manager
General Services Department

CERTIFICATE OF INSURANCE ON FILE WITH DEPARTMENT:

Reviewed by: _____ Date: _____

EXHIBIT A-2

PREMISES

EXHIBIT A - 2

PREMISES

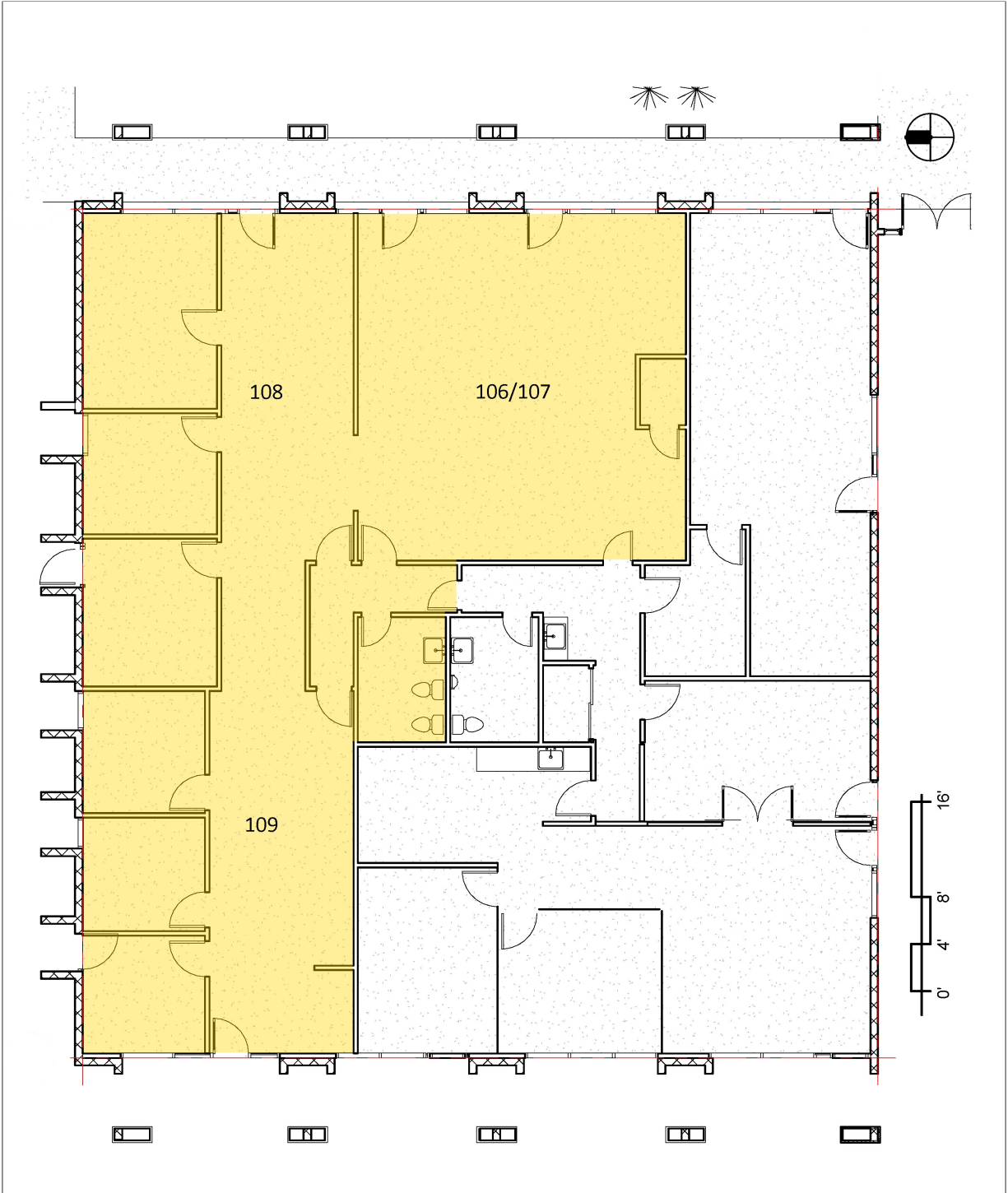


EXHIBIT B SITE PLAN

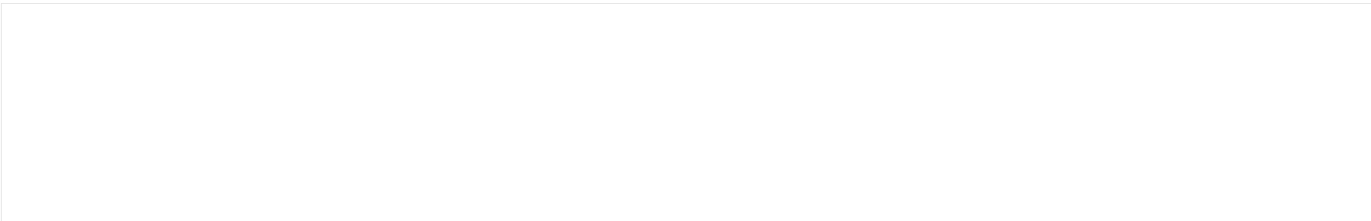
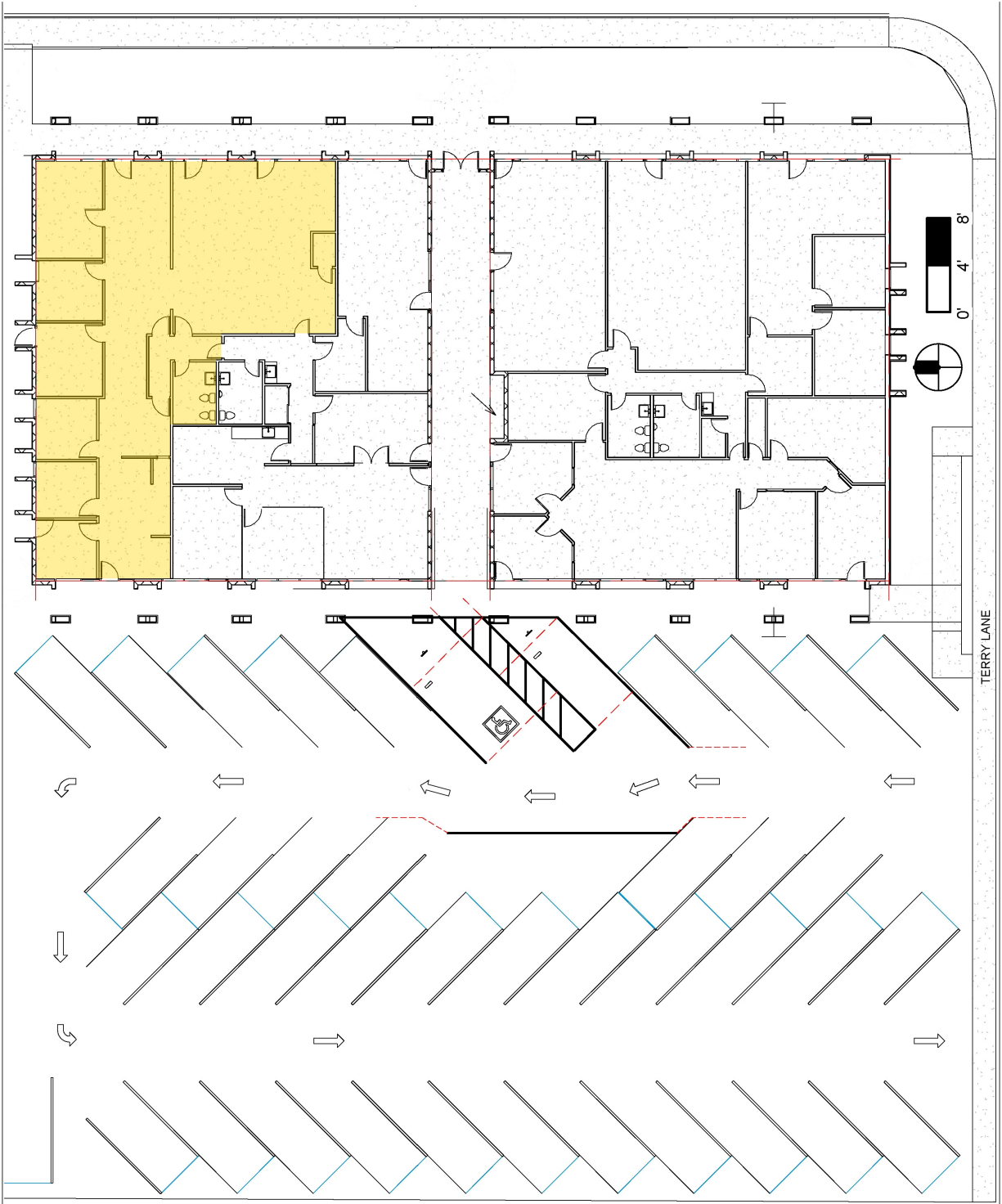


EXHIBIT C-1

TENANT IMPROVEMENTS

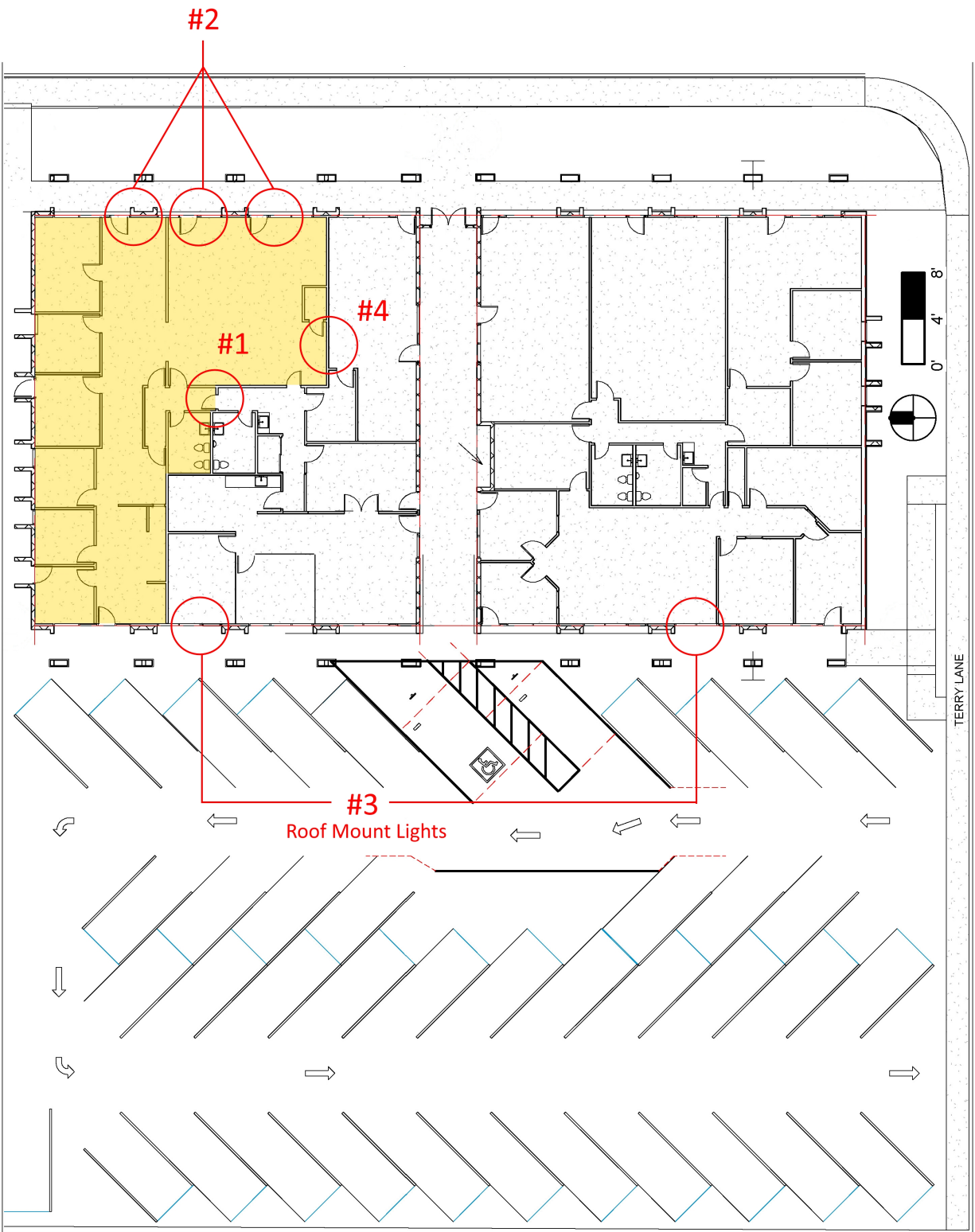
The following items are in addition to Tenant Improvements outlined in **EXHIBIT C** of the Lease. These Tenant Improvements shall be performed by Landlord, at Landlord's sole cost and expense:

1. **Restroom core:** Install a wall with a lockable door in the location, as shown in **Attachment C-3**.
2. **Front entrance door:** Install covers over existing mail slots to prevent outside access and materials from entering the interior of the Premises.
3. **Exterior Lighting:** Install additional lighting to the parking lot, adjacent to the Premises.
4. **Suite 105:** Install a lockable door handle for the door, between Suite 105 and Suite 106, to demise Suite 105 from Suite 106.

ATTACHMENT C-3

Tenant-approved sketch plan:

ATTACHMENT C-3 TO EXHIBIT C-1



Attachment C-4

**CERTIFICATE OF SUBSTANTIAL PERFORMANCE
OF TENANT IMPROVEMENTS PERFORMED BY LANDLORD**

The Tenant Improvements in the Premises located at **2777 Cleveland Avenue, Suites 106 through 109, Santa Rosa, California**, as defined in the that certain First Amendment to Office Lease dated _____, 2018, between **2777 CLEVELAND AVE., LLC** ("Landlord") and the **COUNTY OF SONOMA** ("Tenant"), was substantially performed effective _____, 2018.

Landlord's Representative: **2777 CLEVELAND AVE., LLC**, a California limited liability company

By: _____
Name: _____
Title: _____
Date: _____

Tenant's Representative: **COUNTY OF SONOMA**, a political subdivision of the State of California

By: _____
Name: _____
Title: _____
Date: _____



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 18
(This Section for use by Clerk of the Board Only.)

To: Sonoma County Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): General Services

Staff Name and Phone Number:

Matthew Mendonsa: 707-565-2552

Supervisorial District(s):

All

Title: Main Adult Detention Facility Dayroom Camera Project - Request to Award Installation Contract

Recommended Actions:

Award a contract with Integrated Security Controls, Inc., in the amount of \$170,515 for procurement and installation of a digital video camera recording system within selected inmate housing dayrooms and recreation yards at the Main Adult Detention Facility.

Executive Summary:

General Services is seeking Board approval to award a contract, following a competitive public bid process, for procurement and installation of a digital video camera recording system within selected inmate housing dayrooms and recreation yards at the Main Adult Detention Facility. This stand-alone digital camera system will augment existing analog camera systems within the facility and allow for storage and retrieval of incidents. This offers greater oversight and protection to both inmates and staff as event details can be scrutinized allowing for greater transparency.

Discussion:

Background:

The existing analog camera system within Main Adult Detention Facility allows for monitoring of inmates and staff along key movement corridors and entry points. This limited number of cameras monitors, without the ability to record activity along with the camera monitor placement leaves large areas of the facility unobserved. Areas such as inmate dayrooms and recreation yards offer the potential for incidents between inmates or inmates and staff and it is desirable to increase camera coverage in these areas as well as have the ability to record incidents for subsequent review and evaluation.

Project Description:

The project encompasses design, procurement and installation of a stand-alone digital video camera recording system comprising 36 cameras and recording with storage sufficient to accommodate 366 days of data (one year and one day) with access to viewing and retrieval from the facility Central

Control. The new system will offer the ability to record incidents as they occur within the housing modules and recreation yards. The placement of cameras will maximize coverage and serve as crucial record of evidence to provide information to investigations, potentially allowing for a clearer account of events.

Project Implementation and Phasing:

General Services has worked with the Sheriff and Pennell Consulting, Inc., a professional security design consulting firm, to ensure strategic deployment of the cameras. Pennell Consulting Inc., developed the design documents for installation. The initial phase of the project focuses on the first floor of the facility and will include the following intake and detention housing modules: Booking and Intake, Vehicular Sallyport, R-Mod, I- Mod, Mental Health, and the Infirmary. Supporting these will be a server room and viewing/retrieval station. It is hoped that in future phases additional cameras will be added to expand the system throughout other floors. The system has been design with future expansion in mind.

Public Bid:

A notice inviting bids for the Main Adult Detention Facility Dayroom Camera project was issued March 11, 2018. A mandatory pre-bid meeting and site-walk was held on March 20, 2018, for which four firms pre-qualified, and three firms attended. There was a formal question and answer period in which three firms posed bid- related questions. The bid opening was held on April 3, 2018 at 2:00 PM. Notice of Intent to Award was issued on April 9, 2018.

Bid Results:

Public Contract Code section 20128 provides that the contract shall be awarded to the lowest responsible bidder. One contractor submitted a bid for the Main Adult Detention Facility Dayroom Camera project. The bid results were as follows:

Bidders Name	Location	Base Bid
Integrated Security Controls, Inc.	Santa Rosa, CA	\$170,515

Schedule:

Upon Board approval, work is scheduled to start in June, 2018 and it is anticipated to be completed in August, 2018.

Prior Board Actions:

None.

Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community

The installation of a digital video camera recording system allows for greater oversight and security, as well as serving as crucial record of evidence for investigations, thereby protecting both inmates and staff.

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses	170,515		
Additional Appropriation Requested			
Total Expenditures	170,515		
Funding Sources			
General Fund	170,515		
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources	170,515		
Narrative Explanation of Fiscal Impacts:			
Funds were initially budgeted in the Board adopted FY 09-10 Capital Budget process. The project received actual funding in fiscal year 15/16 however, funding was pulled in fiscal year 16/17 prior to implementation and utilized for the Main Adult Detention Facility Inmate Clothing Conveyor – a critical path project. Funding was replenished in fiscal year 17/18 and is available for completion of the project.			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
N/A			
Narrative Explanation of Staffing Impacts (If Required):			
No staffing impact.			
Attachments:			
None.			
Related Items “On File” with the Clerk of the Board:			
On File #1: Project Plans On File #2: Project Specifications			



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 19
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors of Sonoma County

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Department of Health Services

Staff Name and Phone Number:

Barbie Robinson, 565-7876

Supervisorial District(s):

Title: Emergency Medical Services - Support for Exclusive Operating Area Ambulance Services Extension

Recommended Actions:

Authorize the Chair to submit a letter expressing County support for a one-year extension request of the California Emergency Medical Services Authority for the Exclusive Operating Area Ambulance Services Agreement covering central Sonoma County and work with the area's Assembly members and State Senator to support this request.

Executive Summary:

This item requests Board support for a request of the California Emergency Medical Services Authority for the approval of a one-year extension to the current Exclusive Operating Area Ambulance Services Agreement which covers much of central Sonoma County. The extension is requested to allow the Department of Health Services, administering the Coastal Valleys Emergency Medical Services Agency, to complete a comprehensive stakeholder process that was delayed by the October 2017 fires.

Discussion:

California state law establishes oversight and coordination of the provision of emergency medical services (EMS) in a two-tier system. The state-level tier is the California Emergency Medical Services Authority, which works with Local Emergency Medical Services Agencies (LEMSAs) designated by the county Boards of Supervisors. In Sonoma County, the Department of Health Services has been designated as the LEMSA and administers the EMS system as the Coastal Valleys Emergency Medical Services Agency, providing services to both Sonoma County and Mendocino County. The scope of services provided cover a wide variety of components of emergency medical care under the direction of a designated Medical Director including approval of emergency medical dispatching, pre-hospital care, hospital emergency room and trauma center services, and medical-health system disaster response. Much of the Sonoma County local emergency medical services agency responsibilities are spelled out in an emergency medical services ordinance.

One portion of the LEMSA scope is the regulation of ambulance services providing advanced life support transport for patients to and between hospitals. In order to provide the best patient care, ambulance services in the core area of Sonoma County (see attached map) have been provided under an exclusive operating area agreement since 1991. This area serves 250,000 Sonoma County residents and sees over 50,000 calls for service each year. By limiting services to one competitively procured provider in the area, the exclusive operating area agreement ensures that the first responders and the ambulance providers are closely coordinating together and focused on effective patient care for all instead of many providers trying to maximize their own revenues through competing for insured or affluent patients in the area.

Each year the LEMSA submits an Emergency Medical Services Plan to the California Emergency Medical Services Authority for review and approval. The California Emergency Medical Services Authority also approves the ambulance agreement for the exclusive operating area, conferring protection from anti-trust concerns during the term of the agreement which, essentially, sets up a monopoly for several years for those services in order to achieve more effective patient care. Periodically the LEMSA conducts comprehensive system-wide stakeholder outreach to ensure that the services delivered are up to date and to set the stage for the next competitive procurement of ambulance services for the exclusive operating area.

Last fall, Coastal Valleys Emergency Medical Services Agency (Coastal Valleys) began this process with the stakeholder kick-off meeting scheduled for October 10, 2017. As a result of the October fires, the kick-off was delayed, with the fires requiring the time and energies of Coastal Valleys staff and the vast majority of system stakeholders as well. The kick-off was delayed until February 9, 2018. Not only did this four month delay reduce the time available for the stakeholder process and the procurement of the next set of ambulance services for the core area but it also introduced a new focus, disaster preparedness and response, to ensure that lessons learned from the October fires can be appropriately incorporated into the emergency medical services ordinance and the ambulance services agreement going forward.

The current exclusive operating area ambulance services agreement expires June 30, 2019. In order to provide seamless services for this critical area, the procurements allow for a six month transition period for the new ambulance service provider after execution of the agreement. The project plan for the stakeholder and procurement process accounted for this but a four month delay from the fires makes conducting both a comprehensive stakeholder process and the procurement very challenging. Stakeholders and staff have discussed the possibility of an extension with representatives of the California Emergency Medical Services Authority and while not encouraging, the California Emergency Medical Services Authority will review a formal request (attached) recognizing the unique circumstances. Staff have asked for a one year extension for a number of reasons. First, the stakeholder process, which has been underway since February 2018, is proving to be more robust than originally anticipated in the project plan. Second, while disaster preparedness and emergency response are always included within the scope of the services, the October fires have highlighted the opportunity to further address these service areas, to incorporate lessons learned into the baseline for the ordinance and agreement, and to evaluate potential changes in service delivery needs for all types of major natural disasters. Finally, the alignment of the term of an exclusive operating area agreement with the County fiscal year is beneficial. There are many elements of the Coastal Valleys' budget and operations that track to the services provided in the exclusive operating area agreement and having those identified

before the County budget is prepared ensures that staff resources can be in place to implement and monitor the next agreement appropriately.

The Board's support and willingness to engage our local Assembly members and State Senator will encourage the California Emergency Medical Services Authority to reach a favorable decision on the extension request. The Board's Legislative Program includes State Priority Number 7 - Emergency and Disaster Preparedness and Assistance which seeks state assistance for appropriate emergency operations plans and recognizes the need to work with other agencies and the community for preparedness and response, something the comprehensive stakeholder process is doing and needs the time to do well. The request for state assistance is also consistent with Guiding Principles 3 and 10 of the Legislative Program, regarding actions that support the County Strategic Plan and advancing the health, vibrancy, and resiliency of local communities. A draft letter from the Board of Supervisors Chair to the California Emergency Medical Services Authority conveying the Board's support of the extension request is attached. Also, with your approval, staff will work with each Board Member in reaching out to our legislative delegation to secure assistance from them as well in support of this extension request. Should the California Emergency Medical Services Authority deny the request for extension, staff will work to present the Board with options to consider going forward.

Prior Board Actions:

On September 27, 2011 the Board authorized the Director of Health Services to execute an amendment to the American Medical Response West contract for emergency ground ambulance services increasing user fees effective October 1, 2011.

On December 16, 2008 the Board authorized the County Director of Emergency Medical Services Agency to execute the Emergency Ground Ambulance Services Agreement with American Medical Response West.

Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community

Extending the current Exclusive Operating Area Ambulance Services Agreement allows for continuation of services while a comprehensive stakeholder process is performed as part of a competitive process that was delayed due to the October 2017 fires.

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures	0	0	0
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources	0	0	0
Narrative Explanation of Fiscal Impacts:			
There are no fiscal impacts associated with this item.			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
N/A			
Attachments:			
1) Letter and transportation form that make up the local emergency medical services agency request to the California Emergency Medical Services Authority; 2) draft letter from the Chair on behalf of the Board expressing support; and 3) map of the current Exclusive Operating Area			
Related Items "On File" with the Clerk of the Board:			
None			

COASTAL VALLEYS EMS AGENCY

SERVING MENDOCINO AND SONOMA COUNTIES



May 9, 2018

Howard Backer, MD
Director, California Emergency Medical Services Authority
10901 Gold Center Drive, Suite 400
Rancho Cordova, CA

Dear Dr. Backer,

Sonoma County is nearing the end of the final extension of our 2009-2019 EOA contract with American Medical Response. Our contract was awarded to AMR in 2008 based on a competitive RFP process approved by the EMS Authority. The current agreement expires on June 30th, 2019.

In mid-2017 Coastal Valleys EMS Agency was on track to facilitate a system evaluation and stakeholder engagement process to inform the construction of the next contract and enable an RFP to move forward for a vendor. CVEMSA had secured an EMS Consulting firm to provide support and manage the information gathering and RFP development process; the Abaris Group was retained for the project work. The kickoff meeting for the stakeholder engagement process was scheduled for October 10th 2017.

October 10th found our Sonoma County stakeholders and State-wide partners engaged in a very different effort. The impact of the North Bay Wildfires on the regional medical health system is well understood by EMSA as a key partner in our response and recovery effort. What may be less clear is the impact the disaster had to our agency, our responders and our partner agency stakeholders. Focus on the EOA project was not possible for either CVEMSA, our county leadership or many of our partners as we and they worked through the process of response and recovery. Our recovery in fact is still very much an ongoing process, with Environmental Health and fiscal demands taking up much of our leadership and stakeholder bandwidth. Communities hard hit by the fire will be rebuilding for some time, and the service providers and municipal government partners so key to a successful EMS system project will have many conflicting demands on their attention.

Our process is moving once more. We have engagement with our County leadership and system stakeholders and a strong desire to look at our system with a different perspective than we would have otherwise. That new normal will take some careful, thoughtful consideration of our EMS system in light of the fire events. Although we have unparalleled damage to repair, we have perhaps an unparalleled opportunity to gain support for system improvements. These improvements likely will encompass a revision to the Sonoma County EMS Ordinance in addition to an extensive stakeholder process to review the current system. We don't want to rush that process. If we try to move too quickly, we will not have the crucial support for the process and the system, including the key core ambulance services provided for the majority of county residents through our Exclusive Operating Area that the process creates. We have had six stakeholder engagement meetings and are on track to continue those as we work through educating our stakeholders and addressing any issues they bring to the table. We are confident that the result will be an EMS system supported by a community of partners; effectively delivering field medical care sustainably, accountability and collaboratively within our County.

COASTAL VALLEYS EMS AGENCY

BRYAN CLEAVER
REGIONAL EMS ADMINISTRATOR

195 CONCOURSE BLVD. SUITE B
SANTA ROSA, CA 95403

707.565.6501

WWW.CVEMS.ORG

MARK LUOTO MD
REGIONAL MEDICAL DIRECTOR

Because we lost actual process time and more importantly have identified areas that stakeholders feel require addressing prior to designing the next EMS EOA, including lessons learned from reviewing the disaster response and recovery, we are keenly interested in retaining the current provider as our exclusive provider of ALS and Emergency Ambulance Service until we have completed a careful EMS System review, improvement and EOA development and vendor selection process via RFP.

We have begun discussions with AMR and have confidence that they can continue to offer services provided under the existing exclusive contract. The geographic area covered by Sonoma County EOA #1 will remain unchanged prior to an RFP release and a new competitive process for vendor selection. Oversight of the provider's rates will continue, with any rate adjustment approved by the LEMSA per the existing contract. At the present time, the only change contemplated to the current agreement will be an extension of the end date through Month Date Year.

CVEMSA looks forward to a collaborative effort with the Authority as we work through the process of restoring our community and our EMS system. We understand there are significant limitations on the ability of EMSA and LEMSA's to create exclusive operating areas for very valid reasons. We do believe we have had events occur outside of our ability as a system organizer to manage within the timeframe remaining to run a successful community –supported competitive process. Ultimately the burden will fall on our patients if we cannot do so and do not extend the existing contract. That burden will take the form of a return to the competitive market-driven service model. We feel the risk to the patients from that eventuality exceeds that of extending the EOA agreement for a brief time while continuing to move to our next RFP.

To that end, CVEMSA is formally submitting a request to the California EMS Authority to continue the geographic area submitted as EOA#1 in the 2017 CVEMSA EMS Plan as served by American Medical Response as the exclusive provider of Advanced Life Support and Emergency Ambulance services under the terms and conditions of the current contract amended through June 30, 2020.

Respectfully submitted,

Bryan Cleaver
EMS Administrator



<p>Local EMS Agency or County Name: <u>Coastal Valleys EMS Agency - Sonoma</u></p>
<p>Area or subarea (Zone) Name or Title:</p> <p>EOA #1</p>
<p>Name of Current Provider(s): Include company name(s) and length of operation (uninterrupted) in specified area or subarea.</p> <p>American Medical Response dba/ Sonoma Life Support</p>
<p>Area or subarea (Zone) Geographic Description:</p> <p>See Sonoma County Ambulance Service Zone Map in section "Z" within this plan.</p>
<p>Statement of Exclusivity, Exclusive or non-Exclusive (HS 1797.6): Include intent of local EMS agency and Board action.</p> <p>Exclusive franchise developed and implemented through a competitive RFP process. County BOS approved contract for service. AMR was awarded the new Franchise contract beginning 7/1/2009 for a 5year term.</p>
<p>Type of Exclusivity, "Emergency Ambulance", "ALS", or "LALS" (HS 1797.85): Include type of exclusivity (Emergency Ambulance, ALS, LALS, or combination) and operational definition of exclusivity (i.e., 911 calls only, all emergencies, all calls requiring emergency ambulance service, etc.).</p> <p>Type of Exclusivity is Ground All Emergency Ambulance and All ALS Level of exclusivity includes: Emergency Response 911 and 7-digit. Transport services include all ALS Services and ALS Standby Services Exclusivity does not include BLS, CCT, or Air</p>



Method to achieve Exclusivity, if applicable (HS 1797.224):

If grandfathered, pertinent facts concerning changes in scope and manner of service. Description of current provider including brief statement of uninterrupted service with no changes to scope and manner of service to zone. Include chronology of all services entering or leaving zone, name or ownership changes, service level changes, zone area modifications, or other changes to arrangements for service.

If competitively-determined, method of competition, intervals, and selection process. Attach copy/draft of last competitive process used to select provider or providers.

Announcement of RFP June 4, 2008, RFP Document Available July 11, 2008, Deadline for Written Questions July 25, 2008, Pre-Proposal Conference July 31, 2008, 11:00 am, Letter of Interest Due August 7, 2008, Closing Date/Time for Proposals October 2, 2008 – 4:00 pm, Review of Credentials/Proposals October 3 – 9, 2008

Recommendations Made by the Evaluation Committee to the County Director of the EMS Agency October 20, 2008

Notice of Intent to Award by the DHS/Coastal Valleys EMS, Agency of the Successful Proposal October 31, 2008

Last Day to Protest November 11, 2008, Decision on Protest Within 30 calendar days of receipt of the letter of intent to file protest, Contract Negotiation November, 2008, Request Authorization from the Board of Supervisors to Enter into Contract with the EMS Agency's Selected Proposer December 9, 2008,

Implementation July 1, 2009.

Full RFP available at: <http://www.sonoma-county.org/cvremis/resources/pdf/sonoma/franchise/rfp20080714.pdf>

Howard Backer MD
Director, California Emergency Medical Services Authority
10901 Gold Center Drive Suite 400
Rancho Cordova, CA 95670

Dear Dr. Backer

The fires in Northern California during October, apart from being the most devastating in California history, have impacted our county in an almost inconceivable variety of ways. In the past 6 months, we have learned a great deal about how extensive those impacts have been.

One of these impacts has been to our Local Emergency Medical Services Agency (Coastal Valleys EMSA) work with the first responder and emergency medical service providers in the stakeholder outreach for continuous quality improvement, particularly with respect to ambulance services that are provided under an Exclusive Operating Area agreement serving 240,000 in residents in the core of the county. Consistent with long established practice and timed for completion in order to conduct the next competitive procurement for these services, the kick-off for that process was scheduled for October 10, 2017.

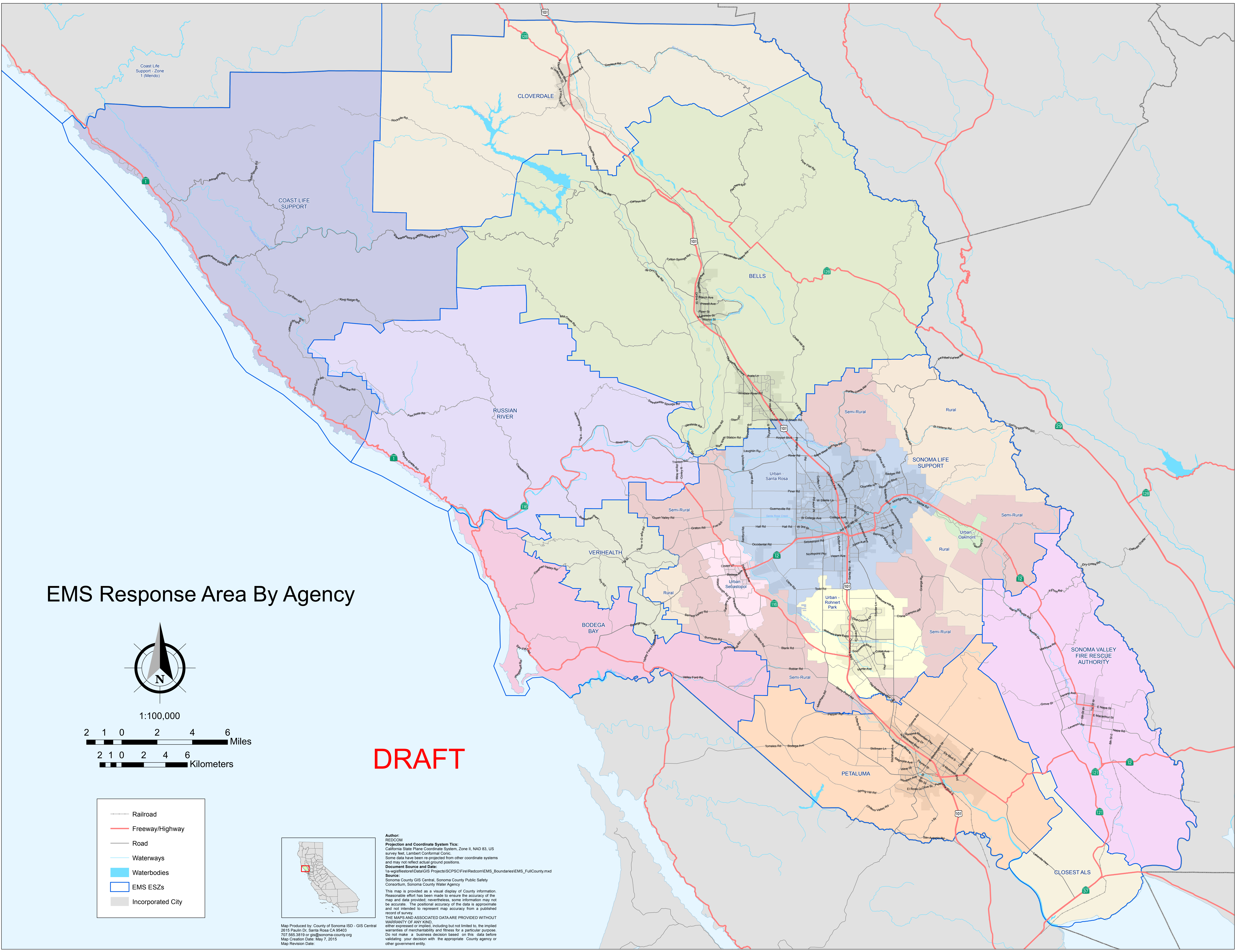
As you can imagine, the Coastal Valleys staff and all the stakeholders of the EMS system in the County were deeply engaged at that moment in response to the devastating fires in the county. Not only did this work disrupt the short-term schedule of the effort, it affected many of the stakeholders personally thorough loss of homes and the need to support recovery efforts for themselves and thousands of others in the community. This delayed the effort significantly, to the point where it was only possible to begin again in February 2018.

But in addition to the four month delay, the fires not only tested the emergency response capabilities of the system but provided a stark reminder that the events and system must be rigorously reviewed and examined for the lessons learned so that the system can be better prepared for future emergencies. We cannot ignore the need to engage in a more thorough process than was originally envisioned. The system's stakeholders and the public we serve cannot have less.

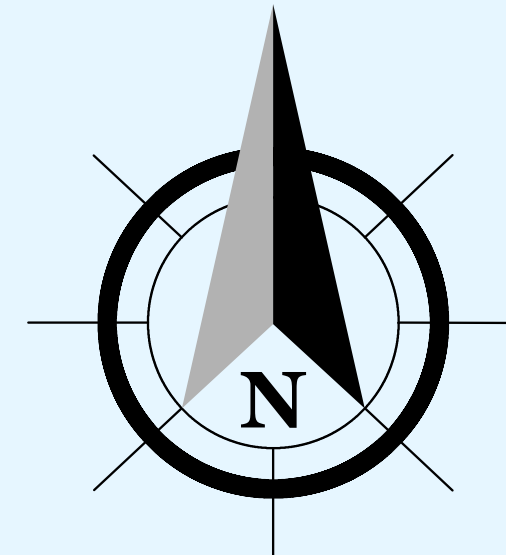
Yet, this puts Coastal Valleys EMSA in a difficult position, for there simply isn't enough time in order to complete the comprehensive stakeholder process and incorporate improvements into the next competitive procurement within the current term of the agreement and provide for enough time to transition safely to the next ambulance provider after the procurement. The risk of returning to the dangerous practice of ambulance organizations fighting each other for patients in the area or degradation of medical and health outcomes with the loss of ability to provide for the coordinated delivery of services in a environment characterized by daily ambulance competition is too great to proceed without a fully functioning Exclusive Operating Area agreement in place.

The Board of Supervisors has learned of this challenge facing Coastal Valleys and of the critical role the California Emergency Medical Services Authority has in approving any extension of exclusive operating area agreements under the annual EMS plans for our County.

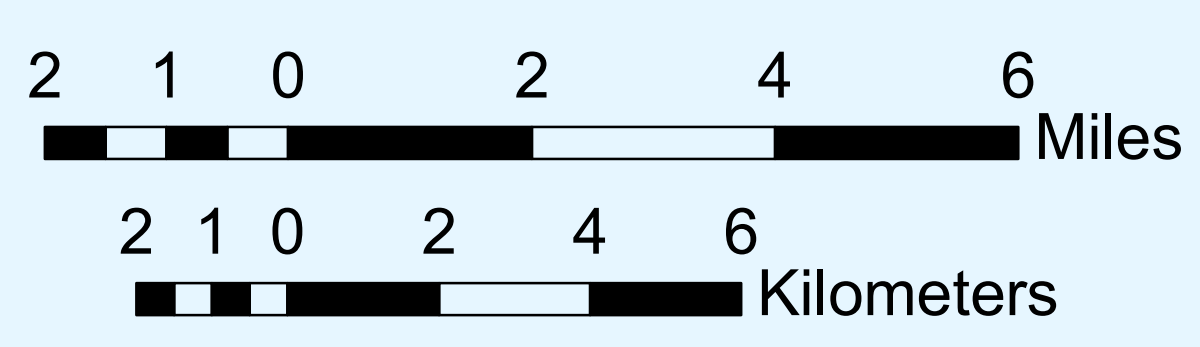
We unanimously and strongly urge you to support Coastal Valley's request for a one year extension dated May 7, 2018 so that they can continue their comprehensive stakeholder engagement process and competitive procurement for the next Exclusive Operating Area ambulance services agreement.



EMS Response Area By Agency



1:100,000



DRAFT

- Railroad
- Freeway/Highway
- Road
- Waterways
- Waterbodies
- EMS ESZs
- Incorporated City



Author:
REDCOM

Projection and Coordinate System Title:
California State Plane Coordinate System, Zone II, NAD 83, US survey feet, Lambert Conformal Conic.

Some data have been re-projected from other coordinate systems and may not reflect actual ground positions.

Document Source and Date:
\\scc\filestore\GIS\Projects\SCPS\Fire\Redcom\EMS_Boundaries\EMS_FullCounty.mxd

Source:
Sonoma County GIS Central, Sonoma County Public Safety Consortium, Sonoma County Water Agency

This map is provided as a visual display of County information. Reasonable effort has been made to ensure the accuracy of the map and data provided; nevertheless, some information may not be accurate. The positional accuracy of the data is approximate and not intended to represent map accuracy from a published record of survey.

THE MAPS AND ASSOCIATED DATA ARE PROVIDED WITHOUT WARRANTY OF ANY KIND, either expressed or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose. Do not make a business decision based on this data before validating your decision with the appropriate County agency or other government entity.

Map Produced by: County of Sonoma ISD - GIS Central
2615 Prairie Dr. Santa Rosa CA 95403
707.565.3819 or gis@sonoma-county.org
Map Creation Date: May 7, 2019
Map Revision Date:





County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 20

(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors/IHSS Public Authority Board Of Directors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Human Services/In-Home Supportive Services (IHSS) Public Authority

Staff Name and Phone Number:

Diane Kaljian – 565-5932
Mike Humphrey – 565-5701

Supervisorial District(s):

Title: Agreement between In-Home Supportive Services (IHSS) Public Authority and Human Services Department.

Recommended Actions:

Approve the Agreement for Services between the Human Services Department and the In-Home Supportive Services (IHSS) Public Authority effective beginning on July 1, 2018 and ending on June 30, 2021.

Executive Summary:

The IHSS Public Authority contracts with Human Services for the staff required to perform the State mandated services, including the operations of the registry, referral, background screening, and training. The agreement includes a Registry Supervisor and the Registry staff needed to perform the mandated services, as well as overhead costs associated with these positions and other County Departments' services. Human Services and Public Authority may negotiate changes to the Human Services staff positions to best meet the needs of both parties.

In addition, the contract delegates the supervision of the IHSS Payroll Supervisor to the Public Authority Manager. IHSS Payroll is a Human Services function. The Human Services Section Manager shall retain responsibility of IHSS policy and operations. The IHSS Payroll Supervisor and payroll staff are Human Services Department employees.

The reimbursement for services provided under this agreement is budgeted in accordance with the annual allocation established through the County budget process.

Discussion:

Historical Background:

IHSS Program: IHSS is a Human Services Department program mandated by the State to serve clients who need assistance (shopping, cooking, housecleaning, bathing, etc.) in order to live in their homes. Those eligible are aged, blind, and disabled clients of public assistance or with low incomes.

IHSS Public Authority: By statute, the purpose of the IHSS Public Authority is twofold: 1) to act as the employer of record for IHSS caregivers for the purpose of collective bargaining over wages, hours, and other conditions of employment; and, 2) to provide specific functions (referral, registry, screening, and training) to IHSS clients and caregivers. On 06/05/01, the Board of Supervisors approved an ordinance to establish the IHSS Public Authority, as an independent public entity, with members of the Board of Supervisors serving as the Board of Directors. Through an Interagency Agreement between the Public Authority and the County, the Public Authority operates within the Human Services Department.

The current agreement between Human Services and IHSS Public Authority was approved by the Board on June 26, 2012. The term of the agreement ran from fiscal year to fiscal year unless amended or terminated. It has been determined that a three-year term is preferred. The primary change involves authorizing the IHSS Public Authority Manager the responsibility of supervising the IHSS Payroll Supervisor. The request is to approve an agreement that begins on July 1, 2018 and expires on June 30, 2021.

Prior Board Actions:

06/26/12	Agreement between the Human Services Department and the IHSS Public Authority
06/23/09	Agreement between the Human Services Department and the IHSS Public Authority
06/27/06	Agreement between the Human Services Department and the IHSS Public Authority
07/01/03	Agreement between the Human Services Department and the IHSS Public Authority
01/29/02	Agreement between the Human Services Department and the IHSS Public Authority
10/16/01	Interagency Agreement for the IHSS Public Authority
06/12/01	Ordinance to establish the Sonoma County IHSS Public Authority

Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community

IHSS provides services to low-income seniors and persons with disabilities to help them maintain health, independence, and the ability to remain at home

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses		994,796	994,796
Additional Appropriation Requested			
Total Expenditures	0	994,796	994,796
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other		994,796	994,796
Use of Fund Balance			
Contingencies			
Total Sources	0	994,796	994,796
Narrative Explanation of Fiscal Impacts:			
<p>Funds for this agreement are in the FY17/18, FY18/19 and future IHSS Public Authority and Human Services budgets. Under the Agreement for Services, IHSS will reimburse HSD \$950,000 annually for Payroll and Administrative staff support, and HSD will in turn reimburse IHSS \$44,796 annually for supervision of Payroll and Administration staff. The revenues and expenditures of both IHSS and HSD are combined in the Fiscal Summary to present an overall balanced budget across both Departments.</p>			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
None			
Attachments:			
Agreement for Services			
Related Items “On File” with the Clerk of the Board:			
None			

INTRACOUNTY MEMORANDUM OF UNDERSTANDING

BETWEEN

Sonoma County Human Services Department

AND

Sonoma County In-Home Supportive Services Public Authority

IHSS Registry and Related Services

Term: July 1, 2018 – June 30, 2021
HSD Agreement Number: AA-PA-IHSS-1821

Preamble

This Memorandum of Understanding (hereinafter “MOU”) is entered into by and between the County of Sonoma Human Services Department (hereinafter “Human Services”) and the County of Sonoma In-Home Supportive Services (IHSS) Public Authority (hereinafter “IHSS-PA”).

WHEREAS, it is the mutual objective of Human Services and IHSS-PA to establish a working agreement with respect to the In-Home Supportive Services Registry, Referral, Training, and Screening program; and

WHEREAS, IHSS-PA desires to have staff assigned for purposes of providing registry, referral, training, and screening services; and

WHEREAS, both Human Services and IHSS-PA desire to integrate services for the benefit of Sonoma County residents; and

WHEREAS, Human Services is willing to provide staff on the terms and conditions set forth herein,

NOW, THEREFORE, Human Services and IHSS-PA agree to the following provisions:

General Provisions

I. Purpose

The purpose of the MOU is to establish the roles and responsibilities of the parties in order to provide the In-Home Supportive Services (IHSS) registry, referral, training, and screening services.

The Sonoma County In-Home Supportive Services (IHSS) Public Authority is a non-County public legal entity, created by the Sonoma County Board of Supervisors on June 12, 2001. The establishment of the IHSS Public Authority was the result of State Law (AB 1682) that required every county in California without a Public Authority to:

- 1) Establish an IHSS advisory committee comprised of a majority of consumers;

- 2) Establish an "employer of record" for individual IHSS workers for the purposes of collective bargaining over wages, benefits, and other terms and conditions of employment.

Additionally the IHSS-PA provides recruitment and maintenance of a registry of screened and approved IHSS workers, and training assistance to increase the skills and knowledge of both IHSS workers and consumers.

Each party to this MOU shall perform the services and shall complete all obligations assigned to that party as described in "Exhibit A: Scope of Work" (hereinafter "Exhibit A").

II. Term

- A. The term of this MOU shall be from July 1, 2018 through June 30, 2021 unless terminated earlier in accordance with the provisions in II.B. below.
- B. Either party to this MOU may terminate the MOU for convenience and without cause. Termination shall be effected by giving the other party thirty (30) days advance written notice of the effective date of termination. In the event of a termination by IHSS-PA, Human Services shall be entitled to receive compensation for any services satisfactorily performed through the date of termination.

III. Allocation of Responsibilities

Human Services shall be responsible for damages caused by the negligence of its officers, agents and employees occurring in the performance of this MOU. IHSS-PA shall be responsible for damages caused by the negligence of its officers, agents and employees occurring in the performance of this MOU. It is the intention of Human Services and IHSS-PA that the provision of this paragraph be interpreted to impose on each party responsibility for the negligence of their respective officers, agents and employees.

IV. Notices and Correspondence

All written correspondence shall be sent to:

Human Services: Human Services Department
 3600 Westwind Blvd
 Santa Rosa, CA 95403
 nmartin@schsd.org

IHSS-PA: In-Home Supportive Services Public Authority
 Michael Humphrey, Manager
 3725 Westwind Blvd
 Santa Rosa, CA 95403
 mhumphre@schsd.org

V. Confidentiality

- A. Both parties agree to require its employees to comply with the provisions of Section 10850 of the Welfare and Institutions Code and Division 19 of the California Department of Social Services Manual on Policy and Procedures,

and with Human Services Department Administrative Manual, Section 1-4, Confidentiality, to ensure that:

1. All applications and records concerning any individual made or kept by any public officer or agency in connection with the administration of any provision of the Welfare and Institutions Code relating to any form of public social services for which grants-in-aid are received by that state from the federal government will be CONFIDENTIAL, and will not be open to examination for any purpose not directly connected with the administration of such public social services.
2. No person will publish, disclose or use or permit or cause to be published, disclosed or used any confidential information pertaining to an applicant or recipient.
 - a. Both parties agree to inform all employees, agents and partners of the provisions and that any person knowingly and intentionally violating the provisions of this paragraph is guilty of a misdemeanor.
 - b. Both parties understand and agree that this provision shall survive any termination or expiration of this MOU.

VI. Nondiscrimination

- A. Both parties shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this MOU are incorporated herein by this reference.
- B. Both parties understand and agree that administrative methods and/or procedures which have the effect of subjecting individuals to discrimination or otherwise defeating the objectives of the applicable and aforementioned laws will be prohibited.
- C. Both parties and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

VII. Record Retention/Access

- A. Human Services acknowledges that applicable portions of the Social Security Act and the Omnibus Budget Reconciliation Act of 1980 require inclusion of a provision requiring Human Services to allow the Secretary of the Department of Health and Human Services (HHS) and other authorized Federal officials, access to Human Services' books and records as they relate to services provided pursuant to this MOU (in accordance with Section 1861 (V) (1) (I) of the Social Security Act). Therefore, if the value or cost of services rendered to IHSS-PA pursuant to this MOU is ten thousand dollars (\$10,000.00) or more over a twelve (12) month period, Human Services agrees as follows:
 1. Until the expiration of four (4) years after the furnishing of any service pursuant to this MOU, Human Services shall, upon written request, make

available to the Secretary of HHS, the Secretary's duly authorized representative, the Controller General or the Controller Generals' duly authorized representative, this subcontract and such books, documents and records as may be necessary to certify the nature and extent of the cost of value of services performed by Human Services hereunder.

2. The availability of Human Services' books, documents, and records shall be subject at all times to such criteria and procedures for seeking and obtaining access as may be promulgated by the Secretary of HHS by regulation or other applicable laws.

VIII. Rights to Data

Subject to compliance with all applicable laws and regulations regarding the confidentiality of patient records, the parties to this MOU may use in any manner all aggregate data, reports, or other materials produced out of the performance of this MOU.

IX. Dispute Resolution

- A. Both parties shall continue to perform the obligations undertaken herein in the event of any dispute arising under this MOU.
- B. Both parties shall make a good faith effort to resolve such dispute through negotiation prior to the commencement of an action in any state or federal court.
- C. No lawsuit pertaining to any matter arising out of or under this MOU shall be instituted in any state other than California.

X. Assignment/Delegation

Neither party hereto shall assign, sublet or transfer any interest in this Agreement or any duty hereunder without written consent of the other, and no assignment shall be of any force or effect whatsoever unless and until the other party shall have so consented.

XI. Merger

This writing is intended both as the final expression of the MOU between parties hereto, with respect to the terms, and as a complete and exclusive statement of the terms of the MOU. No amendment to this MOU shall be effective unless and until such amendment is evidenced in writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as the Effective Date.

Human Services Department

In-Home Supportive Services-Public Authority

By: _____
Karen Fies
Director
Human Services Department

By: _____
Michael Humphrey
Public Authority Manager

Date: _____

Date: _____

Reviewed for Content:

By: 
Diane Kaljian
Assistant Director
Human Services Department

Approved as to form for County:

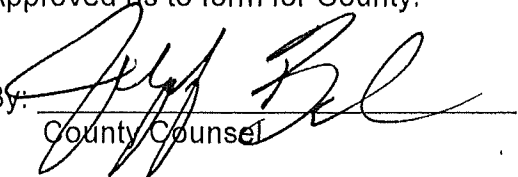
By: 
County Counsel

Exhibit A: Scope of Work

1. Human Services Roles & Responsibilities

- 1.1. Human Services will provide a Registry Supervisor and the Registry staff (referred to as Human Services Registry staff) needed to perform the mandated services detailed in 1.4.

Human Services and Public Authority may negotiate changes to the Human Services staff positions to best meet the needs of both parties.

- 1.2. Human Services shall provide bilingual staff and translation services as needed.
- 1.3. Human Services will provide a Registry Supervisor and Home Care Support Specialists as part of the Public Authority Registry Program (referred to as Human Services Registry staff).
- a) The Registry Supervisor shall be supervised by the IHSS-PA Manager. The Registry Supervisor's evaluation shall be completed by the IHSS-PA Manager, with input from the Human Services Section Manager. The evaluation will be held in the Human Services personnel files.
 - b) Human Services Registry staff (including Home Care Support Specialists and Home Care Aides) shall be supervised by the Registry Supervisor. Registry staff performance evaluations shall be completed by the Registry Supervisor, with input from the IHSS-PA Manager and the Human Services Section Manager. The evaluations will be held in the Human Services personnel files.
 - c) Human Services Registry staff schedules will be designed to accommodate the needs of the IHSS-Public Authority.
- 1.4. Human Services Registry staff shall provide the following services:
- a) Provide State-mandated enrollment functions for all new IHSS workers, including Department of Justice background checks, in-person orientation, completion of required forms, and the collection of valid photo ID and Social Security card.
 - b) Provide Registry recruitment, application processing, orientations, applicant interviews, reference checks, criminal background checks, and enrollment.
 - c) Referral of IHSS workers from the Registry to consumers as requested and assistance with matching an appropriate IHSS worker to meet the needs of the consumer.
 - d) Provide consumers with support in the areas of recruitment, screening, interviewing, supervising, and managing IHSS workers.

- e) Provide IHSS workers and consumers access to training opportunities.
 - f) Provide initial assessment, eligibility determination, home care agency referral, and related support for the Human Services-funded Urgent Substitute Provider Program.
- 1.5. Human Services shall delegate responsibility for the supervision of the IHSS Payroll Supervisor to the IHSS-PA Manager. IHSS Payroll remains a Human Services Department function. The Human Services Section Manager will retain responsibility for IHSS Payroll policy and operations. The Payroll Supervisor and payroll staff are Human Services Department employees.
- a) The IHSS Payroll Supervisor shall be supervised by the IHSS-PA Manager. The Payroll Supervisor's evaluation shall be completed by the IHSS-PA Manager, with input from the Human Services Section Manager. The evaluation will be held in the Human Services personnel files.
 - b) IHSS Payroll staff shall be supervised by the IHSS Payroll Supervisor. Payroll staff performance evaluations shall be completed by the Payroll Supervisor, with input from the IHSS-PA Manager and the Human Services Section Manager. The evaluations will be held in the Human Services personnel files.
- 1.6. Human Services shall provide live electronic CMIPS access to the IHSS-PA.
- 1.7. Human Services staff shall meet with IHSS-PA Manager on a monthly basis, at a minimum, to discuss program functions, as well as other IHSS and Public Authority-related issues.
- 1.8. Public Authority staff shall attend regularly scheduled monthly IHSS and Division staff meetings.
- 1.9. Human Services Registry staff shall abide by all IHSS-PA operational policies and procedures.

2. IHSS-Public Authority Roles & Responsibilities

- 2.1. IHSS-PA shall be the employer of record of IHSS workers and perform the following functions:
- a) Conduct appropriate background screening of potential IHSS workers; and
 - b) Establish a registry of screened and approved potential IHSS workers for consumers that best match the requested needs of the consumer;
 - c) Provide potential IHSS workers with referrals to consumers;

d) Provide training for both IHSS workers and consumers.

2.2. The IHSS-PA Manager shall:

- a) have full autonomy to direct the functions of the IHSS Registry Services;
- b) have oversight of operational issues related to this MOU;
- c) oversee the Registry operations, including direct supervision of the Registry Supervisor;
- d) oversee the IHSS Payroll operations, including direct supervision of the IHSS Payroll Supervisor;
- e) have input into the selection, supervision and evaluation of Human Services staff provided through this MOU;
- f) meet with Human Services staff on a monthly basis, at a minimum, to discuss program functions, as well as other IHSS and Public Authority-related issues

2.3. The IHSS-PA shall abide by all confidentiality requirements addressed in this MOU when using CMIPS data and other consumer related information.

2.4. IHSS-PA shall abide by Adult Protective Services mandated reporter laws and report all suspicions of elder and dependent adult abuse and neglect.

3. Funding

- A. Public Authority shall reimburse Human Services for actual costs from Public Authority State and Federal allocations on a quarterly basis.
- B. Human Services shall pay 25% FTE of the IHSS-PA Manager salary and benefit costs to provide supervision of IHSS Payroll.



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 21
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Human Services Department

Staff Name and Phone Number:

Diane Kaljian (707)-5932
Paul Dunaway (707) 565-2742
Rhiannon Coxon (707) 565-5956

Supervisorial District(s):

Title: Area Agency on Aging FY 2018-19 Area Plan Update

Recommended Actions:

Approve the Area Agency on Aging FY 2016-20 Area Plan Update for FY 2018-19 and authorize the Chairperson of the Board of Supervisors to sign the Transmittal Letter to California Department of Aging, a condition to receive federal funding.

Executive Summary:

The Sonoma County Area Agency on Aging is required by the California Department of Aging to develop an Area Plan every four years and update it annually. The plan establishes annual goals and objectives that serve to improve the lives of older adults, adults with disabilities, and their caregivers in Sonoma County.

Discussion:

The Board of Supervisors has been designated as the governing body of the Sonoma County Area Agency on Aging by the California Department of Aging (CDA) since 1980. The Area Agency on Aging is responsible for planning and developing policy and advocating for the needs of seniors, adults with disabilities, and their caregivers as well as administering Older Americans Act funding. These federal funds assist seniors and people with disabilities remain independent and safe at home and in the community as long as possible.

The California Department of Aging distributes the federal funds to local Area Agencies on Aging for the provision of services for seniors (persons 60 and older). The Sonoma County Area Agency on Aging receives over \$2 million annually from the California Department of Aging and contracts with local community-based service providers to support programs such as home delivered meals, senior lunch programs in congregate sites, case management, transportation, as well as others.

Area Agency on Aging Area Plan Update

As described in Title 22, Chapter 3, Article 1.8 of the California Code of Regulations, each Area Agency on Aging is required to develop and maintain a four-year area plan which informs the community on needs, available services and service gaps for seniors as well as the Area Agency on Aging's plans to address these issues during the four-year planning cycle. Goals and objectives are developed reflecting the results of the extensive needs assessment in 2015. This needs assessment was included in the four-year 2016-2020 plan and comprehensive community report "*The Art of Aging*" approved by the Board of Supervisors on May 24, 2016.

Each fiscal year, the Area Agency on Aging is required to provide the California Department of Aging an update to the four-year plan. The FY 2018-19 Area Plan Update provides a progress report on objectives identified in the 2016-2020 Four-Year Area Plan as well as identifying new objectives to the Area Plan Update. The additional objectives were developed and approved by the Area Agency on Aging Advisory Council as recommended by Area Agency on Aging (AAA) staff. The objectives are a combination of contractual requirements and ongoing evaluation of older adults needs in Sonoma County. These objectives include:

- Collaborate with local agencies in the implementation of a "Getting to Know Your Neighbor Campaign" to reduce isolation and assist in disaster preparedness.
- AAA Advisory Council members and AAA Staff provide older adult perspective and participate in initiatives and workgroups in response to 2017 October wildfires (i.e. housing shortage, rebuild, and county disaster preparedness).
- Expand stress reduction programs for family caregivers by partnering with Redwood Caregiver Resource Center to provide additional evidence-based trainings and support groups.
- Partner with the Aging Together/Age Friendly to support and promote an "Age-Friendly Hiring" event focusing on accessing the skilled, experienced, productive population ready to join the workforce of local businesses.

The FY 2018-19 Area Plan Update was approved by the Area Agency on Aging Advisory Council at its Public Hearing on April 18, 2018.

To accomplish the goals and objectives set forth in the Area Plan and effectively administer the Older Americans Act funding locally, the Area Agency on Aging maintains a strong voice in the community on senior issues. Examples of the Area Agency on Aging's effective advocacy includes:

- Convening community partners to create a Countywide Coalition: Opening Doors for Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTQI) Older adults in Sonoma County Coalition for improved interagency connections to better serve the LGBTQI community.
- Creating AAA Housing Committee to evaluate housing options for older adults, create short, medium, and long-term recommendations to inform policy makers and stakeholders on increasing available, appropriate, housing for older adults.
- AAA Advisory Council members and AAA staff join County of Sonoma Initiatives including Aging Together and Age Friendly Cities to ensure the inclusion of the needs and contributions of older

adults in every conversation.

Prior Board Actions:

The Sonoma County Board of Supervisors has annually approved the Area Plans and Updates as presented to the Board by the Area Agency on Aging at the following meetings:

- May 16, 2017, the Board approved the 2017/18 Area Plan Update
- May 24, 2016, the Board approved the Area Agency on Aging Four-Year Area Plan 2016-2020
- May 12, 2015, the Board approved the 2015/16 Area Plan Update
- May 20, 2014, the Board approved the 2014/15 Area Plan Update
- May 14, 2013, the Board approved the 2013/14 Area Plan Update
- May 15, 2012, the Board approved the Area Agency on Aging Four-Year Area Plan 2012-2016

Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community

The Area Agency on Aging Area Plan Update includes goals and objectives to help improve the lives of older adults in Sonoma County.

Fiscal Summary

Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses	\$2,141,937	\$2,142,000	\$2,142,000
Additional Appropriation Requested			
Total Expenditures	\$2,141,937	\$2,142,000	\$2,142,000

Funding Sources

General Fund/WA GF			
State/Federal	\$2,141,937	\$2,142,000	\$2,142,000
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources	\$2,141,937	\$2,142,000	\$2,142,000

Narrative Explanation of Fiscal Impacts:

The Area Plan Update does not dictate expenditures for the Area Agency on Aging budget however approval of the plan is required as a condition of funding from the California Department of Aging. Revenue from the California Department of Aging and contract expenditures will be included in the Human Services budget for approval by the Board of Supervisors in June 2018 during the Budget Hearings.

Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
None			
Attachments:			
None			
Related Items “On File” with the Clerk of the Board:			
<ol style="list-style-type: none"> 1. FY 2018-19 Area Plan Update (includes Transmittal Letter) 2. The Art of Aging – The Sonoma County Area Agency on Aging Four-Year Plan – 2016-2020 3. Three original Transmittal Letters provided to the clerk for Chair of the Board of Supervisors to sign 			



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 22
(This Section for use by Clerk of the Board Only.)

To: Sonoma County Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: 4/5

Department or Agency Name(s): Permit and Resource Management Department

Staff Name and Phone Number:

Reg Cullen 565-2502

Supervisorial District(s):

Countywide

Title: An Ordinance No. 3836R Permit and Permit Extensions to Sonoma County Water Agency;
ROI18-0003

Recommended Actions:

Adopt a resolution issuing a roiling permit (Ordinance No. 3836R) and necessary permit extensions to Sonoma County Water Agency for in-channel work and Annual Stream Maintenance Activities.

Executive Summary:

Section VIII of Ordinance No. 3836R requires that an application for a permit be filed with the Board of Supervisors prior to the performance of certain prescribed work or operations in a river, stream, or channel which may decrease the clarity of these waterways.

Concurrent Resolution No. 88-1220 of the Board of Supervisors requires that applications for permits describe the work or operations to be done, the purpose of the work or operations, the manner in which the work or operations will be carried out, and the time within which the work or operations will be completed. Pursuant to the Resolution, applications must be accompanied by a copy of the agreement required by Section 1601 et seq. of the California Fish and Wildlife Code and water discharge permits applicable to the work or operations, if any, pursuant to the Porter-Cologne Water Quality Control Act. Applications by public agencies must also be accompanied by evidence of compliance with the California Environmental Quality Act.

The application submitted by the Sonoma County Water Agency complies with the requirements of the 3836R Ordinance. The applicant represents that no significant residual impacts affecting water clarity of the rivers or streams of the County of Sonoma will result. The applicant proposes to perform routine maintenance in various channels. Lower bank vegetation management work outside the flow channel may be performed through 15 November 2018. Emergency removal of dead wood and debris piles threatening a bridge or other structure may be performed at any time during the year. The work is proposed to commence no earlier than 15 May 2018 and be completed by 31 December 2018.

It should be noted that the work described in the application has been performed in accordance with permit requirements in the past years. As described in the application and demonstrated in practice in previous permitting periods, the work will likely require greater than 30 days to complete. To accomplish this, the permit may be extended for additional 30-day periods if such permit period extensions are approved by the Board of Supervisors as requested in this agenda item. The Director of the Permit and Resource Management Department shall confirm the need for each permit extension immediately prior to the expiration of the current permit period to ensure that the work is not yet completed and an additional 30-day period extension is necessary. Seven 30-day extensions may be required.

The 3836R permit and 30-day extensions require a 4/5 approval vote by the Board according to the requirements of the 1988 ballot measure creating the 3836R Ordinance.

Discussion:

Prior Board Actions:

2/21/2017: Board adopted Resolution Number 17-0085 issuing permit and permit extensions to Sonoma County Water Agency for Annual Stream Maintenance Activities.

Strategic Plan Alignment Goal 2: Economic and Environmental Stewardship

This permit allows maintenance of many channels the Water Agency is responsible for, to keep them functioning properly. Maintenance activities include the following: landscaping, fencing, mowing, structure maintenance, grading and reshaping channels, debris removal, and spraying of herbicides to inhibit nuisance vegetation.

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			
Narrative Explanation of Fiscal Impacts:			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
A) Draft Board of Supervisors Resolution B) Application C) Maps			
Related Items "On File" with the Clerk of the Board:			
Application Packet			



County of Sonoma

State of California

Date: May 8, 2018

Item Number: _____
 Resolution Number: _____



4/5 Vote Required

**Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California, Issuing
 A Permit and Permit Extensions Pursuant to Section VIII of Ordinance No. 3836R Of The
 County Of Sonoma To Sonoma County Water Agency To Perform Routine Maintenance Work
 In Various Channels.**

Whereas, Section VIII of Ordinance No. 3836R requires that an application for a permit be filed with the Board of Supervisors prior to the performance of certain prescribed work or operations in a river, stream, or channel which may decrease the clarity of a river or stream; and

Whereas, an application was filed by Russian River Recreation and Park District for an Ordinance No. 3836 permit for routine maintenance work in various rivers, streams, and channels at the Permit and Resource Management Department in the manner prescribed by Resolution No. 88-1220 as amended by Resolution No 89-0746 of the Board of Supervisors; and

Whereas, the Board of Supervisors has reviewed said application; and

Whereas, the work requires greater than 30 days to complete, as described in the application and as demonstrated in past years; and

Whereas, the requirements of section VIII of the Sonoma County Code include a restriction to perform permitted activities within a period of 30 days, except that additional 30-day permit periods may be granted by the Board of Supervisors, and a requirement that all approval votes be by a 4/5th majority of the Board of Supervisors

Now, Therefore, Be It Resolved

That the Board of Supervisors finds and determines that the work and operations described on said application is necessary and that the work and operations will be performed in a manner which will not unreasonably decrease the clarity of the waters of the rivers or streams of the County of Sonoma;

2. That a permit is hereby granted to applicant to perform the work and operations described in the aforementioned application;
3. That permit extensions are hereby granted to the applicant to perform the work described herein for additional 30-day periods commencing on June 14, 2018 subject to the Director of PRMD confirming the need for the permit extension immediately prior to the expiration of the permit period;
4. That the work and operations shall be performed in the manner described in the application and in accordance with the terms and conditions of any applicable agreement required by Section 1601 et seq. of the California Fish and Wildlife Code, any applicable waste discharge permit issued pursuant to the Porter-Cologne Water Quality Control Act (commencing at Section 13000 of the California Water Code), and Chapter 26A of the Sonoma County Code and any plans adopted pursuant thereto;

Be It Further Resolved that the permit is hereby granted to the applicant pursuant to Section 25526.6 of the Government Code.

Supervisors:

Gorin:

Rabbitt:

Zane:

Hopkins:

Gore:

Ayes:

Noes:

Absent:

Abstain:

So Ordered.

Roiling Permit Application

DRN-003

The Board of Supervisors approves all roiling permits under Section VIII of the Water Clarity Ordinance of the County of Sonoma, Ordinance No. 3836R (Chapter 23 of the Sonoma County Code).

A complete application must be submitted to the Permit and Resource Management Department a minimum of eight weeks before the start of project.

Applicant Owner Architect \ Engineer

Project Site Information

Sonoma County Water Agency

Various Streams

Name

Address(es)

404 Aviation Blvd

Sonoma County

Mailing Address

City/Town

Santa Rosa

CA 95403

Various

City/Town

State/Zip

Assessor's Parcel Number(s)

547-1900

Various (see attached Map)

Phone

Fax

River or Stream Name

12/31/2018

Work start date

Estimated completion date

Signature

Date

Types of work (check one):

- To protect riparian property adjacent to a river or stream.
- To construct recreational dams.
- To perform construction work on riparian property, the nature of which may decrease the clarity of the waters of the river or stream.
- To construct temporary bridges, dikes, dams and settling ponds in connection with mining operations, or for agricultural uses.

Application Requirements:

- A. A detailed statement describing the work or operations to be done and the manner in which they will be carried out to avoid unreasonably decreasing the clarity of the river or stream, including any proposed monitoring or mitigation measures.
- B. A location/vicinity map (8 ½ in. X 11 in.) showing where the project is located in relation to nearby lots, streets, highways and/or major natural features (e.g., locator maps & road maps).
- C. A copy of the Fish and Game permit or waiver.
- D. A copy of the Army Corps of Engineers permit for this project, if required.
- E. A copy of the California Regional Water Quality Control Board water quality certification, if required.
- F. A copy of the last roiling permit, if any.
- G. A check payable to "PRMD" (see current fee schedule). This fee includes any requested extensions for the calendar year.
- H. A copy of the California Environmental Quality Act (CEQA) document.
- I. A copy of any approved County permit conditions (e.g. mining approval).

Sonoma County Permit and Resource Management Department

2550 Ventura Avenue ❖ Santa Rosa, CA ❖ 95403-2829 ❖ (707) 565-1900 ❖ Fax (707) 565-1103

General Information

Work cannot start until after the Sonoma County Board of Supervisors has approved the application for a Roiling Permit.

Ordinance No. 3836R is an initiative measure adopted by the electorate of Sonoma County on June 7, 1988. The Ordinance requires that a roiling permit be issued prior to performing the types of work described on the application form. The permit can only be issued upon a four-fifths vote of the Sonoma County Board of Supervisors and only for a maximum period of 30 days. Permits may be extended for additional 30 day periods upon an additional four-fifths vote of the Board of Supervisors. The Board designated the Permit and Resource Management Department (PRMD) as the administering agency of this Ordinance.

Permit applications are filed at PRMD, 2550 Ventura Avenue, Santa Rosa, California 95403, by mail or in person. Roiling permits are subject to CEQA. Applications by other than public agencies must be accompanied by evidence that the proposed work or operations have been submitted for review to the Permit and Resource Management Department pursuant to Article III of Chapter 23A of the Sonoma County Code. Such applications shall not be deemed completed until such environmental review has been completed. Applications by departments of the County of Sonoma must be accompanied by evidence of compliance with Article II of Chapter 23A of the Sonoma County Code. Applications by other public agencies must be accompanied by either a Notice of Determination or a Notice of Exemption filed by such public agency pursuant to the California Environmental Quality Act (CEQA).

Because the ordinance requires each permit to be authorized by a four-fifths vote of the Board of Supervisors, the issuance of a permit requires at least two weeks after compliance with CEQA requirements have been demonstrated (but cannot occur until the Board takes action at a regularly scheduled Board meeting).

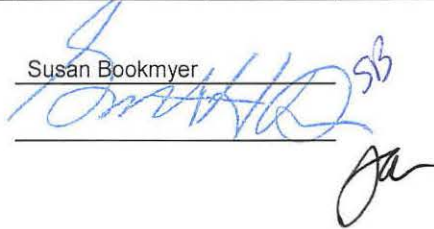
The categories of work described on the application form may require an Agreement Regarding Proposed Stream or Lake Alteration with the California Department of Fish and Game pursuant to Section 1601 et seq. of the California Fish and Game Code and waste discharge requirements issued by a Regional Water Quality Control Board pursuant to the Porter-Cologne Water Quality Control Act (commencing at Section 13000 of the California Water Code). The work may also require a permit issued by the United States Army Corps of Engineers pursuant to Section 404 of the Federal Clean Water Act. In addition, the work may be subject to other Federal, State, and local governmental regulations. It is the applicant's responsibility to comply with all applicable laws and regulations.

COUNTY OF SONOMA
EFS - GL JOURNAL ENTRIES FORM

CONTACT: Susan Bookmyer
PHONE NO: 521-6216
FY: 17/18

EFS JOURNAL ID NO: _____
POST DATE: _____
INITIATED IN EFS BY: _____

GL BUS. UNIT	FUND	DEPT. ID	ACCOUNT	PC Bus Unit	Project	Activity	AMOUNT	FUND NO. Affiliate	BUS. UNIT Affiliate	DESCRIPTION
SC001	14105	33020100	51244	SC001	330000F0002	3300C002	488.00			DRN-003 Roiling Permit
SC001	14110	33020200	51244	SC001	330000F0175	3300C002	488.00			DRN-003 Roiling Permit
SC001	14115	33020300	51244	SC001	330000F0348	3300C002	488.00			DRN-003 Roiling Permit
SC001	14120	33020400	51244	SC001	330000F0296	3300F002	488.00			DRN-003 Roiling Permit
SC001										
SC001										
SC001										
SC001										
SC001										
SC001										
SC001							1,952.00			

PREPARED BY: Susan Bookmyer DATE: 01/29/18 CC: _____
APPROVED BY:  DATE: _____ BILLING AUTH NO: _____

Sonoma County Water Agency Stream Maintenance Activities for DRN-003 application 2018

The Water Agency owns, or has easements to maintain hydraulic capacity, on approximately 75 miles of engineered flood control channels. The channels are primarily located in the vicinity of Santa Rosa, Rohnert Park, Cotati, Petaluma, and Sonoma. The Water Agency also has responsibilities to maintain hydraulic capacity over approximately 100 miles of modified or natural channels in the County.

The Water Agency stream maintenance activities support a proactive regional approach to flood protection and stream and wildlife habitat restoration. Planned stream maintenance activities for the 2017 season includes:

A. Sediment Management

Sediment management refers to the removal of excess sediment from and along flood channels. Sediment management activities are generally conducted from June 15th to October 15th when streams are typically at their driest. The number of sediment removal projects undertaken and the quantity of sediment removed in a given year depend on the frequency and extent of past maintenance activities, as well as weather and hydrologic conditions during recent years. The Water Agency's preferred approach for sediment removal projects is to use the least environmentally damaging approach that is reasonable, not prohibitive in cost, and time-efficient.

B. Bank Stabilization

The Water Agency performs repairs of eroding banks as a routine maintenance within the engineered channels where it has maintenance authority. Bank stabilization involves the repair and stabilization of eroded or eroding stream or reservoir banks. Destabilized banks that are not repaired will continue to erode and shed sediment into the channel.

The Water Agency's approach for stabilizing banks includes minimizing hardscape by back-filling with soil, installing erosion control fabric, seeding with grasses and planting of native riparian trees to provide additional bank stability and increase canopy in the channel.

C. Vegetation Management

The degree of vegetation management performed depends on local reach conditions, neighboring land uses, and existing channel conveyance capacity. Vegetation management activities include: willow pruning and removal; blackberry removal; cattail removal; ludwigia removal; tree pruning and removal; exotics removal; mowing; and nursery stock tree planting. Vegetation management activities are overseen by a biologist, certified arborist, or other qualified personnel.

D. Habitat Restoration/Enhancement

The Water Agency's approach for habitat restoration/enhancement activities can include construction of habitat features; installation of plantings; and vegetation management (as described above). The Water Agency's approach is to improve habitat in the creeks and channels in the County.

The above activities are completed with the goal of transitioning the streams into waterways that not only provide flood protection, but also provide good riparian habitat and water quality. The goal is a mature riparian canopy with alders, maples, and other trees that grow tall and stretch their branches over the creek. Over the long-term, the establishment of a mature riparian canopy is expected to reduce the level of routine maintenance that is required. This will be completed over several years by selectively thinning and brush and multi-trunk tree species and planting single-trunk, canopy forming trees on stream banks.

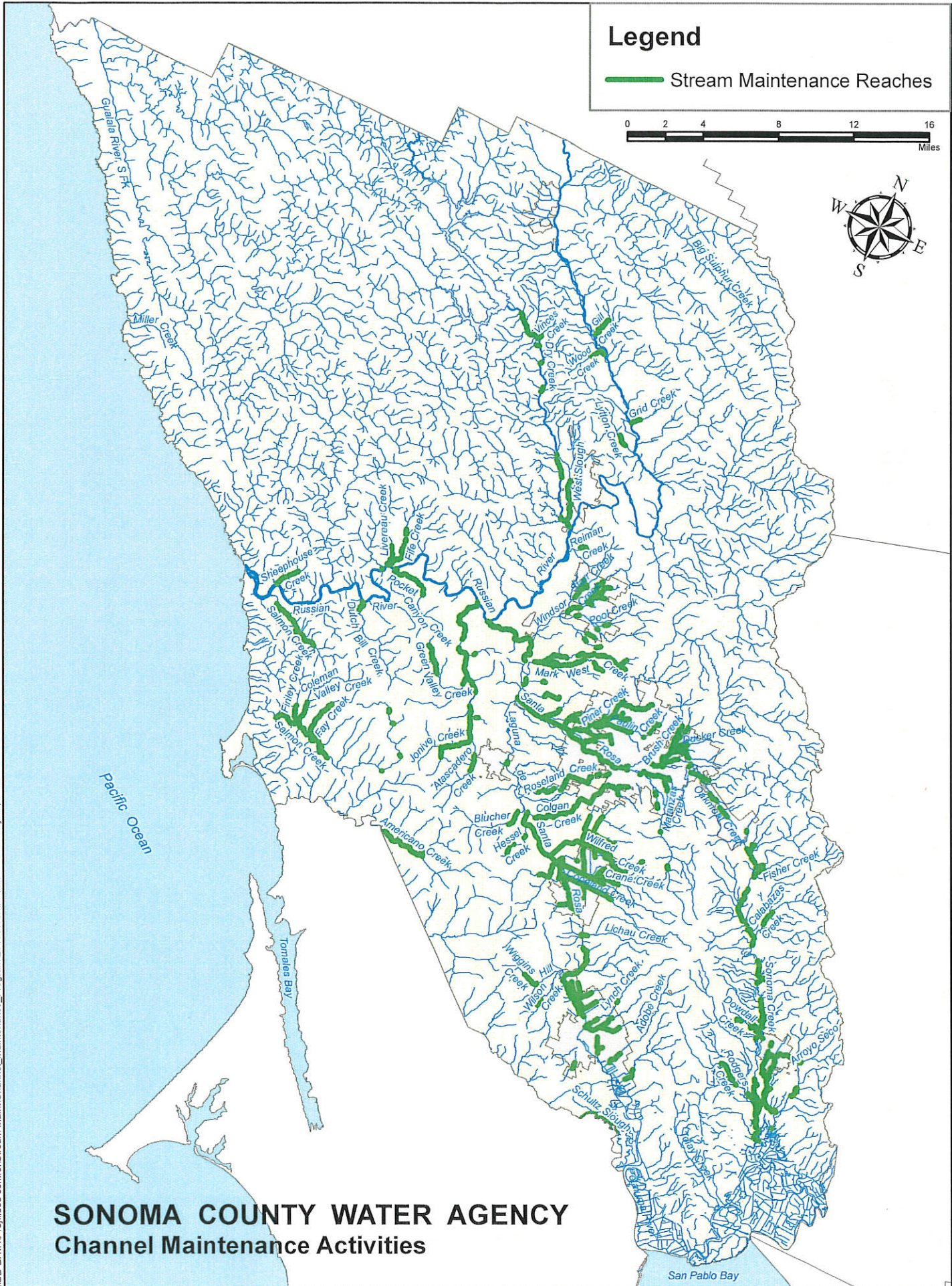
E. Other Maintenance Activities include:

- Access Road Maintenance
- V-Ditch Maintenance
- Culvert Repair and Installation
- Debris Removal
- Fence Maintenance
- Graffiti Removal

Maintenance work conducted in modified and natural channels is conducted on an as needed basis and usually occurs as a result of notification of a problem by an adjacent landowner or public entity. In general, this type of work is performed relatively infrequently (15–20 times each year). The most common type of work conducted in these channels is the removal of blackberry thickets or fallen trees that significantly increase the potential for flood damage to structures. Trash or vegetation debris may also cause a blockage and require removal. Periodically, sediment removal may be required in engineered portions of modified channels (culverts).

Legend

 Stream Maintenance Reaches



SONOMA COUNTY WATER AGENCY

Channel Maintenance Activities



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 23
(This Section for use by Clerk of the Board Only.)

To: Sonoma County Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: 4/5

Department or Agency Name(s): Permit and Resource Management Department

Staff Name and Phone Number:

Reg Cullen 565-2502

Supervisorial District(s):

Fifth

Title: An Ordinance No. 3836R Permit and Permit Extensions to Russian River Recreation and Park District; ROI18-0002

Recommended Actions:

Adopt a resolution issuing a roiling permit (Ordinance No. 3836R) and necessary permit extensions to Russian River Recreation and Park District for the recreation dam installation, maintenance, and removal at Johnson's and Vacation Beaches (Russian River).

Executive Summary:

Sonoma County requires that an application for a permit, known as a roiling permit, be filed with the Board of Supervisors prior to work or operations in a river, stream, or channel which may decrease the clarity of these waterways. The recommended resolution will issue a roiling permit to the Russian River Recreation and Park District for summer flash board installation at Johnson's and Vacation Beaches between 15 May and 15 October 2018. Permit and permit extensions for work within a channel or stream must be approved by the Board of Supervisors.

Discussion:

In May of each year, after winter flood waters have subsided, two flash board dams are installed. One just downstream from Johnson's Beach Resort, and the other, several miles downstream, at the Vacation Beach Sumer Crossing. These dams form two lakes which provide public recreation opportunities. Fish ladders are installed at both locations to facilitate fish passage.

Section VIII of Ordinance No. 3836R requires that an application for a permit be filed with the Board of Supervisors prior to the performance of certain prescribed work or operations in a river, stream, or channel which may decrease the clarity of these waterways.

Concurrent Resolution No. 88-1220 of the Board of Supervisors requires that applications for permits describe the work or operations to be done, the purpose of the work or operations, the manner in which the work or operations will be carried out, and the time within which the work or operations will be

completed. Pursuant to the Resolution, applications must be accompanied by a copy of the agreement required by Section 1601 et seq. of the California Fish and Wildlife Code and water discharge permits applicable to the work or operations, if any, pursuant to the Porter-Cologne Water Quality Control Act. Applications by public agencies must also be accompanied by evidence of compliance with the California Environmental Quality Act.

The application submitted by Russian River Recreation and Park District complies with the requirements of the 3836R Ordinance. The applicant represents that no significant residual impacts affecting water clarity of the Russian River will result. The applicant proposes to install and remove recreational dams at Johnson's and Vacation Beaches on the Russian River. The work is proposed to commence no earlier than 15 May 2018 and is scheduled to be completed by 15 October 2018.

It should be noted that the work described in the application has been performed in accordance with permit requirements in the past years. As described in the application and demonstrated in practice in previous permitting periods, the work will likely require greater than 30 days to complete. To accomplish this, the permit may be extended for additional 30-day periods if such permit period extensions are approved by the Board of Supervisors as requested in this agenda item. The Director of the Permit and Resource Management Department shall confirm the need for each permit extension immediately prior to the expiration of the current permit period to ensure that the work is not yet completed and an additional 30-day period extension is necessary. Five 30-day extensions may be required.

The 3836R permit and 30-day extensions require a 4/5 approval vote by the Board according to the requirements of the 1988 ballot measure creating the 3836R Ordinance.

Prior Board Actions:

5/9/17: Board adopted Resolution Number 17-0188 issuing permit and permit extensions to Russian River Recreation and Park District for beach grooming and installation and removal of summer dams.

Strategic Plan Alignment Goal 2: Economic and Environmental Stewardship

The permit will allow the Russian River Recreation and Park District to properly maintain the beaches, and the flashboard dams at Johnson's and Vacation Beaches on the Russian River promoting safe public summer recreation.

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 21-20 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			
Narrative Explanation of Fiscal Impacts:			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
<ul style="list-style-type: none"> A) Draft Board of Supervisors Resolution B) Application C) Maps 			
Related Items "On File" with the Clerk of the Board:			
Application Packet			



County of Sonoma

State of California

Date: May 8, 2018

Item Number: _____

Resolution Number: _____



4/5 Vote Required

Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California, Issuing A Permit and Permit Extensions Pursuant to Section VIII of Ordinance No. 3836R Of The County Of Sonoma To Russian River Recreation And Park District For The Recreation Dam Installation, Maintenance, And Removal At Johnson's And Vacation Beaches.

Whereas, Section VIII of Ordinance No. 3836R requires that an application for a permit be filed with the Board of Supervisors prior to the performance of certain prescribed work or operations in a river, stream, or channel which may decrease the clarity of a river or stream; and

Whereas, an application was filed by Russian River Recreation and Park District for an Ordinance No. 3836 permit for recreation dam installation, maintenance, and removal on the Russian River, at the Permit and Resource Management Department in the manner prescribed by Resolution No. 88-1220 as amended by Resolution No 89-0746 of the Board of Supervisors; and

Whereas, the Board of Supervisors has reviewed said application; and

Whereas, the work requires greater than 30 days to complete, as described in the application and as demonstrated in past years; and

Whereas, the requirements of section VIII of the Sonoma County Code include a restriction to perform permitted activities within a period of 30 days, except that additional 30-day permit periods may be granted by the Board of Supervisors, and a requirement that all approval votes be by a 4/5th majority of the Board of Supervisors

Now, Therefore, Be It Resolved

1. That the Board of Supervisors finds and determines that the work and operations described on said application is necessary and that the work and operations will be performed in a manner which will not unreasonably decrease the clarity of the waters of the rivers or streams of the County of Sonoma;

2. That a permit is hereby granted to applicant to perform the work and operations described in the aforementioned application;

3. That permit extensions are hereby granted to the applicant to perform the work described herein for additional 30-day periods commencing on June 14, 2017 subject to the Director of PRMD confirming the need for the permit extension immediately prior to the expiration of the permit period;

4. That the work and operations shall be performed in the manner described in the application and in accordance with the terms and conditions of any applicable agreement required by Section 1601 et seq. of the California Fish and Wildlife Code, any applicable waste discharge permit issued pursuant to the Porter-Cologne Water Quality Control Act (commencing at Section 13000 of the California Water Code), and Chapter 26A of the Sonoma County Code and any plans adopted pursuant thereto;

Be It Further Resolved that the permit is hereby granted to the applicant pursuant to Section 25526.6 of the Government Code.

Supervisors:

Gorin:

Rabbitt:

Zane:

Hopkins:

Gore:

Ayes:

Noes:

Absent:

Abstain:

So Ordered.

Roiling Permit Application

DRN-003

The Board of Supervisors approves all roiling permits under Section VIII of the Water Clarity Ordinance of the County of Sonoma, Ordinance No. 3836R (Chapter 23 of the Sonoma County Code).

A complete application must be submitted to the Permit and Resource Management Department a minimum of eight weeks before the start of project.

Applicant Owner Architect \ Engineer

RUSSIAN RIVER RECREATION & PARK DISTRICT

Name

PO BOX 195

Mailing Address

GUERNEVILLE

95446

City/Town

State/Zip

707-869-9184

NONE

Phone

Fax

MAY 15, 2018

Work start date

[Signature]

Signature

Project Site Information

JOHNSON'S BEACH & VACATION BEACH

Address(es)

GUERNEVILLE

City/Town

070-050-020;023;048 & 071-250-003;030;032

Assessor's Parcel Number(s)

RUSSIAN RIVER

River or Stream Name

OCTOBER 15, 2018

Estimated completion date

FEBRUARY 16, 2018

Date

Types of work (check one):

- To protect riparian property adjacent to a river or stream.
- To construct recreational dams.
- To perform construction work on riparian property, the nature of which may decrease the clarity of the waters of the river or stream.
- To construct temporary bridges, dikes, dams and settling ponds in connection with mining operations, or for agricultural uses.

Application Requirements:

- A. A detailed statement describing the work or operations to be done and the manner in which they will be carried out to avoid unreasonably decreasing the clarity of the river or stream, including any proposed monitoring or mitigation measures.
- B. A location/vicinity map (8 ½ in. X 11 in.) showing where the project is located in relation to nearby lots, streets, highways and/or major natural features (e.g., locator maps & road maps).
- C. A copy of the Fish and Game permit or waiver.
- NIA* D. A copy of the Army Corps of Engineers permit for this project, if required.
- NIA* E. A copy of the California Regional Water Quality Control Board water quality certification, if required.
- F. A copy of the last roiling permit, if any. *Reference to last roiling permit (if applicable)*
- G. A check payable to "PRMD" (see current fee schedule). This fee includes any requested extensions for the calendar year.
- H. A copy of the California Environmental Quality Act (CEQA) document.
- NIA* I. A copy of any approved County permit conditions (e.g. mining approval).

Sonoma County Permit and Resource Management Department

2550 Ventura Avenue ❖ Santa Rosa, CA ❖ 95403-2829 ❖ (707) 565-1900 ❖ Fax (707) 565-1103

General Information

Work cannot start until after the Sonoma County Board of Supervisors has approved the application for a Rolling Permit.

Ordinance No. 3836R is an initiative measure adopted by the electorate of Sonoma County on June 7, 1988. The Ordinance requires that a rolling permit be issued prior to performing the types of work described on the application form. The permit can only be issued upon a four-fifths vote of the Sonoma County Board of Supervisors and only for a maximum period of 30 days. Permits may be extended for additional 30 day periods upon an additional four-fifths vote of the Board of Supervisors. The Board designated the Permit and Resource Management Department (PRMD) as the administering agency of this Ordinance.

Permit applications are filed at PRMD, 2550 Ventura Avenue, Santa Rosa, California 95403, by mail or in person. Rolling permits are subject to CEQA. Applications by other than public agencies must be accompanied by evidence that the proposed work or operations have been submitted for review to the Permit and Resource Management Department pursuant to Article III of Chapter 23A of the Sonoma County Code. Such applications shall not be deemed completed until such environmental review has been completed. Applications by departments of the County of Sonoma must be accompanied by evidence of compliance with Article II of Chapter 23A of the Sonoma County Code. Applications by other public agencies must be accompanied by either a Notice of Determination or a Notice of Exemption filed by such public agency pursuant to the California Environmental Quality Act (CEQA).

Because the ordinance requires each permit to be authorized by a four-fifths vote of the Board of Supervisors, the issuance of a permit requires at least two weeks after compliance with CEQA requirements have been demonstrated (but cannot occur until the Board takes action at a regularly scheduled Board meeting).

The categories of work described on the application form may require an Agreement Regarding Proposed Stream or Lake Alteration with the California Department of Fish and Game pursuant to Section 1601 et seq. of the California Fish and Game Code and waste discharge requirements issued by a Regional Water Quality Control Board pursuant to the Porter-Cologne Water Quality Control Act (commencing at Section 13000 of the California Water Code). The work may also require a permit issued by the United States Army Corps of Engineers pursuant to Section 404 of the Federal Clean Water Act. In addition, the work may be subject to other Federal, State, and local governmental regulations. It is the applicant's responsibility to comply with all applicable laws and regulations.

**RUSSIAN RIVER RECREATION & PARK DISTRICT
STREAMBED ALTERATION PERMIT
PROJECT DESCRIPTION AND PROJECT CONDITIONS**

HISTORY: In excess of the past fifty years the summer flash boards located downstream from Johnson's Beach Resort and at Vacation Beach summer crossing have been installed by the Russian River Recreation and Park District. Fish ladders are installed at both locations to facilitate fish passage. Installation has occurred after May 15th with removal by October 15th of each year.

PERIOD OF OPERATION: A one year permit is requested with the work period between 5/15/2018 and 10/15/2018.

PROJECT OUTLINE AND WORK METHODS: In May of each year, after winter flood waters have subsided, two flash board dams are installed. One just downstream from Johnson's Beach Resort, and the other, several miles downstream at the Vacation Beach Summer Crossing. The boards are placed into existing channel structures after debris from the channels and bottom sills are removed. Installation is done by hand. Heavy equipment is not used in the river channel or flowing waters. A winch cable from a dry land vehicle may be used to pull debris away from the channel uprights. All removed debris is moved off site to a disposal area. Fish ladders are installed to facilitate fish passage.







County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 24
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Permit Sonoma

Staff Name and Phone Number:

Hannah Spencer 707-565-1928

Supervisorial District(s):

Second

Title: Lot Line Adjustment, Jackson Family Investments III, LLC; LLA17-0015

Recommended Actions:

Adopt a Resolution approving a Lot Line Adjustment between two parcels subject to Conditions of Approval and a Land Conservation Act Contract for property located at 3225 Bloomfield Road, Twin Hills; APN 025-100-007.

Executive Summary:

Staff has determined that the adjusted parcels would be consistent with the County's Uniform Rules for Agricultural Preserves and the Land Conservation Act and recommends approval of the Lot Line Adjustment, resulting in two parcels 140 acres and 350 acres in size. Lot Line Adjustments on lands under a Land Conservation Contract require that the Board of Supervisors make certain findings of consistency with the Land Conservation Act requirements. The adjusted parcels meet all of the required findings and will enhance the agricultural operations as noted in the attached resolution.

Discussion:

Project Description:

This is a request for a Lot Line Adjustment between two parcels (see Attachment D). The legal parcels are under one Assessor Parcel Number for property tax purposes. The current lot sizes are: 158.95+/- acres (Lot A) and 331.48+/- acres (Lot B). The Lot Line Adjustment will result in two parcels 140+/- acres (Lot A) and 350+/- acres (Lot B). The Lot Line Adjustment is being requested to improve management of both sites and include the residence on the larger parcel.

Project Location and Zoning:

The affected parcels are located approximately 2.5 miles northeast of the unincorporated town of Bloomfield on Bloomfield Road.

Lot A currently has a single family dwelling, three barns, a well and pump house, an irrigation pond, and is planted in 64 acres of vineyard. Lot B currently has two irrigation ponds, two wells, and is planted in

196 acres of vineyard. After the lot line adjustment, resulting Lot A will contain an irrigation pond and 82 acres of vineyard. Resulting Lot B will contain the dwelling, barns, wells, two irrigation ponds, and 178 acres of vineyard.

In 1996, the County formerly recognized the Lots as separate legal parcels under file number ACC96-0185 and ACC96-0186. Both Lots are zoned LEA (Land Extensive Agriculture) 160-acres/dwelling unit density, and have the Z (Accessory Unit Exclusion), RC 50/50 (Riparian Corridor with 50-foot setbacks for residential and agricultural uses), and RC 100/50 (Riparian Corridor 100-foot setback for residential uses and 50-foot setback for agricultural uses) combining districts.

Land Conservation Act:

State regulations for Land Conservation Contracts and the *Sonoma County Uniform Rules for Agricultural Preserves and Farmland Security Zones* (Uniform Rules) require that the amount of land under contract after a Lot Line Adjustment remain the same as it was before the Lot Line Adjustment and that the adjusted parcels continue to meet all the requirements for a contract. The Lot Line Adjustment will not result in a reduction of land under contract and each parcel individually meets the requirements for a contract as both lots will continue to be devoted to agriculture with at least 50% of each parcel planted in vineyard. Staff has determined the Lot Line Adjustment can meet all of the required findings as described in the attached Resolution.

Both lots are currently under the same Non-Prime (Type II) Land Conservation Act Contract. To facilitate a Lot Line Adjustment, Government Code Section 51257 permits the contracting parties to rescind the existing contract and simultaneously enter into new contracts if the required findings can be made. A condition of approval requires that prior to recording the grant deeds for the adjusted parcels, the owner apply to rescind the existing Land Conservation Act contract and replace it with new contracts for the reconfigured parcels in accordance with the Uniform Rules. To reflect the current agricultural use of each parcel, the replacement contracts will be updated to Prime (Type I) Land Conservation Act Contracts.

Staff Recommendation:

Staff recommends the Board find the project consistent with Government Code Section 51257 and approve the proposed Lot Line Adjustment subject to the attached Conditions of Approval.

Prior Board Actions:

None.

Strategic Plan Alignment Goal 2: Economic and Environmental Stewardship

The Board of Supervisors has endorsed the continuation of the County’s agricultural preserve program to preserve a maximum amount of the limited supply of agricultural, open space, scenic, and critical habitat lands within the county, to discourage premature and unnecessary conversion of such lands to urban land uses, to promote vitality in the agricultural economy, and to ensure an adequate, varied, and healthy supply of food and fiber for current and future generations. Land Conservation Act Contracts support agriculture and agribusiness by assisting in the preservation of agricultural land through the incentive of reduced property taxes in exchange for retaining the land in agricultural production.

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			
Narrative Explanation of Fiscal Impacts:			
None. The applicant pays for the costs of processing the application. Both parcels are currently under a Land Conservation Act Contract and after the Lot Line Adjustment the reconfigured parcels will be under separate replacement contracts. There will be no new fiscal impacts as a result of this action.			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
None.			
Attachments:			
Draft Board of Supervisors Resolution with Attachment A: Conditions of Approval Attachment B: Proposal Statement Attachment C: Assessor’s Parcel Map Attachment D: Lot Line Adjustment Site Plan			
Related Items “On File” with the Clerk of the Board:			
Full Sized Lot Line Adjustment Site Plan			



County of Sonoma
State of California

Date: May 8, 2018

Item Number: _____

Resolution Number: _____

LLA17-0015 Hannah Spencer



4/5 Vote Required

Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California, Approving A Lot Line Adjustment Between Two Parcels Of 158.95 +/- Acres And 331.48 +/- Acres, Resulting In Two Parcels Of 140 +/- Acres And 350 +/- Acres With Conditions Of Approval Requiring That The Existing Land Conservation (Williamson) Act Contract Be Rescinded And Replaced With New Contracts Requested By Jackson Family Investments III, LLC Located at 3225 Bloomfield Road, Twin Hills; APN 025-100-007.

Whereas, a request has been made by Jackson Family Investments III, LLC for a Lot Line Adjustment between two parcels of 158.95 +/- and 331.48 +/- acres in size resulting in two parcels of 140 +/- and 350 +/- acres in size both under Land Conservation Contracts on non-prime agricultural land located at 3225 Bloomfield Road, Twin Hills; APN 025-100-007; zoned LEA (Land Extensive Agriculture) 160 acres/dwelling unit, Z (Accessory Dwelling Unit Exclusion), RC 50/50 (Riparian Corridor 50 foot setback for residential and agricultural uses), RC100/50 (100-foot setback for residential uses and 50-foot setback for agricultural uses); Supervisorial District No. 2; and

Whereas, to facilitate a Lot Line Adjustment, Government Code Section 51257 authorizes parties to a Land Conservation Act Contract or Contracts to mutually agree to rescind the Contract or Contracts and simultaneously enter into a new Contract or Contracts, if certain findings are made by the Board of Supervisors; and

Whereas, on December 13, 2011, the Board of Supervisors adopted the updated *Sonoma County Uniform Rules for Agricultural Preserves and Farmland Security Zones* (Uniform Rules) (Resolution No. 11-0678); and

Whereas, consistent with the Uniform Rules the Lot Line Adjustment has been reviewed for its compliance with those rules as well as the Subdivision Map Act and the Sonoma County Subdivision Ordinance; and

Whereas, in accordance with the provisions of the law, the Board of Supervisors held a public hearing on May 8, 2018, at which time all interested persons were given an opportunity to be heard; and

Whereas, Section 15305(a) of Title 14 of the California Code of Regulations (CEQA Guidelines) provides that Lot Line Adjustments are exempt from the California Environmental Quality Act; and

Whereas, the purpose of the Lot Line Adjustment is to adjust property lines to improve management of both sites and include the residence on the larger parcel. Both lots are subject to Non-Prime Land Conservation Act Contracts; and

Whereas, Government Code Section 51257 requires that the Board of Supervisors make certain findings before existing Land Conservation Act Contracts may be rescinded and replaced to facilitate a Lot Line Adjustment.

Now, Therefore, Be It Resolved that the Board of Supervisors makes the following findings consistent with Government Code Section 51257:

- a. The new contracts will enforce and restrict the adjusted boundaries of the contracted parcels for an initial term for at least as long as the unexpired term of the rescinded contracts but for not less than 10 years.
- b. There is no net decrease in the amount of the acreage restricted by a contract. Both parcels are currently under contract and both of the parcels resulting from the Lot Line Adjustment will be under contracts.
- c. All of the land under contract will remain under contract.
- d. At least 50 percent of each resulting parcel is in agricultural use, as Lot A is 140+/- acres in size and contains 82 acres of vineyard, which is approximately 58.5 percent of the parcel; and Lot B is 350+/- acres in size and contains 178 acres of vineyard, which is approximately 50.8 percent of the parcel.
- e. The replacement contracts will be updated to Prime (Type I) Land Conservation Act Contracts to reflect the current agricultural use of each parcel.
- f. After the Lot Line Adjustment, the parcels of land subject to contract will be large enough to sustain their agricultural use, as defined in Section 51222. The lots resulting from the Lot Line Adjustment will be 140 +/- acres and 350 +/- acres. The resulting 140 acre and 350 acre parcels will exceed the 10-acre minimum acreage requirement for Prime contracts and will exceed the minimum gross income requirement of \$1,000 per planted acre per year, as the parcels currently generate an annual average income of \$3,508.00 per planted acre of vineyard. All of the structures and landscaped areas are compatible uses and will be located on the 350 acre resulting parcel. The area occupied by compatible uses is approximately 0.23 acres which is less than the

5 acre maximum established for compatible uses in the Uniform Rules.

- g. The Lot Line Adjustment would not compromise the long term agricultural productivity of the parcel or other agricultural lands subject to the contract or contracts. The Lot Line Adjustment is being undertaken in order to improve features and management of the parcels. The Lot Line Adjustment will not compromise other agricultural lands in the area under contract.
- h. The Lot Line Adjustment will not result in adjacent lands being removed from agriculture.
- i. The Lot Line Adjustment does not result in a greater number of developable parcels than existed prior to the adjustment, or an adjusted lot that is inconsistent with the General Plan. In the current configuration and at the designated density of 160 acres per dwelling unit, the 158.95 +/- acre parcel cannot be divided and the 331.48 +/- acre parcel could potentially be divided into two parcels. After the Lot Line Adjustment there will be one parcel of 140 +/- acres which will not be able to be divided and one parcel of 350 +/- acres that could potentially be divided into two parcels. Therefore, the Lot Line Adjustment results in the same number of developable parcels that existed prior to the adjustment. The Lot Line Adjustment is consistent with the General Plan.

Be It Further Resolved that the Board of Supervisors hereby finds that substantial evidence in the record before it supports the above findings, and further finds that the Lot Line Adjustment meets the requirements of the above findings.

Be It Further Resolved that the Board of Supervisors finds the requested action categorically exempt from the California Environmental Quality Act pursuant to Section 15305, of the State CEQA Guidelines, which provides that minor alterations in land use limitations such as Lot Line Adjustments are exempt from the California Environmental Quality Act.

Be It Further Resolved that the Board of Supervisors hereby grants the requested Lot Line Adjustment subject to the Conditions of Approval in Exhibit "A," attached hereto which includes a condition to rescind and replace the existing Non-Prime (Type II) Land Conservation Act Contract with two new Prime (Type I) Land Conservation Contracts based on the new parcel configurations and the current agricultural use of each parcel.

Be It Further Resolved that the Board of Supervisors designates the Clerk of the Board as the custodian of the documents and other material which constitute the record of proceedings upon which the decision herein is based, including the original executed Contract and Land Conservation Plan. These documents may

Resolution #
Date: May 8, 2018
Page 4

be found at the office of the Clerk of the Board, 575 Administration Drive, Room
100-A, Santa Rosa, California 95403.

Supervisors:

Gorin:

Rabbitt:

Zane:

Hopkins:

Gore:

Ayes:

Noes:

Absent:

Abstain:

So Ordered.

SONOMA COUNTY BOARD OF SUPERVISORS

Attachment A Conditions of Approval

Date: May 8, 2018 **File No.:** LLA17-0015
Staff: Hannah Spencer
Applicant: Jackson Family Investments III, LLC
Owner: Jackson Family Investments III, LLC
Address: 3225 Bloomfield Road, Twin Hills
APN: 025-100-007

Project Description: This is a request for a Lot Line Adjustment among two parcels, 158.95 +/- acres (Lot A) and 331.38 +/- acres (Lot B), resulting in two parcels, 140.32 +/- acres (Lot A) and 349.86 +/- acres (Lot B) in size. The Lot Line Adjustment is being requested to improve management of both sites and include the residence on the larger parcel.

NOTE: Amendments and changes to approved Lot Line Adjustment conditions may be considered by the Board of Supervisors at a later date if additional information justifies the changes and does not increase the intensity of use approved by the original approval. The Director of Permit Sonoma will determine if a public hearing is necessary and if additional fees are required.

NOTE: These conditions must be met and the application validated within 24 months (from May 8, 2018) unless a request for an extension of time is received before the expiration date.

To be Reviewed and Approved by the County Surveyor:

"The conditions below have been satisfied BY _____ DATE _____

1. A draft description, prepared by a licensed land surveyor or civil engineer authorized to practice land surveying, showing the combination of lots or transfer of property shall be submitted to the County Surveyor for approval. The following note shall be placed on the deed or deeds. "The purpose of this deed is for a reconfiguration of the lands of Jackson Family Investments III, LLC, a Delaware Limited Liability Company, as described by recorded Document No. 1996-0113751 and 1996-0113752, Sonoma County Records, APN 025-100-007, ACC96-0185 and ACC96-0186. This deed is pursuant to LLA17-0015 on file in the office of the Sonoma County Permit and Resource Management Department. It is the express intent of the signatory hereto that the recordation of this deed extinguishes any underlying parcels or portions of parcels." It is the responsibility of the surveyor/engineer preparing the deeds to insure that the information contained within the combination note is correct. Note: The County Surveyor may modify the above described note.
2. A site plan map of the Lot Line Adjustment shall be prepared by a licensed surveyor or civil engineer and attached to the deed(s) to be recorded. The site plan shall be subject to the review and approval of the County Surveyor. The following note shall be placed on said plan:

"THIS EXHIBIT IS FOR GRAPHIC PURPOSES ONLY. Any errors or omissions on this exhibit shall not affect the deed description."

To be Reviewed and Approved by the Project Review Planner:

"The conditions below have been satisfied BY _____ DATE _____

3. Submit verification to Planning that taxes and/or assessments, which are a lien and termed as payable, are paid to the Treasurer-Tax Collector's Department on all parcels affected by the adjustment. The Treasurer-Tax Collector knows the amount of the tax due.
4. Prior to Permit Sonoma stamping the grant deed(s) for the Lot Line Adjustment the property owner(s) shall execute a Right-to-Farm Declaration on a form provided by Permit Sonoma to be submitted before the Lot Line Adjustment is cleared by Permit Sonoma for recordation. The Right-to-Farm Declaration shall be recorded concurrently with the Permit and Resource Management Department approved Lot Line Adjustment grant deed(s) to reflect the newly configured parcels.
5. Prior to Permit Sonoma stamping the grant deed(s) for the Lot Line Adjustment, the property owners shall submit all application materials and applicable filing fees to rescind and replace the existing Non-Prime Land Conservation Act Contract with two new Prime Land Conservation Contracts, one for each resulting parcel. Once the Lot Line Adjustment grant deeds are recorded, Permit Sonoma can proceed with processing the new contracts.
6. After approval of the deed description by the County Surveyor, a grant deed or deeds shall be prepared with all attachments such as the Site Plan listed in Condition #2 above.
7. Deed of Trust agreements, which encumber only portions of accepted legal lots, are violations of the Subdivision Map Act; therefore, prior to the Permit Sonoma approval of the deeds for recordation, the applicant(s) shall submit either recorded documents or documents to be recorded concurrently with the Lot Line Adjustment deeds, showing that any Deed of Trust agreements on the subject properties will conform with the adjusted lot boundaries.
8. The packet containing all documents to be recorded shall be submitted to Permit Sonoma, Project Review for approval prior to recording. The approval will be noted by the planner placing a stamp on the front of the deeds to be recorded.
9. After approval by Project Review the grant deeds shall be recorded and a copy of the deed or deeds shall be submitted to Permit Sonoma.
10. This "At Cost" entitlement is not vested until all permit processing costs are paid in full. Additionally, no grading or building permits shall be issued until all permit processing costs are paid in full.

**TREASURER-TAX COLLECTOR
REFERRAL**

DATE: _____ FILE # LLA17-0015

TO: PERMIT SONOMA, ATTN: HANNAH SPENCER, PLANNING

FROM: TREASURER-TAX COLLECTOR

SUBJECT: ASSESSOR'S PARCEL

WITH ASSESSOR'S
PARCEL# _____

PROPERTY
ADDRESS: _____

APPLICANT: _____

MAILING
ADDRESS: _____

PROPERTY OWNER'S NAME (Receiving land to be
combined: _____

MAILING
ADDRESS: _____

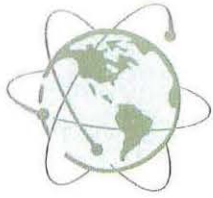
_____ FISCAL YEAR'S TAXES ARE NOW A LIEN, NOT YET DUE AND
PAYABLE. NOTE: THE REGULAR SECURED TAX BILL WILL BE
ISSUED ON THE OLD PARCEL NUMBER. IF YOU WOULD LIKE THE
BILL TO BE DIVIDED, YOU MUST CONTACT OUR OFFICE PRIOR TO
NOVEMBER 30 TH TO REQUEST A FORMAL OR AN INFORMAL
SEGREGATION.

_____ FISCAL YEAR'S TAXES AND/OR DELINQUENT TAXES ON THESE
PARCELS HAVE BEEN PAID.

_____ NO SPECIAL ASSESSMENTS.

_____, 20____
SONOMA COUNTY TREASURER DATE

_____, 20____
SONOMA COUNTY TAX COLLECTOR DATE



RAY CARLSON
AND ASSOCIATES, INC.
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PROPOSAL STATEMENT
LANDS OF JACKSON FAMILY INVESTMENTS II , LLC
JOB NO. 2016-041
APN. 025-100-007 (PTN)

Jackson Family Investment's II , LLC is the owner of the property at 3225 Bloomfield Road, Sebastopol, Assessor's Parcel Number: 025-100-007(ptn), LLA Parcel 1, a 159.00-acre+/- parcel.

Jackson Family Investment's II LLC is also the owner of the property at 3225 Bloomfield Road, Sebastopol, Assessor's Parcel Number: 025-100-007(ptn), LLA Parcel 2, a 331.00-acre+/- parcel.

They would like to add approximately 19+/- acres from LLA Parcel 1 to LLA Parcel 2, to improve the features and management of both sites.

The properties are on well and septic systems.

We also request that any and all parcels and fragment parcels underlying the final parcel configuration be voluntarily merged.

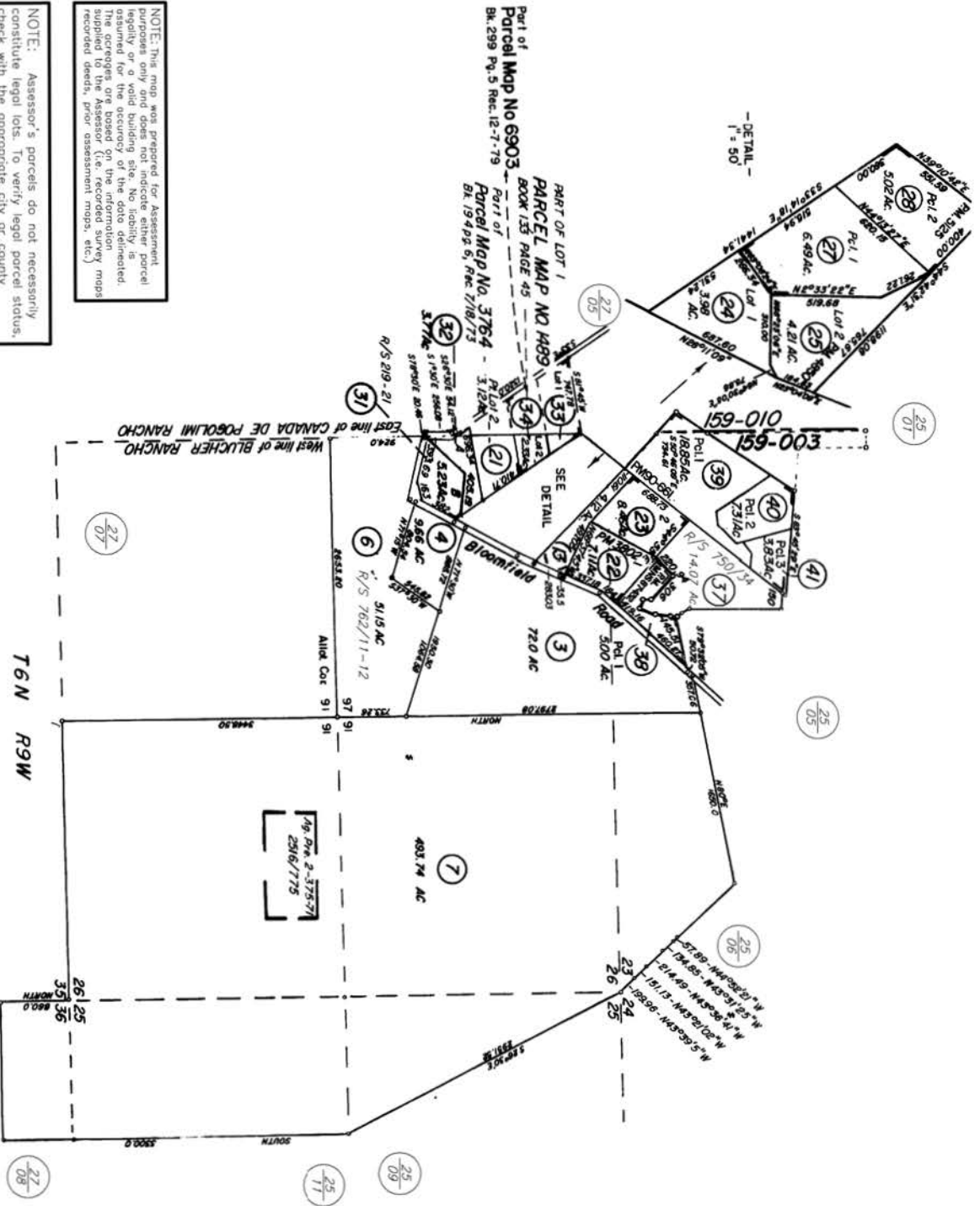
**LANDS OF JACKSON FAMILY
INVESTMENTS III, LLC
TY COMSTOCK-CFO**

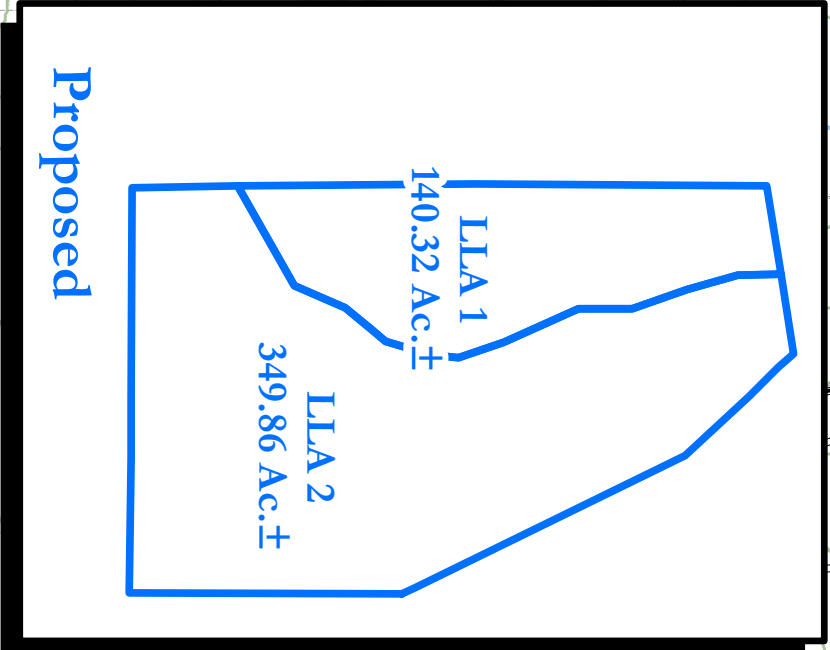
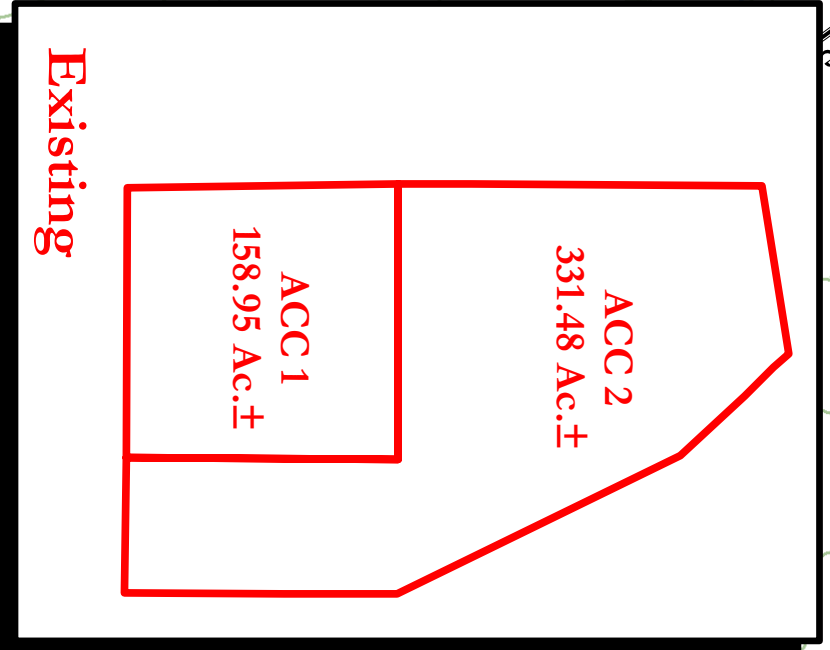
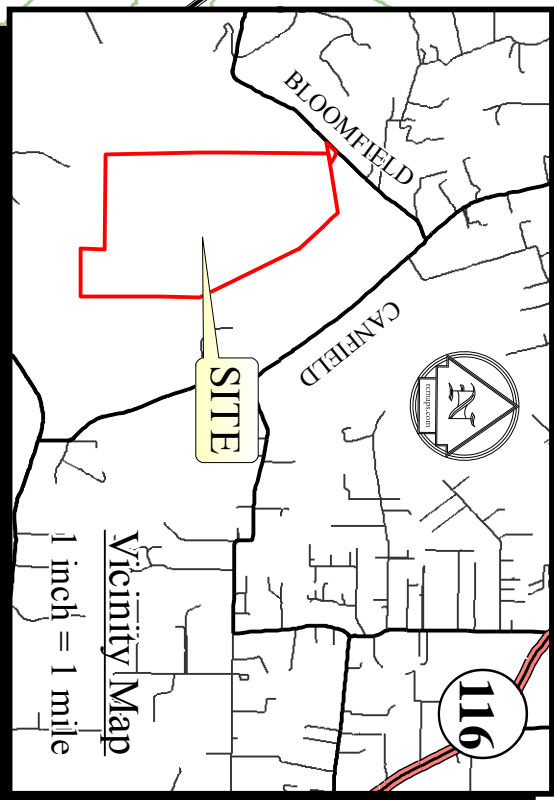
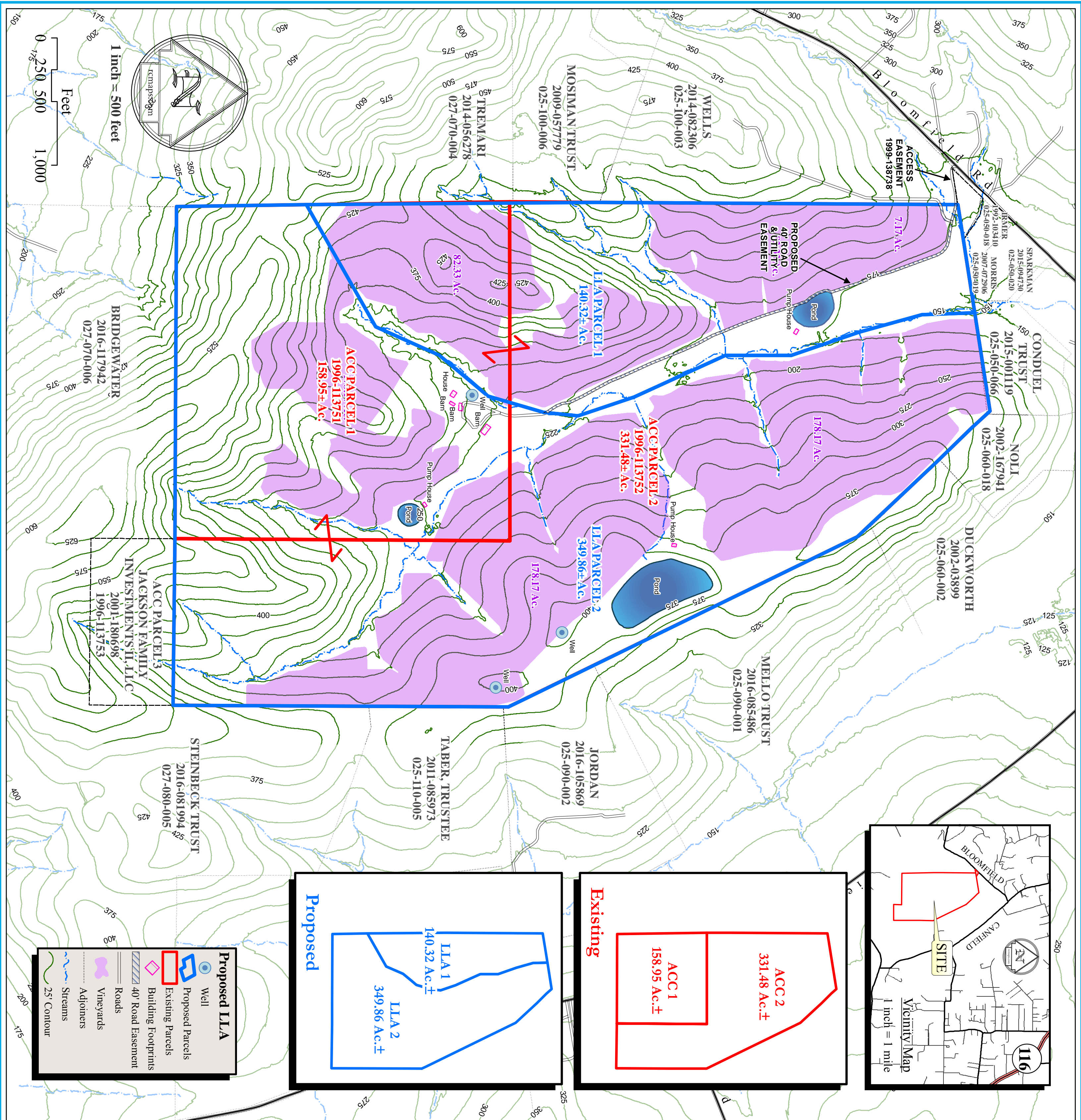
JOB NO. 2016-041
APN. 125-100-007
MARCH 2017

COUNTY ASSESSOR'S PARCEL MAP

TAX RATE AREA
159-003 159-010

025-10





Proposed LLA	
	Well
	Proposed Parcels
	Existing Parcels
	Building Footprints
	40' Road Easement
	Roads
	Vineyards
	Adjoiners
	Streams
	25' Contour

PROJECT INFORMATION

OWNER/APPLICANT ACC 1	JACKSON FAMILY INVESTMENTS II, LLC
APN	025-100-007 PTN
SITE ADDRESS	3225 BLOOMFIELD ROAD, SEBASTOPOL
ZONING	LEA B6 160 Z
SEWAGE DISPOSAL	SEPTIC
WATER SUPPLY	WELL
LAND USE	AGRICULTURAL

OWNER/APPLICANT ACC 2	JACKSON FAMILY INVESTMENTS II, LLC
APN	025-100-007 PTN
SITE ADDRESS	3225 BLOOMFIELD ROAD, SEBASTOPOL
ZONING	LEA B6 160 Z
SEWAGE DISPOSAL	SEPTIC
WATER SUPPLY	WELL
LAND USE	AGRICULTURAL

LOT	EXISTING	PROPOSED	% Change
ACC/LLA 1	159 AC ±	140 AC ±	-12%
ACC/LLA 2	331 AC ±	350 AC ±	+3%
TOTAL			
LLA 1	140±	82 AC ±	58%
LLA 2	350±	178 AC ±	51%

NOTE: THIS MAP WAS CREATED BY RAY CARLSON & ASSOCIATES, INC. STREET AND CREEK DATA PROVIDED BY COUNTY OF SONOMA, SUBJECT TO STANDARD CONDITIONS. ELEVATION DERIVED FROM SONOMA VEG MAP PROJECT Creek & Road layer, edited to fit this data. BOUNDARY SHOWN FOR REFERENCE PURPOSES ONLY. BOUNDARY LINES SHOWN ARE PER FIELD AND RECORD INFORMATION. NO LIABILITY IS ASSUMED OR IMPLIED FOR THE LOCATION OF BOUNDARY LINES HEREON.

USE OF THIS PRODUCT IS COVERED BY COPYRIGHT LAWS.
 RAY CARLSON & ASSOCIATES, INC. IS TO BE HELD HARMLESS FOR ANY AND ALL DISCREPANCIES OF DISTANCE AND GRAPHIC DISTORTION RELATING TO THE USE AND DEPENDENCE UPON THIS REPRESENTATION.
 ORTHOPHOTOGRAPHY (2013), BUILDING FOOTPRINT AND LIDAR ELEVATION DATA (2013) PER SONOMA VEG MAP

SURVEYOR'S STATEMENT
 I, RAY C. CARLSON, A LICENSED LAND SURVEYOR IN AND FOR THE STATE OF CALIFORNIA, DO HEREBY STATE THAT THIS MAP WAS PREPARED BY ME, OR UNDER MY DIRECTION, AS REQUESTED BY LEANNE EDWARDS IN JULY 2016.

THIS MAP HAS BEEN COMPILED FROM VARIOUS RECORD DATA SOURCES. A BOUNDARY SURVEY HAS NOT BEEN PERFORMED BY THIS SURVEYOR OF THE LANDS DELINEATED HEREON. NO LIABILITY IS ASSUMED OR IMPLIED FOR THE LOCATION OF BOUNDARY LINES OR THE ACCURACY OF ACREAGE FIGURES SHOWN HEREON.

THE CONTOUR INFORMATION SHOWN HEREON IS IN CONFORMANCE WITH SECTION 25-15F-2 OF THE SONOMA COUNTY CODE AND IS NOT TO BE USED FOR FINAL DESIGN.

RAY C. CARLSON LS 3890 DATE 2-28-18



SITE MAP

SHOWING PROPOSED LOT LINE ADJUSTMENT OF THE LANDS OF JACKSON FAMILY INVESTMENTS II, LLC AS DESCRIBED IN THAT DEED RECORDED IN OFFICIAL RECORDS AS DOCUMENT NUMBER 2001-180698, SONOMA COUNTY RECORDS.

LOCATED WITHIN THE BLUCHER RANCHO

COUNTY OF SONOMA

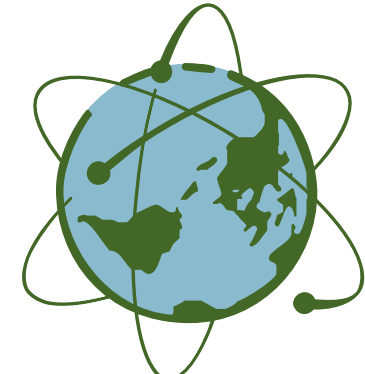
STATE OF CALIFORNIA

RAY CARLSON

AND ASSOCIATES, INC.

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County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 25
(This Section for use by Clerk of the Board Only.)

To: The Board of Supervisors of Sonoma County

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Permit and Resource Management Department

Staff Name and Phone Number:

Amy Lyle, 707-565-7389

Supervisorial District(s):

All

Title: Climate Change Action Resolution

Recommended Actions:

Approve and adopt the Climate Change Action Resolution to support a county-wide framework for reducing greenhouse gas emissions and to pursue local actions that support the identified goals therein.

Executive Summary:

The Regional Climate Protection Authority collaborated with a countywide Staff Working Group under the direction of the Regional Climate Protection Authority Board of Directors to develop a document entitled, Climate Action 2020 Plan: A Regional Program for Sonoma County Communities. Climate Action 2020 builds on prior commitments to reduce greenhouse gas emissions through a community-wide climate action plan for all communities in Sonoma County. The Regional Climate Protection Authority developed Climate Action 2020 over the course of several years, with input from all local city councils, the Board of Supervisors, local government staff, expert consultants, community sustainability leaders, and hundreds of members of the public. The Plan proposed that each local government contribute towards a countywide greenhouse gas reduction target of 25% below 1990 levels by 2020. The Regional Climate Protection Authority certified an Environmental Impact Report and adopted the Climate Action Plan in 2016, and was subsequently litigated. The Superior Court found the Environmental Impact Report inadequate and the Regional Climate Protection Authority declined to appeal.

The Climate Action 2020 Plan is not able to be adopted at this time and staff recommends adopting the enclosed Resolution to provide support and policy direction for future efforts related to climate change and greenhouse gas emission reductions.

Discussion:

Action on a worldwide basis is required to address the various adverse impacts of increasing greenhouse gas emissions, which range from rising sea levels, flooding and drought to the increased risk of wildfires, and the destruction of ocean ecosystems through rapid ocean acidification. According to NASA, seventeen of the 18 warmest years in the 136-year record all have occurred since 2001, and the warmest year on record was 2016. In 2017 our planet passed 400 ppm of CO₂ in the atmosphere, up from the low 300s just in 1960. Without

intervention, this trajectory will result in greenhouse gas emission concentrations that existed in the geologic past when palm trees and reptiles were found in the Arctic. The last time the planet had a concentration of 300 to 400 ppm of CO₂, sea levels were at least 15-25 meters higher than present levels, and CO₂ is currently projected to rise far above current concentrations.

The Sonoma County Regional Climate Protection Authority was formed in 2009 to coordinate countywide climate protection efforts among Sonoma County's nine cities and the County of Sonoma. The goal of the Regional Climate Protection Authority is to collaborate with local agencies on setting goals, pooling resources, and formalizing partnerships to create local solutions to complement State, Federal, and private sector actions to reduce emissions of greenhouse gases.

The Regional Climate Protection Authority collaborated with a countywide Staff Working Group under the direction of the Regional Climate Protection Authority Board of Directors to develop a document entitled, *Climate Action 2020 Plan: A Regional Program for Sonoma County Communities*. *Climate Action 2020* builds on prior commitments to reduce greenhouse gas emissions through a community-wide climate action plan for all communities in Sonoma County. The Regional Climate Protection Authority developed *Climate Action 2020* over the course of several years, with input from all local city councils, the Board of Supervisors, local government staff, expert consultants, community sustainability leaders, and hundreds of members of the public. The Plan proposed that each local government contribute towards a countywide greenhouse gas reduction target of 25% below 1990 levels by 2020.

California River Watch filed an unproductive challenge to the Regional Climate Protection Authority's adoption of the plan on the grounds of the inadequacy of the Environmental Impact Report, not because it opposed the measures in the plan, but instead because it opposed using the plan for subsequent CEQA review. Although the Environmental Impact Report utilized standard regional traffic methodologies and the inventory methodologies used by the State of California in setting and explaining statewide targets, a Superior Court judge disagreed with these methodologies and suggested that worldwide travel should be analyzed by local governments. The Regional Climate Protection Authority Board of Directors elected not to appeal due to its own limited funds and because the 2020 goal was incompatible with lengthy litigation. Additional planning actions will be needed in any case to address post-2020 targets.

Although *Climate Action 2020* cannot be used for CEQA processing due to the Superior Court's order, it can still serve as an advisory resource for the Regional Climate Protection Authority's work to coordinate countywide climate protection efforts. The concepts contained in the plan are intended to advance smart land use, resource efficiency, carbon free electricity, fuel switching, and are aligned with the climate action strategies articulated in the State Scoping Plan established to achieve the goals of AB 32 and SB 32. To create more clear direction for Regional Climate Protection Authority staff on an ongoing basis, the Regional Climate Protection Authority Board adopted Resolution No. 2017-003, officially updating greenhouse gas emission reduction targets and policy goals to reduce greenhouse gasses and prepare for local climate impacts. The intent of the resolution is to achieve the same policy impetus behind climate action as would have the *Climate Action 2020* plan, notwithstanding the setback from the lawsuit.

Taking policy action at a city and county level through adoption of the attached resolution is intended to help create countywide consistency and clear guidance about coordinated implementation of the greenhouse gas reduction measures. If adopted, the attached resolution could provide some of the comprehensive policy framework that had been proposed in *Climate Action 2020*. In addition to Regional Climate Protection

Authority Resolution No. 2017-003, a similar resolution has already been adopted by the City of Sebastopol, the City of Sonoma, the City of Cloverdale, and the Town of Windsor. Therefore, it is recommended that the Board of Supervisors of Sonoma County approve the adoption of the Climate Change Action Resolution.

Prior Board Actions:

July 8, 2008 - The Board of Supervisors approved development of Regional Climate Protection Coordination Plan.

September 12, 2006 - The Board of Supervisors approved the Climate Protection Action Plan as the road map to create the reductions immediately below.

September 27, 2005 – The Board of Supervisors, along with all other local jurisdictions in the County, committed to a community-wide goal of a 25 percent reduction in greenhouse gas emissions from our 1990 baseline levels by the year 2015.

August 20, 2002 - The Board of Supervisors approved a Resolution committing the county to participate in the International Council for Local Environmental Initiatives Climate Protection Campaign to set a target to reduce the county's internal operations greenhouse gas emissions by 20% of year 2000 baseline levels to approximately 30,000 tons per year by the year 2010.

Strategic Plan Alignment Goal 2: Economic and Environmental Stewardship

Adoption of the Climate Change Action Resolution serves to support the strategic goal of economic and environmental stewardship by providing county-wide coordinated implementation of greenhouse gas reduction measures. By providing a clear framework, the Climate Change Action Resolution has the potential to direct policy toward providing energy and cost savings, air quality and public health improvements, local job creation, resource conservation, climate resilience, and enhanced equity.

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses	\$0		
Additional Appropriation Requested	\$0		
Total Expenditures	\$0		
Funding Sources			
General Fund/WA GF	\$0		
State/Federal	\$0		
Fees/Other	\$0		
Use of Fund Balance	\$0		
Contingencies	\$0		
Total Sources	\$0		
Narrative Explanation of Fiscal Impacts:			
The Climate Change Action Resolution as presented has no direct fiscal impact and therefore, requires no additional 2018 fiscal appropriation including recurring or one-time costs. Moreover, no outside funding is required and no funding shall be required for future fiscal years.			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
N/A			
Narrative Explanation of Staffing Impacts (If Required):			
N/A			
Attachments:			
Attachment A: Board of Supervisors Climate Change Action Resolution			
Related Items "On File" with the Clerk of the Board:			



County of Sonoma

State of California

Date: May 8, 2018

Item Number: _____
Resolution Number: _____

3/5 Vote Required

Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California, Reaffirming Its Intent To Reduce Greenhouse Gas Emissions As Part Of A Coordinated Effort Through The Sonoma County Regional Climate Protection Authority And To Adopt Local Implementation Measures As Identified In Climate Action Plan 2020 and Beyond

Whereas, climate change is a real and increasingly urgent threat that demands action at every level of government; and

Whereas, actions taken by local governments to reduce greenhouse gas emissions (GHGs) provide multiple benefits by providing energy and cost savings, air quality and public health improvements, local job creation, resource conservation, climate resilience, and enhanced equity; and

Whereas, the State of California has adopted policy targets to reduce GHGs by 40% from 1990 levels by 2030 and by 80% from 1990 levels by 2050; and

Whereas, the Sonoma County General Plan 2020 includes a section on Energy which includes strong policy language related to the reduction of GHGs; and

Whereas, Sonoma County participates in a coordinated, countywide collaboration to address climate change via the Sonoma County Regional Climate Protection Authority (RCPA); and

WHEREAS, the success of the RCPA depends on the participation of and collaboration with all local jurisdictions, and a commitment to pool resources towards common goals; and

WHEREAS, the RCPA has adopted the same GHG reduction targets as the State of California; and

WHEREAS, the RCPA has established twenty goals to reduce GHG emissions and nine goals to prepare for local climate impacts; and

WHEREAS, the RCPA and Sonoma County collaborated through the Climate Action Plan 2020 and Beyond project to develop Measures specific to Sonoma County that will result in the reduction of GHG and result in substantial environmental and community benefits.

Now, Therefore, Be It Resolved that Sonoma County agrees to work towards the RCPA's countywide target to reduce GHG emissions by 40% below 1990 levels by 2030 and 80% below 1990 levels by 2050; and

Be It Further Resolved, that Sonoma County adopts the following goals to reduce GHG emissions, and will pursue local actions that support these goals:

1. Increase building energy efficiency
2. Increase renewable energy use
3. Switch equipment from fossil fuel to electricity
4. Reduce travel demand through focused growth
5. Encourage a shift toward low-carbon transportation options
6. Increase vehicle and equipment fuel efficiency
7. Encourage a shift toward low-carbon fuels in vehicles and equipment
8. Reduce idling
9. Increase solid waste diversion
10. Increase capture and use of methane from landfills
11. Reduce water consumption
12. Increase recycled water and greywater use
13. Increase water and waste-water infrastructure efficiency
14. Increase use of renewable energy in water and wastewater systems
15. Reduce emissions from livestock operations
16. Reduce emissions from fertilizer use
17. Protect and enhance the value of open and working lands
18. Promote sustainable agriculture
19. Increase carbon sequestration
20. Reduce emissions from the consumption of goods and services; and

Be It Further Resolved, that Sonoma County will continue to work to increase the health and resilience of social, natural, and built resources to withstand the impacts of climate change; and

Be It Further Resolved, that Sonoma County has the goal of increasing resilience by pursuing local actions that support the following goals:

1. Promote healthy, safe communities
2. Protect water resources
3. Promote as sustainable, climate-resilient economy
4. Mainstream the use of climate projections



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 26

(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Permit Sonoma

Staff Name and Phone Number:

Lisa Posternak 565-7383

Supervisorial District(s):

First

Title: Zone Change to add the Vacation Rental Exclusion (X) Combining Zone to 32 parcels in Glen Ellen; File ZCE17-0008

Recommended Actions:

Adopt an Ordinance rezoning 32 parcels in Glen Ellen on Morningside Mountain Drive, Vigilante Road, and Oso Trail to add the Vacation Rental Exclusion (X) Combining Zone. APNs: Various; see attached list.

Executive Summary:

On April 3, the Board took a straw vote (3-2) to add the Vacation Rental Exclusion (X) Combining Zone to 32 parcels in Glen Ellen on Morningside Mountain Drive, Vigilante Road, and Oso Trail; and continued the item to May 8, 2018 on consent.

Discussion:

The proposed Ordinance has been revised to reflect the Board's straw vote on April 3, 2018 adding the X Combining Zone to 32 parcels in Glen Ellen on Morningside Mountain Drive, Vigilante Road, and Oso Trail, as shown in Exhibit A attached to the Ordinance.

Prior Board Actions:

04/03/2018: The Board took a straw vote to add the Vacation Rental Exclusion (X) Combining Zone to 32 parcels in Glen Ellen on Morningside Mountain Drive, Vigilante Road, and Oso Trail.

05/24/2016: The Board applied the Vacation Rental Exclusion (X) Combining Zone to about 5,469 parcels in the 1st and 4th Districts. Ordinance No. 6168 became effective on June 23, 2016. At this time, the Board indicated that property owners may apply for additional rezonings to add the X Combining Zone.

03/15/2016: The Board adopted Ordinance No. 6145 making changes to the Vacation Rental Code, and adopted Resolution of Intention 16-0085 directing staff to consider application of the Vacation Rental Exclusion (X) Combining Zone to a variety of parcels in the 1st and 4th Districts. Ordinance No. 6145 became effective on April 14, 2016.

Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community			
Application of the Vacation Rental Exclusion (X) Combining Zone to 32 parcels on Morningside Mountain Drive, Vigilante Road, and Oso Trail in Glen Ellen will preserve existing housing stock, reduce traffic and fire danger, and improve neighborhood compatibility.			
Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			
Narrative Explanation of Fiscal Impacts:			
Elimination of 32 parcels from potential for conversion to vacation rentals will have a negligible effect on the potential future collection of Transient Occupancy Taxes.			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
Exhibit A: Ordinance with Attachment A (Parcel List and Current/Proposed Zoning) Attachment B (Sectional District Map)			

Related Items “On File” with the Clerk of the Board:

N/A

ORDINANCE NO. ()

AN ORDINANCE OF THE BOARD OF SUPERVISORS, COUNTY OF SONOMA, STATE OF CALIFORNIA, AMENDING THE OFFICIAL ZONING DATABASE OF THE COUNTY OF SONOMA ADOPTED BY REFERENCE BY SECTION 26-02-110 OF THE SONOMA COUNTY CODE, BY RECLASSIFYING CERTAIN REAL PROPERTY BY ADDING THE X (VACATION RENTAL EXCLUSION) COMBINING DISTRICT ON 32 PARCELS TOTALING 583.35 ACRES LOCATED AT 2020, 2028, 2310, 3350, 3380, 3434, 3454, 3475, AND 3535 VIGILANTE ROAD, GLEN ELLEN; 51, 77 AND 100 OSO TRAIL, GLEN ELLEN; 1000, 1200, 1400, 1407, 1500, 1623, 1700, 1741, 1750, 1877, 1900, 2000, 2010, 2100, 2205, AND 2600 MORNINGSIDE MOUNTAIN DRIVE, GLEN ELLEN; AND FOUR PARCELS ON MORNINGSIDE MOUNTAIN DRIVE, GLEN ELLEN, WITH NO ADDRESS; APNS: 054-110-016 AND -011; 054-100-003; 054-110-049, -047, -048, -044, -050, AND -042; 054-110-039, -046, AND -045; 054-400-017; 054-120-038, -017, -035, -016, -039, -025, -042, -029, -030, -028, -027, AND -018; 054-110-025, -038, AND -031; 054-100-12; AND 054-120-036, -040, AND -041.

The Board of Supervisors of the County of Sonoma, State of California, ordains as follows:

SECTION I: The Official Zoning Database (OZD) of the County, adopted by reference by Section 26-02-110 of the Sonoma County Code, is amended by reclassifying the following real property from the existing zoning designations to the zoning designations set forth in Exhibit "A" attached hereto and incorporated herein by this reference. File No. ZCE17-0008. The Director of the Permit and Resource Management Department is directed to reflect this amendment to the OZD of the County as shown on Sectional District Map No.

SECTION II: The Proposed Project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State CEQA guidelines.

SECTION III: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION IV: This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the

Supervisors voting for or against the same, in the *Press Democrat*, a newspaper of general circulation, published in the County of Sonoma, State of California.

In regular session of the Board of Supervisors of the County of Sonoma, introduced on the 3rd day of April, 2018, and finally passed and adopted this 8th day of May, 2018, on regular roll call of the members of said Board by the following vote:

SUPERVISORS:

Gorin: ___ Rabbitt: ___ Gore: ___ Hopkins: ___ Zane: ___

Ayes: ___ Noes: ___ Absent: ___ Abstain: ___

WHEREUPON, the Chair declared the above and foregoing Ordinance duly adopted and

SO ORDERED.

Chair, Board of Supervisors
County of Sonoma

ATTEST:

Sheryl Bratton,
Clerk of the Board of Supervisors

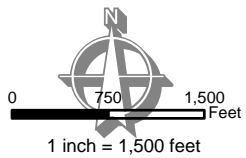
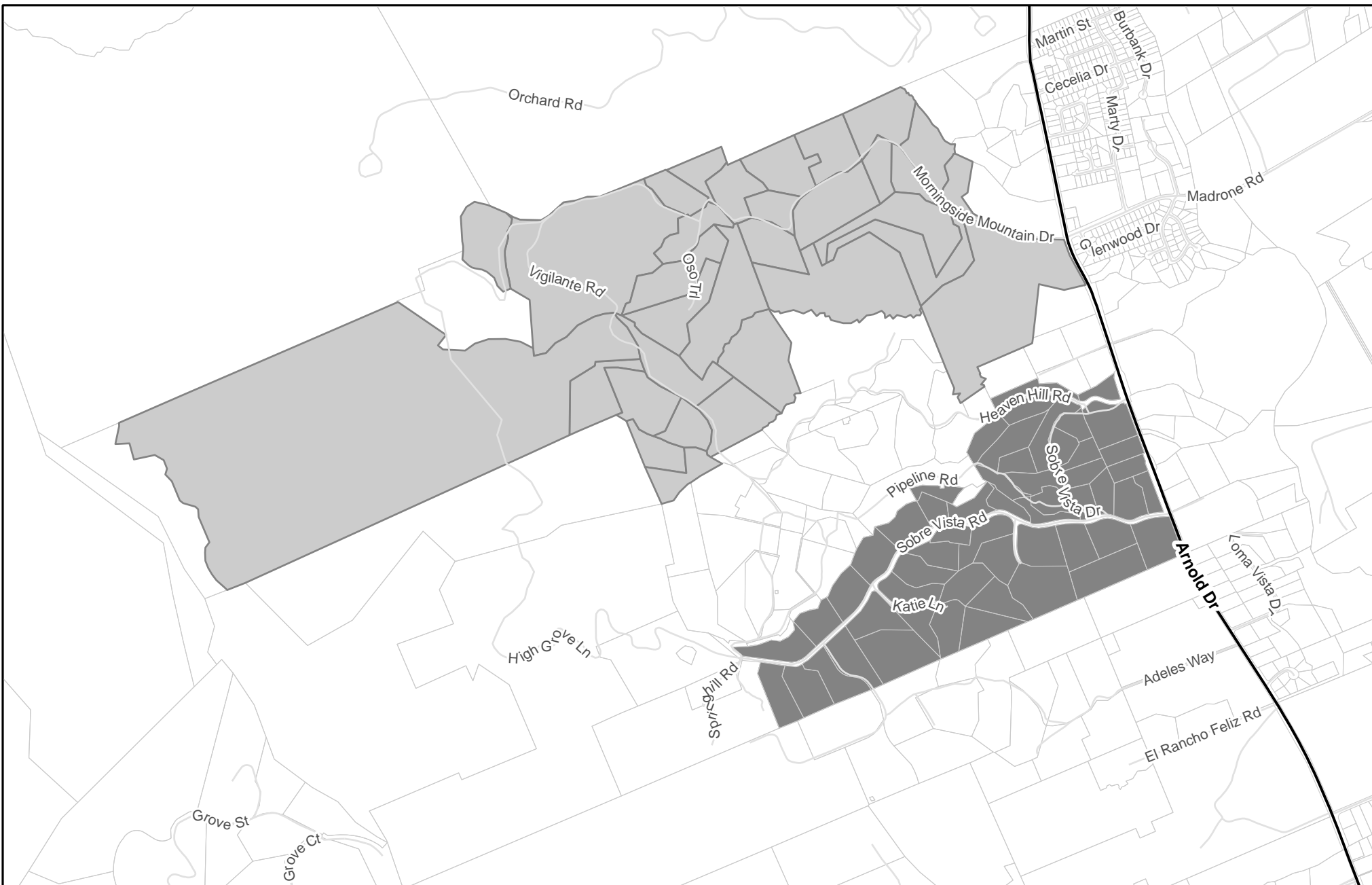
Glen Ellen Vacation Rental Exclusion (X) Combining Zone Parcel Consideration

Parcel No.	Current Zoning	Potential Zoning	Situs Address
054-100-003	DA B6 10, LG/MTN RC50/50 SR	DA B6 10, LG/MTN RC50/50 SR X	2310, 3275 & 3277 Vigilante Rd
054-100-012	DA B6 40, RRD B7, LG/MTN RC50/50 SR	DA B6 40, RRD B7, LG/MTN RC50/50 SR X	None (Morningside Mountain Dr.)
054-110-011	DA B6 10, LG/MTN RC50/50 SR	DA B6 10, LG/MTN RC50/50 SR X	2028 & 3577 Vigilante Rd
054-110-016	DA B6 10, LG/MTN RC50/50 SR	DA B6 10, LG/MTN RC50/50 SR X	2020 & 3585 Vigilante Rd
054-110-025	RR B6 10, SR	RR B6 10, SR X	2100 Morningside Mountain Dr
054-110-031	DA B6 20, LG/MTN SR	DA B6 20, LG/MTN SR X	2600 Morningside Mountain Dr
054-110-038	DA B6 10, SR	DA B6 10, SR X	2205 & 2207 Morningside Mountain Dr
054-110-039	DA B6 10, RC50/50 SR	DA B6 10, RC50/50 SR X	51 & 55 Oso Trl
054-110-042	LIA B6 50 Z, LG/MTN RC50/50 SR	LIA B6 50 Z, LG/MTN RC50/50 SR X	3535 & 3600 Vigilante Rd, 2500 Morningside Mountain Dr
054-110-044	DA B6 10, RC50/50 SR	DA B6 10, RC50/50 SR X	3454 Vigilante Rd
054-110-045	DA B6 10, RC50/50 SR	DA B6 10, RC50/50 SR X	100 Oso Trl
054-110-046	DA B6 10, RC50/50 SR	DA B6 10, RC50/50 SR X	77 Oso Trl
054-110-047	DA B6 10, LG/MTN RC50/50 SR	DA B6 10, LG/MTN RC50/50 SR X	3380 & 3388 Vigilante Rd
054-110-048	DA B6 10, RC50/50 SR	DA B6 10, RC50/50 SR X	3434 & 3444 Vigilante Rd
054-110-049	DA B6 10, LG/MTN RC50/50 SR	DA B6 10, LG/MTN RC50/50 SR X	3350 & 3353 Vigilante Rd
054-110-050	DA B6 10, LG/MTN RC50/50 SR	DA B6 10, LG/MTN RC50/50 SR X	3475 Vigilante Rd
054-120-016	RR B6 10, RC50/50 SR	RR B6 10, RC50/50 SR X	1500 Morningside Mountain Dr
054-120-017	RR B6 10, SR	RR B6 10, SR X	1400 Morningside Mountain Dr



Parcel No.	Current Zoning	Potential Zoning	Situs Address
054-120-018	RR B6 10, SR	RR B6 10, SR X	2010 Morningside Mountain Dr
054-120-025	RR B6 10, RC50/50 SR	RR B6 10, RC50/50 SR X	1700 Morningside Mountain Dr
054-120-027	RR B6 10, SR	RR B6 10, SR X	2000 Morningside Mountain Dr
054-120-028	RR B6 10, SR	RR B6 10, SR X	1900 Morningside Mountain Dr
054-120-029	RR B6 10, RC50/50 SR	RR B6 10, RC50/50 SR X	1750 Morningside Mountain Dr
054-120-030	RR B6 10, SR	RR B6 10, SR X	1877 Morningside Mountain Dr
054-120-035	RR B6 10, SR	RR B6 10, SR X	1407 Morningside Mountain Dr
054-120-036	RR B6 10, SR	RR B6 10, SR X	None (Morningside Mountain Dr.)
054-120-038	RR B6 10, RC50/50 SR VOH	RR B6 10, RC50/50 SR VOH X	1200 Morningside Mountain Dr
054-120-039	RR B7, SR	RR B7, SR X	1623 & 1741 Morningside Mountain Dr
054-120-040	RR B7, SR	RR B7, SR X	None (Morningside Mountain Dr.)
054-120-041	RR B7, RC50/50 SR	RR B7, RC50/50 SR X	None (Morningside Mountain Dr.)
054-120-042	RR B7, RC50/50 SR	RR B7, RC50/50 SR X	1741 Morningside Mountain Dr
054-400-017	RR B6 10, SR	RR B6 10, SR X	1000 Morningside Mountain Dr





Base Map Data

- Rezone Area
- Existing X Combining Zone (Sobre Vista)
- Parcel
- Main Arterial Street
- Street

*X Vacation Rental
Exclusion Combining District
Glen Ellen, ZCE17-0008*

County of Sonoma

Permit and Resource Management Department

2550 Ventura Avenue, Santa Rosa
California 95403





County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 27
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors of Sonoma County

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Probation Department

Staff Name and Phone Number:

David Koch, Probation: 565-2732

Supervisorial District(s):

Countywide

Title: Public Safety Realignment Implementation Plan for Fiscal Year 2018-19

Recommended Actions:

Approve the Community Corrections Partnership's recommended Public Safety Realignment Implementation Plan for Fiscal Year 2018-19. The Plan prioritizes public safety and supports rehabilitative services designed to reduce offenders' future involvement in the criminal justice system.

Executive Summary:

This report presents the Community Corrections Partnership's recommended Public Safety Realignment Implementation Plan for fiscal year 2018-19, describes changes compared to the current year plan, and highlights some recent program successes.

As in past years, this year's Plan funds established programs to supervise and rehabilitate offenders. Different from past years, this year's Plan reduces expenditures within several areas to help bring expenditures in line with revenues. Most programs remaining in the recommended FY 2018-19 budget largely or exclusively serve realigned offenders. An exception—the Pretrial program—primarily serves non-realigned populations but remains in the recommended fiscal year 2018-19 budget as a vital program that reduces incarceration time while protecting public safety. However, the Community Corrections Partnership budget will be unable to sustain pretrial programming in future years. Accordingly, this report recommends an alternate funding solution.

Discussion:

2011 Public Safety Realignment

In response to a federal court order to reduce prison overcrowding, California's Public Safety Realignment Act (Assembly Bill 109) took effect October 1, 2011, and mandated sweeping changes to the criminal justice system by shifting the responsibility for managing select adult offenders from the State to each of the 58 counties. Because of this legislation, the Sonoma County Sheriff's Office and Probation Department now supervise over 500 offenders, comprising 221 inmates and 319 individuals

supervised in the community, who formerly would have been supervised by the California Department of Corrections and Rehabilitation.

State Funding

To assist counties in handling this increased workload, the State provides dedicated funding, with sales taxes providing approximately 90% of funding and vehicle license fees providing the remaining 10%. In earlier years, State revenues exceeded Community Corrections Partnership expenses such that local reserves grew to \$7.4 million in FY 2015-16. Since then, expenses have exceeded revenues due to a change in the State's funding formula, which reduced Sonoma County's share of statewide funding, combined with increasing program expenses. As a result, we expect to fully expend Community Corrections Partnership reserves by FY 2021-22, assuming continuation of the services recommended for FY 2018-19.

FY 2018-19 Community Corrections Partnership Budget

The Community Corrections Partnership's FY 2018-19 budget includes 57.5 full-time equivalent position allocations and \$13,706,066 in funding for the following departments: Sheriff's Office (\$4,922,923), Probation Department (\$6,703,421), Department of Health Services (\$1,039,386), Human Services Department (\$275,185), District Attorney's Office (\$366,637), Public Defender's Office (\$226,314), County Counsel (\$50,000), and Information Systems Department (\$25,000). Departments include their allocations in their respective recommended budgets. The Plan also includes \$97,200 for the Superior Court to provide competency assessments to those awaiting trial. The overall budget reduces expenditures by \$524,000 compared to the approved FY 2017-18 budget.

Consistent with prior years, the FY 2018-19 Plan promotes evidence-based programming and upstream investments by using proven strategies to help offenders successfully complete supervision and reduce future involvement in the justice system. Furthermore, the Plan supports the strategic goals, guiding principles, and recommendations of the *Sonoma County Criminal Justice System Master Plan 2015 Update*.

FY 2018-19 Recommended Budget and Cost Control Update

The Community Corrections Partnership recommends allocating \$13,706,066 for all services, which exceeds expected revenue by \$921,403, thereby reducing reserves from \$4,485,026 to \$3,563,623. This deficit represents a large improvement from last year, when we requested approval for FY 2017-18 expenses that exceeded expected revenues by \$2.6 million. At that time, we described a three-step approach toward future budget stability. Following are the steps and the progress we've made.

Step 1: Initiate no new programs in FY 2017-18 and eliminate existing programs to the extent possible without jeopardizing public safety.

In considering program cuts, the Community Corrections Partnership Executive Committee ranked programs according to the impacts they were expected to have on the AB 109 realigned offender population, using a tiered approach in which Tier 1 programs are those specifically for realigned

offenders; Tier 2 programs assist with the criminal justice system overall, but may not directly or exclusively impact AB 109 offenders; and Tier 3 programs provide ancillary benefits to the criminal justice system. Using this approach, the Executive Committee eliminated three lower-tier programs in FY 2017-18.

Step 2: Hold a series of budget-focused meetings.

The Executive Committee’s budget meetings culminated in a four-hour meeting on February 26, 2018, at which nine programs were reduced or eliminated, totaling over \$900,000 in reductions (Table 1). After accounting for increases in remaining programs related to salary and benefits, the Community Corrections Partnership’s recommended FY 2018-19 budget is \$524,000 less than costs approved in the FY 2017-18 budget. The remaining programs in the recommended FY 2018-19 budget largely or exclusively serve realigned offenders, excepting the Pretrial program discussed below.

Tier Level	Major Program	Department	Program Description	FY 2017-18 CCP Approved	FY 2018-19 CCP Approved	Year-Over-Year Variance
1,2	In-Custody Programming	Health Services	Starting Point SUD Services	\$269,074	\$179,074	(\$90,000)
1,2	Community-Based Programming	Human Services	Business Representative Contract	\$58,000	\$0	(\$58,000)
1,2	Community-Based Programming	Human Services	General Assistance Subsidy	\$70,000	\$35,000	(\$35,000)
1	Data Management & Evaluation	ISD	Programming Support	\$124,990	\$25,000	(\$99,990)
1	Community Supervision	Probation	Office Rent	\$17,000	\$0	(\$17,000)
2,3	Community-Based Programming	Probation	Young Adult Restorative Justice	\$30,000	\$0	(\$30,000)
1	Custody	Sheriff	Jail Unit 2	\$361,277	\$100,000	(\$261,277)
1	Community Supervision	Sheriff	Detective	\$261,089	\$0	(\$261,089)
1,2	Community-Based Programming	Sheriff	Electronic Monitoring Staff & Contract	\$470,068	\$410,476	(\$59,592)
Total				\$1,661,498	\$749,550	(\$911,948)

Table 1. FY 2018-19 Program Reductions.

Step 3: Pursue alternative funding sources for some programming such as transitional housing and mental health care.

Probation, in partnership with the Community Development Commission and InterFaith Shelter Network, pursued and secured \$4 million in State funding for transitional housing. Funding began in December 2017 and provides an additional 39 critically needed beds to Probation’s inventory. In addition to serving a clear community need, this stable housing improves offenders’ chances of success in other Community Corrections Partnership-funded community-based programming such as the Day Reporting Center, mental health services, and employment services. Finally, the State funding allows the Community Corrections Partnership to focus remaining resources on high-priority community supervision and custody programs.

Separately, Health Services recently awarded a request for proposals to California Human Development to pursue Drug Medi-Cal reimbursement at the Day Reporting Center. Once this program becomes State-certified, it will reduce the Community Corrections Partnership’s expenses for contractor-provided substance use disorder services.

Future Steps: As previously reported to the Board, even with successful implementation of last year’s budget stabilization measures, the Community Corrections Partnership cannot continue funding existing

Tier 1 programming while also maintaining the Pretrial program, which is critical to the criminal justice system but does not directly serve realigned offenders. The Community Corrections Partnership expects that cuts to Pretrial would increase incarceration rates, force early releases from jail, and increase overall costs to Sonoma County compared to less expensive and more rehabilitative community supervision alternatives. The attached letter from Community Corrections Partnership Chair David Koch details a proposed solution in which funding for this program gradually shifts from the Community Corrections Partnership to County General Fund. The Program Highlights section below describes the Pretrial program and its recent performance.

Program Highlights

Pretrial Services

Traditionally, courts have based decisions of release from pre-adjudication incarceration partly on defendants’ ability to meet financial burdens of bond or bail, a system that may release dangerous defendants while incarcerating those who pose little risk to their communities. By contrast, under the Pretrial services program, a collaboration between the Sheriff’s Office, the Probation Department, and the Superior Court, release decisions consider defendants’ risk of 1) posing a threat to public safety, and 2) failing to appear in court. By using a validated assessment tool to predict these risks, the program protects the public and allows lower-risk defendants to continue productive, law-abiding activities, regardless of financial status, while awaiting adjudication.

Informed by these assessments, the Superior Court determines appropriate levels of Pretrial supervision, which can range from monthly check-ins at the Probation Office to field visits from a Probation Officer coupled with GPS and alcohol electronic monitoring to detention.

The Court began using pretrial services in January 2015, and the program has grown rapidly in recent months, soaring from 70 pretrial grants in January 2017 to 160 grants in February 2018, as judges increasingly embrace this risk-based approach. The program has proven largely successful as measured by failures to appear and new criminal referrals (Table 2). Technical violations represent Probation’s active supervision of participants to prevent new crimes and failures to appear in court.

“We have over 200 out of custody and on pretrial—that is a major success. If it weren’t for that, we would be over-crowded, and we would be releasing people on early release orders without supervision. So pretrial is very successful and the electronic monitoring programs are very good.”
 –Sonoma County Sheriff’s Office

	#	%
	Successful Outcomes	Total Releases
No Failures to Appear	406	87%
No New Criminal Referrals	446	95%
No Technical Violations Resulting in Termination	357	76%

Table 2. Outcomes of Pre-Trial Release Terminations (Out of 468 Exits from January through June 2017)

Day Reporting Center

Serving as the central point of evidence-based programming and structure for felony offenders, the Day Reporting Center provides a detention alternative to traditional incarceration for adults who meet the program criteria. The Probation Department collaborates with the Sheriff's Office, the Department of Health Services, and the Human Services Department to provide seamless, offender-engaged reentry service coordination that begins in custody, continues through supervision, and transitions the offender to ongoing community-based supports and services when supervision ends. Services include life skills, vocational skills, substance abuse treatment, and Cognitive Behavioral Intervention, a program developed in collaboration with the University of Cincinnati Corrections Institute. The program includes 55 group sessions where participants take accountability for past actions, learn new ways to handle difficult and risky situations, and create a support system and plan for success.

"The classes here at the DRC were very helpful for me in everyday life, especially in reference to my anger issues. I often use many of the skills I learned when I felt myself getting angry or when I was in a situation that was potentially dangerous. I thank you for helping me achieve my goals."

—Day Reporting Center Participant

Since Probation assumed operation of the Day Reporting Center in January 2015, 209 participants have successfully completed Cognitive Behavioral Intervention (Table 3).

Program	Began Participation	Successfully Completed	Successful Completion Rate
Cognitive-Based Interventions - Comprehensive Curriculum	676	209	31%
Cognitive-Based Interventions - Advanced Practice	150	106	71%
Substance Abuse Outpatient Treatment	200	67	34%
Aggression Replacement Training	75	40	53%

Table 3. Participation in and Completion Rates of DRC Programs (January 2015 through March 2018).

While we strive to increase successful completion rates, we also acknowledge that this is a challenging program that serves participants with long histories of criminal behavior and/or substance abuse. As such, we view partial program completions more favorably than no programming at all. Indeed, preliminary analysis by Resource Development Associates, our contracted evaluation partner, suggests even partial completion of Day Reporting Center programming contributes to statistically significant recidivism reduction. An initial study comparing Post-Release Community Supervision offenders¹ who attended the Day Reporting Center to those who did not attend found that 14% of participants

¹ Post-Release Community Supervision offenders are those who, prior to California's Public Safety Realignment Act, would have been supervised by State Parole upon release from prison but who now receive community supervision from county probation departments.

reoffended during the one-year period following the start of supervision versus 31% of non-participants. Future studies will address other variables that might explain differences between the two groups, such as differing levels of participation in other interventions. For now, however, we are encouraged by initial findings and will continue implementing and evaluating evidence-based practices.

Program participation has also been shown to reduce monetary costs associated with recidivism. The Washington State Institute for Public Policy² calculates benefit-to-cost ratios for various interventions. Although based on the Washington economy, the Institute's studies are rigorous and instructive. The figures below represent the dollars of community benefit for every one dollar of program cost:

- Cognitive-behavioral intervention: \$6.32
- Employment counseling and job training: \$9.75
- Community-based outpatient drug treatment: \$13.45
- Intensive supervision (surveillance plus treatment such as cognitive behavioral intervention or chemical dependency treatment): \$16.25

The Community Corrections Partnership's recommended FY 2018-19 budget provides funding for all of the above programs.

As of February 2018, the Day Reporting Center is serving 201 participants, well above the design capacity of 150 participants.

Detention Services

Home Confinement. The Community Corrections Partnership funds the staff needed to oversee the Sheriff's Office electronic monitoring program. This program has been essential in helping the Sheriff's Office manage the population of the adult detention facilities by allowing qualified inmates to serve their sentences in the community. In calendar year 2017, the program placed 508 inmates into home confinement—46% more than in 2016—saving 15,987 jail days, with 90% of participants successfully completing their sentences in-home.

Inmate Programs. The Community Corrections Partnership funds the cost of the Inmate Programs Sergeant and approximately 30% of inmate education and development programs offered in the Sheriff's Office adult detention facilities. The Programs Sergeant continues to improve and expand the inmate program offerings and re-entry services. Over the last year, a culinary certificate pilot program was implemented, and several existing programs, such as tablet-based programming, canine intervention therapy and puppy training, and mental health services were expanded. Several new re-entry services were established for inmates being released into the community as well as an in-house felony restoration-to-competency program.

² <http://www.wsiipp.wa.gov/BenefitCost>

Eligibility Services

In its eligibility programs, Human Services has taken 77 applications for Medi-Cal, 68 for CalFresh, and 23 for General Assistance since February 2017, with a 91% approval average rate.

Program Highlights Conclusion

While we are encouraged by these program highlights, the true test is the degree to which our programs reduce participant recidivism. To this end, the Community Corrections Partnership and Resource Development Associates will continue collecting and processing data to measure participant involvement in the criminal justice system following program participation. We look forward to delivering additional study results to the Board in the coming years.

Prior Board Actions:

08/16/2011 – 06/06/2017: The Board approved the Community Corrections Partnership’s Annual Realignment Implementation Plan and Budget.

Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community

The Community Corrections Partnership’s FY 2018-19 Realignment Implementation Plan aligns with the County’s strategic goal of promoting a safe, healthy, and caring community. The Plan includes continued funding for a jail unit to maintain capacity commensurate with need, plus additional resources to monitor offenders effectively in the community. It also includes innovative public safety programs, such as pretrial services and electronic monitoring, which provide cost-effective detention alternatives, while protecting public safety. Finally, recommended funding will support a variety of health, education, and human services programs. These services address offenders’ needs, bolster their skills, improve their employment prospects, and foster integration into the community.

Fiscal SummaryFiscal SummaryFiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses	\$14,279,087	\$13,706,066	\$12,570,428
Additional Appropriation Requested	\$0		
Total Expenditures	\$14,279,087	\$13,706,066	\$12,570,428
Funding Sources			
General Fund/WA GF			
State/Federal	\$11,682,822	\$12,784,663	\$12,570,428
Fees/Other			
Use of Fund Balance	\$2,596,265	\$921,403	\$0
Contingencies			
Total Sources	\$14,279,087	\$13,706,066	\$12,570,428
Narrative Explanation of Fiscal Impacts:			
<p>All County departments with AB 109-funded programs incorporated their portion of the Realignment budget into their respective FY 2018-19 departmental budgets. Sonoma County’s FY 2018-19 Main AB 109 Subaccount allocation is \$11,647,311. Additionally, Sonoma County expects to receive \$363,175 in the District Attorney/Public Defender Subaccount and \$150,000 in planning revenue, for a total of \$12,160,486 in State base funding. Additionally, Sonoma County expects to receive \$624,177 in FY 2017-18 growth allocation funds by November 2018, for total fiscal year funding of \$12,784,663. Reserve funds from previous years’ revenue surpluses will make up the remaining \$921,403 in requested expenditures. The FY 2019-20 projection assumes implementation of the Pretrial program cost-sharing proposal presented here.</p>			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
<p>For FY 2018-19, the Community Corrections Partnership recommends funding for 57.5 full-time equivalent positions, all of which are currently funded in the approved FY 2017-18 budget.</p>			
Attachments:			
<ul style="list-style-type: none"> Letter from Community Corrections Partnership Chair David Koch regarding Probation’s Pretrial Services funding proposal 			

- Community Corrections Partnership's FY 2018-19 line-item budget

Related Items "On File" with the Clerk of the Board:

None.

SONOMA COUNTY

PROBATION DEPARTMENT

Changing Lives, Reducing Crime, Restoring Community

David M. Koch
Chief Probation Officer



May 8, 2018

Sheryl Bratton
County Administrator
County of Sonoma
575 Administration Drive, Suite 104A
Santa Rosa, CA 95403

RE: Pretrial Services Funding Proposal

Dear Sheryl,

The Pretrial Services funding proposal which appears below was approved by the Community Corrections Partnership (CCP) on 2/26/2018. This action was taken in conjunction with approval of the overall CCP budget submitted for the Board's consideration. The CCP budget for program services was reduced for FY 2018-19 by \$524,000 in order to balance the budget and align expenditures with projected revenue while maintaining an ongoing reserve equal to two months of expenses (currently \$2.3 million). This action is consistent with information provided to Board members earlier in FY 2017-18.

As discussed previously, the policy position adopted by the CCP Executive Committee is to sever Pretrial Services funding from the CCP budget and shift this expense to the County General Fund, phased in over a 4-year period, as described in the accompanying table. During FY 2018-19, CCP reserves will fully fund Pretrial Services. In FY 2019-20 and FY 2020-21, funding for Pretrial Services is proposed as a mix of CCP reserves and County General Fund. Beginning FY 2021-22, County General Fund would fully fund Pretrial Services. In formulating this proposal, the CCP recognized that Pretrial Services benefits the entire criminal justice system, including helping to manage the jail population. Also of note is that less than 1% of the defendants participating in Pretrial Services are AB109 offenders—the very population CCP funds are expected to serve.

A potential revenue offset to use of County General Fund comes by way of pending "bail reform" legislation. In the event the State Legislature and Governor approve such legislation during this session, counties are likely to receive funding for legislatively

Adult Probation Services/SAC

600 Administration Drive,
Room 104-J
Santa Rosa, CA 95403
(707) 565-2149
FAX (707) 565-2504

Juvenile Probation Services

7425 Rancho Los Guillicos Road,
Dept. B
Santa Rosa, CA 95409
(707) 565-6229
FAX (707) 565-6329

Juvenile Hall

7425 Rancho Los Guillicos Road,
Dept. A
Santa Rosa, CA 95409
(707) 565-6300
FAX (707) 565-6393

Probation Camp

7400 Steve Olson Lane
Forestville, CA 95436
(707) 565-8900
FAX (707) 565-8903

Administrative Services

370 Administration Drive,
2nd Floor
Santa Rosa, CA 95403
(707) 565-2731
FAX (707) 565-2878

Day Reporting Center

2400-A County Center Drive
Santa Rosa, CA 95403
(707) 565-8041
FAX (707) 565-2009

mandated pretrial services functions. The program developed in Sonoma County meets best practices standards and very likely would be eligible for funding. I, and the rest of the CCP Executive Committee, look forward to working with your office on advocacy efforts toward securing appropriate State funding in support of this vital program. Additionally, were CCP revenues to increase and/or underspending to occur, the CCP would consider directing a portion of the amount over the CCP's reserve target toward Pretrial Services funding, thus reducing the County General Fund obligation.

I appreciate your consideration of this proposal and welcome the opportunity to respond to any questions that may arise.

Respectfully submitted,

David Koch, Chair
 Community Corrections Partnership
 707.565.2732

cc: Christine Williams, Administrative Services Director

Pretrial Services Funding Proposal

Fiscal Year	Pretrial Program Cost	General Fund Contribution to Pretrial	CCP Reserve Fund Contribution to Pretrial
FY 18-19	\$2,256,158	\$0	\$2,256,158
FY 19-20	\$2,307,050	\$1,461,338	\$845,712
FY 20-21	\$2,359,468	\$1,461,338	\$898,130
FY 21-22	\$2,413,460	\$2,413,460	\$0
Total	\$9,336,136	\$5,336,136	\$4,000,000

**Sonoma County Community Corrections Partnership
FY 2018-19 BUDGET BY MAJOR PROGRAM**

Tier Level	Major Program	Department	Program Description	FY 2018-19 FTE	FY 2018-19 CCP Approved
1	Custody	Sheriff	Jail Unit 1	10.0	\$2,168,006
1	Custody	Sheriff	Jail Unit 2	0.0	\$100,000
Custody Total				10.0	\$2,268,006
1,2	In-Custody Programming	Sheriff	Jail Programs	0.0	\$142,564
1,2	In-Custody Programming	Sheriff	Program Sergeant	1.0	\$215,446
2	In-Custody Programming	Sheriff	PC 1370 Restoration Services	0.0	\$124,251
1,2	In-Custody Programming	Sheriff	Mental Health	0.0	\$793,191
1,2	In-Custody Programming	Health Services	Starting Point SUD Services	1.5	\$179,074
In-Custody Programming Total				2.5	\$1,454,526
1	Community Supervision	Probation	AB 109 Supervision Unit	13.0	\$2,347,637
1	Community Supervision	Probation	Offender Needs Fund	0.0	\$2,000
Community Supervision Total				13.0	\$2,349,637
1,2	Community-Based Programming	Sheriff	Electronic Monitoring Staff & Contract	2.0	\$410,476
1,2	Community-Based Programming	Probation	Electronic Monitoring Contract	0.0	\$220,000
1,2	Community-Based Programming	Probation	Day Reporting Center	10.0	\$1,861,635
1	Community-Based Programming	Probation	Transitional Housing	0.0	\$265,754
1,2	Community-Based Programming	Probation	Adult Education at DRC	0.0	\$51,000
2	Community-Based Programming	Probation	DUI Court PO Support	1.0	\$168,052
2	Community-Based Programming	Superior Court	PC 1368 Competency Assessments	0.0	\$97,200
1,2	Community-Based Programming	Health Services	SUD Services	1.0	\$177,163
1,2	Community-Based Programming	Health Services	Community Mental Health Services	1.5	\$257,559
1,2	Community-Based Programming	Health Services	SUD Contract Services	0.0	\$261,442
1,2	Community-Based Programming	Health Services	Outpatient SUD at DRC	0.0	\$45,850
1,2	Community-Based Programming	Human Services	General Assistance Subsidy	0.0	\$35,000
1,2	Community-Based Programming	Human Services	Employment & Eligibility Services	2.0	\$240,185
Community-Based Programming Total				17.5	\$4,091,316

**Sonoma County Community Corrections Partnership
FY 2018-19 BUDGET BY MAJOR PROGRAM**

Tier Level	Major Program	Department	Program Description	FY 2018-19 FTE	FY 2018-19 CCP Approved
1	Parole Revocation Hearings	District Attorney	Case Prosecution	1.0	\$249,471
1	Parole Revocation Hearings	District Attorney	Legal Processor	1.0	\$117,166
1	Parole Revocation Hearings	Public Defender	Attorney	1.0	\$163,949
1	Parole Revocation Hearings	Public Defender	Investigator	0.5	\$62,365
Parole Revocation Hearings Total *				3.5	\$592,951
2	Pre-Trial Services	Sheriff	Assessment Staff	4.0	\$813,366
2	Pre-Trial Services	Probation	Pre-Trial Supervision	5.0	\$1,009,494
2	Pre-Trial Services	Probation	Pre-Trial Electronic Monitoring Contract	0.0	\$315,000
2	Pre-Trial Services	Health Services	Pre Trial Clinical Services	0.0	\$118,298
Pre-Trial Services Total				9.0	\$2,256,158
1	Data Management & Evaluation	ISD	Programming Support	0.0	\$25,000
1,2	Data Management & Evaluation	Probation	Business Systems Analyst	0.0	\$77,861
1	Data Management & Evaluation	Probation	Evaluation Consultant	0.0	\$220,000
Data Management & Evaluation Total				0.0	\$322,861
1	Administration	Probation	Department Analyst	1.0	\$164,988
1,2	Administration	Sheriff	Department Analyst	1.0	\$155,623
1	Administration	County Counsel	Legal Support	0.0	\$50,000
Administration Total				2.0	\$370,611
Grand Total				57.5	\$13,706,066

*** FY 2018-19 Parole Revocation Hearings Funding**

	DA/PD Dedicated Funding	CCP Funding	Total
DA	\$205,148	\$161,489	\$366,637
PD	\$205,148	\$21,166	\$226,314
Total	\$410,296	\$182,655	\$592,951

Note: Funded first from DA/PD dedicated funding, then from CCP funding up to the approved budget amount.

**Sonoma County Community Corrections Partnership
FY 2018-19 BUDGET BY DEPARTMENT**

Tier Level	Major Program	Department	Program Description	FY 2018-19 FTE	FY 2018-19 CCP Approved
1	Administration	County Counsel	Legal Support	0.0	\$50,000
		County Counsel Total		0.0	\$50,000
1	Parole Revocation Hearings	District Attorney	Case Prosecution	1.0	\$249,471
1	Parole Revocation Hearings	District Attorney	Legal Processor	1.0	\$117,166
		District Attorney Total		2.0	\$366,637
1,2	In-Custody Programming	Health Services	Starting Point SUD Services	1.5	\$179,074
1,2	Community-Based Programming	Health Services	SUD Services	1.0	\$177,163
1,2	Community-Based Programming	Health Services	Community Mental Health Services	1.5	\$257,559
1,2	Community-Based Programming	Health Services	SUD Contract Services	0.0	\$261,442
1,2	Community-Based Programming	Health Services	Outpatient SUD at DRC	0.0	\$45,850
2	Pre-Trial Services	Health Services	Pre Trial Clinical Services	0.0	\$118,298
		Health Services Total		4.0	\$1,039,386
1,2	Community-Based Programming	Human Services	General Assistance Subsidy	0.0	\$35,000
1,2	Community-Based Programming	Human Services	Employment & Eligibility Services	2.0	\$240,185
		Human Services Total		2.0	\$275,185
1	Data Management & Evaluation	ISD	Programming Support	0.0	\$25,000
		ISD Total		0.0	\$25,000
1	Community Supervision	Probation	AB 109 Supervision Unit	13.0	\$2,347,637
1	Community Supervision	Probation	Offender Needs Fund	0.0	\$2,000
1,2	Community-Based Programming	Probation	Electronic Monitoring Contract	0.0	\$220,000
1,2	Community-Based Programming	Probation	Day Reporting Center	10.0	\$1,861,635
1	Community-Based Programming	Probation	Transitional Housing	0.0	\$265,754
1,2	Community-Based Programming	Probation	Adult Education at DRC	0.0	\$51,000
2	Community-Based Programming	Probation	DUI Court PO Support	1.0	\$168,052
2	Pre-Trial Services	Probation	Pre-Trial Supervision	5.0	\$1,009,494
2	Pre-Trial Services	Probation	Pre-Trial Electronic Monitoring Contract	0.0	\$315,000
1,2	Data Management & Evaluation	Probation	Business Systems Analyst	0.0	\$77,861
1	Data Management & Evaluation	Probation	Evaluation Consultant	0.0	\$220,000
1	Administration	Probation	Department Analyst	1.0	\$164,988
		Probation Total		30.0	\$6,703,421
1	Parole Revocation Hearings	Public Defender	Attorney	1.0	\$163,949
1	Parole Revocation Hearings	Public Defender	Investigator	0.5	\$62,365
		Public Defender Total		1.5	\$226,314

**Sonoma County Community Corrections Partnership
FY 2018-19 BUDGET BY DEPARTMENT**

Tier Level	Major Program	Department	Program Description	FY 2018-19 FTE	FY 2018-19 CCP Approved
1	Custody	Sheriff	Jail Unit 1	10.0	\$2,168,006
1	Custody	Sheriff	Jail Unit 2	0.0	\$100,000
1,2	In-Custody Programming	Sheriff	Jail Programs	0.0	\$142,564
1,2	In-Custody Programming	Sheriff	Program Sergeant	1.0	\$215,446
2	In-Custody Programming	Sheriff	PC 1370 Restoration Services	0.0	\$124,251
1,2	In-Custody Programming	Sheriff	Mental Health	0.0	\$793,191
1,2	Community-Based Programming	Sheriff	Electronic Monitoring Staff & Contract	2.0	\$410,476
2	Pre-Trial Services	Sheriff	Assessment Staff	4.0	\$813,366
1,2	Administration	Sheriff	Department Analyst	1.0	\$155,623
Sheriff Total				18.0	\$4,922,923
2	Community-Based Programming	Superior Court	PC 1368 Competency Assessments	0.0	\$97,200
Superior Court Total				0.0	\$97,200
Grand Total				57.5	\$13,706,066



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 28
(This Section for use by Clerk of the Board Only.)

To: The Board of Supervisors of Sonoma County

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Sonoma County Regional Parks

Staff Name and Phone Number:

Melanie Parker, Deputy Director (707) 292-4193

Supervisorial District(s):

5

Title: Highway 12 Bridge Mitigation Restoration Maintenance Cooperative Agreement

Recommended Actions:

Approve and authorize the Director of Regional Parks to execute reimbursement agreement and any necessary amendments with Caltrans for maintenance and monitoring of mitigation planting for the recent replacement of the Laguna de Santa Rosa bridge in the amount of \$402,500 with a term ending July 31, 2027.

Executive Summary:

Caltrans recently replaced the Laguna de Santa Rosa Bridge located on Highway 12 at the eastern edge of Sebastopol. Mitigation for the impacts of bridge replacement consisted, in part, of on-site plantings of 361 native trees and shrubs. Planting was completed on July 21, 2017 and will be maintained and monitored for one year by the installing contractor. Beginning in July, 2018, Sonoma County Regional Parks (SCRP) will take over the maintenance and monitoring of the mitigation planting for a total of nine years. The completed mitigation planting will allow Caltrans to meet permitting requirements for the bridge replacement. The total reimbursement for maintenance and monitoring of the mitigation planting from Caltrans to SCRCP will be \$402,500 for the nine year period of agreement.

Discussion:

History

From 2015-2017, Caltrans replaced the Laguna de Santa Rosa Bridge spanning the Laguna de Santa Rosa at the eastern edge of Sebastopol along Highway 12 at post mile 9.6. Due to the impacts of bridge replacement, the California Department of Fish and Wildlife and the North Coast Regional Water Quality Control Board required on-site mitigation of 361 native trees and shrubs to compensate for the loss of native plants during construction. Planting was completed on July 21, 2017 and will be maintained and monitored for the first year by the installing contractor.

Discussion of the local area

The “middle reach” of the Laguna de Santa Rosa waterway spans a complex of public and private ownership with a mix of trail intersections, pedestrian and vehicular crossings, and opportunities for public access. The precise location of mitigation planting spans several parcels on the north and south side of Highway 12 and east and west sides of the Laguna de Santa Rosa. The mitigation planting crosses numerous parcels and ownership, all within the Caltrans right of way. Fee title property ownership includes the City of Sebastopol and the State of California. The planting area is approximately 1 acre in size and in the immediate vicinity of several trails including the Laguna de Santa Rosa the Joe Rodota Trails operated by SCRCP and the Meadowlark Field and Americorps Trails owned and operated by the City of Sebastopol.

Due to ongoing presence of SCRCP in the area to operate trails, and the staff expertise in maintaining mitigation plantings and coordinating with other local stakeholders, Caltrans identified SCRCP as an ideal partner to maintain the mitigation planting over time.

Future activities

As described in the attached contract, beginning in July, 2018, Sonoma County Regional Parks (SCRCP) will take over the maintenance and monitoring of the mitigation planting for a total of nine years. Caltrans will deposit \$200,000 with SCRCP in the first year of this executed contract and \$202,500 after the completion of the fourth year of maintenance and monitoring. The total contract amount for maintenance and monitoring of the mitigation planting paid from Caltrans to SCRCP will be \$402,500.

Prior Board Actions:

None.

Strategic Plan Alignment Goal 2: Economic and Environmental Stewardship

Restoration of the Laguna de Santa Rosa broadly promotes the protection of natural resources in Sonoma County including the protection of water quality and wildlife habitat.

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal		44,722	44,722
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources		44,722	44,722
Narrative Explanation of Fiscal Impacts:			
There is no current year fiscal impact from this agreement. Starting in FY 2018-19 approximately \$44,722 annually will be budgeted in the Natural Resource Management division budget for this work.			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
Attachment A - Maintenance Agreement			
Related Items "On File" with the Clerk of the Board:			

COOPERATIVE AGREEMENT

This AGREEMENT, ENTERED INTO EFFECTIVE on _____, 2018, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as “CALTRANS,” and

SONOMA COUNTY REGIONAL PARKS, a public agency, referred to herein as “SCRP”.

RECITALS

1. CALTRANS and SCRП, herein referred to as “PARTIES,” pursuant to Streets and Highways Code sections 114 and 130, are authorized to enter into this Agreement.
2. CALTRANS replaced the Laguna De Santa Rosa Bridge, No. 20-035 at PM 9.6 on State Route 12 (SR 12) in Sebastopol, in Sonoma County, referred to herein as “PROJECT.”
3. CALTRANS is owner and operator of SR-12 and the NEPA/CEQA lead agency for the PROJECT. The following permits have been issued in relation to the PROJECT:
 - a. Pursuant to Fish and Wildlife Code sections 1600 et seq., California Department of Fish and Wildlife (“CDFW”) issued to CALTRANS a Streambed Alteration Agreement (Notification No. 1600-2012-0159-3, dated January 16, 2013) for PROJECT, referred to herein as “1600” and attached hereto as Exhibit A.
 - b. Pursuant to Clean Water Act Section 401, the California Regional Water Quality Control Board-North Coast Region (“RWQCB”) issued to CALTRANS a Water Quality Certification for disturbances to the waters of the United States and waters of the State associated with the Russian River Hydrologic Unit No. 1114, (Certification No. 1B12122WNSO, dated February 7, 2013) for PROJECT, referred to herein as “401” and attached hereto as Exhibit B.
 - c. Pursuant to Section 404 of the Clean Water Act, the Dept. of the Army, San Francisco District, US Army Corps of Engineers, issued Nationwide Permit File No. 2008-00255N on January 11, 2013, for the permanent and temporary placement of fill in wetlands associated with the Laguna de Santa Rosa. Caltrans subsequently provided compensation in full for these impacts through its purchase of .5 credits of wetland creation and .3 credits of wetland preservation of suitable habitat from the Desmond Mitigation Bank on September 11, 2013.

4. CDFW and RWQCB, are collectively known as “PERMITTING AGENCIES.”
5. PERMITTING AGENCIES approved Caltrans “On-Site Restoration Plan” on May 8, 2014.
6. CALTRANS, in order to comply with MITIGATION REQUIREMENTS outlined in the 401 Certification from the RWQCB (Condition 32), and 1600 Agreement from CDFW (Compensatory Measure 3.1), intends to fund work for maintenance and monitoring of plantings, control of invasive species and, as more specifically described in the “SCOPE OF WORK” for the PROJECT attached hereto as Exhibit C and made a part of this Agreement.
7. On-site mitigation plantings were completed July 21, 2017 and will be monitored and maintained for one year; subsequently, SCRP will begin maintaining the on-site mitigation plantings beginning July 2018 for a total of nine years, to meet the PERMITTING AGENCIES’ maintenance and monitoring requirement.
8. SCRP desires to assist CALTRANS in satisfying MITIGATION REQUIREMENTS by assisting with the LAGUNA DE SANTA ROSA MITIGATION PROJECT referred to herein as “MITIGATION PROJECT,” and more particularly described in Exhibit C, attached hereto and made a part of this Agreement and referred to herein as “SCOPE OF WORK” and Exhibit D (Plant List and Planting Plan).
9. CALTRANS has determined that the estimated cost of satisfying MITIGATION PROJECT is \$402,500 described in Exhibit C, attached hereto and made a part of this Agreement.
10. PARTIES now define herein below the terms and conditions under which this Agreement will be implemented.

SECTION I

SCRIP AGREES:

1. All work performed by SCRP, or performed on SCRP’s behalf, shall be performed in accordance with all state and federal laws, regulations, policies, procedures, and standards.
2. To submit draft monitoring reports to CALTRANS for comment and approval, for nine (9) years (with monitoring anticipated to begin in July 2018 and end nine (9) years later, currently anticipated to be year 2027 by November 1st of each year. Said reports shall contain all of the information described in Exhibit C, (Scope of Work) attached hereto and made a part of this Agreement.
3. To address CALTRANS’ comments on the draft monitoring report and thereafter submit a final draft monitoring report to CALTRANS within fourteen (14) calendar days of

receipt for nine (9) years (with monitoring anticipated to begin in the year 2018 and end nine (9) years later, currently anticipated to be year 2027) for CALTRANS' review and approval.

4. If at any time during the nine (9) year monitoring period (with monitoring anticipated to begin in the year 2018 and end nine (9) years later, currently anticipated to be year 2027) it is determined by CALTRANS that progress towards the success criteria, as described in Exhibit A is not being achieved, then SCRP shall implement any remedial or adaptive management measures necessary to meet the success criteria. Mitigation monitoring annual reporting will be the main document used in establishing the trending success of the mitigation and whether remedial or adaptive management measures are required.
5. To use one hundred percent (100%) of CALTRANS' funds provided pursuant to this Agreement, in order to satisfy SCRP's obligation and responsibilities set forth in this Agreement.
6. To submit an initial invoice in the amount of \$200,000 to CALTRANS within thirty (30) days of execution of this Agreement and prior to commencement of any work performed by SCRP
7. To prepare and submit to CALTRANS the final invoice in the amount of \$202,500 after completing and submitting to Caltrans the Fourth Year Monitoring Report.
8. If work performed under this Agreement is done under contract (not completed by SCRP's own employees) and is governed by the California Labor Code's definition of a "public work" (section 1720(a)(a)), SCRP will conform to sections 1720 – 1815 of the California Labor Code and all applicable regulations and coverage determinations issued by the Director of Industrial Relations.
9. To include wage requirements in all contracts for "public work" and will require their contractors and consultants to include prevailing wage requirements in all agreement-funded subcontracts for "public work."
10. To retain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred, including support data for cost proposals, and to make such materials available at the respective offices of CALTRANS at all reasonable times for three (3) years after the termination date of this Agreement. CALTRANS, the Federal Highway Administration, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of SCRP that are pertinent to this Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished when requested.

SECTION II

CALTRANS AGREES:

1. To deposit with SCRP within forty-five (45) days of receipt of signed invoice, the amount of \$200,000, which figure represents initial payment of the estimated cost and to deposit with SCRP \$202,500 after SCRP completes and submits the Fourth Year Monitoring Report to Caltrans. CALTRANS' total obligation to SCRP for MITIGATION PROJECT costs shall not exceed the amount of \$402,500.
2. CALTRANS will obtain written confirmation from PERMITTING AGENCIES that MITIGATION REQUIREMENTS have been met and provide a copy to SCRP.

SECTION III

IT IS MUTUALLY AGREED:

1. All obligations of CALTRANS under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority and the allocation of funds by the California Transportation Commission (CTC).
2. All applicable laws, rules and policies relating to the use of federal or state funds shall apply notwithstanding other provisions of this Agreement.
3. The PARTY that discovers hazardous material (HM) will immediately notify the other PARTY(IES) to this Agreement. HM-1 is defined as hazardous material (including but not limited to hazardous waste) that may require removal and disposal pursuant to federal or state law, whether it is disturbed by MITIGATION PROJECT or not. HM-2 is defined as hazardous material (including but not limited to hazardous waste) that may require removal and disposal pursuant to federal or state law, only if disturbed by MITIGATION PROJECT. Management activities associated with either HM-1 or HM-2 include, without limitation, any necessary manifest requirements and designation of disposal facility.
4. CALTRANS, independent of MITIGATION PROJECT, is responsible for any HM-1 found within existing State Highway System (SHS) right of way. CALTRANS will undertake, or cause to be undertaken, HM-1 management activities with minimum impact to PROJECT schedule and will pay, or cause to be paid, all costs associated with HM-1 management activities.
5. CALTRANS has no responsibility for management activities or costs associated with HM-1 found outside the existing SHS right of way. If HM-1 is found outside existing SHS right of way, under state and federal law responsibility for such HM-1 rests with the owner(s) of the parcel(s) on which the HM-1 is found. If HM-1 is found outside the existing SHS right of way, PARTIES will reassess the feasibility of the

MITIGATION PROJECT and mutually agree on a course of action prior to the commencement of any additional work.

6. Neither SCRP nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CALTRANS and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this agreement. It is understood and agreed that CALTRANS will fully defend, indemnify, and save harmless SCRP and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS and/or its agents under this agreement.
7. Neither CALTRANS nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by SCRP and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon SCRP under this agreement. It is understood and agreed that SCRP will fully defend, indemnify, and save harmless CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by SCRP and/or its agents under this agreement.
8. In the event of any breach of this Agreement by either PARTY, the other PARTY may enforce this Agreement by any means available at law or in equity. In the event of litigation, mediation or arbitration to resolve any breach of, or dispute related to this Agreement, each PARTY agrees to pay for their own attorneys' cost and expenses, without regard to who prevails.
9. A failure by either PARTY to enforce any provision of this Agreement shall not be construed as a continuing waiver, or as a waiver of the right to compel enforcement of that provision.
10. This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one agreement that shall be binding on all of the PARTIES, notwithstanding that all of the PARTIES are not a signatory to the original or the same counterpart. If any provision of this Agreement is held invalid, the other provisions shall not be affected thereby.
11. No alteration or variation of the terms of this Agreement shall be valid unless made by a formal amendment executed by the PARTIES hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the PARTIES hereto.

12. This AGREEMENT shall terminate upon written confirmation from PERMITTING AGENCIES that MITIGATION REQUIREMENTS have been met. However, all indemnification, document retention, audit, claims, environmental, legal challenge, hazardous material, operation, maintenance, and ownership articles will remain in effect until terminated or modified in writing by mutual agreement.

CONTACT INFORMATION

The information provided below indicates the primary contact information for each PARTY to this Agreement. PARTIES will notify each other in writing of any personnel or location changes. Contact information changes do not require an amendment to this Agreement.

The primary Agreement contact person for CALTRANS is:

Lilian Acorda, Regional Project Manager
111 Grand Avenue
Oakland, CA 94612
Office Phone: (510) 286-4927
Email: lilian.a.acorda@dot.ca.gov

The primary Agreement contact person for SCRIP is:

Melanie Parker, Natural Resources Manager
2300 County Center Drive, Suite 120A
Santa Rosa, CA 95403
Office Phone: (707) 565-2355
Email: Melanie.Parker@sonoma-county.org

SIGNATURES

PARTIES declare that:

1. Each PARTY is an authorized legal entity under California state law.
2. Each PARTY has the authority to enter into this Agreement.
3. The people signing this Agreement have the authority to do so on behalf of their public agencies.

**STATE OF CALIFORNIA
Department of Transportation**

**SONOMA COUNTY REGIONAL
PARKS**

By: _____
Helena (Lenka) Culik-Caro
Deputy District Director

By: _____
Bert Whitaker
Director

Approved as to form and procedure:

Approved as to form and procedure:

Attorney
Department of Transportation

Attorney

Certified as to budgeting of funds:

Jeffrey Armstrong
District Budget Manager

Certified as to financial terms and
policies:

Accounting Administrator

EXHIBIT A

Streambed Alteration Agreement (Notification No. 1600-2012-0159-3)



State of California - The Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
7329 Silverado Trail
Napa, CA 94555
(707) 944-5500
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



January 16, 2013

Jeffrey G. Jensen
California Department of Transportation
111 Grand Avenue
Oakland, CA 94623

Subject: Final Lake or Streambed Alteration Agreement
Notification No. 1600-2012-0158-3
Laguna de Santa Rosa Bridge Replacement

Dear Mr. Jensen:

Enclosed is the final Streambed Alteration Agreement ("Agreement") for the Laguna de Santa Rosa Bridge Replacement ("Project"). Before the Department may issue an Agreement, it must comply with the California Environmental Quality Act ("CEQA"). In this case, the Department, acting as a responsible agency, filed a notice of determination ("NOD") on January 16, 2013, based on information contained in Laguna de Santa Rosa Bridge Replacement Project Negative Declaration, the lead agency prepared for the Project.

Under CEQA, filing a NOD starts a 30-day period within which a party may challenge the filing agency's approval of the project. You may begin your project before the 30-day period expires if you have obtained all necessary local, state, and federal permits or other authorizations. However, if you elect to do so, it will be at your own risk.

If you have any questions regarding this matter, please contact, Melissa Escaron, Staff Environmental Scientist, at (707)339-0334 or Melissa.Escaron@wildlife.ca.gov.

Sincerely,

Craig J. Weighman
Acting Environmental Program Manager
Bay Delta Region

cc: Chris Jannusch
California Department of Transportation

Lieutenant Jones
Warden Esquivel
Melissa Escaron

Conserving California's Wildlife Since 1870

CALIFORNIA DEPARTMENT OF FISH AND GAME
BAY DELTA REGION
7329 SILVERADO TRAIL
NAPA, CALIFORNIA 94558
(707) 944-5520
WWW.DFG.CA.GOV



STREAMBED ALTERATION AGREEMENT
NOTIFICATION NO: 1600-2012-0159-R3
Laguna de Santa Rosa

CALIFORNIA DEPARTMENT OF TRANSPORTATION
LAGUNA DE SANTA ROSA BRIDGE REPLACEMENT PROJECT

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Game (DFG) and California Department of Transportation (Permittee) or as represented Jeffrey G. Jensen.

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified DFG on May 12, 2012 that Permittee intends to complete the project described herein.

WHEREAS, pursuant to FGC section 1603, DFG has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement.

PROJECT LOCATION

The project is located where State Route 12 crosses the Laguna de Santa Rosa, at Post Mile 9.63, east of the City of Sebastopol, in the County of Sonoma, State of California.

PROJECT DESCRIPTION

Caltrans proposes to replace the existing 33.5-foot-wide, 220.25-foot-long, two-lane Bridge over Laguna de Santa Rosa (stream) with a new 58-foot-wide, 236-foot-long, two-lane bridge. The proposed bridge will have three spans and two bents. Four retaining walls are also proposed at the corners of the new bridge to minimize the amount of earthwork, land acquisitions, and impacts to environment. The new bridge alignment will shift to the south to minimize impacts to state and federally listed plant species, riparian trees, wetlands and other aquatic resources, and the bridge elevation will be increased by 3.5 feet. Caltrans proposes to construct half of the new bridge on the south side of the existing one, demolish the existing bridge, and then build the second half of the new bridge.

The Pacific Gas and Electric Company, AT&T, and Comcast plan to relocate gas, electric, telephone, and cable utilities during the summer of 2013, prior to the replacement of the bridge. The bridge replacement will be constructed in three stages over two construction seasons.

Bridge Replacement Project Overview

Stage 1

Following the relocation of the utilities, which will occur in 2013, the majority of the work during Stage 1 construction (the first bridge replacement construction season) will be along the southern side of the new bridge alignment. To accommodate Stage 1 work a southern temporary access road will be cleared and graded for access of large equipment, such as pile-driving equipment, cranes, drill rigs, bulldozers, excavators, trucks, etc. Once the temporary access road is created, a temporary access pad will be built. Stage 1 work will include installing sheet piling to create eight temporary cofferdams, cast-in-steel-shell (CISS) concrete piling, and temporary formworks. Once the bents and abutments are completed, the superstructure will be constructed which will consist of setting pre-cast girders and casting a concrete bridge deck. Concurrent with the bridge construction, permanent retaining walls and embankments will be constructed on the southeast and southwest sides from the southern temporary access road. Temporary fill materials such as a temporary water diversion, temporary access road, temporary access pad, and temporary cofferdams, will be removed by October 15. Erosion control measures will then be implemented to stabilize disturbed natural areas. The shoring between the existing and new abutment will be left in place between the first season and second season to protect the abutments and roadway embankment behind the abutments from scour. Once the southern half of the new bridge is completed, traffic will be shifted from the existing structure to the new structure. Depending on the construction progress and schedule, construction may start on the northern portion (Stage 2) of the new structure during the first construction season.

Stage 2

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During Stage 2 most of the work will occur along the northern side of the new replacement bridge alignment. The northern temporary access road will be constructed, the southern temporary access road and temporary access pad will be reestablished, and the existing bridge structure will be removed, including the footing piles to at least 3 feet below the existing grade. A protective cover (heavy plastic or plywood) will be placed on the creek bottom as part of the temporary access pad to prevent concrete debris from falling onto the waterway during bridge demolition. The northern half of the bridge will be built similarly to the southern half. A closure concrete pour will be required to connect the Stage 1 and Stage 2 bridges together.

Stage 3

Stage 3 work within DFG jurisdiction includes the removal of all temporary fills and other temporary works. Any voids within the creek remaining from the removal of the original bridge footings will be filled with native soil material.

Utility Relocation

The utilities, including poles and electrical lines, will be relocated during 2013, the season prior to Stage 1 construction. Electrical lines will be rerouted from along the south side of the bridge to the north side. Most of the poles will be relocated to the north side of SR 12, and set with a crane from the existing SR 12 or from an existing dirt path. An alternate access route will be used if a crane is infeasible. A gas line, currently attached to the existing bridge, will be relocated and bored underground on the north side using directional drilling techniques. The bore will be approximately 850 feet long, up to 32 feet deep, and at least 20 feet below the bottom of the creek channel. The bore holes will be located within developed areas outside of DFG jurisdiction.

Temporary Construction Access Road

Two temporary construction access roads are required for project construction and equipment access and will be between 15 and 30 feet wide. Clearing and grading of the temporary access road will be required to construct an access that is safe for large equipment such as pile-driving equipment, cranes, drill rigs, bulldozers, excavators, and trucks. The temporary construction access roads will consist of a bottom pavement-reinforcing fabric with a layer of 6-inch rock (type A) or railroad ballast no. 25 (type B). The temporary construction access roads will be located both north and south of SR 12. The southern temporary access road will be constructed on the south side of the road during the first construction season to allow access for the Stage 1 bridge construction. This temporary access road will start at the Village Campground driveway, extend across the streambed and end on the east side of the stream. The southern temporary construction access road will be removed by October 15 of the first construction season, and be re-established up to the eastern bridge abutment during the second construction season. During Stage 2, the southern temporary construction access will require passing under the Stage 1 bridge construction, which will limit the use to small equipment and foot traffic. Large equipment will operate from the existing bridge, new bridge, and through the development of the northern temporary

construction access road. The northern temporary access road will extend from the staging area to the stream, then turn and extend to the east for the length of the proposed northeast retaining wall 2.

Temporary Access Pad, Stream Diversion, and Trestle

A temporary stream access pad will be constructed to access the area under the bridge. The temporary stream access pad will be approximately 235 feet by 62 feet during Stage 1, and approximately 230 feet by 28 feet during Stage 2. The temporary access pad will consist of a bottom layer of subgrade enhancement textile with a layer of 6-inch rock overlaid with another subgrade enhancement textile and a top layer of aggregate base. Crane mats may be placed over the gravel pad to provide support. The final design of the temporary stream access pad will depend on water level in the Laguna de Santa Rosa.

To create a dry work area and divert flows around the work area, grading of wetted areas of the streambed will be necessary and gravel bags will be placed as needed to direct flows towards the main channel. A temporary crossing over the main channel will be required as part of the temporary access pad during Stages 1 and 2. Construction of a 62 foot by 60 foot temporary trestle is proposed for Stage 1, and a 43 foot by 60 foot temporary trestle is proposed for Stage 2. The temporary trestle will be removed by October 15 of each year.

Sheet Piling Cofferdams

Sheet piling will be installed at the abutments, bents, and wing walls prior to foundation work. The sheet piling will be vibrated or driven to elevation around the new foundation locations. Sheet piling will be used to create eight cofferdams for dewatering activities, and to protect the new abutments from scour. Four cofferdams totaling approximately 5,913 cubic yards on the southern side of the bridge will occupy approximately 3,493 square feet (0.08 ac) during the first season. Another four cofferdams totaling approximately 7,052 cubic yards on the northern side of the bridge will occupy approximately 4,108 square feet (0.09 ac) during the second season. The temporary sheet piles will be removed through the use of vibratory hammer, direct pull, or clamshell grab. Approximately 6,795 cubic yards of sheet pile shoring will remain permanently below the original grade along approximately 6,601 square feet (0.15 ac) of the banks of the creek.

The temporary sheet piling between the existing and new roadway will remain in place between the first season and second season to protect the existing roadway and structure from scour and erosion caused by the offset of the new abutments. The top of the shoring will be installed to the existing roadway grade or higher and will be installed or cut flush with the abutments so that the sheet piling do not obstruct the waterway during higher winter flows.

Foundation Work

Once the cofferdams are in place, construction activities associated with the

construction of the permanent foundations for abutments, bents, and wing walls, will consist of pumping out excess water, excavating for the footings, installing Cast In Steel Shell (CISS) piling, placing pile concrete, reinforcement steel, concrete forms, and footing concrete.

Retaining Walls

Four retaining walls approximately 20 feet long, 160 feet long, 193 feet long, and 298 feet long will be constructed at each of the bridge corners. These retaining walls will total 660 cubic yards. The retaining walls will also contain the roadway widening cut/fill activities, which will require clearing and grubbing vegetated areas north and south of SR 12. The retaining walls will be constructed from the temporary access roads with the methods described above for Foundation Work. The area behind the retaining walls will then be backfilled with approximately 3,856 cubic yards of clean soil to support the proposed roadway.

Erosion Control

All disturbed areas will be treated with standard Caltrans erosion control methods during and after construction, including the period between Stages 1 and 2. At the wing wall on the north side of the west abutment, exposed slopes will be protected from erosion by installing coir netting secured with wooden stakes. In areas of frequent inundation, coir logs will also be installed. The slopes will be hydroseeded with a suitable mix of native plant species appropriate to the area.

Drainage

The existing pipe and two drainage inlets south of SR 12 will be removed to facilitate widening of the south side of the road west of the bridge. A new 18-inch Alternative Pipe Culyert (APC) will be constructed across the roadway to drain stormwater flows north and into the proposed 18-inch APC, which will be installed north of SR 12 to replace the existing APC on the south side. Overside drains are proposed on the north side and south sides of SR 12 to drain stormwater flows into the waterway.

Proposed Equipment

Cranes will be used for multiple parts of the construction from setting up of the trestle and pile driving to delivery of materials and setting precast girders. Excavators will operate from the temporary construction access roads and temporary access pad and will be used for excavation at the abutments. Drilling equipment will operate from the temporary access pad and be used to clean out the CISS piles. Concrete pumps will operate from the existing roadway, temporary construction access roads, and temporary access pad and will be used to pour concrete for the structure. Baker tanks will be located at the temporary access pad and may be used to store water prior to discharge from dewatered excavations and cleaned out piles. Directional drilling equipment will be used to bore under the creek for utility relocation activities. Other equipment may include loaders, manlifts, paver, hoerem, jackhammers, backhoes, dozers, gradalls, and compaction equipment.

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Staging

All project staging will occur outside of DFG 1602 jurisdiction.

Project Schedule

The relocation of utilities is scheduled for summer 2013. Construction of the bridge will span over 2 years and is scheduled to start June 2014 and end December 2015. Construction activities in the stream will occur between June 15 and October 15 of each year to minimize potential impacts to sensitive species. Caltrans will remove riparian trees between September 1 and February 15 to avoid impacts to nesting birds. Tree trimming will precede utility relocation and tree removal will precede road construction activities. The project area to the south of SR 12 will be cleared of vegetation between September 1 and October 15 in 2013 and grubbed in June 2014. The project area to the north of SR 12 will be cleared of vegetation between September 1 and October 15 in 2014 and grubbed in June 2015.

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include:

- Riparian habitat
- Native trees
- Arroyo willow thicket habitat
- Oregon ash thicket habitat
- North coast riparian forest
- Central California Coastal Steelhead habitat
- Central California Coast Coho habitat
- California Coastal Chinook Salmon habitat
- Aquatic invertebrates
- Amphibians
- Black crowned night herons
- Double crested cormorants
- Migratory bird nesting
- Raptors
- Western pond turtles and habitat
- Bats and habitat
- Emergent wetlands

The adverse effects the project could have on the fish or wildlife resources identified above include:

- Tree removal
- Increased shading
- Permanent and temporary loss of natural bed and bank
- Permanent and temporary loss of riparian habitat
- Loss of avian nesting, foraging, and roosting sites
- Disruption of nesting

- Loss of bat habitat
- Loss of Western pond turtle habitat
- Loss of amphibian habitat
- Degradation and/or loss of salmonid habitat
- Water quality degradation
- Short-term release of contaminants

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

Permittee shall meet each administrative requirement described below:

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to DFG personnel, or personnel from another state, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. This Agreement and any extension and amendments shall be onsite at all times during Project activities.
- 1.3 Access to DFG Lands. This Agreement does not authorize entry to DFG-owned lands. Permittee shall obtain written permission from DFG before entering DFG-owned lands.
- 1.4 Notification of Conflicting Provisions. Permittee shall notify DFG if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that event, DFG shall contact Permittee to resolve any conflict.
- 1.5 Project Site Entry. Permittee agrees that DFG personnel may, with notification of the Resident Engineer, enter the project site at any time to verify compliance with the Agreement.

2. Avoidance and Minimization Measures

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below. These conditions apply to DFG jurisdiction as described in the Project Description above.

- 2.1 To minimize adverse impacts to fish and wildlife all work within the bed, bank, channel, and associated riparian habitat shall be confined to the period of June 15 to October 15. Trees and shrubs may be removed using mechanical hand tools between

January 1 and June 14, and between August 31 and December 31, as long as tree removal activities are consistent with Conditions 2.3 and 2.5 below. Stumps shall remain in place until ground disturbing activities begin. Trees and shrubs can be removed between June 15 and August 30 as long as activities are consistent with Conditions 2.3 and 2.5 below. Revegetation work is not confined to this time period.

2.2 At least 30-days prior to commencing project activities covered by this Agreement, the Permittee shall submit to DFG, for review and approval, the qualifications for a number of biologists (Qualified Biologist) that shall oversee the implementation of the conditions in this Agreement. At a minimum, the Qualified Biologists shall have a combination of academic training and professional experience in biological sciences and related resource management activities. The Qualified Biologists shall communicate to the Resident Engineer when any activity is not in compliance with this Agreement and the Resident Engineer shall immediately stop the activity that is not in compliance with this Agreement.

2.3 To protect nesting birds, no project activities shall occur from February 15 through August 31 unless nesting bird surveys have been completed by a Qualified Biologist. To prevent nest abandonment, a Qualified Biologist shall survey within 500 feet of the proposed Project for nesting birds. If nests are found within the Project site or 500 feet from the Project then a Qualified Biologist shall establish a 50-foot buffer radius for nests of non-raptor bird species or a 300-foot buffer radius for raptor nests. A Qualified Biologist shall monitor the nesting birds and shall increase the buffer, through the Resident Engineer, if it is determined the birds are showing signs of unusual or distressed behavior that may be the result of Project activities. To prevent encroachment, the established buffer(s) shall be clearly marked by high visibility material. Surveys shall be conducted during periods of peak activity (early morning, dusk) and shall be of sufficient duration to observe movement patterns. Identified nests shall be reported to DFG. The buffer area shall be marked with high visibility material, protected from work activities and avoided until the young have fledged, as determined by a Qualified Biologist. During work, should birds indicate unusual or distressed behavior that could be indicative of future nest abandonment, a Qualified Biologist shall stop work immediately, through the Resident Engineer, and consult DFG on how to proceed.

2.4 Within 48 hours prior to construction, a Qualified Biologist shall conduct a wildlife survey, at the appropriate time of day, focusing on presence of Western pond turtle (*Clemmys marmorata*) and Foothill yellow legged frog (*Rana boylei*). If any Western pond turtles or Foothill yellow legged frogs are found, a Qualified Biologist shall relocate the animal downstream of the project site in appropriate habitat.

2.5 A Qualified Biologist shall conduct a habitat assessment for potentially suitable bat roosting habitat, including within the open expansion joints of the bridge and trees, March 1 to April 15 or August 31 to October 15 prior to bridge construction activities. If the habitat assessment reveals the bridge structure is

suitable roosting habitat for bats, then appropriate exclusionary measures will be implemented prior to bridge construction during the period between March 1 to April 15 or August 31 to October 15. Potential avoidance efforts may include exclusionary blocking or filling potential roosting cavities with foam, visual monitoring, and staging project work to avoid bats. If bats are known to use the bridge structure, exclusion netting shall not be used. If the habitat assessment reveals suitable bat habitat within trees, and tree removal is scheduled from April 16 through August 30 and/or October 16 through February 28, then presence/absence surveys shall be conducted two to three days prior to any tree removal or trimming. If presence/absence surveys are negative, then tree removal may be conducted by following a two-phased tree removal system. If presence/absence surveys indicate bat occupancy, then the occupied trees shall only be removed from March 1 through April 15 and/or August 31 through October 15 by following the two-phased tree removal system. The two-phased removal system shall be conducted over 2 consecutive days. The first day (in the afternoon), limbs and branches are removed by a tree cutter using chainsaws or other hand tools only. Limbs with cavities, crevices, or deep bark fissures are avoided, and only branches or limbs without those features are removed. On the second day, the entire tree shall be removed.

2.6 If any wildlife is encountered during the course of project activities, said wildlife shall be allowed to leave the area unharmed and on their own volition.

2.7 The Resident Engineer or designated representative and a Qualified Biologist shall be onsite during dewatering and aquatic species relocation activities. Capture and relocation shall be conducted in a manner that minimizes stress and injury to captured animals. Capture methods may include dip nets. All nets shall be made of a soft braded nylon material that is non-abrasive. Electrofishing shall be used as a last resort. A relocation site shall be identified and the most direct transportation route shall be determined prior to any capture. The number of animals captured and moved at any one time shall be limited to the number that can be relocated without stress or injury. Prior to handling animals, all hands and equipment shall be wetted down with stream water and shall be free of any materials including hand sanitizers, sunscreen or insect repellent. No animals shall be handled with dry hands or dry equipment. Exclusionary netting or other barriers shall be used to prevent relocated animals from re-entering the dewatered work area. An aeration system shall be used in any live well or other holding facility. Dissolved oxygen levels shall be maintained above 8 parts per million. Water from the local collection site shall be used in live wells or other holding facilities during loading and transport. At no time shall chlorinated tap water be used. Water temperatures within any live well or other holding facility shall be kept at or below water temperature at the collection site. No non-native animals captured shall be returned to the stream or released alive.

2.8 Permittee shall comply with all applicable state and federal laws, including the California and Federal Endangered Species Act. This Agreement does not authorize the take of any state or federally endangered listed species. Liability for any take of

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incidental take of such species remains the responsibility of the Permittee for the duration of the project. Any unauthorized take of listed species may result in prosecution and nullification of the Agreement.

2.9 The perimeter of the work site shall be adequately fenced using high visibility Environmentally Sensitive Area (ESA) fencing to prevent damage to adjacent riparian habitat. No construction activities, within the riparian zone, will be allowed within the habitat protected by the ESA fencing (this does not preclude activities from occurring on the bridge or deck work above the ESA area).

2.10 Permittee shall conduct work defined in the above project description, and within the project area, during periods of dry weather. The project area is defined as the bed, bank, channel, and associated riparian habitat. The Permittee shall monitor forecasted precipitation. When $\frac{1}{4}$ inch or more of precipitation is forecasted to occur, the Permittee shall stop work before precipitation commences. No activity of the project may be started if its associated erosion control measures cannot be completed prior to the onset of precipitation. After any storm event, the Permittee shall inspect all sites currently under construction and all sites scheduled to begin construction within the next 72 hours for erosion and sediment problems and take corrective action as needed. Seventy-two hour weather forecasts from National Weather Service shall be consulted and work shall not start back up until runoff ceases and there is less than a 30% forecast for precipitation for the following 24-hour period.

2.11 Permittee shall utilize erosion control measures throughout all phases of operation where sediment runoff from exposed slopes threatens to enter waterways. At no time shall silt laden runoff be allowed to enter the stream or directed to where it may enter the stream. Erosion control installations shall be monitored for effectiveness and shall be repaired or replaced as recommended by a Qualified Biologist or Water Quality Monitor to the Resident Engineer. As needed to prevent sediment transport, Permittee shall deploy soil stabilizer such as hydroseeding, netting, erosion control mats, mulch, fiber rolls, silt fences, check dams, and flow velocity dissipation devices. Permittee shall stabilize and equip construction site entrances and exits with tire washing capability. Materials containing monofilament or plastic shall not be used. Erosion and sediment control measures shall be installed prior to unseasonable rain storms.

2.12 To the extent practicable, Permittee shall leave the root masses of removed trees and shrubs in place. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete operations.

2.13 To the extent practicable Permittee shall not remove oak trees. Oak trees within the project site that can be avoided shall be fenced along their drip line with high visibility ESA fencing.

2.14 Pending accessibility for maintenance activities, and roadway and bridge geometrics, biofiltration swales or strips shall be installed on both bridge approaches, and on both sides of the roadway, and maintained in perpetuity.

2.15 Permittee shall not permit the operation of equipment within the main channel of the Laguna de Santa Rosa at any time.

2.16 The site shall be dewatered as necessary to provide an adequately dry work area. Any muddy or otherwise contaminated water shall be pumped to a settling tank prior to re-entering the creek. Work site dewatering can be accomplished using pumps and or siphons.

2.17 Permittee shall design the horizontal directional drilling operation in such a way as to minimize the risk of spills of all types. Permittee shall use lower pressure and greater boring depths in areas with frac out potential. If the potential for frac out exists, the Permittee shall prepare a contingency plan to address the release of drilling lubricants. The frac out contingency plan shall include a containment and remediation plan, include staging location of vacuum trucks and equipment, equipment list, and necessary hose lengths. The contingency plan shall include emergency contact phone numbers for prompt response by biological monitors. Permittee shall call biological monitors as soon as a spill is suspected. Permittee shall notify the United State Fish and Wildlife Service (USFWS) and DFG in the event of a frac out. Permittee shall not resume project activities until the spill has been remediated and approval to resume has been granted by the USFWS and DFG.

2.18 If, as currently anticipated, utility relocation commences the year prior to bridge construction activities, all utility relocation will occur from the existing pavement, the existing dirt path on the northeast side of the highway, or from the proposed Alternative Access Route described in the Streambed Alteration Agreement Notification Package (Figure 1).

2.19 If the gradient of the streambed is altered during project operations, Permittee shall return its contours as close as possible to pre-project conditions. Pre-project condition shall be defined (e.g. by engineered plans, LIDAR, geomorphological cross-sections) and dated prior to the commencement of the project. Permittee shall be liable for restoration of contours to pre-project conditions in the event that subsequent erosion is caused by the project.

2.20 Concrete shall be excluded from surface water for a period of 30-days after it is poured/sprayed. During that time the concrete shall be kept moist and runoff from the concrete shall not be allowed to enter any water body. Commercial sealants may be applied to the concrete surface where difficulty in excluding flow for a long period may occur. If sealant is used, water shall be excluded from the site until the sealant is cured. If groundwater comes into contact with fresh concrete, it shall be prevented from flowing towards surface water.

2.21 Staging and storage areas for equipment, materials, fuels, lubricants and solvents, shall be located outside of the creek channel and banks. Stationary equipment such as motors, pumps, generators, compressors and welders, located within or adjacent to the creek shall be positioned over drip pans. Any equipment or vehicles driven and/or operated within or adjacent to the stream must be checked and maintained daily, to prevent leaks of materials that if introduced to water could be deleterious to aquatic life.

2.22 Refueling of mobile construction equipment and vehicles shall not occur within 50 feet of any water body, or anywhere that spilled fuel could drain to a water body. Refueling of stationary equipment requiring breakdown and setup to move will remain in place. All equipment shall be refueled with appropriate drip pans, absorbent pads, and water quality Best Management Practices. Equipment and vehicles operating in the project area shall be checked and maintained daily to prevent leaks of fuels, lubricants, or other liquids.

2.23 Permittee shall plan appropriately to ensure all work within DFG jurisdiction be completed by October 15 of each year. DFG will not grant work extensions beyond October 15 of each year.

3. Compensatory Measures

3.1 Permittee shall submit an Onsite Restoration Plan for temporary impacts within 3 months of the issuance of this Agreement. The Onsite Restoration Plan shall be based on the Tree Survey Results for the State Route 12 Laguna de Santa Rosa Bridge Replacement Project, prepared by CH2MHill, dated December 3, 2007 (Attachment 1). The Onsite Restoration plan shall include a plant palette of native species to be used, success criteria, a monitoring a reporting schedule, and corrective actions to be taken if mitigation measures do not meet the approved success criteria. All plantings shall be derived from locally available genotypes. The Permittee shall monitor the survival and vigor of onsite plantings for a period of 10 years to ensure attainment of 75% survivorship. Permittee shall control invasive species as needed to ensure attainment of 75% survivorship after 10 years.

3.2 At the issuance of this Agreement DFG has not approved an offsite mitigation location. At least 60 days prior to commencement of construction the Permittee shall submit a detailed North Coast Riparian Forest Habitat Mitigation Plan (Habitat Mitigation Plan) to DFG for review and written approval. The Habitat Mitigation Plan shall mitigate permanent north coast riparian forest habitat impacts at a minimum of a 3:1 acreage ratio. Mitigation shall be based on all trees regardless of diameter at breast height. The Habitat Mitigation Plan shall include proposed mitigation locations, a plant palette of native species to be used, success criteria, a monitoring a reporting schedule, and corrective actions to be taken if mitigation measures do not meet the approved success criteria. The Permittee shall monitor the survival and vigor of offsite plantings for a period of 10 years to ensure attainment of 75% survivorship. Offsite mitigation may

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include a combination of habitat restoration, creation, enhancement, and/or preservation of habitat that will support a similar plant community to that found at the project site, including but not limited to the following species: red willow; valley oak; coast live oak; California walnut, black oak; California rose; arroyo willow; Oregon ash; blue elderberry, and hawthorn. The Habitat Mitigation Plan shall be based on the Tree Survey Results for the State Route 12 Laguna de Santa Rosa Bridge Replacement Project, prepared by CH2MHill, dated December 3, 2007 (Attachment 1).

CONTACT INFORMATION

Any communication that Permittee or DFG submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as Permittee or DFG specifies by written notice to the other:

To Permittee:

California Department of Transportation
Jeffrey G. Jensen
111 Grand Ave.
(510)822-8729
Jeffrey_jensen@dof.ca.gov

To DFG:

Department of Fish and Game
Bay Delta Region
7329 Silverado Trail
Napa, CA 94558
Attn: Lake and Streambed Alteration Program – Melissa Escaron
Notification #1900-2012-0159-R3
mescaron@dfg.ca.gov

LIABILITY

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute DFG's endorsement of, or require Permittee to proceed with the project. The decision to proceed with the project is Permittee's alone.

SUSPENSION AND REVOCATION

DFG may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before DFG suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before DFG suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused DFG to issue the notice.

ENFORCEMENT

Nothing in the Agreement precludes DFG from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects DFG's enforcement authority or that of its enforcement personnel.

OTHER LEGAL OBLIGATIONS

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from obtaining any other permits or authorizations that might be required under other federal, state, or local laws or regulations before beginning the project or an activity related to it.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the FGC including, but not limited to, FGC sections 2050 et seq. (threatened and endangered species), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5937 (sufficient water for fish), and 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

AMENDMENT

DFG may amend the Agreement at any time during its term if DFG determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by DFG and Permittee. To request an amendment, Permittee shall submit to DFG a completed DFG "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the corresponding amendment fee identified in DFG's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

TRANSFER AND ASSIGNMENT

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter DFG approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to DFG a completed DFG "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in DFG's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

EXTENSIONS

In accordance with FGC section 1605(b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall submit to DFG a completed DFG "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in DFG's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). DFG shall process the extension request in accordance with FGC 1605(b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (Fish & G. Code, § 1605, subd. (f)).

EFFECTIVE DATE

The Agreement becomes effective on the date of DFG's signature, which shall be: 1) after Permittee's signature; 2) after DFG complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable FGC section 711.4 filing fee listed at http://www.dfg.ca.gov/habcon/ceqa/ceqa_changes.html.

TERM

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This Agreement shall expire on December 31, 2017, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

EXHIBITS

The documents listed below are included as exhibits to the Agreement and incorporated herein by reference.

- A. Figure 1. Utility Relocation Access Map

AUTHORITY

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

AUTHORIZATION

This Agreement authorizes only the project described herein. If Permittee begins or completes a project different from the project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify DFG in accordance with FGC section 1602.

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CONCURRENCE

The undersigned accepts and agrees to comply with all provisions contained herein.

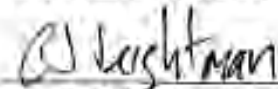
**FOR CALIFORNIA DEPARTMENT OF
TRANSPORTATION**



Jeffrey G. Jensen
Office Chief Biological Sciences and Permits

1/14/2013
Date

FOR DEPARTMENT OF FISH AND GAME



Craig Weightman
Acting Environmental Program Manager

1/16/13
Date

Prepared by: Melissa Escaron
Staff Environmental Scientist

Date Sent: August 13, 2012
Revision Sent: October 16, 2012
Revision Sent: January 14, 2013

EXHIBIT B

Water Quality Certification (Certification No. 1B12122WNSO)



North Coast Regional Water Quality Control Board

February 7, 2013

In the Matter of
Water Quality Certification
for the
California Department of Transportation
Highway 12, Laguna de Santa Rosa Bridge Replacement Project
WDID No. 1B12122WNSO

APPLICANT: California Department of Transportation
RECEIVING WATER: Laguna de Santa Rosa
HYDROLOGIC AREA: Russian River Hydrologic Unit No.1114
COUNTY: Sonoma
FILE NAME: CDOT – HWY 12, Laguna de Santa Rosa Bridge Replacement Project

BY THE EXECUTIVE OFFICER:

- 1. On May 30, 2012, the North Coast Regional Water Quality Control Board (Regional Water Board) received an application from the California Department of Transportation (Caltrans), requesting Federal Clean Water Act (CWA), section 401, Water Quality Certification (certification) for activities related to the proposed Highway 12 – Laguna de Santa Rosa Project (project).
2. The proposed project is located in Sonoma County on State Route 12 (SR12) between post miles (PM) 9.2 and 10.0. The purpose of the project is to replace the existing, deteriorating two-lane bridge with a new two-lane bridge built to current design standards.

- period (approximately July 2013 through October 2013) and the bridge replacement phase would occur over a two-year period (approximately June 2013 through December 2015).
3. Caltrans has determined that the proposed project would result in 0.04 acres of permanent impacts to U.S. wetlands and 70 linear feet (0.01 acres) of permanent impacts to Other Waters of the U.S. (Laguna de Santa Rosa). The proposed project would also permanently impact approximately 0.57 acres (317 linear feet) of riparian vegetation.
 4. Caltrans has determined that the proposed project would result in 0.26 acres (11,361 feet²) of temporary impacts to U.S. wetlands, 68 linear feet (0.45 acres, 25,069 feet²) of temporary impacts to Other Waters of the U.S. (Laguna de Santa Rosa), and 21 linear feet (0.004 acres, 160 feet²) of temporary impacts to Other Waters of the U.S. that are tributary to the Laguna de Santa Rosa. The project would also result in approximately 0.80 acres (425 linear feet) of temporary impacts to riparian vegetation.
 5. On-site mitigation for temporary impacts to jurisdictional wetlands and waters would include re-vegetation and monitoring of disturbed areas. Mitigation for permanent and temporary wetland impacts would be provided by purchase of 0.5 acres of mitigation bank credits. Off-site mitigation for permanent impacts to riparian habitat would involve restoration of approximately 1.7 acres of riparian habitat in the Laguna de Santa Rosa watershed.
 6. Project implementation would result in approximately 0.55 acres of new and 0.26 acres of reworked impervious surface area (0.81 acre treatment obligation). Caltrans has proposed using a vegetated filter strip to treat 0.31 acres of impervious area. Because Caltrans was unable to reduce the filter strip slope and thereby increase treatment performance, a fifty percent treatment credit will be given (0.155 acres). Additionally, because Caltrans cannot provide treatment of impervious area for direct discharges to the Laguna de Santa Rosa, an additional 0.50 acres of stormwater treatment shall be required. Caltrans will off-set the overall treatment deficit of 1.31 acres by using treatment credits from the Caltrans-funded Sonoma County Fairground low impact development (LID) retrofit project. Caltrans currently holds 2.23 acres of treatment credit from the LID retrofit Project and 0.92 acres of treatment credit would remain after applying the treatment credit for this project.
 7. The proposed project would be divided into utility relocation and bridge replacement phases. The utility relocation phase would occur over a one year period (approximately July 2013 through October 2013) and the bridge replacement phase would occur over a two-year period (approximately June 2013 through December 2015). The project would result in approximately 3.2 acres of disturbed soil area. Caltrans will prepare a Stormwater Pollution Prevention Plan detailing Best Management Practices to control pollution from the project area during construction. All disturbed areas within the project will be appropriately stabilized and/or replanted with appropriate native vegetation.
 8. Caltrans received authorization from the U.S. Army Corps of Engineers on January 11, 2013, to implement the project under Nationwide Permit Nos. 12 (*utility line*

activities) and 14 (*linear transportation projects*) pursuant to Clean Water Act, section 404. Caltrans has also entered into a 1602 Streambed Alteration Agreement with the California Department of Fish and Game. On May 10, 2010, Caltrans, acting as lead agency, certified a Negative Declaration for the proposed project in order to comply with the California Environmental Quality Act (CEQA) (State Clearing House No. 2008012074). The Regional Water Board has considered the environmental documentation, including any proposed changes, and incorporates any avoidance, minimization, and mitigation measures into the project as a condition of approval to avoid significant affects to the environment.

9. The Laguna de Santa Rosa watershed is listed on the Clean Water Act section 303(d) list as impaired for sediment, temperature, nitrogen, phosphorus, indicator bacteria, dissolved oxygen, and mercury. In addition, activities that impact the riparian zone and reduce riparian vegetation are identified as sources contributing to increased stream temperatures. A focus on measures to reduce sediment discharges to surface waters from construction areas, and measures to avoid, minimize, and mitigate impacts on riparian zones is essential for achieving TMDL, Basin Plan, and CEQA compliance.
10. Pursuant to Regional Water Board Resolution R1-2004-0087, Total Maximum Daily Load Implementation Policy Statement for Sediment-Impaired Receiving Waters within the North Coast Region (Sediment TMDL Implementation Policy), the Executive Officer is directed to "rely on the use of all available authorities, including existing regulatory standards, and permitting and enforcement tools to more effectively and efficaciously pursue compliance with sediment-related standards by all dischargers of sediment waste."
11. Pursuant to Regional Water Board Resolution R1-2012-0013, Implementation of the Water Quality Objective for Temperature in the North Coast Region (Temperature Implementation Policy), Regional Water Board staff is directed to address factors that contribute to elevated water temperatures when issuing 401 certifications or WDRs (permits) for individual projects. Any permit should be consistent with the assumptions and requirements of temperature shade load allocations in areas subject to existing temperature TMDLs, including EPA- established temperature TMDLs, as appropriate. If applicable, any permit or order should implement similar shade controls in areas listed as impaired for temperature but lacking a TMDL and region-wide as appropriate and necessary to prevent future impairments and to comply with the intrastate temperature objective.
12. The federal antidegradation policy requires that state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. The Regional Water Board's Basin Plan implements, and incorporates by reference, both the State and federal antidegradation policies. This certification is consistent with applicable federal and State antidegradation policies, as it does not authorize the discharge of increased concentrations of pollutants or increased volumes of treated wastewater, and does not otherwise authorize degradation of the waters affected by this project.

CDOT – HWY 12
 Laguna de Santa Rosa Bridge Replacement
 WDID No. 1B12122WNSO

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February 7, 2013

13. To ensure compliance with Water Quality Objectives within the Basin Plan, adequate wetland and riparian protection and stringent requirements to avoid, minimize, and mitigate the sediment and temperature impacts associated with the proposed project will be incorporated as enforceable conditions in this Water Quality Certification. In addition, Caltrans will be required to conduct surface water monitoring, sampling, and analysis in accordance with the conditions of the Water Quality Certification. Additionally, storm water runoff monitoring, sampling, and analysis will be conducted as required by the State Water Resources Control Board (SWRCB) National Pollutant Discharge Elimination System (NPDES) Permit for Storm Water Discharges from the State of California, Department of Transportation (Caltrans) Properties, Facilities and Activities Order No. 99 – 06 - DWQ. The surface water data collected will be utilized to assess the adequacy of BMPs during construction as well as site specific mitigation measures proposed to minimize impacts to the environment, including sediment and temperature impacts.
14. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification," which requires compliance with all conditions of this certification.

Receiving Waters: Laguna de Santa Rosa in Russian River Hydrologic Unit No. 1114

Filled and/or
 Excavated Areas: Permanent – streams (Waters of U.S.): 70 linear feet (0.01 acres)
 Permanent – wetlands (Waters of U.S.): 0.04 acres
 Permanent – riparian areas (Waters of State): 0.57 acres (317 linear feet)
 Temporary – streams (Waters of U.S.): 89 linear feet (0.46 acres)
 Temporary – wetlands (Waters of U.S.): 0.26 acres
 Temporary – riparian Areas (Waters of State): 0.80 acres (425 linear feet)

Dredge Volume : None

Fill Volume : Permanent - 972 cubic yards
 Temporary – 2,790 cubic yards

Mitigation proposed: On-site: Restoration of 89 linear feet of jurisdictional waters and 0.26 acres of jurisdictional wetlands
 Off-site: 1.7 acres of riparian habitat restoration and purchase of 0.5 acres of wetland mitigation bank credit

Latitude/Longitude: 38.40348 / -122.81616

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Caltrans – Highway 12 Laguna de Santa Rosa Bridge Replacement Project (WDID No. 1B12122WNSO), as described in the application will comply with sections 301,

302, 303, 306 and 307 of the Clean Water Act, and with applicable provisions of state law, provided that the Caltrans complies with the following terms and conditions:

All conditions of this certification apply to Caltrans (and all its employees) and all contractors (and their employees), sub-contractors (and their employees), and any other entity or agency that performs activities or work on the project (including the off-site mitigation lands) as related to this Water Quality Certification.

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code section 13330 and title 23, California Code of Regulations, section 3867.
2. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to title 23, California Code of Regulations, section 3855, subdivision (b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity this certification is conditioned upon total payment of any fee required under title 23, California Code of Regulations, section 3833, and owed by the applicant.
4. All conditions required by this certification shall be included in the Plans and Specifications prepared by Caltrans for the Contractor. In addition, Caltrans shall require compliance with all conditions included in this certification in the bid contract for this project.
5. Caltrans shall provide a copy of this certification and State Water Resources Control Board (SWRCB) Order No. 2003-0017-DWQ (web link referenced below) to the contractor and all subcontractors conducting the work, and require that copies remain in their possession at the work site. Caltrans shall be responsible for work conducted by its contractor or subcontractors.
6. For both the utility relocation and bridge replacement contracts, the Regional Water Board shall be notified in writing each year at least five working days (working days are Monday – Friday) prior to the commencement of ground disturbing activities, water diversion activities or construction activities with details regarding the construction schedule. The notification will allow Regional Water Board staff to be present on-site during installation and removal activities, and to answer any public inquiries that may arise regarding the project. Caltrans shall provide Regional Water Board staff access to the project site to document compliance with this certification.
7. The Resident Engineer (or appropriately authorized agent) shall hold on-site water quality permit compliance meetings (similar to tailgate safety meetings) to discuss permit compliance, including instructions on violation avoidance and violation reporting procedures. The meetings shall be held at least every other week, before forecasted storm events, and when a new contractor or subcontractor arrives to begin work at the site. The contractors, subcontractors and their employees, as well as any inspectors or monitors assigned to the project, shall be present at the meetings. Caltrans shall maintain dated sign-in sheets for attendees at these meetings, and shall make them available to the Regional Water Board on request.

8. All activities and best management practices (BMPs) shall be implemented according to the submitted application materials (dated May 2012 and October 2012) and the findings and conditions of this certification. BMPs for erosion, sediment, turbidity and pollutant control shall be implemented and in place at commencement of, during, and after any ground clearing activities, construction activities, or any other project activities that could result in erosion, sediment, or other pollutant discharges to waters of the State. The BMPs shall be implemented in accordance with the Caltrans Construction Site Best Management Practice Manual (CCSBMPM) and all contractors and subcontractors shall comply with the CCSBMPM. In addition, BMPs for erosion and sediment control shall be utilized year round, regardless of season or time of year. Caltrans shall stage erosion and sediment control materials at the work site. All BMPs shall be installed properly and in accordance with the manufacturer's specifications. If the project Resident Engineer elects to install alternative BMPs for use on the project, Caltrans shall submit a proposal to Regional Water Board staff for review and concurrence.
9. Caltrans shall prioritize the use of wildlife-friendly biodegradable (not photo-degradable) erosion control products wherever feasible. Caltrans shall not use or allow the use of erosion control products that contain synthetic netting for permanent erosion control (i.e. erosion control materials to be left in place for two years or after the completion date of the project). If Caltrans finds that erosion control netting or products have entrapped or harmed wildlife, personnel shall remove the netting or product and replace it with wildlife-friendly biodegradable products. Caltrans shall not use or allow the use of erosion control products that contain synthetic materials within waters of the United States or waters of the State at any time. Caltrans shall request approval from the Regional Water Board if an exception from this requirement is needed for a specific location.
10. Herbicides and pesticides shall not be used within the project. If Caltrans has a compelling case as to why herbicides and pesticides should be used, they may submit a request along with a BMP plan to the Executive Officer of the Regional Water Board for review, consideration, and concurrence.
11. Work in flowing or standing surface waters, unless otherwise proposed in the project description and approved by the Regional Water Board, is prohibited. If construction dewatering of groundwater is found to be necessary, Caltrans shall use a method of water disposal other than disposal to surface waters (such as land disposal) or Caltrans shall apply for coverage under the Low Threat Discharge Permit or an individual National Pollutant Discharge Elimination System (NPDES) Permit and receive notification of coverage to discharge to surface waters, prior to the discharge.
12. Caltrans is prohibited from discharging waste to waters of the State, unless explicitly authorized by this certification. For example, no debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or concrete washings, welding slag, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized by this certification, shall not be allowed to enter into waters of the State. Except for temporary stockpiling of waste generated during demolition operations ("temporary" in this instance means generated and removed during the same working day), waste materials shall not be placed within 150 linear feet of waters of the State or where the materials may be

washed by rainfall into waters of the State. Exceptions to the 150-foot limit may be granted on a case-by-case basis provided Caltrans first submits a proposal in writing that is found acceptable by Regional Water Board staff or the Regional Water Board liaison to Caltrans.

13. Caltrans shall implement a demolition debris containment plan to prevent demolition waste from entering State waters. The strategy may be detailed either in the SWPPP submitted with the Notice of Intent for the bridge construction contract or submitted separately to the Water Board. Demolition shall not commence until the demolition plan has been found acceptable to Water Board staff or the Caltrans liaison to the Regional Water Board.
14. Caltrans shall submit, subject to review and concurrence by the Regional Water Board staff or Caltrans liaison to the Regional Water Board, a dewatering and/or diversion plan that appropriately describe the dewatered or diverted areas and how those areas will be handled during construction. The diversion/dewatering plans shall be submitted no later than 30 days prior to conducting the proposed activity. Information submitted shall include the area or work to be diverted or dewatered and method of the proposed activity. All diversion or dewatering activities shall be designed to minimize the impact to waters of the State and maintain natural flows upstream and downstream. All dewatering or diversion structures shall be installed in a manner that does not cause sedimentation, siltation or erosion upstream or downstream. All dewatering or diversion structures shall be removed immediately upon completion of project activities.
15. In-channel work, including removal of stream diversion structures, shall only be conducted between June 15 and October 15; extensions shall not be granted. This certification does not authorize Caltrans to draft surface waters.
16. Fueling, lubrication, maintenance, storage and staging of vehicles and equipment shall be prohibited within waters of the State. Fueling of individual equipment types within waters of the State may be authorized if Caltrans first prepares a fueling plan that:
 - 11) Identifies the specific piece of machinery that may require fueling within waters of the State;
 - 12) Provides justification for the need to refuel within State waters. The justification shall describe why fueling outside of jurisdictional waters is infeasible; and
 - 13) Includes a narrative of specific BMPs that shall be employed to prevent and capture fuel releases.

Fueling of equipment within waters of the State shall be prohibited until the above mentioned plan has been approved by Regional Water Board staff or the Regional Water Board liaison for Caltrans. The fueling plan may be submitted individually, included in the project Storm Water Pollution Prevention Plan (SWPPP), or submitted as a SWPPP amendment.

17. Fueling, lubrication, maintenance, storage and staging of vehicles and equipment shall not result in a discharge or a threatened discharge to any waters of the State or the U.S. At no time shall Caltrans use any vehicle or equipment which leaks any substance that may impact water quality.

18. Caltrans shall implement appropriate BMPs to prevent the discharge of equipment fluids to the stream channel. The minimum requirements shall include: storing hazardous materials at least 150 linear feet outside of the stream banks; checking equipment for leaks and preventing the use of equipment with leaks; and pressure washing or steam cleaning equipment to remove fluid residue on any of its surfaces prior to its entering any stream channel in a manner that does not result in a discharge to waters of the State.
 19. If, at any time, an unauthorized discharge to surface water (including wetlands, rivers or streams) occurs, or any other water quality problem arises, the associated project activities shall cease immediately until adequate BMPs are implemented. The Regional Water Board shall be notified promptly and in no case more than 24 hours after the unauthorized discharge or water quality problem arises.
 20. Caltrans and their contractor are not authorized to discharge wastewater (e.g., water that has contacted uncured concrete or cement, or asphalt) to surface waters, ground waters, or land. Wastewater may only be disposed of to a sanitary waste water collection system/facility (with authorization from the facility's owner or operator) or a properly-licensed disposal or reuse facility. If Caltrans or their contractor proposes an alternate disposal method, Caltrans or their contractor shall request authorization from the Regional Water Board. Plans to reuse or recycle wastewater require written approval from Regional Water Board staff.
 21. Concrete shall be excluded from surface water for a period of 30-days after it is poured/sprayed. During that time the concrete shall be kept moist and runoff from the concrete shall not be allowed to enter any water body. Commercial sealants may be applied to the concrete surface where difficulty in excluding flow for a long period may occur. If sealant is used, water shall be excluded from the site until the sealant is cured. If groundwater comes into contact with fresh concrete, it shall be prevented from flowing towards surface water.
 22. Caltrans shall provide analysis and verification that placing non-hazardous waste or inert materials (which may include discarded product or recycled materials) will not result in degradation of water quality, human health, or the environment. All project-generated waste shall be handled, transported, and disposed in strict compliance with all applicable State and Federal laws and regulations. When operations are complete, any excess material or debris shall be removed from the work area and disposed of properly and in accordance with the Special Provisions for the project and/or Standard Specification 7-1.13, Disposal of Material Outside the Highway Right of Way. Within 30 days of disposing of materials off-site Caltrans shall submit to the Regional Water Board the satisfactory evidence provided to the Caltrans Engineer by the Contractor referenced in Standard Specification 7-1.13. In accordance with State and Federal laws and regulations, Caltrans is liable and responsible for the proper disposal of waste generated by their project.
 23. All imported fill material shall be clean and free of pollutants. All fill material shall be imported from a source that has the appropriate environmental clearances and permits. The reuse of low-level contaminated solids as fill on-site shall be performed in accordance with all State and Federal policies and established guidelines and must be submitted to the Regional Water Board for review and concurrence.
-

24. Gravel bags used within the Laguna de Santa Rosa shall meet the gravel specifications described below in condition number 25. Gravel bag fabric shall be nonwoven polypropylene geotextile (or comparable polymer) and shall conform to the following requirements:
- 11) Mass per unit area, grams per square meter, min ASTM Designation: D 5261 – 270
 - 12) Grab tensile strength (25-mm grip), kilonewtons, min. ASTM Designation: D4632* 0.89
 - 13) Ultraviolet stability, percent tensile strength retained after 500 hours, ASTM Designation: D4355, xenon arc lamp method 70 or appropriate test method for specific polymer
 - 14) Gravel bags shall be between 600 mm and 800 mm in length, and between 400 mm and 500 mm in width.
 - 15) Yarn used in construction of the gravel bags shall be as recommended by the manufacturer or bag supplier and shall be of a contrasting color. The opening of gravel-filled bags shall be secured to prevent gravel from escaping. Gravel-filled bags shall be between 13 kg and 22 kg in mass.
 - 16) Caltrans shall request approval from the Regional Water Board if an exception from this requirement is needed for a specific location.
25. Gravel used in the construction of the temporary Laguna de Santa Rosa access pad shall:
- 11) Consist of mechanically-rounded and washed, and/or river run gravel obtained from a river or creek bed;
 - 12) Be clean, hard, sound, durable, uniform in quality, and free of disintegrated material, organic matter, or other deleterious substances;
 - 13) Be composed entirely of particles that have no more than one fractured face;
 - 14) Have a cleanliness value of at least 85, using the Cleanness Value Test Method for California Test No. 227; and
 - 15) Have a diameter no less than 0.75 inches in diameter, and no greater than four inches in diameter.
26. The Laguna de Santa Rosa temporary access pad shall be completely removed on or before October 15. Extensions shall not be granted. Installation or removal of the temporary access pad shall not impact the form or substrate of the Laguna de Santa Rosa. Caltrans shall conduct pre- and post-surveys of the Laguna to ensure that installation or removal of the temporary access pad did not impact the Laguna's form or substrate. If Caltrans finds there was an impact, then the Laguna de Santa Rosa shall be restored to its previous conditions and documentation shall be provided to the Regional Water Board no later than 30 days from completion of the post-construction survey.
27. In order to demonstrate compliance with receiving water limitations and water quality objectives surface water monitoring shall be conducted. When conducting surface water monitoring Caltrans shall establish discharge, upstream (background) and downstream monitoring locations to demonstrate compliance with applicable water quality objectives. The downstream location shall be no more than 100 feet from the discharge location.

- 11) Surface water monitoring shall be conducted whenever a project activity is conducted within waters of the State (e.g. including but not limited to the installation, use or removal of stream diversions, pile installations, and cofferdams). Measurements and observations shall be collected from each sampling location four times daily.
- 12) Surface water monitoring shall be conducted immediately when any project activity has mobilized sediment or other pollutants resulting in a discharge and/or has the potential to alter background conditions within waters of the State (including but not limited to storm water runoff, concrete discharges, leaks, and spills.). The continuing frequency is contingent upon results of field measurements and applicable water quality objectives.

Surface water monitoring field measurements shall be taken for pH and turbidity. In addition, visual observations of each location shall be documented daily for each established monitoring location and monitoring event and include the estimate of flow, appearance of the discharge including color, floating or suspended matter or debris, appearance of the receiving water at the point of discharge (occurrence of erosion and scouring, turbidity, solids deposition, unusual aquatic growth, etc.), and observations about the receiving water, such as the presence of aquatic life. If a project activity has reached a steady state and is stable, then Caltrans may request a temporary reprieve from this condition from the Regional Water Board until an activity or discharge triggers the monitoring again.

- 28. Whenever, as a result of project activities (in-stream work or a discharge to receiving waters), downstream measurements exceed any water quality objective 100 feet downstream of the source(s) all necessary steps shall be taken to install, repair, and/or modify BMPs to control the source(s). The frequency of surface water monitoring shall increase to hourly and shall continue until measurements demonstrate compliance with water quality objectives for each parameter listed below and measured levels are no longer increasing as a result of project activities. In addition, the overall distance from the source(s) to the downstream extent of the exceedence of water quality objectives shall be measured.

Monitoring results shall be reported to appropriate Regional Water Board staff person by telephone within 24 hours of taking any measurements that exceed the limits detailed below (only report turbidity if it is higher than 20 NTU).

pH	<6.5 or >8.5 (any changes >0.5 units)
turbidity	20% above natural background

Monitoring results and upstream and downstream pictures within the working and/or disturbed area and discharge location shall be taken and submitted to the appropriate Regional Water Board staff within 24 hours of the incident. All other monitoring data documenting compliance with water quality objectives shall be reported on a monthly basis and is due to the Regional Water Board by the 15th of the following month.

- 29. Post Storm Event Reports:

- 11) Once the project has begun ground-disturbing activities, and subsequent to a qualifying rain event that exceeds 0.5-inches of precipitation, Caltrans shall inspect the project within 24 hours and take photos of all discharge locations, and disturbed areas, including all excess materials disposal areas, in order to demonstrate that erosion control and revegetation measures are present and have been installed appropriately and are functioning effectively. A brief report containing these photos, corrective actions (if necessary), and any surface water monitoring results collected pursuant to this Order or the Construction General Permit (SWRCB Order 2009-009 DWQ) shall be submitted to the Regional Water Board within 10 days after the end of the qualifying rain event. Inspections are required daily during extended rain events. Once the project site is stable, in a steady state (channel- ground- or vegetation-disturbing activities have ceased), and has demonstrated sufficient and effective erosion and sediment control, Caltrans may request a reprieve from this condition from the Regional Water Board. At least one post-construction inspection is required to demonstrate sufficient and effective erosion and sediment control and compliance with the Basin Plan.
 - 12) Rain events are periods of precipitation that that are separated by more than 48-hours of dry weather. Rainfall amounts may be taken from on-site rain gauges, from the nearest California Data Exchange Center station (<http://cdec.water.ca.gov>), or by a custom method or station approved by Regional Water Board staff.
30. Grubbing of vegetation shall not occur in areas of temporary impact, as identified in the application materials. Vegetation within these areas shall be cleared to no less than one inch from the soil surface.
 31. To avoid and minimize impacts, temporary access roads shall employ reinforcing fabric and temporary soil confinement systems when placed over jurisdictional wetlands and waters. Applicable road locations and crossing designs shall be consistent with the Water Pollution Control Details included in Attachment A of this certification.
 32. Caltrans shall submit a mitigation and monitoring plan (MMP) to address on-site and off-site mitigation measures for temporary and permanent project impacts to jurisdictional wetlands, waters, and riparian vegetation. Bridge replacement construction shall be prohibited until a MMP has been found acceptable to the Executive Officer. The MMP shall include:
 - 11) A proposal to revegetate and monitor all temporarily impacted jurisdictional waters and riparian areas. The proposal shall include:
 - a. A planting palette, planting plans, and proposed seed mixes;
 - b. Success criteria, including vigor, percent cover, percent invasive cover, and 75% survival of trees at the end of ten years. Final success criteria for wetland restoration may be considered at five years;
 - c. Corrective actions to be taken if mitigation measures do not meet the proposed success criteria;

- d. A plan to re-vegetate all temporarily impacted areas in the first full planting season (November to April) subsequent to the year construction is complete and erosion control is established in the impacted area. Caltrans shall include a plan to stabilize areas above the Laguna de Santa Rosa Ordinary High Water Mark using appropriate native soil-stabilizing species;
 - e. An invasive plant control plan;
 - f. A monitoring period of no less than ten years;
 - g. Photo-documentation; and
 - h. Annual reporting at the end of years 0 (as-built), 1, 3, 5, 7, 9, and 10. Caltrans shall propose report delivery deadlines;
- ii) A proposal to restore no less than 1.7 acres of riparian habitat in the Laguna de Santa Rosa watershed. Caltrans may partner with the Laguna de Santa Rosa Foundation to restore riparian habitat adjacent the north bank of Gravenstein Creek at "The Brown Farm," or, at an alternative site found acceptable to the California Department of Fish and Wildlife and the Regional Water Board. The proposal shall include:
- a. Mitigation goals;
 - b. A planting palette, planting plans, and proposed seed mixes;
 - c. A plan to implement the mitigation no later than Fall 2014;
 - d. Success criteria;
 - e. An invasive plant control plan;
 - f. Photo-documentation;
 - g. Corrective actions to be taken if mitigation measures do not meet the proposed success criteria;
 - h. A monitoring period of no less than ten years, and
 - i. Annual reporting at the end of years 0 (as-built), 1, 3, 5, 7, 9 and 10. Caltrans shall propose report delivery deadlines.

Project construction shall be prohibited until the MMP has been found acceptable to the Executive Officer. Utility relocation work may commence in advance of MMP acceptance provided specific activities and restoration measures related to the utility relocation activities are first submitted to and found acceptable by Regional Water Board staff or the Caltrans liaison to the Regional Water Board.

- 33. Prior to commencement of bridge construction, Caltrans shall submit confirmation of the purchase of credits equivalent to no less than 0.5 acres of seasonal wetland establishment from a United States Army Corps of Engineers-approved mitigation bank within the appropriate service area.
- 34. Caltrans shall install a compost-amended vegetated filter strip to treat roadway stormwater runoff. The strip shall be no less than 9,821 square feet, have a slope not greater than 25 percent, and be situated adjacent westbound SR12, approximately between post-miles 9.74 and 9.81. The strip shall be entered into the District's permanent stormwater treatment BMP database and monitored and maintained to ensure BMP efficacy.
- 35. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under applicable state or federal law.

- For the purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification. In response to a suspected violation of any condition of this certification, the State Water Board may require the holder of any federal permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the State Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. In response to any violation of the conditions of this certification, the Regional Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.
36. The Regional Water Board may add to or modify the conditions of this Order, as appropriate, to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.
 37. This certification is not transferable. In the event of any change in control of ownership of land presently owned or controlled by the Applicant, the Applicant shall notify the successor-in-interest of the existence of this certification by letter and shall forward a copy of the letter to the Regional Water Board. The successor-in-interest must send to the Regional Water Board Executive Officer a written request for transfer of this certification to discharge dredged or fill material under this Order. The request must contain the following:
 - 11) requesting entity's full legal name;
 - 12) the state of incorporation, if a corporation;
 - 13) address and phone number of contact person; and
 - 14) a description of any changes to the project or confirmation that the successor-in-interest intends to implement the project as described in this Order.
 38. Except as may be modified by any preceding conditions, all certification actions are contingent on: a) the discharge being limited, and all proposed revegetation, avoidance, minimization, and mitigation measures being completed, in strict compliance with Caltrans' project description and CEQA documentation, as approved herein, b) Caltrans shall construct the project in accordance with the project described in the application and the findings above, and c) compliance with all applicable water quality requirements and water quality control plans including the requirements of the Water Quality Control Plan for the North Coast Region (Basin Plan), and amendments thereto. Any change in the design or implementation of the project that would have a significant or material effect on the findings, conclusions, or conditions of this Order must be submitted to the Executive Officer of the Regional Water Board for prior review, consideration, and written concurrence. If the Regional Water Board is not notified of a significant alteration to the project, it will be considered a violation of this Order, and Caltrans may be subject to Regional Water Board enforcement actions.

CDOT – HWY 12
Laguna de Santa Rosa Bridge Replacement
WDID No. 1B12122WNSO

- 2 -

February 7, 2015

Please contact our staff Environmental Specialist / Caltrans Liaison, Brendan Thompson at (707) 576-2699, or via e-mail, at Brendan.Thompson@waterboards.ca.gov, if you have any questions.

Original Signed By

Matthias St. John
Executive Officer

130207_CDOT_Hwy12_LagunaDeSantaRosa_401Cert

Enclosure: Attachment A – Temporary Construction Access Road Details

Web link: State Water Resources Control Board Order No. 2003-0017 -DWQ, General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification can be found at:
http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf

Original to: Ms. Lilian Acorda, Caltrans, District 4, 111 Grand Ave., Oakland, CA 94612

Copies to: Mr. Cyrus Vafai, Caltrans, District 4, 111 Grand Ave., Oakland, CA 94612

Electronic Copies to: U.S. Army Corps of Engineers, Regulatory Functions - San Francisco District

California Department of Fish and Game, Bay Delta Region

EXHIBIT C

Scope of Work

Scope of Work

Sonoma County Regional Parks

Laguna de Santa Rosa/Hwy 12 Bridge – Native Plant Plantings

Maintain and Monitor Vegetative Restoration 2018-2028

Task #1 SCRCP will assume responsibility for the maintenance of plantings on both sides of the highway on approximately less than 1 acre. This shall include monitoring the irrigation system, and weeding by hand around individual plants as well as mechanically between plants.

Task #2 SCRCP will monitor and maintain the condition and survival of the planting as needed to attain 75% survivorship/cover at end of years 2,3,5,7,9,10.

Task #3 SCRCP will replace plants with the same species and container size as those originally planted bi-annually as needed, to ensure 100% plant presence.

Task #4 SCRCP will conduct plants counts monthly and record dead and replaced plants in monthly logs. SCRCP will oversee and direct permanent and seasonal staff to conduct this work. Occasionally, Regional Parks will utilize volunteer groups if there is a specific task that requires a lower level of skill. Reports will be submitted by the end of the calendar year (December 31st) and will include an accounting of costs, a summary of site conditions, photographs and recommendations for any remedial actions.

Task 1.	Maintain and Weed Planting				
Years 2-5	\$20K/yr	x 4 yrs	\$80,000		
Years 6-10	\$15K/yr	x 5 yrs	\$75,000		
Task 2.	Survival Success Monitoring and Reporting				
	\$12,500/yr	X 9 yrs	\$112,500		
Task 3.	Replace Plantings to retain 90% survival Rate				
	\$5,000/yr	X 9 yrs	\$45,000		
Task 4.	Contract Administration				
	\$10,000/yr	X 9 yrs	\$90,000		
		TOTAL:	\$402,500		

EXHIBIT D

Plant List and Planting Plan

PLANT GROUP	PLANT No.	SYMBOL	BOTANICAL NAME	COMMON NAME	SIZE	QUANTITY EACH	ROOT SIZE (INCH)	BAGIN TYPE	SPON SULFATE	SOIL AMEND	COMMERCIAL FERTILIZER PLANTING PLT USE	BAGIN BULCH (CY)	STAKING	PLANTING LIMITS						REMARKS		
														NUMBER		DISTANCE		FROM			OR	
														ROW	CYCLE	ROW	ROW	ROW	ROW			
A	1	⊙	ROSA CALIFORNICA	CALIFORNIA ROSE	No. 1	25	12"	1	-	1.0 CF	1 PKT	1.0 LB.	0.86	-	15	18	10	10	-	10	⊙	SHRUB
	2	⊙	FRAX OREGANA	CALIFORNIA BLACKBERRY	No. 1	25	12"	1	-	1.0 CF	1 PKT	1.0 LB.	0.86	-	15	18	10	10	-	10	⊙	SHRUB
	3	⊙	CONIFERUS ALBA	COMMON JUNEBERRY	No. 1	25	12"	1	-	1.0 CF	1 PKT	1.0 LB.	0.86	-	12	18	10	18	-	10	⊙	SHRUB
I	4	⊙	QUERCUS ALBA	RED OAK	POY	25	12"	11	-	0.5 CF	1 PKT	1.8 LB.	0.66	⊙	25	25	20	20	-	11	⊙	TREE
	5	⊙	QUERCUS ALBA	AMERICAN OAK	POY	25	12"	11	-	0.5 CF	1 PKT	1.8 LB.	0.66	-	15	18	10	10	-	10	⊙	SHRUB
	6	⊙	QUERCUS ALBA	GRAND OAK	POY	25	12"	11	-	0.5 CF	1 PKT	1.8 LB.	0.66	⊙	15	12	18	12	-	10	⊙	TREE
	7	⊙	QUERCUS ALBA	ORANGE OAK	POY	25	12"	11	-	0.5 CF	1 PKT	1.8 LB.	0.66	⊙	25	20	15	15	-	11	⊙	TREE
	8	⊙	QUERCUS ALBA	VALLEY OAK	POY	25	12"	11	-	0.5 CF	1 PKT	1.8 LB.	0.66	⊙	25	25	18	18	-	11	⊙	TREE
W	9	⊙	QUERCUS ALBA	RED BELLER	POY	25	12"	11	-	-	1 PKT	-	-	-	25	25	15	20	-	11	⊙	TREE
	10	⊙	QUERCUS ALBA	WHITE BELLER	POY	25	12"	11	-	-	1 PKT	-	-	-	25	20	10	20	-	10	⊙	TREE

DISTRICT NO. 04
 DISTRICT SUPERVISOR
 DISTRICT ENGINEER
 DISTRICT PLANTING SUPERVISOR

APPLICABLE WHEN ORDERED-

- 1 - QUANTITIES SHOWN ARE PER PLANT UNLESS NOTED AS NOT ON SEED APPLICATION NOTE
- 2 - PLANT NO. ON IS INCLUDED WITH MATCH QUANTITIES SHOWN ON PLANTING PLAN
- 3 - SPECIFIED TO RECEIVE ROOT BALL AND WEDGEMENTS IF REQUIRED
- 4 - SEE DETAIL IN STANDARD PLAN.
- 5 - SEE SPECIAL PROVISIONS
- 6 - SEE STANDARD SPECIFICATIONS
- 7 - AS SHOWN ON PLAN
- 8 - UNLESS OTHERWISE SHOWN ON PLAN
- 9 - MODIFIED FILLAGE PROTECTION REQUIRED
- 10 - ROOT PROTECTION REQUIRED
- 11 - ROOT WARDER REQUIRED
- 12 - STAKE FURNISHED
- 13 - SEE DETAIL SECTION 31-1.2.2 OF THE STANDARD SPECIFICATIONS

LEGEND

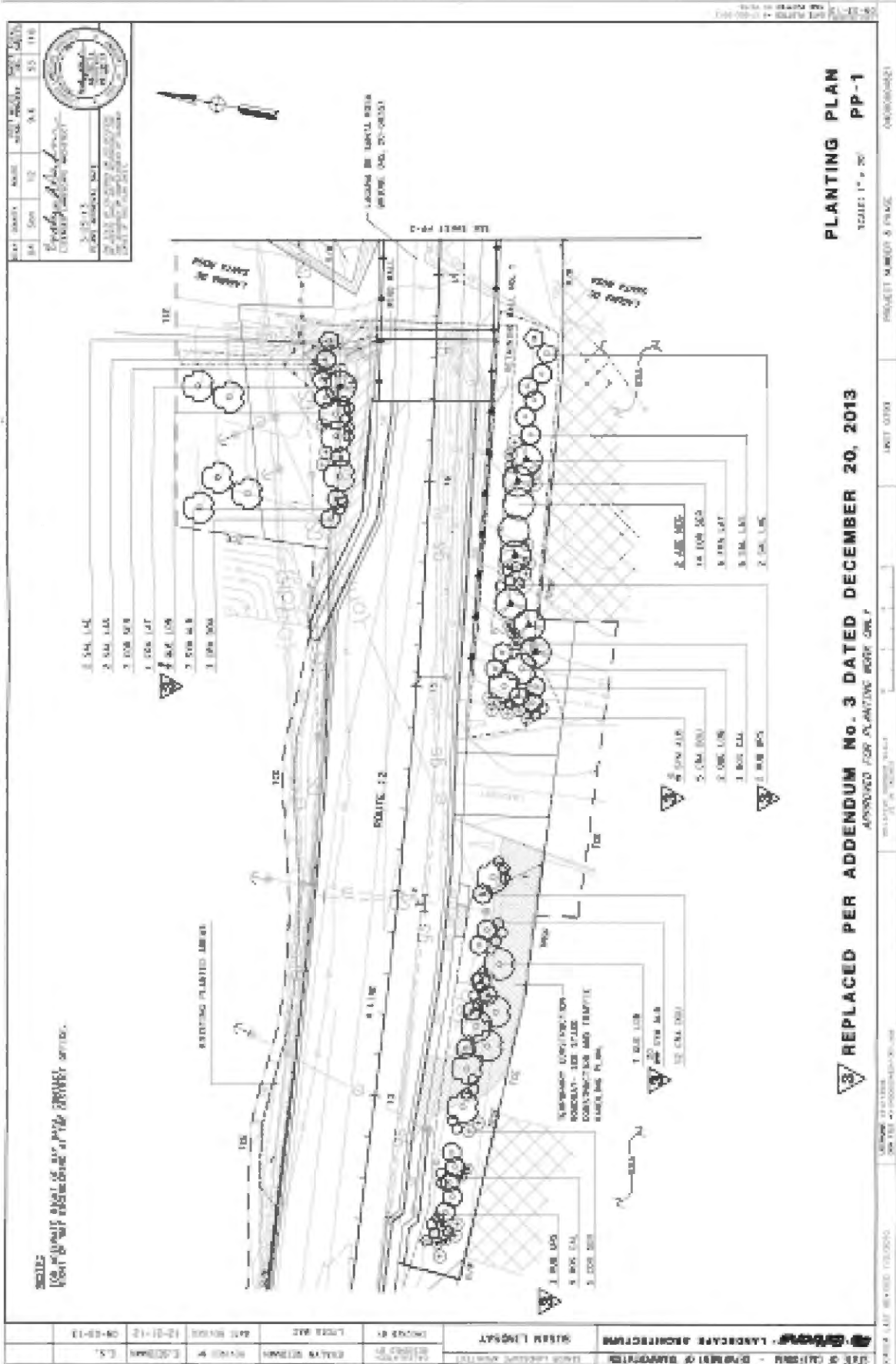


NOTE:

- 1. UNDERLINED PORTIONS OF BOTANICAL NAME INDICATE ABBREVIATIONS USED ON PLANTING PLANS.
- 2. SEE ALSO EROSION CONTROL PLANS.
- 3. MATCH MUST BE GOOD CROPS.
- 4. SEE AMENDMENT MAY BE CORRECT. CONSULT DISTRICT ENGINEER SECTION 31-1.2.2 OF THE STANDARD SPECIFICATIONS.

REPLACED PER ADDENDUM No. 3 DATED DECEMBER 20, 2013

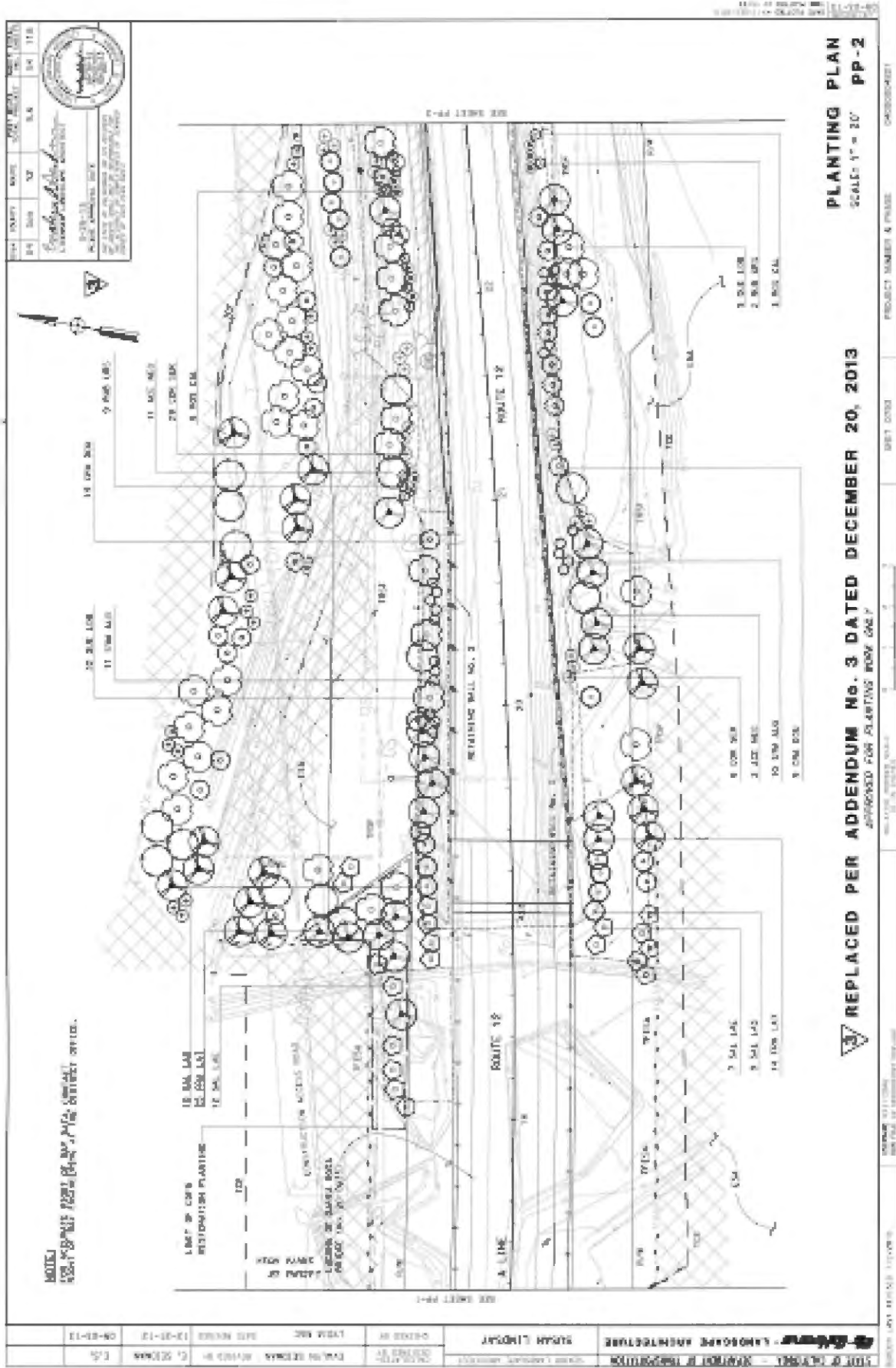
PLANT LIST
PL-1



PLANTING PLAN
SCALE: 1" = 20'
PP-1

REPLACED PER ADDENDUM No. 3 DATED DECEMBER 20, 2013
APPROVED FOR PLANTING WORK ONLY

DATE: 12/20/13
PROJECT NUMBER: 5 PRJG
SHEET NUMBER: 5 PRJG



DATE	BY	SCALE	NO.	DATE
04-25-13	MM	1" = 30'	11	04-25-13

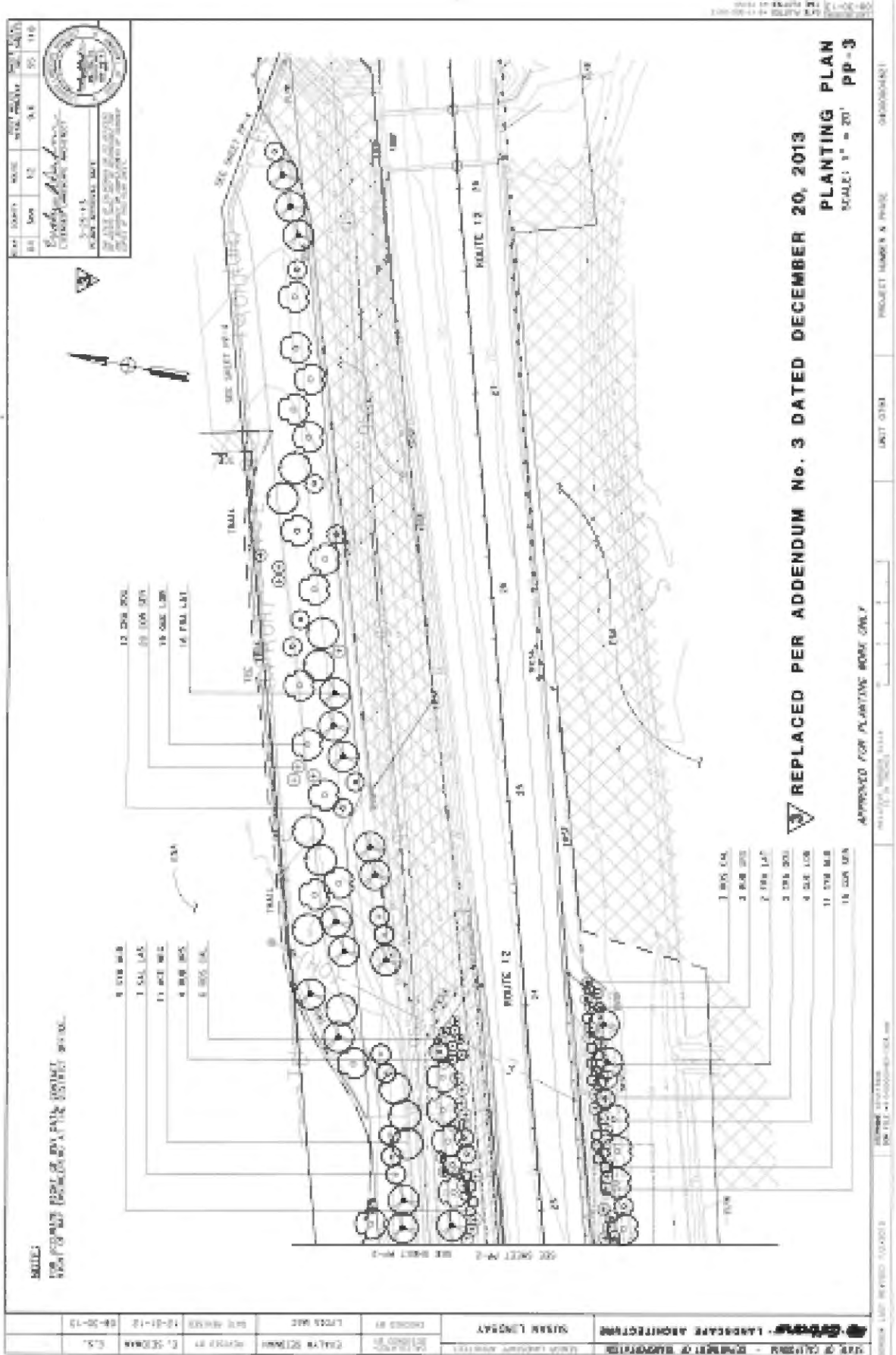
City of Lincoln
 PUBLIC WORKS DEPARTMENT
 1000 LINCOLN AVENUE, SUITE 100
 LINCOLN, NE 68502

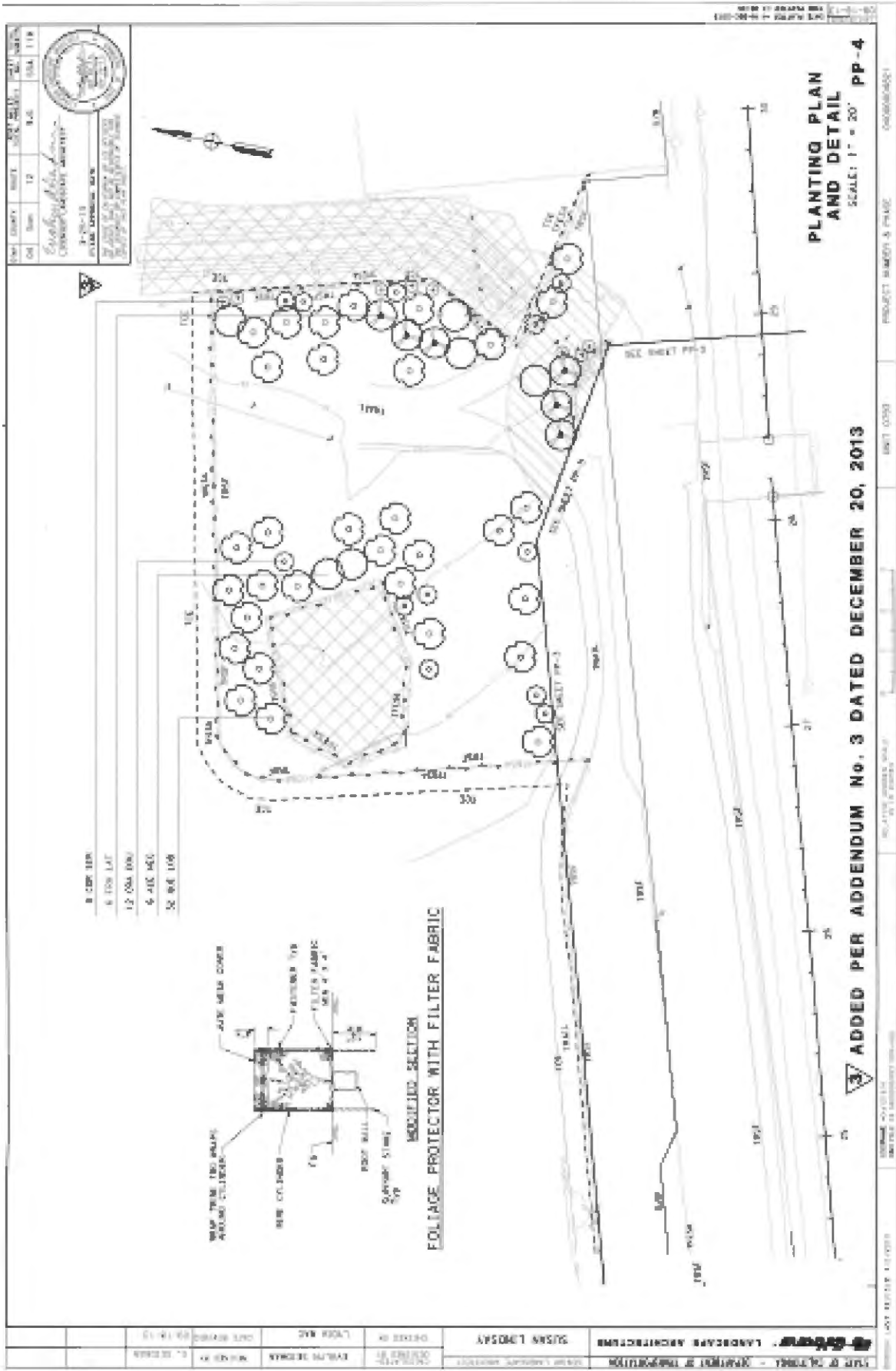
NOTES:
 1. ALL PLANTING SHALL BE AS SHOWN ON THIS PLAN.
 2. ALL PLANTING SHALL BE INSTALLED BY THE CONTRACTOR.
 3. ALL PLANTING SHALL BE MAINTAINED THROUGHOUT THE TERM OF THE DISTRICT AGREEMENT.

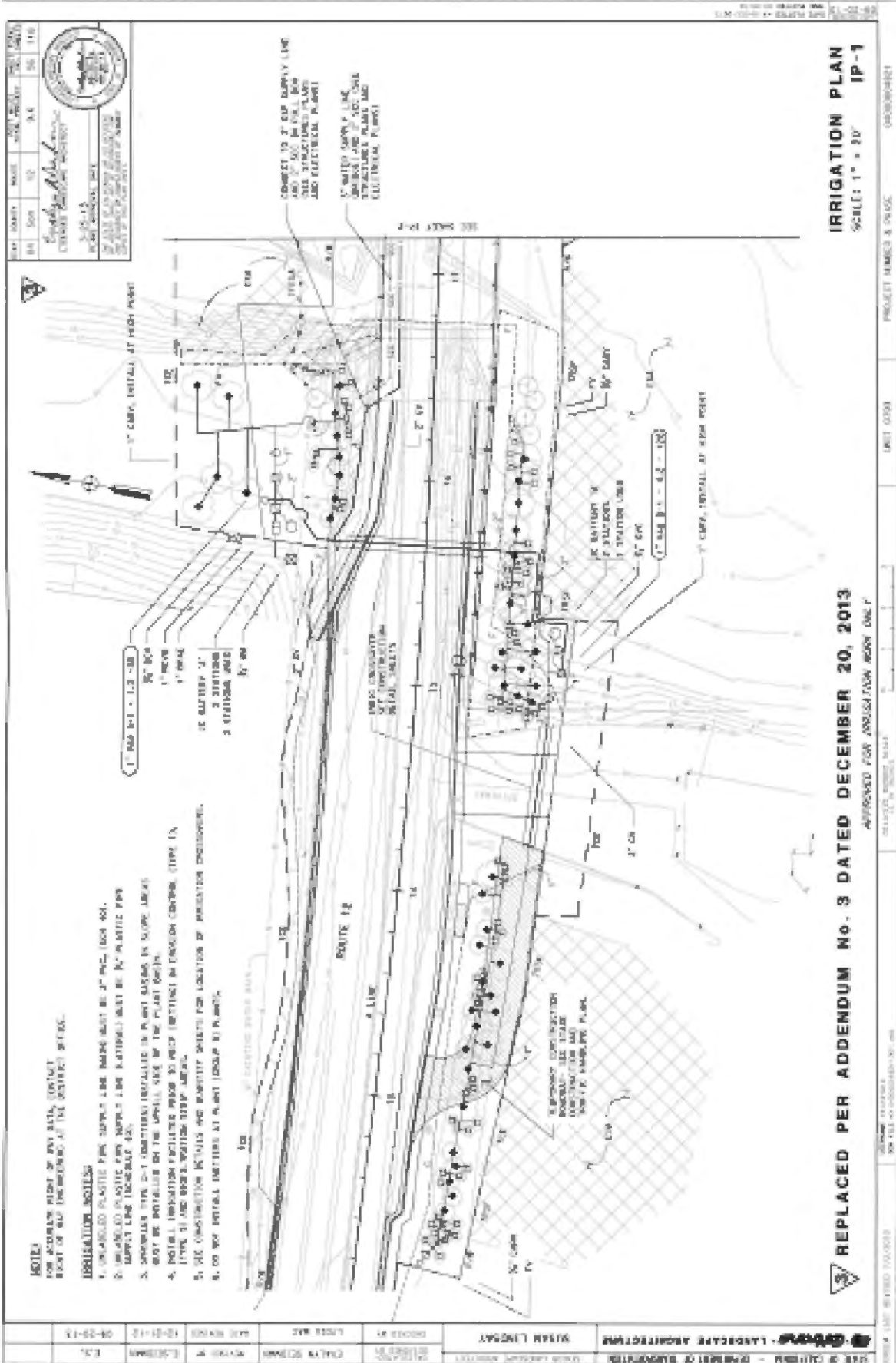
PLANTING PLAN
 SCALE: 1" = 30'
PP-2

REPLACED PER ADDENDUM No. 3 DATED DECEMBER 20, 2013
 APPROVED FOR PLANTING BY: [Signature]

DATE	BY	SCALE	NO.	DATE
04-25-13	MM	1" = 30'	11	04-25-13



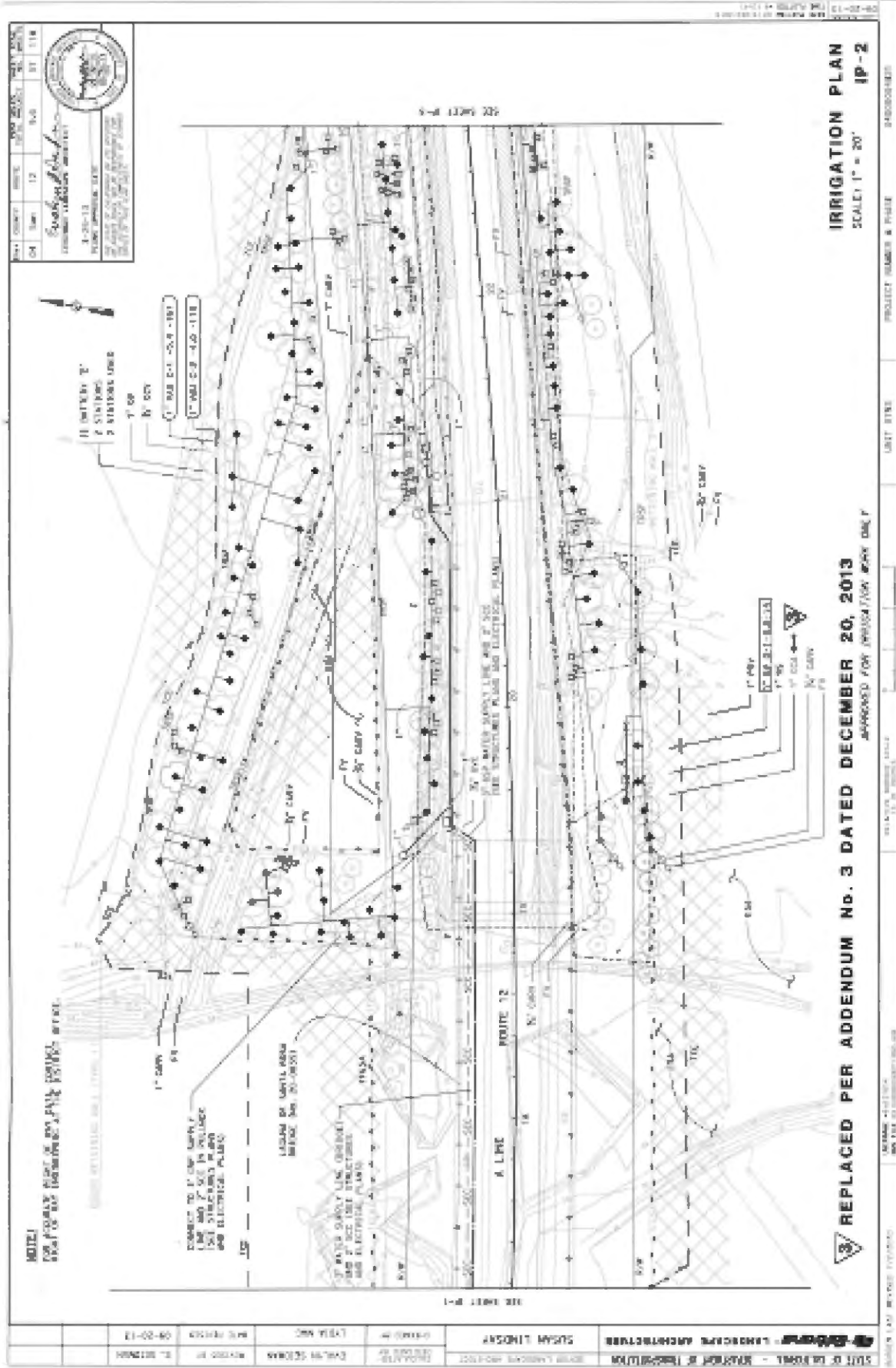




- NOTE:**
FOR ACCURATE HEIGHT OF ANY DATA, CONTACT
SOURCE OF ANY INFORMATION AT THE APPLICABLE OFFICE.
- IRRIGATION NOTES:**
1. UNGRADED PLASTIC PIPE SHALL BE 3" PVC (100' MIN).
 2. UNGRADED PLASTIC PIPE SHALL BE 4" PLASTIC PIPE
UNLESS OTHERWISE NOTED.
 3. SPOOLS SHALL BE 2" UNLESS OTHERWISE NOTED IN ANY OTHER AREA.
SPOOLS SHALL BE 4" UNLESS OTHERWISE NOTED IN ANY OTHER AREA.
 4. INITIAL INSTALLATION SHALL BE TO BE COMPLETED IN ENOUGH CONCRETE (TYPE 1) IN
TYPE 1) AND 2) AND 3) UNLESS OTHERWISE NOTED.
 5. ALL CONSTRUCTION SHALL BE TO BE COMPLETED BY THE DATE OF APPLICABLE DECISION.
 6. DO NOT INSTALL STRUCTURES AT ANY OTHER LOCATION.

IRRIGATION PLAN
SCALE: 1" = 20'
IP-1

REPLACED PER ADDENDUM NO. 3 DATED DECEMBER 20, 2013
APPROVED FOR INSTALLATION BY THE DISTRICT



PROJECT INFORMATION

DATE	12	13	13
NO.	12	13	13

Paul Christensen
 CONSULTING ENGINEER
 4-25-13
 PROJECT NUMBER: 04-2596

IRRIGATION PLAN
 SCALE: 1" = 20'

3 REPLACED PER ADDENDUM No. 3 DATED DECEMBER 20, 2013
 APPROVED FOR PREPARED BY: [Signature]

NOTE:
 FOR FORMER PART OF THE PAUL CHRISTENSEN ESTATE.

CONNECT TO 12" MAIN LINE
 AND 3" SEE IN PACKAGE
 AND ELECTRICAL PLANS

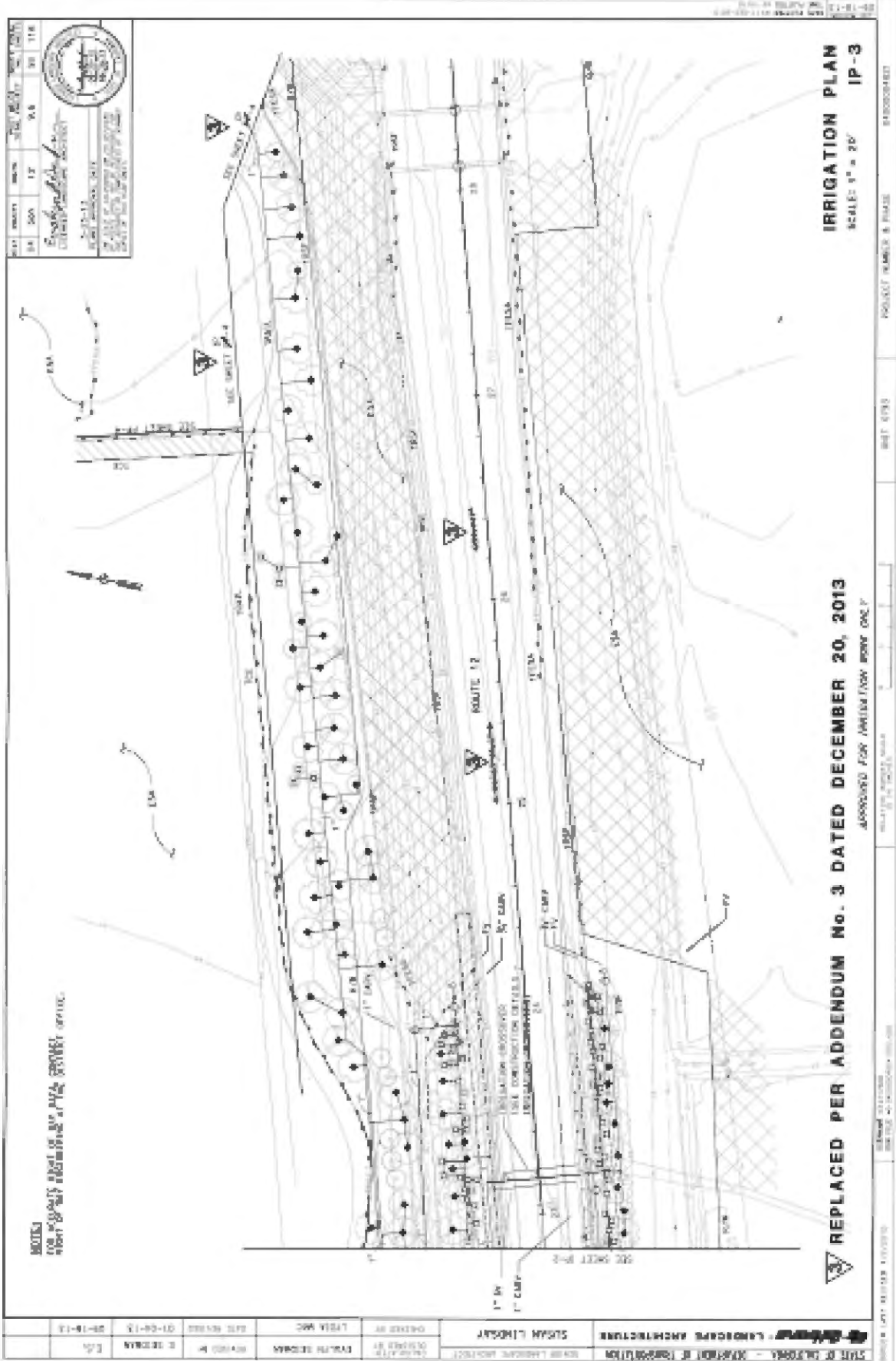
LAND OF SANTA ANITA
 (MAY 20-2001)

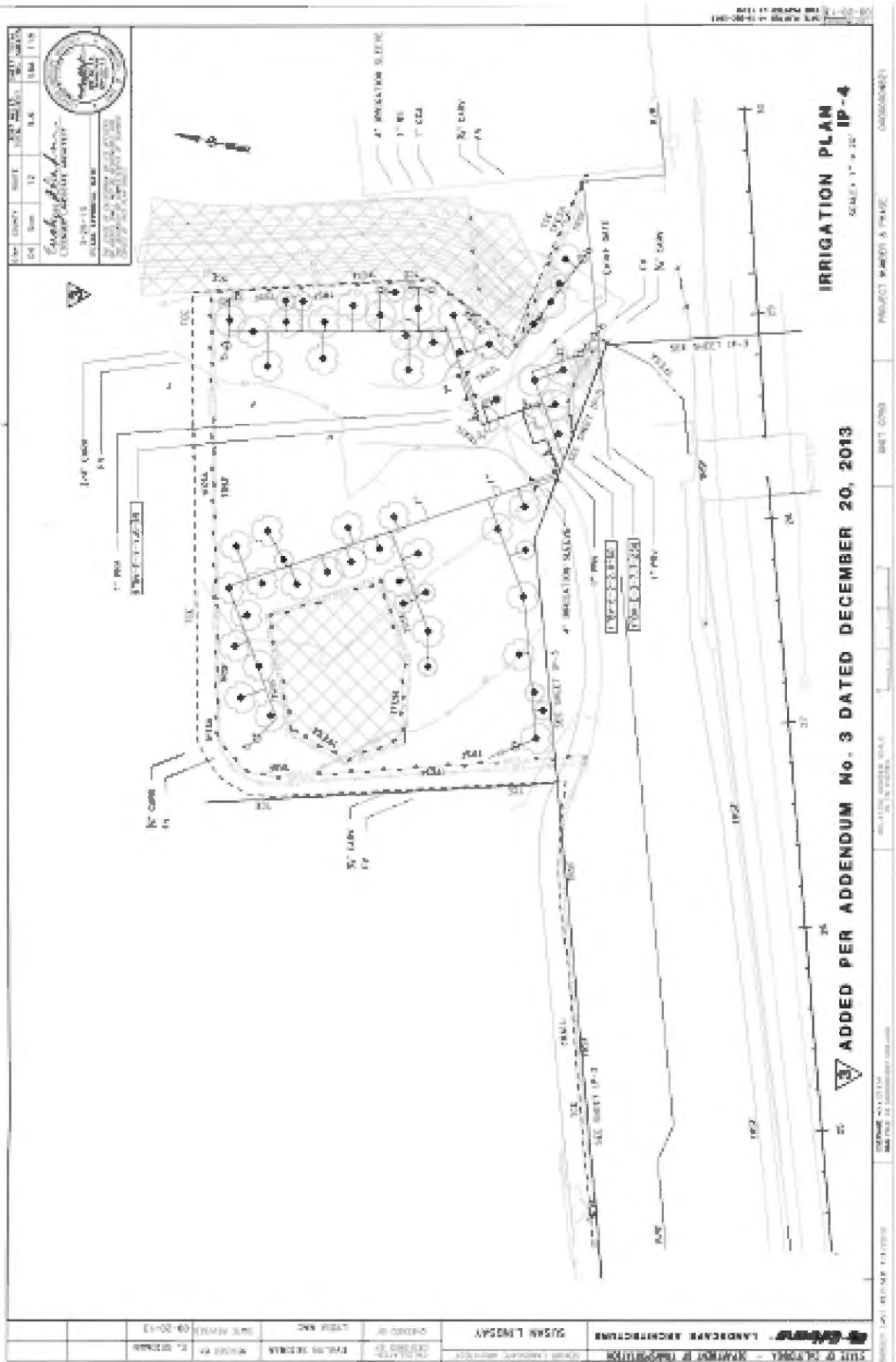
3" MAIN DRAIN LINE (ORIENT)
 AND 3" SEE LINE STRUCTURE
 AND ELECTRICAL PLANS

12" MAIN LINE AND 3" SEE
 FOR STRUCTURE PLANS AND ELECTRICAL PLANS

12" MAIN LINE
 3" SEE
 3" SEE
 3" SEE

DATE	12	13	13
NO.	12	13	13
PROJECT NUMBER	04-2596		
DESIGNER	PAUL CHRISTENSEN		
ARCHITECT	SUSAN LINDSEY		
LANDSCAPE ARCHITECTURE	[Signature]		





3 REPLACED PER ADDENDUM No. 3 DATED DECEMBER 20, 2013

IRRIGATION QUANTITIES
10-2

SUBTOTALS PER PLAN SHEET ON MAIN SUPPLY SIDE OF CONTROL VALVE

QTY	DESCRIPTION	UNIT	SHEET NUMBER (10-1-2013)	SUBTOTALS
1	1"			
1	1"			
1	1"			
3	3"			
-	-			
13	13"			
6	6"			
1	1"			
4	4"			
4	4"			
15	15"			
2	2"			
3	3"			
4	4"			
8	8"			
2	2"			
108	108"			
152	152"			
18	18"			
34	34"			

TOTAL QUANTITIES

QTY	DESCRIPTION	UNIT
1	1"	
1	1"	
3	3"	
-	-	
13	13"	
6	6"	
1	1"	
4	4"	
4	4"	
15	15"	
2	2"	
3	3"	
4	4"	
8	8"	
2	2"	
108	108"	
152	152"	
18	18"	
34	34"	

ABBREVIATIONS:

- 1" - 1" END CONTROL VALVE
- 2" - 2" END CONTROL VALVE
- 3" - 3" END CONTROL VALVE
- 4" - 4" END CONTROL VALVE
- 6" - 6" END CONTROL VALVE
- 8" - 8" END CONTROL VALVE
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COUNTY OF LOS ANGELES
 PUBLIC UTILITIES DEPARTMENT
 125 SOUTH WASHINGTON STREET, SUITE 200
 LOS ANGELES, CALIFORNIA 90033

DATE: 12/20/13
 DRAWN BY: [Signature]
 CHECKED BY: [Signature]



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 29
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Transportation and Public Works

Staff Name and Phone Number:

Johannes J. Hoevertsz 707-565-2231

Supervisorial District(s):

Countywide

Title: FY 2018-19 ADA Paratransit Services Agreement

Recommended Actions:

Approve and authorize Chair to execute an Agreement with Sonoma County Volunteer Center for Countywide Americans with Disabilities Act (ADA) Paratransit Services for the period of July 1, 2018 through June 30, 2019, in an amount not to exceed \$2,333,292.

Executive Summary:

As a fixed-route transit operator, Sonoma County Transit is required to provide complementary Americans with Disabilities Act paratransit service within $\frac{3}{4}$ mile of all its routes during the same days and hours as its fixed-route service operates. To meet federal Americans with Disabilities Act requirements, all paratransit trip requests, made by eligible clients, must be provided regardless of trip purpose, cost or number of trips taken within any period of time.

Demand for Americans with Disabilities Act paratransit service has been steadily growing over the past five years with a projected 55% increase in paratransit trips taken when comparing projected FY 2017-18 (60,468 projected) with 2012-13 (39,111).

This action would renew the County's agreement with the Sonoma County Volunteer Center to provide countywide Americans with Disabilities Act (ADA)-compliant paratransit services. Under this agreement, the Volunteer Center will continue to serve as Sonoma County Transit's ADA paratransit services provider through FY 2018-19, under the name of "Sonoma County Paratransit".

Discussion:

The Volunteer Center has provided Americans with Disabilities Act paratransit service, on an annual basis, for Sonoma County since 2002. Prior to that time, the Volunteer Center provided general public dial-a-ride service for both Sonoma County and the city of Santa Rosa.

Under the Americans with Disabilities Act and its implementing regulations, fixed-route transit operators are required to provide complementary paratransit service within $\frac{3}{4}$ of a mile of their fixed-route service

during the same hours and days that fixed-route services are provided. All trip requests, made by eligible passengers, must be met regardless of their trip purpose. Operators are required to provide, at a minimum, all next-day requested trips.

The Americans with Disabilities Act requires transit operators to provide a sufficient level of paratransit service such that no eligible passenger is denied paratransit service due to capacity limitations. Transit operators that do not meet the required “no-denial” level of service jeopardize their federal funding eligibility and expose themselves to potential legal liability.

Within Sonoma County, there are approximately 4,300 individuals that have qualified and signed up for paratransit services. For many of these individuals, the services provided under this agreement are their sole access to on-going medical care, as well as social activities, shopping and educational opportunities. It is projected that Sonoma County Paratransit will provide 64,519 paratransit passenger trips during fiscal year 2018-19. Additionally, while paratransit services provided under this agreement serve qualified individuals of all ages, usage by seniors has been the primary demographic where increased demand for service is most evident.

Sonoma County Paratransit is operated with a fleet of 30 vehicles including: 20 minibuses, 4 accessible minivans, and 6 sedans. Eight new vehicles will replace eight retiring vehicles this spring. Vehicles are retired in accordance with Federal guidelines with regard to miles and years in service.

The proposed FY 2018-19 agreement permits an approximate 6.5% increase in paid service hours over the Volunteer Center’s FY 2017-18 agreement. A total of 59,904 paid driver hours (wheelchair accessible fleets) is budgeted, in addition to 4,500 volunteer driver hours (sedan fleet).

The proposed agreement provides for a maximum subsidy of \$2,333,292, reflecting a 5.71% increase over FY 2017-18’s agreement maximum of \$2,207,262. This is largely attributed to increased service hours and insurance costs associated with the new vehicles noted above. Sonoma County’s subsidy under this agreement compensates the Volunteer Center for its operating deficit. The operating deficit is the cost of services provided less passenger fares.

It should be noted that the Volunteer Center provides volunteer drivers to the County at no cost to support this service. Based on the Volunteer Center’s hourly rate, the annualized value of this volunteer service for FY 2018-19 is projected at \$110,160. Due to their scheduling flexibility, the Volunteer Center’s use of volunteer drivers has been a key contributor to achieving and maintaining a “no-denial” level of service. The ability to “right-size” the level of service each year due to changes in funding and/or passenger demand is a benefit of utilizing the Volunteer Center for this service.

The Volunteer Center is the preferred vendor based on their non-profit status, experience and that their use of volunteer drivers reduces the County’s overall operating costs and provides the back-up resources necessary to maintain the federally-required no-denial level of Americans with Disabilities Act paratransit service.

Prior Board Actions:

5/23/17 – Board approved agreement with Volunteer Center for FY 2017-18 Americans with Disabilities Act Paratransit Services in an amount not to exceed \$2,207,262. 05/24/16: Board approved Agreement with Volunteer Center for FY 2016/17 Americans with Disabilities Act Paratransit Services in an amount not to exceed \$1,917,115.

Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community			
Provision of countywide Americans with Disabilities Act paratransit service, aligned with Sonoma County Transit's route network, provides local and intercity paratransit options for disabled persons residing and visiting Sonoma County.			
Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses		\$2,333,292	
Additional Appropriation Requested			
Total Expenditures		\$2,333,292	
Funding Sources			
General Fund/WA GF			
State/Federal		\$1,211,249	
Fees/Other		722,043	
Use of Fund Balance		400,000	
Contingencies			
Total Sources		\$2,333,292	
Narrative Explanation of Fiscal Impacts:			
Funding for the agreement is included in the FY 2018-19 Recommended Transit Division Budget and is consistent with Sonoma County Transit's FY 2018-19 Metropolitan Transportation Commission annual claim.			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
Agreement			

Related Items "On File" with the Clerk of the Board:

2018-19 AGREEMENT BETWEEN THE COUNTY OF SONOMA AND VOLUNTEER CENTER OF SONOMA COUNTY FOR ADA PARATRANSIT SERVICES

The following is an Agreement, dated as of July 1, 2018 ("Effective Date"), made and entered into pursuant to the provisions of Section 99400(c) of the Public Utilities Code of the State of California, by and between the County of Sonoma, a political subdivision of the State of California, hereinafter referred to as "County," and Volunteer Center of Sonoma County, a nonprofit corporation, hereinafter referred to as "Center." For purposes of this Agreement, County and Center shall be jointly referred to as "Parties" or "the Parties" and singularly as "Party."

RECITALS

WHEREAS, Center and County wish to provide countywide ADA paratransit services on behalf of the Sonoma County Transit system.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1. **SERVICES TO BE PROVIDED:** Center agrees to serve as the general Americans with Disabilities Act (ADA) paratransit operator for County and shall assume full responsibility and liability associated with ADA compliance as to such service. Paratransit service operated under this Agreement shall be referred to as "Sonoma County Paratransit", which will operate door-to-door demand-responsive paratransit services to ADA-eligible clients. This service is not meant to replace or compete with other public transportation services and will be coordinated with other providers as applicable.

Center will operate both a van and volunteer auto component which complement each other depending on demand and to obtain maximum operational efficiencies and effectiveness. The scope of services shall include:

- A. **"Base Agreement" Service Levels:** Center shall operate service during the same hours and days as Sonoma County Transit fixed-route service, except on holidays when no fixed-route service is provided (Easter, Thanksgiving Day, Christmas Day, New Year's Day, Memorial Day, Independence Day and Labor Day).

It is the goal to offer eligible clients pre-scheduled trips for up to seven days in advance with no trip denials. The budget anticipates the provision of approximately 64,404 hours of service (59,904 paid driver hours, 4,500 volunteer driver hours).

Unless additional services are authorized as allowed herein, Center shall provide services up to the "Base Agreement" amount stated herein.

- B. **Area Served:** The area served shall cover, at a minimum, the inter-city and intra-city corridors currently served by Sonoma County Transit throughout the County. This includes inter-city routes between the County's nine incorporated cities and local routes provided within Sebastopol, Rohnert Park, Cotati, Windsor, Healdsburg, Cloverdale, Sonoma Valley communities, and Monte Rio-Guerneville-Rio Nido. Demand responsive

services shall serve patrons within 3/4 of a mile on each side of these corridors and as otherwise required by the ADA.

- C. Center shall comply with all ADA requirements and regional requirements established by the Metropolitan Transportation Commission (MTC) as it pertains to the provision of ADA paratransit services. Eligibility for ridership, including that of accompanying individuals, shall be as determined by the ADA and regional MTC requirements, including certification from a qualified agency prior to making their first trip request.
- D. Discrimination: No form of discrimination shall be practiced by Center in determining the granting of services to eligible patrons. The system shall operate without preference to the type of trip requested. County residents as well as non-residents shall be eligible for service.
- E. Call Center Services: Center shall provide live telephone services weekdays from 8:00 a.m. to 5:00 p.m. and weekends from 9:00 a.m. to 5:00 p.m. Center shall provide a telephone answering system to record messages during off-hours..
- F. Driver Training and Licensing: Center shall provide drivers with appropriate training to provide safe, courteous, and ADA-compliant transportation. A copy of the training program and quarterly listing of drivers trained or retrained shall be provided to County. Paid drivers shall receive at least one hour of training per month and volunteer drivers must attend at least one training session per year to remain eligible as a driver. Center shall ensure that its full-time, paid drivers possess a valid Class B operator's license throughout the term of this Agreement. The preceding sentence notwithstanding, Center may hire and permit full-time, paid drivers with valid Class C licenses to operate vehicles requiring only a Class C license, provided that Center complies with each of the following requirements:
 - 1. Only those drivers in possession of valid Class B licenses are permitted to operate vehicles requiring a Class B license; and
 - 2. For a reasonable period of time following successful completion of a Class C-licensed drivers' "probationary" period with Center, Center shall provide reasonable assistance to enable said driver to obtain a valid Class B license.
- G. Trip Denial: It is the goal of this Agreement to provide a sufficient level of service such that all paratransit trips requested are provided. In the event a requested trip is denied (for any reason whatsoever) it shall be documented using the form contained in Exhibit "A" and emailed to Sonoma County Transit on the same day, or next business day should such a denial occur on a weekend day. Center shall not limit the number of trips granted to any eligible individual.
- H. Complaints: Complaints lodged to either party will be emailed to the respective party as soon as possible, utilizing the Complaint Form (Exhibit "B"). Center's publications shall include County's phone number (707) 585-7516 and indicate that complaints may be presented to County at this number.
- I. Waiting Lists and Reservations: The objective of this service is to provide demand-responsive services by no later than the next day after request. Center shall focus on

providing this type of response but may also offer subscription service up to 50% of the systems' capacity. Subscription services shall be defined as client reservations, on a regularly scheduled basis, taken for a period of up to seven (7) calendar days beyond the date of client's request for service.

Waiting lists are prohibited except for subscription services. If a trip cannot be fulfilled, it must be reported to County as a trip denial. Center shall, however, enforce a trip cancellation policy that requires scheduled clients to give adequate notice when cancellations are necessary, so that replacement trips can be scheduled.

Frequent client cancellations or unannounced cancellations may serve as grounds for eligibility suspension. Center shall inform County of any clients who are alleged to fall under this category.

- J. Coordination: Center shall coordinate with and accept transfers from other surrounding paratransit and fixed-route providers to facilitate expanded client travel options. County will work with Center to facilitate communication between operators in an effort to maximize operational efficiency and passenger convenience.
- K. Record Keeping: Center shall keep proper program records, including any required or requested by any funding or regulatory agency, and make them available for inspection. Records shall include, costs and ridership revenues reports, a description of actual services provided and results obtained. All operating costs must satisfy Transportation Development Act (TDA) eligibility and reporting requirements.
- L. Management: Center shall appoint a full-time Program Manager/Director to oversee, administer and maintain daily operations of services under this Agreement.
- M. Compliance: Center shall comply with all applicable federal, state, and local laws and regulations, including those associated with the TDA and State Transit Assistance (STA) programs as they pertain to the provision of public paratransit service. County has relied upon Center's representations regarding its professional ability and training as a material inducement to enter into this Agreement. Center hereby warrants that all its services will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state, and local laws, it being understood that County's acceptance of Center's services shall not operate as a waiver or release.
- N. Safety Program: Center shall provide County with a written safety program that is provided to all Center's volunteers and employees. The safety program shall include safety policies and practices, accident prevention and reporting, and other training materials. Center is required to ensure that all drivers are properly trained and certified (as applicable), participate in the California Department of Motor Vehicles' Employer Pull Notice Program, and conduct driver safety training meetings (monthly for paid drivers, annually for volunteer drivers, at a minimum).
- O. Weekly Meetings: Center's Program Director will meet on a weekly basis to coordinate activities with County's Transit Systems Manager, or designee.

2. DUTIES OF COUNTY:

- A. Serve as lead agency in the administration of this Agreement.
 - B. Provide up to \$2,333,292 in funds, subject to the contingency described below (\$2,276,382 “Base Agreement” plus up to a 2.5% contingency (\$56,910) for additional services allowed under Section 7.)
 - C. Make payment in a timely manner as defined in this Agreement for all amounts due under this Agreement.
 - D. Prepare and submit to funding agencies the appropriate performance reports.
 - E. Assess the continuing need for the described service at least annually and evaluate the effectiveness and quality of services provided.
 - F. Monitor the performance of Center in meeting the terms of this Agreement.
 - G. Provide vehicle fuel, cleaning, and maintenance services at 355 West Robles Avenue, Santa Rosa (Sonoma County Bus Facility) to Center for all County-owned vehicles used in the provision of services under this Agreement.
 - H. Permit use of storage space at 355 West Robles Avenue, Santa Rosa (Sonoma County Bus Facility) for paratransit vehicles used in performance of this Agreement.
 - I. Maintain a client eligibility program.
 - J. Provide a computerized scheduling and dispatching system which shall be owned by County but maintained and operated by Center.
 - K. Meet with Center Program Manager on a weekly basis to coordinate activities.
 - L. Assist with acquisition of van fleet and provide temporary substitute vehicles if available and subject to additional terms as determined by County.
3. FUNDING FOR AGREEMENT: Center acknowledges that this Agreement is contingent on County obtaining required funds. Up to \$2,333,292 in County Article 8 TDA, STA, and local Measure M funds will be made available, subject to MTC and Sonoma County Transportation Authority approvals. **County’s and Center’s duties under this Agreement are contingent upon award of said funds.** No County General Fund monies will be made available under this Agreement.
4. COMPENSATION AND PAYMENT: Center will be paid an amount based on its operating deficit not to exceed the amounts stated herein. Operating deficit is defined as operating expense less the amount of fare and other non-TDA/STA/Measure M revenues. Operating expense is defined as the actual expenditure for the usual and customary expenses for the administration and operation of the service. Operating expense does not include any expense that is not eligible for reimbursement under the provisions of Section 99400(c) of the California Public Utilities Code and any related rules or regulations.

Up to the amount of the “Base Agreement” level of service described above, the following applies:

By the 15th day following the end of a calendar month, Center shall submit a Reimbursement Computation (Exhibit "C") to County for all services provided in the preceding month. A monthly management report containing the required elements contained in Exhibit "D", at a minimum, shall accompany the request for reimbursement, followed by a staff meeting on Wednesday of the following week to review the management report and any concerns with the payment request. Monthly payments will be based on a fixed fee of \$50,430 per month and additional variable reimbursement at the rate of \$24.48 per driver-hour of service.

The monthly fixed fee is exclusive of the Center's annual liability insurance premium for ADA paratransit services. Center shall bill separately, by July 15, 2018, for the annual liability insurance costs associated with this Agreement (estimated at \$205,000.)

Reimbursements for services provided under this Agreement shall be paid by County within fourteen (14) days of Center's delivery of an acceptable monthly management report and request for reimbursement as detailed above. Center recognizes that failure to file timely reports may delay payment.

All payments by County will be made in accordance with Sonoma County Board of Supervisors Resolution No. 62627, dated December 19, 1978.

Allowance for authorized additional services beyond the "Base Agreement" are defined in Section 7.

Payment of outstanding requests by Center may be withheld by County if required reports have not been submitted by Center in a complete and timely manner.

5. FARES: Passenger fares shall be collected at the rates set forth in Exhibit "E." Fares are based on criteria allowable under the Americans with Disabilities Act and are tied to Sonoma County Transit's fare structure for similar fixed-route services. Personal care attendants and eligible service animals ride free. Center shall accept County-developed and -issued passes in lieu of monetary fare. County will reimburse Center on a monthly basis for all County passes accepted.
6. FAREBOX RECOVERY RATIO: Center and County are expected to satisfy the TDA requirement that at least 10% of the operating cost be obtained from farebox revenues to qualify for the funds. It shall be a goal to obtain a greater than 10% recovery ratio.

Should Center not meet the 10% farebox recovery goal, County may request steps be taken within a reasonable period of time to comply. If County, after an analysis of all services funded through P.U.C. 99400(c) under contract with County, determines that failure by Center to comply will result in a farebox recovery of less than 10% for all services under P.U.C. 99400(c), County may require that Center adjust level of services accordingly such that a 10% recovery ratio can be achieved. All fare revenues shall be applied against operating expenses.

7. ADDITIONAL SERVICES: Additional services beyond the "Base Agreement" levels may be authorized.

County's Transit Systems Manager may authorize additional services up to 2.5% of this Agreement's maximum compensation, not to exceed \$56,910, if additional services are

necessary to assure that the federally required “no-denial” level of service is maintained if passenger demand increases beyond “base agreement” estimates. If additional services beyond 2.5% are necessary, a contract amendment will be prepared. It is understood that County is free to obtain additional services from sources other than Center if desired.

8. CHANGES IN SERVICE: Changes in service may be proposed by either Center or County. Such proposals will be reviewed by County to determine estimated cost and compatibility with County's overall public transit operations. The proposal will be put into effect only upon a statement in writing approved by representatives of both Parties. Other than as for additional services as permitted above, changes that affect the amount of compensation will require an amendment to this Agreement.
9. EMERGENCY PROCEDURES: In the event of a declared local emergency, upon the request of County’s Director of the Office of Emergency Services, Center shall make transportation and communication resources available to the degree possible for emergency assistance. Center shall follow instructions of the County’s Director of the Office of Emergency Services and inform County, as directed, of actions being taken. Emergency uses of transportation may include evacuation, transportation of injured, and movement of people to food and shelter. Center shall be reimbursed on the basis of fair, equitable, and prompt reimbursement of Center's actual costs. Reimbursement for such emergency services shall be permitted to exceed the “Base Agreement” amount.. Immediately after the emergency ceases, Center shall reinstitute normal transportation services. It is understood that operational funding provided in this Agreement cannot be expended to support emergency services.
10. CONFLICTING USE: Center shall not use any vehicle, equipment, personnel, or other facilities which are provided by County for performing services under this Agreement for any use whatsoever other than provided for in this Agreement, unless authorized by County Transit Systems Manager.
11. PERIOD OF SERVICE: Center shall provide ADA paratransit services as described herein as Sonoma County Paratransit from July 1, 2018, through June 30, 2019, unless terminated per the Termination provision of this Agreement.
12. REPORTS: Center will furnish County with the following reports:
 - A. A monthly management report will accompany the monthly payment request (Exhibit "D"). This report shall include Monthly Report - Summary Operating Data and a management review of performance indicating problems encountered and solutions considered, pertinent critiques and evaluation of system and service, training conducted, trends developing, staffing changes, budgetary concerns or other matters of importance. Performance measures shall be reviewed and a geographic presentation on where passenger ridership is occurring. This report will serve as basis for monthly meeting between Center and County staff.
 - B. Delivery of Trip Denial Forms (Exhibit "A") and Passenger Complaint Forms (Exhibit "B") as occurrences develop.
 - C. Center shall provide County copies of all incident and accident reports.

- D. Any special report requests of County such as patronage by time of day, daily trip reports, log of trip cancellations along with reasons, or other sampling surveys.
 - E. Copies of quarterly staffing report (Exhibit "F").
 - F. Driver trainer and driver certificates.
 - G. Provide quarterly drug and alcohol testing reports for the three-month period preceding September 30, December 31, March 31 and June 30. These reports are required, in addition to, an annual drug and alcohol testing report as detailed in Section 44.
13. INSURANCE: With respect to performance of work under this Agreement, Center shall maintain and shall require all its subcontractors to maintain insurance as described below:
- A. Workers' Compensation Insurance. Workers' compensation insurance with statutory limits as required by the Labor Code of the State of California. Said policy shall be endorsed with the following specific language:

"This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to the County of Sonoma, Department of Transportation and Public Works."
 - B. General Liability Insurance. Commercial general liability insurance covering bodily injury and property damage utilizing an occurrence policy form, in an amount no less than \$2,000,000 combined single limit for each occurrence. Said commercial general liability insurance policy shall either be endorsed with the following specific language or contain equivalent language in the policy:
 - 1. "The County of Sonoma, its officers and employees, is named as additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement."
 - 2. "The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply 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."
 - 3. "The insurance provided herein is primary coverage to the County of Sonoma with respect to any insurance or self-insurance programs maintained by County."
 - 4. "This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to the County of Sonoma, Department of Transportation and Public Works."
 - C. Automobile Liability Insurance. Automobile liability insurance covering bodily injury and property damage in an amount no less than \$5,000,000 combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles. Said policy shall be endorsed with the following language:

"The County of Sonoma, its officers and employees, is named as additional insured for

liability arising out of the ownership, maintenance, use, loading or unloading of an automobile in the performance of this agreement.

The insurance provided to County is primary and non-contributory with respect to any insurance or self-insurance program maintained by County.

This policy shall not be cancelled or materially changed without first giving thirty (30) days prior written notice to the County of Sonoma, Department of Transportation and Public Works.”

- D. Automotive Physical Damage Insurance. Comprehensive and Collision insurance covering all transit vehicles provided by County under this agreement. Such coverage shall include a Loss Payable endorsement in favor of County. Center shall be responsible for payment of any deductible applicable to this insurance.
- E. Documentation. The following documentation shall be submitted to County:
1. Properly executed Certificates of Insurance clearly evidencing all coverages, limits, and endorsements required above. Said Certificates shall be submitted prior to the execution of this Agreement.
 2. Signed copies of specified endorsements for each policy. Said endorsement copies shall be submitted within thirty (30) days of execution of this Agreement.
 3. Upon County’s written request, certified copies of insurance policies. Said policy copies shall be submitted within thirty (30) days of County’s request.
 4. After the Agreement has been signed, signed Certificates of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- F. Policy Obligations. Center’s indemnity and other obligations shall not be limited by the foregoing insurance requirements.
- G. Material Breach. If Center, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. County, at its sole option, may terminate this Agreement and obtain damages from Center resulting from said breach. Alternatively, County may purchase such required insurance coverage, and without further notice to Center, County may deduct from sums due to Center any premium costs advanced by County for such insurance. These remedies shall be in addition to any other remedies available to the County.
14. VEHICLES: County will provide Center with transit vehicles necessary to operate these services. Any vehicles provided by County shall be owned by County but controlled by Center. When not in use by Center, vehicles will be made available to County for maximum use of this resource.

Center shall be responsible for any physical damages to said vehicles while under its control. Within 24 hours, Center shall provide copies of all vehicle accident reports to County’s maintenance contractor and other designated County persons. Center shall be responsible for

completing a Daily Bus Report (DBR) for each vehicle operated by Center under this Agreement. Completed DBRs shall be returned to County's dispatch office at the completion of each work shift.

Center shall only use such vehicles for purposes defined in this Agreement. It is understood that failure of Center to operate County vehicles as defined in this Agreement may result in return and denial of further use of County vehicles. Return of vehicles to County shall be made in accordance with the provisions of a written demand presented by County.

15. ASSIGNMENT AND SUBCONTRACTING: None of the Parties hereto shall assign, sublet, or transfer any interest in this Agreement without written consent of the other, and no assignment shall be of any force or effect whatsoever unless and until the other party shall have so consented in writing. No subcontracting of service delivery is permitted.
16. STATUS OF CENTER: The Parties intend that Center, in performing the services hereunder specified, shall act as an independent contractor and shall have control of the services and the manner in which it is performed. Center is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits County provides its employees.
17. MUTUAL INDEMNITY: Each party shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees and witness costs) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying party. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party under workers' compensation action, disability benefit acts, or other employee benefit acts.
18. BREACHES AND DISPUTES:
 - A. Disputes - Disputes arising in the performance of this Agreement that are not resolved by agreement of the Parties shall be decided in writing by County Transit Systems Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy Center mails or otherwise furnishes a written appeal to County's Director of Transportation and Public Works. In connection with any such appeal, Center shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the County's Director of Transportation and Public Works shall be binding upon Center and Center shall abide by the decision.
 - B. Performance During Dispute - Unless otherwise directed by County, Center shall continue performance under this Agreement while matters in dispute are being resolved. Center acknowledges that County, in executing this Agreement, is relying on Center as part of compliance with applicable ADA requirements.
 - C. Claims for Damages - Should either Party to the Agreement suffer injury or damage to person or property because of any act or omission of the Party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be

made in writing to such other Party within a reasonable time after the first observance of such injury of damage.

- D. Remedies - Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between County and Center arising out of or relating to this Agreement or its breach will be decided by arbitration if the Parties mutually agree, or in a court of competent jurisdiction within the State of California.
- E. Rights and Remedies - The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by County shall constitute a waiver of any right or duty afforded any of them under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

19. TERMINATION:

- A. Termination for Convenience: At any time, and without cause, County or Center shall have the right to terminate this Agreement by giving one hundred and twenty (120) days written notice to the other party. In the event of such termination, County shall pay Center for services rendered to the date of termination.
- B. Termination for Default: If Center fails to perform services specified in this Agreement or to comply with any provision of this Agreement, County may terminate this Agreement. Termination shall be effected by serving written notice of termination by County on Center, setting forth in detail the Center default. Center will only be paid for services and supplies delivered and accepted as performed in the manner set forth in this Agreement, and subject to the rates and amounts stated herein.

If it is later determined by County in its reasonable discretion that Center had an excusable reason for not performing, such as a strike, fire, or other events not the fault of or are beyond the control of Center, County, after setting up a new delivery of performance schedule, may allow Center to continue work or treat the termination as a termination for convenience.

- C. Opportunity to Cure: In the case of a termination for breach or default, County, in its sole discretion, may allow Center a set period of time, depending on default, in which to cure the defect. In such case, the notice of termination will specify, in detail, the manner of default or breach, the actions required to cure said default or breach, and will state the time period in which cure is permitted and other appropriate conditions. If a satisfactory remedy is not reached within the time period, County shall have the right to terminate without further obligation to Center. Any such termination for default shall not in any way operate to preclude County from also pursuing all available remedies against Center and its sureties for said breach or default.
- D. Waiver of Remedies for Any Breach: In the event that County elects to waive its remedies for any breach or default by Center of any covenant, term, or condition of this Agreement,

such waiver by County shall not limit County's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.

20. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS, AND MAKING PAYMENTS: All notices, bills and payments shall be made in writing and may be given by personal delivery or by U.S. mail or courier service. Notices, bills and payments should be addressed as follows:

COUNTY: Sonoma County Transit
Attention: Transit Systems Manager
355 West Robles Avenue Phone: (707) 585-7516
Santa Rosa, CA 95407 Fax: (707) 585-7713

CENTER: Volunteer Center
Attn: Executive Director
153 Stony Circle, Ste. 100 Phone: (707) 573-3377
Santa Rosa, CA 95401 Fax: (707) 579-2079

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

21. MERGER: This writing is intended both as the final expression of the Agreement between the Parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
22. RIGHT TO MONITOR AND AUDIT: County and its agents, and the regional governments, including the Metropolitan Transit Commission (MTC), shall have the right to monitor and audit all work performed under this Agreement. County will assess Center's performance on a quarterly basis per performance standards contained in Exhibit "H" of this Agreement.

County will notify Center in writing within thirty (30) days of any potential exception(s) discovered during such examination. Where such findings indicate that program requirements are not being met and funding agency participation in this program may be imperiled, such written notification will constitute County's intent to terminate this Agreement in the event that corrections are not accomplished by Center within sixty (60) days, or sooner if specified and depending on the urgency of the exception.

Center shall provide County within 120 days of the termination of this Agreement an unaudited statement of actual revenues and expenditures by budget item as defined in Exhibits "C" and "D."

Audits must comply with Transportation Development Act requirements and with Standards for Audit of Government Organizations, Programs, Activities, and Functions.

23. NO GOVERNMENT OBLIGATION TO THIRD PARTIES:

- A. County and Center acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the federal government, the federal government is not a party to this Agreement and shall not be subject to any obligations or liabilities to County, Center, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the underlying Agreement.
- B. Center agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by Federal Transit Administration (FTA). It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

24. NONDISCRIMINATION: The following requirements apply to the underlying Agreement:

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, Center agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Center agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.
- B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying Agreement:
 - 1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and federal transit laws at 49 U.S.C. § 5332, Center agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the project. Center agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Center agrees to comply with any implementing requirements FTA may issue.
 - 2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332,

CENTER agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Center agrees to comply with any implementing requirements FTA may issue.

3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Center agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Center agrees to comply with any implementing requirements FTA may issue.
- C. Center also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected Parties.
25. RETENTION OF RECORDS: County and Center agree to retain all documents relevant to this Agreement for four years from the termination of the Agreement or until all federal/state audits are complete for this fiscal year, whichever is later. Upon request, Center shall make available these records to County, state, or federal government personnel.
 26. ACCESS TO RECORDS: The following access to records requirements apply to this Agreement:
 - A. Center agrees to provide County, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of Center which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. Center also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives access to Center's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
 - B. Where County is the FTA recipient or a subgrantee of the FTA recipient in accordance with 49 C.F.R. 633.17, Center agrees to provide County, the FTA Administrator or his authorized representatives access to Center's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
 - C. Where County enters into a negotiated agreement for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other nonprofit organization and is the FTA recipient or a subgrantee of the FTA recipient in accordance with 49 C.F.R. 19.48, Center agrees to provide County, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of Center which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

- D. Where any purchaser which is the FTA recipient or a subgrantee of the FTA recipient in accordance with 49 U.S.C. 5325(a) enters into an agreement for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, Center shall make available records related to the agreement to County, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
 - E. Center agrees to permit any of the foregoing Parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 - F. Center agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Center agrees to maintain same until County, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
 - G. FTA does not require the inclusion of these requirements in subcontracts.
27. PRIVACY ACT: The following requirements apply to Center and its employees that administer any system of records on behalf of the federal government under any agreement:
- A. Center agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, Center agrees to obtain the express consent of the federal government before Center or its employees operate a system of records on behalf of the federal government. Center understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Agreement.
 - B. Center also agrees to include these requirements in each subcontract to administer any system of records on behalf of the federal government financed in whole or in part with federal assistance provided by FTA.
28. COMPLIANCE WITH LAWS AND REGULATIONS: Center shall comply with any federal, state, and local laws and regulations or requirements of funding agencies such as FTA drug and alcohol testing, Americans with Disabilities Act, DMV Pull-Notice System for Drivers, and any other matters that impact eligibility for funding, risk exposure, safety, or other relevant area of endeavor.
29. PERFORMANCE: Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arises with respect to the performance of either party, the other may, in writing demand adequate assurance of due performance and until he receives such assurance may, if commercially reasonable, suspend any performance for which the agreed return has not been received. Commercially reasonable includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with

Parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding 30 days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

30. CONFLICT OF INTEREST: Center covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Center further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by County, Center shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Center's or such other person's financial interests.
31. CONFLICT OF TRANSPORTATION INTERESTS: Center shall not divert any revenues, passengers, or other business from County's project to any other transportation operation of Center.
32. EXECUTION OF AGREEMENT: This Agreement shall not come into effect unless duly executed by County and Center.
33. 13(C) OBLIGATIONS: Center acknowledges that County is obligated, under the terms of certain capital assistance agreements with the federal government, to ensure that employees of Center are afforded certain labor protections per 49 U.S.C. section 5333(b) and U.S. DOL guidelines at 29 CFR Part 215. A copy of those labor protective arrangements is attached hereto as Exhibit "G" and incorporated herein by reference. Center agrees to comply with such labor protective requirements during the term of this transit service agreement, and any extension thereof. Center further agrees to take no action which would adversely impact its employees, during the term of this Agreement, in a manner which would cause 13(c) financial obligations to said employees. In the event such adverse impact is considered reasonable or unavoidable by Center, Center agrees to consult with County, to take reasonable steps to avoid or mitigate any adverse impacts, and assume financial responsibility.

Center shall have financial liability for any 13(c) claims or obligations that are created by acts or omissions of Center that are not specifically directed by County. In addition, Center shall cooperate with County (including the provision of payroll records and other information) in the resolution or defense of any 13(c) claims or disputes for which County has responsibility.

Center shall not assist or encourage any employee to file or otherwise pursue a 13(c) claim against County, or take any action which is contrary to the interests of County under 13(c) or its 13(c) agreements relating to the termination of services under this Agreement, any future transition from Center to another service provider, or any other action or event relating to this Agreement. If Center fails to comply with this obligation, Center shall be financially liable for all costs incurred by County (including attorney's fees) associated with any 13(c) claims or delays in the receipt of federal grants.

34. TRANSIT EMPLOYEE ARRANGEMENTS: Center agrees to comply with the applicable transit employee protective requirements as follows:

- A. General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, Center agrees to carry out the transit operations work on the underlying agreement in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Agreement and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R.B. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the agreement involves transit operations financed in whole or in part with federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying agreement, Center agrees to carry out the project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. Center agrees to perform transit operations in connection with the underlying agreement in compliance with the conditions stated in that U.S. DOL letter.
- C. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas - If the agreement involves transit operations financed in whole or in part with federal assistance authorized by 49 U.S.C. § 5311, Center agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

Center also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with federal assistance provided by FTA.

35. AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE: Center agrees to serve as a general paratransit and ADA provider for County and shall assume full responsibility and liability associated with ADA compliance within the limits defined by this Agreement including Section 17 ("Mutual Indemnity," above). Any trip denials or other grievances shall be referred to County Transit Systems Manager within 24 hours after receipt on the same day or next business day such trip denial or grievance occur on a weekend day.

Center shall operate fully accessible paratransit services including wheelchair-loading devices, tie downs, communication systems, training, and related ADA requirements for paratransit providers and as defined in the scope of services outlined in Section 1 of this Agreement. County will assume no liability for failure by Center to satisfy these requirements. County has entered this Agreement with the understanding that Center will make every effort to fully comply with the ADA based on the resource limits established by this Agreement.

36. MODIFICATION OF AGREEMENT: This writing constitutes the entire agreement between the Parties relative to the subject matter of this Agreement and no modification hereof shall be effective unless and until such modification is evidenced by a writing signed by both Parties to this Agreement. There are no understandings, agreements, or conditions with respect to the subject matter of this Agreement except those contained in this writing.
37. DISADVANTAGED BUSINESS ENTERPRISE: Center agrees to take the following measures to facilitate participation by disadvantaged business enterprises (DBE) in the project:
- A. Center agrees to comply with section 1101(b) of TEA-21, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.
 - B. Center agrees that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any third Party Agreement, or subagreement supported with federal assistance derived from the U.S. DOT or in the administration of its DBE program or the requirements of 49 C.F.R. Part 26. Center agrees to take all necessary and reasonable steps set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third party contracts and subagreements supported with federal assistance derived from the U.S. DOT. Center's DBE program, as required by 49 C.F.R. Part 26 and approved by the U.S. DOT, is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. Implementation of this DBE program is a legal obligation, and failure to carry out its terms shall be treated as a violation of the Grant Agreement or Master Agreement. Upon notification to Center of its failure to implement its approved DBE program, the U.S. DOT may impose sanctions as provided for under 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*
38. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION -- LOWER-TIER COVERED TRANSACTION:
- A. The prospective lower-tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" (as defined at 49 CFR □29.105[p]) debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
 - B. When the prospective lower-tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.
39. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT): Center agrees to comply, and assures the compliance of each third party contractor and subcontractor at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Government-wide Debarment and Suspension (Non-procurement)," within 49 C.F.R. Part 29.
40. LOBBYING: Center shall certify compliance with 49 CFR Part 20 as detailed in Exhibit "I"- Certification Regarding Lobbying.

41. LOBBYING RESTRICTIONS: Center agrees to:
- A. Refrain from using federal assistance funds to support lobbying,
 - B. Comply, and assure the compliance of each third party contractor at any tier and each subcontractor at any tier, with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352.
 - C. Comply with federal statutory provisions to the extent applicable prohibiting the use of federal assistance funds for activities designed to influence Congress or a State legislature on legislation or appropriations, except through proper, official channels.
42. CHARTER BUS REQUIREMENTS: Center agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and sub-recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.
43. SCHOOL BUS REQUIREMENTS: Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.
44. DRUG AND ALCOHOL TESTING:
- A. Center agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or County, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. Center agrees further to certify annually its compliance with Part 655 before March 15 and to submit the Management Information System (MIS) reports before March 15 to COUNTY Transit Systems Manager and FTA Office of Safety and Security. To certify compliance, Center shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.
 - B. Center agrees to comply with the following federal substance abuse regulations:
 - 1. Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 C.F.R. Part 29, Subpart F, as modified by 41 U.S.C. §§ 702 *et seq.*
 - 2. Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655, to the

extent applicable. Center agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or County, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. Center agrees further to certify annually its compliance with Part 655 before February 15 and to submit the Management Information System (MIS) reports before February 15 to Transit Systems Manager, 355 West Robles Avenue, Santa Rosa, CA 95407. To certify compliance Center shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

3. Comply with USDOT updated Drug and Alcohol Testing Regulation (49 CFR Part 40), effective January 1, 2018.

45. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS:

- A. Center acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying agreement, Center certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying agreement or the FTA-assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, Center further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Center to the extent the federal government deems appropriate.
- B. Center also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under an agreement connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Center, to the extent the federal government deems appropriate.
- C. Center agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

46. ENERGY CONSERVATION: Center 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 U.S.C. §§ 6321 *et seq.*

47. CLEAN WATER:

- A. Center agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. Center agrees to report each violation to County and understands and agrees that County will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. Center also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

48. CLEAN AIR:

- A. Center agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. Center agrees to report each violation to County and understands and agrees that County will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. Center also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

49. RECYCLED PRODUCTS: To the extent applicable, Center agrees to comply with U.S. EPA regulations, "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 C.F.R. Part 247, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and otherwise provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient.

50. INCORPORATION OF FTA 4220.1E TERMS: The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding agreement provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, (revised March 18, 2013). are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Center shall not perform any act, fail to perform any act, or refuse to comply with any County of Sonoma request, which would cause County to be in violation of the FTA terms and conditions.

51. FEDERAL CHANGES: Center shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Department of Transportation, Federal Transit Administration, Master Agreement (FTA MA (10) dated October, 2003), between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. Center's failure to so comply shall constitute a material breach of this Agreement.

52. TERMINATION FOR NON-APPROPRIATION: County may terminate this Agreement at any time, upon giving Center thirty (30) days written notice, for any of the following reasons:

- A. County has exhausted all funds legally available for payments to become due under this Agreement;
 - B. Funds which have been appropriated for purposes of this Agreement are withheld and are not made available to County;
 - C. No appropriation of funds for payments has been made for purposes of this Agreement in the budget for the next fiscal year.
53. PROMPT PAYMENT OF WITHHELD FUNDS TO SUBCONTRACTORS: The Center shall return all moneys withheld in retention from the subcontractor within 30 days after receiving payment for work satisfactorily completed, even if the other contract work is not completed and has not been accepted. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Center or subcontractor in the event of a dispute involving late payment or nonpayment by the Center or deficient subcontract performance or noncompliance by a subcontractor.
54. Statutory Compliance/Living Wage Ordinance. Center agrees to comply, and to ensure compliance by its sub-consultants or subcontractors, with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Center expressly acknowledges and agrees that this Agreement may be subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.
55. PERFORMANCE STANDARDS: County is accountable to its funding agencies who demand that performance standards be established, monitored, and evaluated to assure maintenance and improvement of productivity and the best delivery of service for the tax dollars provided.

Center shall be accountable for and assist in reporting and operating in a manner that satisfies the following performance standards as outlined in Exhibit "H."

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

VOLUNTEER CENTER OF SONOMA COUNTY

COUNTY OF SONOMA:

By: _____

By: _____

Chair, Board of Supervisors

Name: _____

ATTEST:

Title: _____

By: _____

Clerk of the Board

—

APPROVED AS TO FORM FOR

COUNTY:

By: _____

County Counsel

—

Date: _____

—

CERTIFICATES OF INSURANCE ON FILE WITH THE DEPARTMENT:

By: _____

—

Date: _____

—

REVIEWED AS TO SUBSTANCE FOR COUNTY:

By: _____

—

Department Head

Exhibit "A"

Sample Trip Denial Form

Sonoma County Paratransit Trip Denial Form

SonomaCountyParatransit

Fax to Sonoma County Transit on the same day denial is recorded : 585-7713

Date of Requested Trip:

Today's Date:

Requested pick-up time and location (@ origin):

Requested pick-up time and location (@ destination):

Client requires accessible vehicle

Reason for Denial

Capacity

Request Withdrawn due to unavailability of going/return trip

Suspended Eligibility - Suspended from: _____ Suspended to: _____
Reason for suspension: _____

Out of Service Area / Time Route #: _____

Same Day Request

Adversarial

@ Origin - Negotiated Time: _____

@ Destination - Negotiated Time: _____

Client's Name:

Street Address:

City:

Daytime Phone Number:

This form was completed by:

Follow Up

Met Ride/Client Accepted

Initials: _____ Date: _____

Met on another date _____

Initials: _____ Date: _____

Met/Client declined

Initials: _____ Date: _____

Exhibit "B"

Sample Passenger Complaint Form

[New message](#) | [Edit this message](#) | [Delete](#)

[« All Messages](#)



date of complaint / time vehicle # or driver name tracking #

From: Jodi Curtis

Date: Mon, 3 Apr 2017 at 12:06pm

Category: [Complaint Category](#)

Location that situation occurred

Body of Complaint

Name of complainant and contact information



[Delete Jodi Curtis Mon, 3 Apr at 12:08pm](#) | [Edit](#) (for another 13 minutes)

This is where response is written



Leave a comment...

Exhibit "C"

Payment Request Form

Exhibit "C"
 Payment Request Form

Operator: Volunteer Center of Sonoma County

For the Period of: _____ to _____

	FY 2018-19 Budget			Expenditures for this Period	Year to Date Expenditures
	Variable Paid Van	Fixed	Total		
201 Salaries - Drivers	\$1,055,109		\$1,055,109		
Salaries - Administration		347,386	347,386		
Volunteer Center - Indirect Salaries		102,000	102,000		
Volunteer Center - O/H Allocation		168,000	168,000		
202 Benefits - Health	93,000	39,600	132,600		
203 Benefits - Retirement	31,655	10,422	42,077		
204 Benefits - Workers Comp.	205,746	22,515	228,261		
205 Payroll Tax	80,713	26,576	107,289		
206 Contract Services/Software		30,000	30,000		
207 Supplies/Uniforms		8,000	8,000		
208 Telephone, Postage		14,160	14,160		
209 Licenses - Staff		1,200	1,200		
210 Radio Maintenance		12,000	12,000		
211 Insurance: Liability		below	below		
212 Insurance: Volunteers		below	below		
213 Equipment Maintenance		600	600		
214 Printing/Publications		2,400	2,400		
215 Miles/Meals - Local; Staff		1,800	1,800		
216 Miles/Meals - Conf; Staff		0	0		
217 Miles/Meals: Volunteer		0	0		
219 Conferences & Staff Development		12,000	12,000		
220 Vehicle Operations - Fuel		0	0		
221 Vehicle Operations - Maintenance		0	0		
222 Vehicle Insurance PIC		205,000	205,000		
Vehicle Insurance - Deductable		6,000	6,000		
223 Dues		0	0		
224 Subscriptions, Dues		1,500	1,500		
225 Recognition - Volunteers		3,500	3,500		
Recognition - Staff		8,000	8,000		
226 Recruitment - Volunteers		3,000	3,000		
227 Recruitment - Staff		6,000	6,000		
Random Testing		3,500	3,500		
229 Depreciation		0	0		
Reserve for Contingency		0	0		
Total Expenses	\$1,466,223	\$1,035,159	\$2,501,382		
Less: Passenger Fares & Contributions	0	225,000	225,000		
Balance	1,466,223	810,159	2,276,382		
Total Driver Hours	59,904				
Cost per Driver Hour	24.48				
Insurance Payment		205,000			
Net Fixed-Cost		605,159			
Net Fixed-Cost per Month		50,430			
Projected Budget Maximum			2,276,382		

FY 2018-19 Contract Maximum = **\$2,276,382**

Payment Calculation:

Fixed-Monthly Administration Fee:	50,430	
Paid Vehicle Service Hours (VSH): (\$24.48 x _____ #Driver Hours) =		
Other:		
Total Reimbursement Due:		

By: _____

Date: _____

County of Sonoma Agreement - Invoice for Services

Operator: Volunteer Center of Sonoma County

For the Period of: _____

	Budget	Current	YTD
Fixed Monthly Administration Fee: \$50,430 X 0 month(s)	\$0.00	\$0.00	\$0.00
Vehicle Insurance	0.00	0.00	0.00
Paid Driver Hours (PDH) 0.00 hrs @ \$24.48 PDHs	0.00	0.00	0.00
Adjustments	0.00	0.00	0.00
	\$0.00		\$0.00
Fees Due		\$0.00	

Expenses Prior to Current Billing (above)	\$0.00
Fees Received - Prior to Current Billing (above)	0.00
Fee Adjustment	0.00 *

*(if negative number, subtract from payment)

Total Reimbursement Due \$0.00

By: _____

Date: _____

Exhibit "D"

**Monthly Management Report –
Required Elements**

SonomaCountyParatransit

July 2017 Management Report

Table of Contents:

1. Summary of Operating Data/Management Review of Performance
2. NTD Standard Report (Novus)
3. Monthly Incident Summary
4. Monthly Accident Summary
5. Customer Service Complaint Summary
6. Customer Service Compliment Summary
7. Office Staff Meeting Agenda and Attendance Record
8. Driver In-Service/Safety Meeting Agenda and Attendance Record
9. Driver Training/Retraining Required
10. Monthly Phone Log
11. FTA/DOT Drug Testing Report (Quarterly)
12. Staffing Report (Quarterly)
13. Dispatch/Schedule Staff Training (Quarterly)

Exhibit "E"
Fare Structure

CHART A - Fixed-Route Intercity Fares

Effective	Fare Type	Base or 1st Zone	2nd Zone	3rd Zone	4th Zone	5th Zone	Additional Zone Rate
Effective 01-17-2016	Adult	1.50	2.10	3.00	----	----	0.90 *
* applies to trips beyond 3 zones							
Effective 01-17-2016	Youth	1.25	1.85	2.75			0.90 *
* applies to trips beyond 3 zones							
Effective 01-17-2016	Senior/Disabled	0.75	1.05	1.50			0.45 *
* applies to trips beyond 3 zones							

CHART B - ADA Paratransit Intercity Fares

Effective	Base or 1st Zone	2nd Zone	3rd Zone	4th Zone	5th Zone	Additional Zone Rate
Effective 01-17-2016	3.00	4.20	6.00			1.80 *
* applies to trips beyond 3 zones						

Exhibit "F"

Quarterly Staffing Report Format

1st Quarter Staffing Report - July 2018

Position	Contracted Positions	Fulltime Equivalent	Positions Filled	Positions Vacant
Operations				
Program Director	1	100.00%		
Operations Manager	1	100.00%		
Scheduler/Dispatcher/Customer Service	6.25	100.00%		
Paid Van Drivers - Full Time	25	100.00%		
Paid Van Drivers - Part Time	6	Varies		
Volunteer Drivers	15	Varies		
Volunteer Office Support	2	Varies		
Administrative Support				
Executive Director	1	16.10%		
Finance Director	1	22.00%		
Program Officer	1	22.00%		
Human Resources Director	1	52.00%		
Executive Secretary	1	22.00%		
Receptionist	1	22.00%		

2nd Quarter Staffing Report - October 2018

Position	Contracted Positions	Fulltime Equivalent	Positions Filled	Positions Vacant
Operations				
Program Director	1	100.00%		
Operations Manager	1	100.00%		
Scheduler/Dispatcher/Customer Service	6.25	100.00%		
Paid Van Drivers - Full Time	25	100.00%		
Paid Van Drivers - Part Time	6	Varies		
Volunteer Drivers	15	Varies		
Volunteer Office Support	2	Varies		
Administrative Support				
Executive Director	1	16.10%		
Finance Director	1	22.00%		
Program Officer	1	22.00%		
Human Resources Director	1	52.00%		
Executive Secretary	1	22.00%		
Receptionist	1	22.00%		

3rd Quarter Staffing Report - January 2019

Position	Contracted Positions	Fulltime Equivalent	Positions Filled	Positions Vacant
Operations				
Program Director	1	100.00%		
Operations Manager	1	100.00%		
Scheduler/Dispatcher/Customer Service	6.25	100.00%		
Paid Van Drivers - Full Time	25	100.00%		
Paid Van Drivers - Part Time	6	Varies		
Volunteer Drivers	15	Varies		
Volunteer Office Support	2	Varies		
Administrative Support				
Executive Director	1	16.10%		
Finance Director	1	22.00%		
Program Officer	1	22.00%		
Human Resources Director	1	52.00%		
Executive Secretary	1	22.00%		
Receptionist	1	22.00%		

4th Quarter Staffing Report - April 2019

Position	Contracted Positions	Fulltime Equivalent	Positions Filled	Positions Vacant
Operations				
Program Director	1	100.00%		
Operations Manager	1	100.00%		
Scheduler/Dispatcher/Customer Service	6.25	100.00%		
Paid Van Drivers - Full Time	25	100.00%		
Paid Van Drivers - Part Time	6	Varies		
Volunteer Drivers	15	Varies		
Volunteer Office Support	2	Varies		
Administrative Support				
Executive Director	1	16.10%		
Finance Director	1	22.00%		
Program Officer	1	22.00%		
Human Resources Director	1	52.00%		
Executive Secretary	1	22.00%		
Receptionist	1	22.00%		

Exhibit "G"
13(c) Obligations



July 25, 2003

Mr. Leslie Rogers
Regional Administrator
Federal Transit Administration
Region IX
201 Mission Street, Suite 2210
San Francisco, California 94105

Re: FTA Application
Sonoma County Transit
Capitalized Preventive Maintenance, Non-
Fixed Route ADA Paratransit Service
CA-90-Y204 Revised

Dear Mr. Rogers:

This is in reply to the request from your office that we review the above-captioned application for a grant under Title 49 of the U.S. Code, Chapter 53.

Since there were no previously certified protective arrangements that could appropriately be applied to this grant, the Department of Labor proposed the attached arrangements for certification pursuant to Section 5333(b). Sonoma County Transit and the Service Employees International Union (SEIU), the Amalgamated Transit Union (ATU) Locals 1575 and 1700 and the International Association of Machinists (IAM), which represent transportation related employees in the service area of the project, have accepted the terms of the attached Operating Assistance Protective Arrangements dated July 25, 2003, and shall each be deemed a party to the Arrangements. These Arrangements provide to employees represented by the unions, protections satisfying the requirements of 49 U.S.C., Section 5333(b).

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the attached *OPERATING ASSISTANCE PROTECTIVE ARRANGEMENT PURSUANT TO SECTION 5333(b) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53*, For Sonoma County Transit and the SEIU, the ATU Locals 1575 and 1700 and the IAM, July 25, 2003, FTA Grant CA-90-Y204 Revised, shall be made applicable to the preventive maintenance and the non-fixed route ADA paratransit service portion of the instant project and made part of the contract of assistance, by reference;
2. The term "project" as used in the above referenced arrangements shall be deemed to cover and refer to the instant project;
3. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned arrangements for the resolution of such disputes; and
4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union which is a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the above-referenced arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

Should a dispute remain after exhausting any available remedies under the protective arrangements and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a

neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Handwritten signature of Kelley Andrews in black ink.

Kelley Andrews, Director
Division of Statutory Programs

Enclosure

cc: Donald Durkee/FTA
Steven Schmitz/Sonoma County Transit
Leo E. Wetzel/ATU
Thomas Buffenbarger/IAM
Andrew Stern/SEIU

OPERATING ASSISTANCE PROTECTIVE ARRANGEMENT
PURSUANT TO SECTION 5333(b) OF
TITLE 49 OF THE U.S. CODE, CHAPTER 53

For

Sonoma County Transit and the Service Employees International Union (SEIU),
the Amalgamated Transit Union (ATU) Locals 1575 and 1700 and the
International Association of Machinists (IAM)

July 25, 2003

FTA GRANT

CA-90-Y204

The following terms and conditions shall apply and shall be specified in any contract governing federal operating assistance to the recipient(s) referenced in the title of this arrangement ("Recipient"):

(1) The term "Project", as used in this arrangement, shall not be limited to the particular facility, service, or operation assisted by federal funds, but shall include any changes, whether organizational, operational, technological, or otherwise, which are a result of the assistance provided. The phrase "as a result of the Project" shall, when used in this arrangement, include events occurring in anticipation of, during, and subsequent to the Project and any program of efficiencies or economies related thereto; provided, however, that volume rises and falls of business, or changes in volume and character of employment brought about solely by causes other than the Project (including any economies or efficiencies unrelated to the Project) are not within the purview of this arrangement.

(2) The Project, as defined in paragraph (1) shall be performed and carried out in full compliance with the protective conditions described herein.

(3) All rights, privileges, and benefits (including pension rights and benefits) of employees covered by this arrangement (including employees having already retired) under existing collective bargaining agreements or otherwise, or under any revision or renewal thereof, shall be preserved and continued; provided, however, that such rights, privileges and benefits which are not foreclosed from further bargaining under applicable law or contract may be modified by collective bargaining and agreement by the Recipient and the union involved to substitute other rights, privileges and benefits. Unless otherwise provided, nothing in this arrangement shall be deemed to restrict any rights the Recipient may otherwise have to direct the working forces and manage its business as it deems best, in accordance with the applicable collective bargaining agreement.

(4) The collective bargaining rights of employees covered by this arrangement, including the right to arbitrate labor disputes and to maintain union security and checkoff arrangements, as provided by applicable laws, policies and/or existing collective bargaining agreements, shall be preserved and continued.* Provided, however, that this provision shall not be interpreted so as to require the Recipient to retain any such rights which exist by virtue of a collective bargaining agreement after such agreement is no longer in effect.

In the event that the Recipient and the union(s) referenced in the title to this protective arrangement have an established collective bargaining relationship, the Recipient agrees that it will bargain collectively with the union or otherwise arrange for the continuation of collective bargaining, and that it will enter into agreement with the union or arrange for such agreements to be entered into, relative to all subjects which are or may be proper subjects of collective bargaining. If, at any time, applicable law or contracts permit or grant to employees covered by this arrangement the right to utilize any economic measures, nothing in this arrangement shall be deemed to foreclose the exercise of such right.

(5) (a) In the event the Recipient contemplates any change in the organization or operation of its system which may result in the dismissal or displacement of employees, or rearrangement of the working forces covered by this arrangement, as a result of the Project, the Recipient shall do so only in accordance with the provisions of subparagraph (b) hereof. Provided, however, that changes which are not a result of the Project, but which grow out of the normal exercise of seniority rights occasioned by seasonal or other normal schedule changes and regular picking procedures under the applicable collective bargaining agreement, shall not be considered within the purview of this paragraph.

(b) The Recipient shall give to the unions representing the employees affected thereby, at least sixty (60) days' written notice of each proposed change, which may result in the dismissal or displacement of such employees or rearrangement of the working forces as a result of the Project, by sending

* As an addendum to this arrangement, there shall be attached where applicable the arbitration or other dispute settlement procedures or arrangements provided for in the existing collective bargaining agreements or any other existing agreements between the Recipient and the Union, subject to any changes in such agreements as may be agreed upon or determined by interest arbitration proceedings.

certified mail notice to the union representatives of such employees. Such notice shall contain a full and adequate statement of the proposed changes, including an estimate of the number of employees affected by the intended changes, and the number and classifications of any jobs within the jurisdiction and control of the Recipient, including those in the employment of any entity bound by this arrangement pursuant to paragraph (19) hereof, available to be filled by such affected employees.

At the request of either the Recipient or the representatives of the affected employees, negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this arrangement shall commence immediately. These negotiations shall include determining the selection of forces from among the employees of other urban mass transportation employers who may be affected as a result of the Project, to establish which such employees shall be offered employment for which they are qualified or can be trained; not, however, in contravention of collective bargaining agreements relating thereto. If no agreement is reached within twenty (20) days from the commencement of negotiations, any party to the dispute may submit it to arbitration in accordance with the procedures contained in paragraph (15) hereof. In any such arbitration, final decision must be reached within sixty (60) days after selection or appointment of the neutral arbitrator. In any such arbitration, the terms of this arrangement are to be interpreted and applied in favor of providing employee projections and benefits no less than those established pursuant to §11347 of Title 49 of the U.S. Code.

(6) (a) Whenever an employee, retained in service, recalled to service, or employed by the Recipient pursuant to paragraphs (5), (7)(e), or (18) hereof is placed in a worse position with respect to compensation as a result of the Project, he shall be considered a "displaced employee", and shall be paid a monthly "displacement allowance" to be determined in accordance with this paragraph. Said displacement allowance shall be paid each displaced employee during the protective period following the date on which he is first "displaced", and shall continue during the protective period so long as the employee is unable, in the exercise of his seniority rights, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for.

(b) The displacement allowance shall be a monthly allowance determined

by computing the total compensation received by the employee, including vacation allowances and monthly compensation guarantees, and his total time paid for during the last twelve (12) months in which he performed compensated service more than fifty per centum of each such months, based upon his normal work schedule, immediately preceding the date of his displacement as a result of the Project, and by dividing separately the total compensation and the total time paid for by twelve, thereby producing the average monthly compensation and the average monthly time paid for. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for. If the displaced employee's compensation in his current position is less in any month during his protective period than the aforesaid average compensation (adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for), he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time, but he shall be compensated in addition thereto at the rate of the current position for any time worked in excess of the average monthly time paid for. If a displaced employee fails to exercise his seniority rights to secure another position to which he is entitled under the then existing collective bargaining agreement, and which carries a wage rate and compensation exceeding that of the position which he elects to retain, he shall thereafter be treated, for the purposes of this paragraph, as occupying the position he elects to decline.

(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his employment.

(7) (a) Whenever any employee is laid off or otherwise deprived of employment as a result of the Project, in accordance with any collective bargaining agreement applicable to his employment, he shall be considered a "dismissed employee" and shall be paid a monthly dismissal allowance to be determined in accordance with this paragraph. Said dismissal allowance shall first be paid each dismissed employee on the thirtieth (30th) day following the day on which he is "dismissed" and shall continue during the protective period, as follow:

<u>Employee's length of service prior to adverse effect</u>	<u>Period of protection equivalent period</u>
1 day to 6 years	6 years
6 years or more	6 years

The monthly dismissal allowance shall be equivalent to one-twelfth (1/12th) of the total compensation received by him in the last twelve (12) months of his employment in which he performed compensation service more than fifty per centum of each such months based on his normal work schedule to the date on which he was first deprived of employment as a result of the Project. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for.

(b) An employee shall be regarded as deprived of employment and entitled to a dismissal allowance when the position he holds is abolished as a result of the Project, or when the position he holds is not abolished but he loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a result of the Project or as a result of the exercise of seniority rights by other employees brought about as a result of the Project, and he is unable to obtain another position, either by the exercise of his seniority rights, or through the Recipient, in accordance with subparagraph (e). In the absence of proper notice followed by an agreement or decision pursuant to paragraph (5) hereof, no employee who has been deprived of employment as a result of the Project shall be required to exercise his seniority rights to secure another position in order to qualify for a dismissal allowance hereunder.

(c) Each employee receiving a dismissal allowance shall keep the Recipient informed as to his current address and the current name and address of any other person by whom he may be regularly employed, or if he is self-employed.

(d) The dismissal allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished when he is absent from service, he will be entitled to the dismissal allowance when he is available for service. The employee temporarily filling said position at the time it was abolished will be given a dismissal allowance on the basis of that position, until the regular employee is available for service, and thereafter shall revert to his previous status and will be given the protections of the arrangement in said position, if any are due him.

(e) An employee receiving a dismissal allowance shall be subject to call to return to service by his former employer after being notified in accordance with the terms of the then-existing collective bargaining agreement. Prior to such call to return to work by his employer, he may be required by the

Recipient to accept reasonably comparable employment for which he is physically and mentally qualified, or for which he can become qualified after a reasonable training or retraining period, provided it does not require a change in residence or infringe upon the employment rights of other employees under then-existing collective bargaining agreements.

(f) When an employee who is receiving a dismissal allowance again commences employment in accordance with subparagraph (e) above, said allowance shall cease while he is so reemployed, and the period of time during which he is so reemployed shall be deducted from the total period for which he is entitled to receive a dismissal allowance. During the time of such reemployment, he shall be entitled to the protections of this arrangement to the extent they are applicable.

(g) The dismissal allowance of any employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings from such other employment or self-employment, any benefits received from any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his union representative, and the Recipient shall agree upon a procedure by which the Recipient shall be kept currently informed of the earnings of such employee in employment other than with his former employer, including self-employment, and the benefits received.

(h) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the failure of the employee without good cause to return to service in accordance with the applicable labor agreement, or to accept employment as provided under subparagraph (e) above, or in the event of his resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his employment.

(i) A dismissed employee receiving a dismissal allowance shall actively seek and not refuse other reasonably comparable employment offered him for which he is physically and mentally qualified and does not require a change in his place of residence. Failure of the dismissed employee to comply with this obligation shall be grounds for discontinuance of his allowance; provided that said dismissal allowance shall not be discontinued until final determination is made either by agreement between the Recipient and the employee or his representative, or by final arbitration decision rendered in accordance with paragraph (15) of this arrangement that such employee did not comply with this obligation.

(8) In determining length of service of a displaced or dismissed employee for purposes of this arrangement, such employee shall be given full service credits in accordance with the records and labor agreements applicable to him and he shall be given additional service credits for each month in which he receives a dismissal or displacement allowance as if he were continuing to perform services in his former position.

(9) No employee shall be entitled to either a displacement or dismissal allowance under paragraphs (6) or (7) hereof because of the abolishment of a position to which, at some future time, he could have bid, been transferred, or promoted.

(10) No employee receiving a dismissal or displacement allowance shall be deprived, during his protected period, of any rights, privileges, or benefits attaching to his employment, including, without limitation, group life insurance, hospitalization and medical care, free transportation for himself and his family, sick leave, continued status and participation under any disability or retirement program, and such other employee benefits as Railroad Retirement, Social Security, Workmen's Compensation, and unemployment compensation, as well as any other benefits to which he may be entitled under the same conditions and so long as such benefits continue to be accorded to other employees of the bargaining unit, in active service or furloughed as the case may be.

(11) (a) Any employee covered by this arrangement who is retained in the service of his employer, or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment in order to retain or secure active employment with the Recipient in accordance with this arrangement, and who is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects, for the traveling expenses for himself and members of his immediate family, including living expenses for himself and his immediate family, and for his own actual wage loss during the time necessary for such transfer and for a reasonable time thereafter, not to exceed five (5) working days. The exact extent of the responsibility of the Recipient under this paragraph, and the ways and means of transportation, shall be agreed upon in advance between the Recipient and the affected employee or his representatives.

(b) If any such employee is laid off within three (3) years after changing

his point of employment in accordance with paragraph (a) hereof, and elects to move his place of residence back to his original point of employment, the Recipient shall assume the expenses, losses and costs of moving to the same extent provided in subparagraph (a) of this paragraph (11) and paragraph (12)(a) hereof.

(c) No claim for reimbursement shall be paid under the provisions of this paragraph unless such claim is presented to the Recipient within ninety (90) days after the date on which the expenses were incurred.

(d) Except as otherwise provided in subparagraph (b), changes in place of residence, subsequent to the initial changes as a result of the Project, which are not a result of the Project but grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.

(12) (a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the employer (or who is later restored to service after being entitled to receive a dismissal allowance), who is required to change the point of his employment as a result of the Project, and is thereby required to move his place of residence.

If the employee owns his own home in the locality from which he is required to move, he shall, at his option, be reimbursed by the Recipient for any loss suffered in the sale of his home for less than its fair market value, plus conventional fees and closing costs, such loss to be paid within thirty (30) days of settlement or closing on the sale of the home. In each case, the fair market value of the home in question shall be determined, as of a date sufficiently prior to the date of the Project, so as to be unaffected thereby. The Recipient shall, in each instance, be afforded an opportunity to purchase the home at such fair market value before it is sold by the employee to any other person and to reimburse the seller for his conventional fees and closing costs.

If the employee is under a contract to purchase his home, the Recipient shall protect him against loss under such contract, and in addition, shall relieve him from any further obligation thereunder.

If the employee holds an unexpired lease of a dwelling occupied by him as his home, the Recipient shall protect him from all loss and cost in securing the cancellation of said lease.

(b) No claim for loss shall be paid under the provisions of this paragraph

unless such claim is presented to the Recipient within one year after the effective date of the change in residence.

(c) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through a joint conference between the employee, or his union, and the Recipient. In the event they are unable to agree, the dispute or controversy may be referred by the Recipient or the union to a board of competent real estate appraisers selected in the following manner: one (1) to be selected by the representatives of the employee, and one (1) by the Recipient, and these two, if unable to agree within thirty (30) days upon the valuation, shall endeavor by agreement within ten (10) days thereafter to select a third appraiser or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the State or local Board of Real Estate Commissioners to designate within ten (10) days a third appraiser, whose designation will be binding upon the parties and whose jurisdiction shall be limited to determination of the issues raised in this paragraph only. A decision of a majority of the appraisers shall be required and said decision shall be final, binding, and conclusive. The compensation and expenses of the neutral appraiser including expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(d) Except as otherwise provided in paragraph (11)(b) hereof, changes in place of residence, subsequent to the initial changes as a result of the Project, which are not a result of the Project but grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.

(e) "Change in residence" means transfer to a work location which is either (A) outside a radius of twenty (20) miles of the employee's former work location and farther from his residence than was his former work location, or (B) is more than thirty (30) normal highway route miles from his residence and also farther from his residence than was his former work location.

(13) A dismissed employee entitled to protection under this arrangement may, at his option within twenty-one (21) days of his dismissal, resign and (in lieu of all other benefits and protections provided in this arrangement) accept a lump sum payment computed in accordance with section (9) of the Washington Job Protection Agreement of May 1936:

<u>Length of Service</u>	<u>Separation Allowance</u>
1 year and less than 2 years	3 months' pay
2 " " " " 3 "	6 " "
3 " " " " 5 "	9 " "
5 " " " " 10 "	12 " "
10 " " " " 15 "	12 " "
15 " " over	12 " "

In the case of an employee with less than one year's service, five days' pay, computed by multiplying by 5 the normal daily earnings (including regularly scheduled overtime, but excluding other overtime payments) received by the employee in the position last occupied, for each month in which he performed service, will be paid as the lump sum.

(a) Length of service shall be computed as provided in Section 7(b) of the Washington Job Protection Agreement, as follows:

For the purposes of this arrangement, the length of service of the employee shall be determined from the date he last acquired an employment status with the employing carrier and he shall be given credit for one month's service for each month in which he performed any service (in any capacity whatsoever) and twelve (12) such months shall be credited as one year's service.

The employment status of an employee shall not be interrupted by furlough in instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization, he will be given credit for performing service while so engaged on leave of absence from the service of a carrier.

(b) One month's pay shall be computed by multiplying by 30 the normal daily earnings (including regularly scheduled overtime, but excluding other overtime payments) received by the employee in the position last occupied prior to time of his dismissal as a result of the Project.

(14) Whenever used herein, unless the context requires otherwise, the term "protective period" means that period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of six

(6) years therefrom, provided, however, that the protective period for any particular employee during which he is entitled to receive the benefits of these provisions shall not continue for a longer period following the date he was displaced or dismissed than the employee's length of service, as shown by the records and labor agreements applicable to his employment prior to the date of his displacement or his dismissal.

(15) (a) In the event there arises any labor dispute with respect to the protection afforded by this arrangement, or with respect to the interpretation, application or enforcement of the provisions of this arrangement, not otherwise governed by Section (12)(c) hereof, the Labor-Management Relations Act, as amended, Railway Labor Act, as amended, or by impasse resolution provisions in a collective bargaining or protective arrangement involving the Recipient and the Union, which cannot be settled by the parties thereto within thirty (30) days after the dispute or controversy arises, it may be submitted at the written request of the Recipient or the union to a board of arbitration to be selected as hereinafter provided. One arbitrator is to be chosen by each interested party, and the arbitrators thus selected shall endeavor to select a neutral arbitrator who shall serve as chairman. Each party shall appoint its arbitrator within five (5) days after notice of submission to arbitration has been given. Should the arbitrators selected by the parties be unable to agree upon the selection of the neutral arbitrator within ten (10) days after notice of submission to arbitration has been given, then the arbitrator selected by any party may request the American Arbitration Association to furnish, from among members of the National Academy of Arbitrators who are then available to serve, five (5) arbitrators from which the neutral arbitrator shall be selected. The arbitrators appointed by the parties shall, within five (5) days after the receipt of such list, determine by lot the order of elimination and thereafter each shall, in that order, alternately eliminate one name until only one name remains. The remaining person on the list shall be the neutral arbitrator. If any party fails to select its arbitrator within the prescribed time limit, the highest officer of the Union or of the Recipient or their nominees, as the case may be, shall be deemed to be the selected arbitrator, and the board of arbitration shall then function and its decision shall have the same force and effect as though all parties had selected their arbitrators. Unless otherwise provided, in the case of arbitration proceedings, under paragraph (5) of this arrangement, the board of arbitration shall meet within fifteen (15) days after selection or appointment of the neutral arbitrator and shall render its decision within forty-five (45) days after the hearing of the dispute has been concluded and the record closed. The decision by majority vote of the arbitration board shall be final and binding as the decision of the arbitration board, except as provided in subparagraph (b)

below. All the conditions of the arrangement shall continue to be effective during the arbitration proceedings.

(b) In the case of any labor dispute otherwise covered by subparagraph (a) but involving multiple parties, or employees of urban mass transportation employers other than those of the Recipient, which cannot be settled by collective bargaining, such labor dispute may be submitted, at the written request of any of the parties to this arrangement involved in the dispute, to a single arbitrator who is mutually acceptable to the parties. Failing mutual agreement within ten (10) days as to the selection of an arbitrator, any of the parties involving may request the American Arbitration Association to furnish an impartial arbitrator from among members of the National Academy of Arbitrators who is then available to serve. Unless otherwise provided, in the case of arbitration proceedings under paragraph (5) of this arrangement, the arbitrator thus appointed shall convene the hearing within fifteen (15) days after his selection or appointment and shall render his decision within forty-five (45) days after the hearing of the dispute or controversy has been concluded and the record closed. The decision of the neutral arbitrator shall be conclusive upon all parties to the dispute. All the conditions of the arrangement shall continue to be effective during the arbitration proceeding. Authority of the arbitrator shall be limited to the determination of the dispute arising out of the interpretation, application, or operation of the provisions of this arrangement. The arbitrator shall not have any authority whatsoever to alter, amend, or modify any of the provisions of any collective bargaining agreement.

(c) The compensation and expenses of the neutral arbitrator, and any other jointly incurred expenses, shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

(d) In the event of any dispute as to whether or not a particular employee was affected by the Project, it shall be his obligation to identify the Project and specify the pertinent facts of the Project relied upon. It shall then be the Recipient's burden to prove that factors other than the Project affected the employee. The claiming employee shall prevail if it is established that the Project had an effect upon the employee even if other factors may also have affected the employee (Hodgson's Affidavit in Civil Action No. 825-71).

(e) Nothing in this arrangement shall be construed to enlarge or limit the right of any party to utilize, upon the expiration of any collective bargaining agreement or otherwise, any economic measures which are not inconsistent or

in conflict with applicable laws or this arrangement.

(16) Nothing in this arrangement shall be construed as depriving any employee of any rights or benefits which such employee may have under any existing job security or other protective conditions or arrangements by collective bargaining agreement or law where applicable, including P.L. 93-236, enacted January 2, 1974; provided that there shall be no duplication of benefits to any employees, and, provided further, that any benefit under the arrangement shall be construed to include the conditions, responsibilities, and obligations accompanying such benefits.

(17) The Recipient shall be financially responsible for the application of these conditions and will make the necessary arrangements so that any employee affected as a result of the Project may file a claim through his union representative with the Recipient within sixty (60) days of the date he is terminated or laid off as a result of the Project, or within eighteen (18) months of the date his position with respect to his employment is otherwise worsened as a result of the Project; provided, in the latter case, if the events giving rise to the claim have occurred over an extended period, the 18-month limitation shall be measured from the last such event; provided, further, that no benefits shall be payable for any period prior to six (6) months from the date of the filing of the claim. Unless such claims are filed with the Recipient within said time limitations, the Recipient shall thereafter be relieved of all liabilities and obligations related to said claims. The Recipient will fully honor the claim, making appropriate payments, or will give notice to the claimant and his representative of the basis for denying or modifying such claim, giving reasons therefor. In the event the Recipient fails to honor such claim, the Union may invoke the following procedures for further joint investigation of the claim by giving notice in writing of its desire to pursue such procedures. Within ten (10) days from the receipt of such notice, the parties shall exchange such factual material as may be requested of them relevant to the disposition of the claim and shall jointly take such steps as may be necessary or desirable to obtain from any third party such additional factual materials as may be relevant. In the event the claim is so rejected by the Recipient, the claim may be processed to arbitration as herein above provided by paragraph (15). Prior to the arbitration hearing, the parties shall exchange a list of intended witnesses. In conjunction with such proceedings, the impartial arbitrator shall have the power to subpoena witnesses upon the request of any party and to compel the production of documents and other information denied in the pre-arbitration period which is relevant to the disposition of the claim.

Nothing included herein as an obligation of the Recipient shall be construed to relieve any other urban mass transportation employer of the employees covered hereby of any obligations which it has under existing collective bargaining agreements, including but not limited to obligations arising from the benefits referred to in paragraph (10) hereof, nor make any such employer a third-party beneficiary of the Recipient's obligations contained herein, nor deprive the Recipient of any right of subrogation.

(18) During the employee's protective period, a dismissed employee shall, if he so requests, in writing, be granted priority of employment to fill any vacant position within the jurisdiction and control of the Recipient, including those in the employment of any entity bound by this arrangement pursuant to paragraph (19) hereof, which is reasonably comparable to that which he held when dismissed, for which he is, or by training or retraining can become, qualified; not, however, in contravention of collective bargaining agreements related thereto. In the event such employee requests such training or retraining to fill such vacant position, the Recipient shall provide for such training or re-training at no cost to the employee. The employee shall be paid the salary or hourly rate provided for in the applicable collective bargaining agreement for such position, plus any displacement allowance to which he may be otherwise entitled. If such dismissed employee who has made such request fails, without good cause, within ten (10) days to accept an offer of a position comparable to that which he held when dismissed for which he is qualified, or for which he has satisfactorily completed such training, he shall, effective at the expiration of such ten-day period, forfeit all rights and benefits under this arrangement.

As between employees who request employment pursuant to this paragraph, the following order where applicable shall prevail in hiring such employees:

(a) Employees in the craft or class of the vacancy shall be given priority over employees without seniority in such craft or class;

(b) As between employees having seniority in the craft or class of the vacancy, the senior employees, based upon their service in that craft or class, as shown on the appropriate seniority roster, shall prevail over junior employees;

(c) As between employees not having seniority in the craft or class of the vacancy, the senior employees, based upon their service in the crafts or classes

in which they do have seniority as shown on the appropriate seniority rosters, shall prevail over junior employees.

(19) This arrangement shall be binding upon the successors and assigns of the parties hereto, and no provisions, terms, or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by reason of the arrangements made by or for the Recipient to manage and operate the system.

Any person, enterprise, body, or agency, whether publicly - or privately-owned, which shall undertake the management, provision and/or operation of the Project services or the Recipient's transit system, or any part or portion thereof, under contractual arrangements of any form with the Recipient, its successors or assigns, shall agree to be bound by the terms of this arrangement and accept the responsibility with the Recipient for full performance of these conditions. As a condition precedent to any such contractual arrangements, the Recipient shall require such person, enterprise, body or agency to so agree.

(20) The employees covered by this arrangement shall continue to receive any applicable coverage under Social Security, Railroad Retirement, Workmen's Compensation, unemployment compensation, and the like. In no event shall these benefits be worsened as a result of the Project.

(21) In the event any provision of this arrangement is held to be invalid, or otherwise unenforceable under the federal, State, or local law, in the context of a particular Project, the remaining provisions of this arrangement shall not be affected and the invalid or unenforceable provision shall be renegotiated by the Recipient and the interested union representatives of the employees involved for purpose of adequate replacement under Section 5333(b). If such negotiation shall not result in mutually satisfactory agreement, any party may invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements for application only to the particular Project, which shall be incorporated in this arrangement only as applied to that Project, and any other appropriate action, remedy, or relief.

(22) The designated Recipient, as hereinabove defined, signatory hereto, shall be the sole provider of mass transportation services to the Project and such services shall be provided exclusively by employees of the Recipient covered by this agreement, in accordance with this agreement and any applicable collective bargaining agreement. The parties recognize, however, that certain of the recipients signatory hereto, providing urban mass transportation services,

have heretofore provided such services through contracts by purchase, leasing, or other arrangements and hereby agree that such practices may continue. Whenever any other employer provides such services through contracts by purchase, leasing, or other arrangements with the Recipient, or on its behalf, the provisions of this agreement shall apply.

(23) An employee covered by this arrangement, who is not dismissed, displaced, or otherwise worsened in his position with regard to his employment as a result of the Project, but who is dismissed, displaced, or otherwise worsened solely because of the total or partial termination of the Project or exhaustion of Project funding, shall not be deemed eligible for a dismissal or displacement allowance within the meaning of paragraphs (6) and (7) of this arrangement.

(24) If any employer of the employees covered by this arrangement shall have rearranged or adjusted its forces in anticipation of the Project, with the effect of depriving an employee of benefits to which he should be entitled under this arrangement, the provisions of this arrangement shall apply to such employee as of the date when he was so affected.

(25) In the context of a particular Project, the Recipient and any union which is referenced in the title of this arrangement shall be deemed a party to this arrangement as applied to the Project.

(26) In the event any project to which this arrangement applies is approved for assistance, the foregoing terms and conditions shall be made part of the contract of assistance between the federal government and the applicant for federal funds and between the applicant and any recipient of federal funds; provided, however, that this arrangement shall not merge into the contract of assistance but shall be independently binding and enforceable by and upon the parties thereto, in accordance with its terms, nor shall any other employee protective arrangement nor any collective bargaining agreement merge into this agreement, but each shall be independently binding and enforceable by and upon the parties thereto, in accordance with its terms.

Exhibit "H"

Contractor Performance Standards

Sonoma County Paratransit

Contractor Performance Standards Fiscal Year 2018

OVERVIEW

The performance standards detailed in this document were developed by Sonoma County staff to encourage its paratransit Contractor, to provide the highest quality of service. The guidelines described herein should be considered minimum standards of performance. Future contract extensions may be predicated on the Contractor's successful adherence to these standards.

County staff will issue quarterly performance evaluations based on the Contractor's monthly reports and the County's independent monitoring efforts. The purpose of these performance evaluations is to improve communication between County staff and the Contractor, as well as to document the Contractor's progress toward providing higher quality service. The Contractor may dispute any performance evaluation by submitting a written statement to the County within seven (7) days of the evaluation's issuance. County staff will meet with the Contractor to discuss the Contractor's concerns within seven (7) days after receiving the written dispute. The County Transit Systems Manager will make any final determinations regarding the dispute.

The standards, monitoring procedures and reporting procedures listed below are intended to support the following goal:

Sonoma County Paratransit, shall provide efficient, safe and professional quality service to its customers. The "customers" are the users of paratransit service as well as the agency of Sonoma County Transit.

1. Efficiency

Contractor shall implement scheduling practices to maximize service efficiency. Contractor shall maintain adequate staffing to ensure the following efficiency standards are met.

A. On-Time Performance

Standard 1.1: Contractor shall maintain 90% or greater on-time performance, defined as arrival at scheduled pick-up location within the thirty (30) minute scheduled pick-up window. At the time the reservation is made, the scheduler advise the customers of the half hour pick-up window for the scheduled pick-up time. Driver shall wait for a passenger for up to five minutes after vehicle arrives at the scheduled pick-up location and notifies customer of their presence, within the allotted window.

Monitoring Measure 1.1a: Contractor shall provide On-time Performance Reports generated from scheduling software on a monthly basis. All reports will have the following information recorded on a road supervision report:

- a) Date
- b) Vehicle Number
- c) Route Number
- d) Scheduled pick-up location (City)
- e) Scheduled departure time
- f) Actual departure time
- g) Difference between scheduled departure time and actual departure time

Monitoring Measure 1.1b: County staff may conduct its own road supervision to verify the on-time performance reported by the Contractor. Contractor may be asked to supply County staff with daily manifests for this purpose.

Standard 1.2: Trip duration shall not exceed the duration of the corresponding fixed route bus trip.

Monitoring Measure 1.2a: County will rely on Contractor reports and customer complaints to monitor this standard. Driver logs may be audited to verify Contractor reports.

B. Trip Denials

Standard 1.3: Contractor shall have a goal of zero ADA trip denials and. A "denial" is when the Contractor is unable to schedule a trip within one hour before or after the requested trip time due to a lack of capacity or when other capacity constraints prevent riders from scheduling trips.

Monitoring Measure 1.3a: Contractor shall keep a daily log of all trips requested in Novus.

Monitoring Measure 1.3b: Contractor shall record all denied trips. Contractor will fax daily trip denial reports to the County the same day the denial is recorded.

Monitoring Measure 1.3c: Contractor shall provide recommendations on a quarterly basis regarding planned operational changes to reduce overall trip denials.

C. Incoming Calls Wait Time

Standard 1.5: Contractor's goal shall be that 96% of all incoming calls shall be answered within five (5) minutes and a reservation for one (1) round trip should be completed within five (5) minutes.

Monitoring Measure 1.5a: Contractor shall include computerized call wait time reports in the Monthly Report

Monitoring Measure 1.5b: County staff will review customer complaints with regard to this standard.

D. Efficient Dispatching

Standard 1.6: The average number of passengers per vehicle revenue hour shall be at least 2.0.

Monitoring Measure 1.6a: The average number of passengers per vehicle revenue hour shall be included in the Monthly Report.

Standard 1.7: Contractor shall maximize efficient use of automated scheduling program.

Monitoring Measure 1.7a: Contractor shall report its training efforts with respect to this standard on a quarterly basis.

2. Safety

Contractor shall make every effort to operate Sonoma County Paratransit vehicles safely, to protect passengers and the public from injury, and to protect County property.

A. Accidents

Standard 2.1: Contractor shall achieve eighty thousand (100,000) average miles between preventable accidents. For the purposes of this standard, accidents shall be defined as events causing damage to any County-owned vehicle or property in excess of one hundred dollars (\$100). Contractor shall provide drivers with ongoing safety training, including monthly safety meetings for paid drivers and an annual meeting with volunteer drivers..

Monitoring 2.1a: Contractor shall report the dates and topic of safety meetings in its Monthly Management Reports, as well as an attendance record.

Standard 2.2: Contractor shall maintain drug testing procedures as prescribed in the Contract.

Monitoring 2.2a: Contractor shall document its drug testing procedures on a quarterly basis and provide this information in the Monthly Management Report.

Standard 2.3: Contractor shall keep the County informed of all accidents and incidents.

Monitoring Measure 2.3a: Contractor shall notify County staff and the Operations Contractor's Maintenance Manager of all accidents / incidents within twenty-four (24) hours or by 9:00 a.m. the following business day, whichever is sooner. A date-stamped report shall be submitted to the County within two (2) business days after the date of the accident or incident. This report may be the same report the Contractor submits to its insurance agency. The report shall include the following information:

- a) County vehicle identification number
- b) Date of accident / incident
- c) Time of accident / incident
- d) Name of driver
- e) Brief description of the accident
- f) Determination of whether the accident was preventable
- g) Names and phone numbers of authorities consulted
- h) Names of passengers on board
- i) Names and addresses of witnesses

A preventable accident is one that reasonably could have been avoided by the operator. The County Transit Systems Manager will make any final decisions regarding whether an accident is preventable or non-preventable.

An incident is any other unusual occurrence that disrupted service, did not incur monetary damage to County property and is unlikely to result in a claim against the County.

Monitoring Measure 2.3b: Contractor shall include a summary of accidents / incidents in the Monthly Management Report. County staff will verify the number of accidents / incidents reported in the Monthly Management Report with the actual accident reports submitted throughout the month.

B. Wheelchair Lift Cycling

Standard 2.4: Contractor shall cycle the wheelchair lift on all vehicles daily to ensure that each lift is functional prior to in-service use. Dispatch must be notified immediately of any in-service wheelchair lift failures.

Monitoring Measure 2.4a: Contractor shall report all in-service wheelchair lift failures in the Monthly Management Report.

Standard 2.5: In the event of an in-service wheelchair lift failure, Contractor shall ensure that the passenger utilizing a wheelchair is given adequate transportation to his/her destination.

Monitoring Measure 2.5a: County staff will review customer complaints with regard to this standard.

3. Professionalism

Contractor shall make every effort to provide uniformly professional quality service. Further development of training curricula may be needed.

A. Employee Conduct

Standard 3.1: Contractor shall provide employees who are likely to be in contact with the public with on-going sensitivity and customer service training, as well as an understanding of the Americans with Disabilities Act (ADA). Contractor shall train its employees to give customers accurate information regarding all Sonoma County Paratransit services. Employees also should have basic knowledge about Sonoma County Transit fixed route services. Additionally, paratransit drivers must conduct themselves in accordance with the following guidelines:

Customer Service

- a) Inform customers of driver's name upon the request of the customer;
- b) Verbally identify himself/herself to blind or visually impaired customers;
- c) Wear an identification badge on an outer garment during all service hours;
- d) Drivers shall present a common appearance including the uniform shirts issued with the Sonoma County Paratransit logo or other attire as approved by the Sonoma County Transit Systems Manager.
- e) Assist customers as needed and required by the Americans with Disabilities Act (ADA);
- f) Be aware of ADA requirements concerning service animals;

- g) Require all non-service animals to be contained while on-board;
- h) Be courteous and helpful to all customers and other persons encountered while on duty;
- i) Operate assigned vehicle in a safe and courteous manner;
- j) Do not use profane language;
- k) Do not allow soliciting on the vehicle;
- l) Do not accept monetary gratuities;
- m) Do not smoke aboard County vehicles;
- n) Do not eat or drink aboard County vehicles while there are passengers on-board;
- o) Do not play portable radios or wear headphones aboard vehicles whether moving or parked;
- p) Do not use cellular telephones while in the driver seat of the vehicle;
- q) Use vehicles only for assigned duties;

Operational Guidelines

- r) Keep a daily driver manifest of departure times and the number of customers boarding at pick-up areas;
- s) Complete a vehicle inspection report before checking out a vehicle and after turning in a vehicle;
- t) Follow the route manifest, maintain time schedules to the extent possible, and notify dispatcher if it becomes necessary to alter the order of pick-ups and drop-offs, or if a schedule cannot be maintained;
- u) Honor special passes, collect fares/tickets, issue bulletins and other materials, and perform occasional surveys or other actions as required by the County;
- v) Keep the vehicle clean and sanitary during the work shift;
- w) Secure all wheelchairs and scooters using a four point tie down;
- x) Immediately report any vehicle defects to supervisor or dispatcher;
- y) Refrain from speaking to anyone concerning an accident or incident unless it is to the police, County staff, or Contractor supervisory personnel. All information regarding an accident involving Sonoma County Paratransit is confidential.

Monitoring Measure 3.1a: Contractor shall include in the Monthly Management Report a narrative of ongoing driver training/retraining programs.

Standard 3.2: Schedulers shall give each caller their full attention and observe high standards of telephone etiquette. Schedulers shall not function as dispatchers while taking reservations over the telephone. (Calls can be put on hold while the radio is used.)

Monitoring Measure 3.2a: County staff will review customer complaints with regard to this standard. Any complaints received directly by County staff will be forwarded to the Program Director for review and remedy.

B. Complaints

Standard 3.3: The number of service-related complaints against the Contractor shall not exceed five (5) per month.

Monitoring Measure 3.3a: Contractor shall record all passenger complaints on the Customer Service Form in BaseCamp (or other software, as required), and copy all complaints to the County as soon as possible. The Contractor must respond with the results of their investigation, along with a customer follow-up within five (5) business days of receipt of the complaint.

Monitoring Measure 3.3b: Contractor shall provide a summary of passenger complaints in the Monthly Management Report and any written letters or responses sent to passengers by Contractor.

C. Public Relations

Standard 3.4: Contractor shall obtain approval from County staff prior to issuing press releases, including announcements in local newspapers, newsletters and marketing materials.

Monitoring Measure 3.4a: Publication of press releases without County approval shall be considered a violation of this standard.

4. Reporting

Standard 4.1: Contractor shall submit a Monthly Management Report by the 15th day of the following month as specified in the Contract. The Monthly Report should be in a standardized format and easily legible.

Standard 4.2: Contractor shall include the following information to the County in the **Monthly Report:**

- ✓
- ✓ Operations Data Summary / Management Performance Summary;
- ✓ Total trip requests and total trip denials (Novus Report);
- ✓ Average trip duration (Novus Report) (MM 1.2a);
- ✓ Computerized call wait time reports (MM 1.5a);
- ✓ Average number of passengers per vehicle hour (Novus Report) (MM 1.6a);
- ✓ Date and attendance of monthly safety meeting (MM 1.7a);
- ✓ Date and attendance of monthly office staff meeting
- ✓ Summary of incidents and accidents (MM 2.3b);
- ✓ Summary of customer service complaints and compliments;
- ✓ List of all in-service wheelchair lift failures (MM 2.4a);
- ✓ Narrative of ongoing driver training/retraining efforts (MM 3.1a);
- ✓ Summary of customer complaints and correspondence sent to customers (MM 3.3b).

Standard 4.3: Contractor shall submit the following information to the County on a **quarterly basis:**

- ✓ Recommendations regarding planned operational changes to reduce overall trip denials (MM 1.3c);
- ✓ Staffing report;
- ✓ Financial review and report;
- ✓ Summary of training provided to dispatch/scheduling staff (MM 1.7a);
- ✓ Documentation of drug testing (MM 2.2a).

Exhibit "I"

Certification Regarding Lobbying

CERTIFICATION REGARDING LOBBYING

Consultant certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to 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 [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]

(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, loans, 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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Consultant, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Consultant understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Consultant's Authorized Official

_____ Name and Title of Consultant's Authorized Official

_____ Date



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 30
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Transportation and Public Works

Staff Name and Phone Number:

Johannes J. Hoevertsz 707-565-2231

Supervisorial District(s):

Countywide

Title: Transit Services Agreement – Mendocino Transit Authority

Recommended Actions:

Approve and authorize Chair to execute agreement with Mendocino Transit Authority to provide transit services in the northern coastal area of Sonoma County for a not-to-exceed amount of \$172,200 for the period of July 1, 2018 through June 30, 2019.

Executive Summary:

The Mendocino Transit Authority provides transit services on behalf of Sonoma County Transit for the coastal communities of Point Arena, Gualala, The Sea Ranch, Jenner, Bodega Bay and Bodega. The morning eastbound route begins in Point Arena and connects residents in these remote communities with destinations in Sebastopol and Santa Rosa, returning them home in the afternoon via the westbound route. The requested action provides for continuation of these services in fiscal year 2018-19.

Discussion:

The proposed agreement provides for continued support for Sonoma Coast transit services provided by Mendocino Transit Authority for fiscal year 2018-19. Mendocino Transit Authority's Route 95 provides daily service that originates in Point Arena and travels Highway 1 thru Gualala, The Sea Ranch, Jenner and Bodega Bay, then continues east to Bodega, Sebastopol and Santa Rosa, serving the Downtown Santa Rosa Transit Mall, Coddington Shopping Center and the Sonoma County Airport. Mendocino Transit Authority's Route 95 primarily serves coast area residents as it travels into Santa Rosa in the morning and returns to the coast in the afternoon.

The proposed agreement allows for reimbursement to Mendocino Transit Authority in a not-to-exceed amount of \$172,200. Both Sonoma and Mendocino counties contribute a percentage, based on respective ridership, of the operations deficit for Route 95. The operations deficit represents Mendocino Transit Authority's operating costs less passenger fares. Sonoma County's contribution percentage is 56%. Route 95 is a long established service that has been supported by Sonoma and Mendocino counties since the

1980's. Funding participation by the two counties provides for a cost-effective means of providing daily transit service within one of the most rural areas of Sonoma County.

The proposed FY 2018-19 budget remains unchanged from FY 2017-18 at \$172,200.

Funding for this agreement is included within the Recommended FY 2018-19 Transit Division budget and is consistent with Sonoma County Transit's FY 2018-19 Transportation Development Act/State Transit Assistance funding claim to the Metropolitan Transportation Commission.

Prior Board Actions:

05/09/17 – Board approved FY 2017-18 agreement in the amount of \$172,200.

Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community

The provision of public transit services assists the County's goals of providing safe, healthy and caring community by providing low-cost mobility options that link all areas of Sonoma County and provide access to major medical, educational and commercial destinations.

Fiscal Summary

Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses		\$172,200	
Additional Appropriation Requested			
Total Expenditures		\$172,200	
Funding Sources			
General Fund/WA GF			
State/Federal		\$172,200	
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources		\$172,200	

Narrative Explanation of Fiscal Impacts:

Appropriations included in Recommended FY 2018-19 Transit Division budget. To be funded with Transportation Development Act and State Transit Assistance funds as requested in the annual Coordinated Claim.

Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
Agreement			
Related Items "On File" with the Clerk of the Board:			

**2018-19 AGREEMENT BETWEEN THE COUNTY OF SONOMA AND MENDOCINO
TRANSIT AUTHORITY**

The following is an Agreement, dated as of July 1, 2018 (“Effective Date”), by and between the County of Sonoma, a political subdivision of the State of California (hereinafter “County”), and Mendocino Transit Authority Joint Powers Agency (hereinafter “MTA”). For purposes of this Agreement, County and MTA shall be jointly referred to as “Parties” or “the Parties” and singularly as “Party.”

RECITALS

WHEREAS, California Public Utilities Code section 99288 authorizes the Parties to enter into this Agreement; and

WHEREAS, MTA represents that it operates a bus transit system in compliance with all relevant laws, regulations, and other applicable restrictions; and

WHEREAS, the Transportation Development Act requires that at least 10% of the Operating Cost be obtained from Farebox Revenue for transit operations to qualify for state funding; and

WHEREAS, MTA and County wish to continue providing transit service in the North Coastal area between Point Arena and the city of Santa Rosa, known as MTA Route 95.

NOW, THEREFORE, in consideration of the foregoing recitals and mutual covenants contained herein, the Parties hereto agree as follows:

AGREEMENT

1. Definitions. For purposes of this Agreement, the terms shall have the following meanings:

- (a) “Day” or “day” means calendar day.
- (b) “Farebox Revenue” means all revenues collected from fare-paying passengers for the transit service provided hereby (*i.e.*, Route 95), including in the form of cash and pass sales revenues.
- (c) “Local Fare” means the passenger fare paid to travel a “local” zone as illustrated in Exhibit “A.”
- (d) “Operating Costs” means total costs of operating a public transit route, including labor, fuel (and other consumable costs), insurance, maintenance, administration and depreciation.
- (e) “Route Costs” means the Operating Costs of operating a specific route within a transit system’s collection of routes.
- (f) “Route Deficit” means Operating Cost less all Farebox Revenue.

2. Service to be Provided. MTA agrees to provide general public and disabled-accessible transit service per the route and schedule set forth in Exhibit “A” attached hereto and incorporated herein by reference. MTA shall make available on all route vehicles a printed schedule which indicates that part of the service which is subsidized by County.

MTA shall provide daily round trip services every day, except for the following holidays: Thanksgiving Day (November 22, 2018), Christmas Day (December 25, 2018), and New Year’s Day (January 1, 2019).

3. Fares. A minimum Local fare within Sonoma County shall be at least \$1.50 for regular/adult; \$1.25 for youth (18 and under); and \$0.75 for senior and disabled. MTA shall honor transfers from Sonoma County Transit for satisfaction of a Local fare. Sonoma County Transit shall accept MTA transfers for satisfaction of a First-Zone (base) fare. Fares may only be changed by the written, mutual consent of all Parties to this Agreement.

4. Changes in Service. Any Party may propose a change in service. MTA shall review any proposed change in service to determine the estimated cost and compatibility of the proposed change with MTA's overall bus system operation. A change in service will be put into effect only upon the written approval of both Parties; except that MTA may, at its sole discretion, make such temporary changes as are required by conditions beyond the control of MTA or make minor operational changes in service that do not increase County's payment obligation. MTA shall promptly notify County, in writing, of temporary changes or operational changes in service.

5. Route Costs. The total Route Costs of this service shall be determined by MTA on an actual cost basis in accordance with generally accepted accounting procedures for public transit service. Route Costs shall not include any expense or charge which is not eligible for reimbursement under the provisions of California Public Utilities Code Section 99400 et seq. and any related rules or regulations.

County shall contribute to these Route Costs based on a residency survey of riders. County will be responsible for conducting the survey within Sonoma County.

6. Fare Distribution and Satisfaction of Farebox Requirement. All Farebox Revenue collected on this service shall be credited to that route.

7. Route Deficit. The Route Deficit shall be equal to the Route Costs less Farebox Revenue. The Parties shall split the Route Deficit as follows: 56% by County and 44% by MTA. The Parties agree that these percentages are based on previous ridership residency surveys and sufficiently reflect each jurisdiction's ridership on the service. In the event that the ridership survey determines different ridership by Sonoma County residents, these split rates shall be adjusted accordingly and summarized in writing by the Parties.

8. Payment Obligation; Funding Contingency. Subject to the funding contingency indicated below, County shall pay County's portion of the Route Deficit, in an amount as provided above. Notwithstanding, County's payment obligation shall not exceed 56% of the Route Deficit, and shall not exceed \$172,200 ("Maximum Obligation").

County will apply to Metropolitan Transportation Commission (MTC) for \$172,200 in Transportation Development Act (TDA) or State Transit Assistance (STA) funds for payment for services under this Agreement. County will notify MTA if County's TDA/STA request is denied by MTC.

Payment by County and MTA's obligations to provide service under this Agreement are **contingent** upon MTC's approval of County's TDA/STA claim and the availability of TDA/STA funds for this service. County shall incur no liability for or related to any failure to obtain TDA/STA or any other funding in support of this Agreement.

9. Reporting and Information Requirements. MTA shall provide a written report to County every month for the previous month. This report shall include the financial and operating data for all services provided under this Agreement and a detailed itemization of operating data, expenses, and revenues on the form shown as Exhibit "B." MTA shall also provide applicable back-up data

as requested. MTA shall provide this report to County within twenty (20) days following the end of each month. If MTA fails to timely file a monthly report or reports, County may, in its sole discretion, withhold any payment or payments required by this Agreement.

MTA shall also provide any other information or documents that may be required to comply with National Transit Database reporting requirements or the Transportation Development Act (as amended) or any related rules or regulations, including Title 21, Division 3, of the California Code of Regulations (as amended), to County within twenty (20) days of any County request.

10. Payment. County shall pay MTA as provided herein on or before the 15th day of each month, beginning July 2018 through June 2019. County's monthly payment shall not exceed \$14,350 and County's aggregate annual payment under this Agreement shall not exceed \$172,200. All County payments shall comport with Sonoma County Board of Supervisors' Resolution No. 62627, dated December 19, 1978.

11. Term. The term of this Agreement is July 1, 2018, through June 30, 2019. This Agreement shall automatically terminate at midnight on June 30, 2019.

12. Insurance. MTA shall maintain and shall require all its subcontractors to maintain insurance as described below:

A. Worker's Compensation Insurance. Worker's compensation insurance with statutory limits as required by the Labor Code of the State of California. Said policy shall be endorsed with the following specific language:

“This policy shall not be canceled or materially changed without first giving thirty (30) days' prior written notice to the County of Sonoma, Department of Transportation and Public Works.”

B. General Liability Insurance. Commercial general liability insurance covering bodily injury and property damage utilizing an occurrence policy form, in an amount no less than \$5,000,000 combined single limit for each occurrence. Said commercial general liability insurance policy shall either be endorsed with the following specific language or contain equivalent language in the policy:

(1) “The County of Sonoma, its officers and employees, is named as additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement.”

(2) “The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply 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.”

(3) “The insurance provided herein is primary coverage to the County of Sonoma with respect to any insurance or self-insurance programs maintained by County.”

(4) “This policy shall not be canceled or materially changed without first giving thirty (30) days' prior written notice to the County of Sonoma, Department of Transportation and Public Works.”

C. Automobile Liability Insurance. Automobile liability insurance covering bodily injury and property damage in an amount no less than \$5,000,000 combined single limit for each

occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles. Said policy shall be endorsed with the following language:

“The County of Sonoma, its officers and employees, is named as additional insured for liability arising out of the ownership, maintenance, use, loading or unloading of an automobile in the performance of this agreement.

The insurance provided to County is primary and non-contributory with respect to any insurance or self-insurance program maintained by County.

This policy shall not be cancelled or materially changed without first giving thirty (30) days prior written notice to the County of Sonoma, Department of Transportation and Public Works.”

D. Documentation. The following documentation shall be submitted to the County:

(1) Properly executed Certificates of Insurance clearly evidencing all coverages, limits, and endorsements required above. Said Certificates shall be submitted prior to the execution of this Agreement.

(2) Signed copies of specified endorsements for each policy. Said endorsement copies shall be submitted within thirty (30) days of execution of this Agreement.

(3) Upon County’s written request, certified copies of insurance policies. Said policy copies shall be submitted within thirty (30) days of County’s request.

(4) After the Agreement has been signed, signed Certificates of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.

E. Policy Obligations. MTA's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

F. Material Breach. If MTA, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of this Agreement. County, in its sole option, may terminate this Agreement and obtain damages from MTA resulting from said breach. Alternatively, County may purchase such required insurance coverage, and without further notice to MTA, County may deduct from sums due to MTA any premium costs advanced by County for such insurance. These remedies shall be in addition to any other remedies available to County.

13. Statutory Compliance/Living Wage Ordinance. MTA agrees to comply, and to ensure compliance by its sub-consultants or subcontractors, with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, MTA expressly acknowledges and agrees that this Agreement may be subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

14. Substitute Vehicle(s). The County will not provide any vehicles to MTA for services provided under this Agreement. .

15. Indemnification. County agrees to accept all responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless, and release MTA, its officers, agents, and employees, from and against any and all actions, claims, damages, disabilities, or expenses that may be asserted by any person or entity, including County, arising out of or in connection with the performance of County hereunder, but excluding liability due to the sole active negligence or sole willful misconduct of MTA. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for County or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

MTA agrees to accept all responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any and all actions, claims, damages, disabilities, or expenses that may be asserted by any person or entity, including MTA and/or any passengers, arising out of or in connection with this Agreement and/or the services provided-for hereunder, but excluding liability due to the sole active negligence or sole willful misconduct of County. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for MTA or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

16. Assignment. No Party shall assign, sublet, or transfer any interest in this Agreement without written consent of the other, and no assignment shall be of any force or effect whatsoever unless and until the other Parties shall have so consented in writing.

MTA offers and agrees and shall assign to County, and agrees to require its subcontractors to offer and agree to assign to County, all rights, title, and interest in and to all causes of actions it may have under Section 4 of the Clayton Act (15 USC Section 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to this Agreement or any subcontracts entered into hereunder. This assignment shall be made and become effective at the time County tenders final payment to MTA, without further acknowledgement of the Parties.

17. Method and Place of Giving Notice, Submitting Bills and Making Payments. All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills and payments shall be addressed as follows:

MTA: Mendocino Transit Authority
Attention: General Manager
241 Plant Road
Ukiah, CA 95482
PHONE: 707-462-5765
FAX: 707-462-1760

County: Sonoma County Transit
Attention: Transit Systems Manager
355 West Robles Avenue
Santa Rosa, CA 95407
PHONE: 707-585-7516
FAX: 707-585-7713

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. Notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this section.

18. Merger. This writing is intended both as the final expression of the Agreement between the Parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both Parties.

19. Nondiscrimination. MTA shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by reference.

MTA shall not engage in, tolerate or practice any form of discrimination in determining the grant of services to eligible patrons. The system shall operate on a first-come, first-served basis without preference to the type of trip (i.e., medical, social, work, or other). County residents as well as non-residents shall be equally eligible for service. No restrictions or priorities based on trip purpose will be permitted.

20. Right to Monitor and Audit. County and its agents and the regional governments, including the Metropolitan Transportation Commission (MTC, shall have the right to monitor and audit all performance under this Agreement.

County will notify MTA in writing within thirty (30) days of any potential exception(s) discovered during such examination. Where such findings indicate that program requirements are not being met and funding agency participation in this program may be imperiled, such written notification will constitute the County's intent to terminate this Agreement in the event that corrections are not accomplished by MTA within sixty (60) days.

21. Compliance with Laws and Regulations. MTA shall comply with all federal, state, and local laws, and all regulations or requirements of funding agencies, such as alcohol/drug testing, DMV Pull-Notice System for Drivers, and any other matters that impact eligibility for funding, risk exposure, safety, or other relevant area.

MTA shall indemnify, protect, defend, and hold harmless County and its officers, agents, and employees from all fines, penalties, and liabilities imposed or threatened to be imposed upon County under any such laws, rules, or regulations by any public agency, authority, or court having

jurisdiction, when the imposition or threat of same relates to the failure of MTA to keep fully informed and/or to comply with such laws, rules, or regulations.

22. Senior and Disabled Certification. MTA shall offer reduced fares to senior citizens and disabled persons. Fares for senior citizens and disabled persons shall not exceed 50% of the regular adult fare. MTA shall honor the federal Medicare identification card, the DMV senior citizen identification card, and the Regional Connection Discount Card.

23. Status of MTA. The Parties intend that MTA, in performing the services hereinafter specified, shall act as an independent contractor and shall have control of the work and the manner in which it is performed. MTA is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits County provides its employees.

24. Right to Adequate Assurance of Performance. Each Party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either Party, the other may, in writing, demand adequate assurance of due performance and until it receives such assurance may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a Party with respect to performance under this Agreement, but also conduct of a Party with respect to other Agreements with Parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved Party's right to demand adequate assurance of future performance. Nothing in this Section 24 limits County's right to terminate this Agreement pursuant to Section 33.

25. Retention of Records. MTA and County agree to retain all documents relating to this Agreement for four years from the date of termination or until all federal/state audits are complete for the associated fiscal year, whichever is later, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case MTA agrees to maintain same until County, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto. Reference 49 CFR 18.39(i)(11). Upon request, MTA shall make available these records to County, state, or federal government personnel.

26. Conflict of Interest. MTA covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. MTA further covenants that in the performance of this Agreement no person having any such interests will be employed. In addition, if requested to do so by County, MTA shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with the Sonoma County Clerk disclosing MTA's or such other person's financial interests.

27. Conflict of Transportation Interest. MTA shall not divert any revenues, passengers, or other business from services (Route 95) under this Agreement to any other transportation operation of MTA.

28. Americans with Disabilities Act (ADA) Compliance. MTA shall assume full responsibility and liability associated with ADA compliance associated with provision of this contracted service. It is the understanding of both Parties that this service is a limited intercity commute route, not requiring complementary paratransit services.

MTA shall provide a fully-accessible fixed-route service including well-maintained wheelchair devices, tiedowns, communication systems, training, and related requirements identified by the Federal Transit Administration. County will assume no liability for failure by MTA to satisfy these requirements. County has entered this Agreement with the understanding that MTA will fully comply with the ADA.

29. Public Information Services. MTA shall provide public telephone services Monday through Friday, between 8:00 AM and 5:00 PM in accessible formats. MTA shall also provide a telephone answering system to record messages on weekends and off-hours and to provide recorded information.

30. Emergency Procedures. In the event of a declared local emergency, upon the request of County's Director of the Office of Emergency Services, MTA shall make transportation and communication resources available to the degree possible for emergency assistance. MTA shall follow instructions of the County's Director of the Office of Emergency Services and inform County, as directed, of actions being taken. Emergency uses of transportation may include evacuation, transportation of injured, and movement of people to food and shelter. MTA shall be reimbursed on the basis of fair, equitable, and prompt reimbursement of MTA's actual costs. Reimbursement for such emergency services may exceed the "Maximum Obligation" of this Agreement. Immediately after the emergency ceases, MTA shall reinstitute normal transportation services. It is understood that operational funding provided in this Agreement cannot be expended to support emergency services.

31. Additional Services. Additional services outside the description and level of services indicated in this Agreement may be considered. Any additional services shall be authorized in writing and in advance of service delivery by MTA and County. Additional services will then be paid for by County on an individual occurrence (i.e., case-by-case) basis. The estimated number of service hours and related costs associated with any requested additional services shall be mutually determined prior to service performance and not be exceeded by MTA.

County's Transit Systems Manager is authorized to obtain additional services up to an aggregate of 10% of this Agreement's Maximum Obligation. Otherwise, an Agreement amendment must be approved by the Sonoma County Board of Supervisors. It is understood that County is free to obtain additional services in the subject service area from sources other than MTA, but only after consultation and negotiation with MTA.

32. Disputes. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by the County Transportation and Public Works Director ("Director") or the Director's designee. The Director shall reduce his or her decision to writing and mail or otherwise furnish a copy thereof to MTA. The Director's decision shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal or administrative or judicial proceeding under this clause, MTA shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a

dispute hereunder, MTA shall proceed diligently with the performance of this Agreement and in accordance with the Director's decision.

This clause does not preclude consideration of law questions in connection with decisions provided for in this clause, provided that nothing in this Agreement shall be construed as making final the decision of administrative official, representative, or board on a question of law.

33. Termination.

A. Termination Without Cause. County shall have the right, in its sole discretion, to terminate this Agreement at any time and without cause, by giving ninety (90) days' written notice to MTA. In the event of termination without cause, County shall pay MTA for services rendered to that date.

B. Termination for Default. If MTA fails to deliver or perform services or to comply with any provision of this Agreement, County may terminate this Agreement. County shall serve a written notice of termination for cause on MTA, setting forth the MTA default. MTA will only be paid for services and supplies delivered and accepted as performed in the manner set forth in this Agreement, and in accordance with the Route Deficit and Maximum Obligation provisions herein.

If County subsequently determines that MTA had an excusable reason for not performing, such as a strike, fire, or other events not the fault of or are beyond the control of MTA, County, after setting up a new delivery of performance schedule, may allow MTA to continue work or treat the termination as a termination for convenience.

C. Opportunity to Cure. In the case of a termination for breach or default, County, in its sole discretion, may allow MTA a period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If a satisfactory remedy is not reached within the time period, County shall have the right to terminate without further obligation to MTA. Any such termination for default shall not in any way operate to preclude County from also pursuing all available remedies against MTA and its sureties for said breach or default.

D. Waiver of Remedies for Any Breach. In the event that County elects to waive its remedies for any breach or default by MTA of any covenant, term, or condition of this Agreement, such waiver by County shall not limit County's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.

34. 13(c) Obligations. MTA agrees to comply with the labor protection obligations of County pursuant to Section 13(c) of the Federal Transit Act (49 U.S.C. Section 5333(b)), as set forth in the 13(c) protective conditions attached to this Agreement as Exhibit "C." MTA shall be liable for any 13(c) claims or obligations that are created by acts or omissions of MTA that are not specifically directed by County. County will be responsible for 13(c) claims resulting from its acts or omissions, or actions taken by MTA pursuant to County's specific direction. MTA shall cooperate with County in the resolution or defense of 13(c) claims or disputes for which County has responsibility related to this Agreement and services.

MTA shall not take any action which is contrary to the interests of County under 13(c) or its 13(c) protective conditions relating to the termination of services under this Agreement, any future transition to another service provider, or any other action or event relating to this Agreement. If

MTA fails to comply with this obligation, MTA shall be liable for any costs incurred by County associated with any 13(c) claims or disputes.

35. Standard of Care. County has relied upon MTA's representations regarding its professional ability and training as a material inducement to enter into this Agreement. MTA hereby warrants that all its services will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state, and local laws, it being understood that County's acceptance of MTA's services shall not operate as a waiver or release.

36. School Bus Operations. Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 205, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally-funded equipment, vehicles, or facilities.

37. Drug and Alcohol Testing. MTA agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or County, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. MTA agrees further to certify annually its compliance with Part 655 before March 15 and to submit the Management Information System (MIS) reports before March 15 to County Transit Systems Manager and FTA Office of Safety and Security. To certify compliance, MTA shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

38. Binding Agreement. All Parties hereto acknowledge that it or they are represented by an attorney; that it or they have had an opportunity to discuss this Agreement with their attorney; and it or they are fully aware of the contents of this Agreement and acknowledge that it is a legal and binding agreement.

39. Further Acts. The Parties shall execute and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

40. Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the forum nearest to the city of Santa Rosa, in the County of Sonoma.

41. Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation or law. The Parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. MTA and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the

other. MTA and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

42. No Waiver. The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

43. Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

44. Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

45. Counterparts. This Agreement may be executed in counterparts or by facsimile.

46. Recitals. The Recitals set forth above are true and correct.

47. Incorporation of Exhibits. All Exhibits hereto are incorporated as if fully set forth herein by this reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

MENDOCINO TRANSIT AUTHORITY
JOINT POWERS AGENCY

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM FOR MTA:

By: _____

COUNTY OF SONOMA

By: _____

Chair, Board of Supervisors

ATTEST:

By: _____

County Clerk

CERTIFICATES OF INSURANCE
ON FILE WITH AN APPROVED AS
TO SUBSTANCE FOR COUNTY:

By: _____

Department Head

APPROVED AS TO FORM FOR
COUNTY:

By: _____

County Counsel

Exhibit "A"

Route 95 Schedule

SOUTH COAST to Santa Rosa

ROUTE 95 - Southbound

	Mon. - Sat.	Sunday
Point Arena (Theater)	8:00	10:00
Anchor Bay	8:15	10:15
Gualala (Sundstrom Mall)	8:30	10:30
Sea Ranch Apts.	8:35	10:35
Sea Ranch (Lodge)	8:45	10:45
Stewarts Point (Store)	8:50	10:50
Fort Ross Store	9:10	11:10
Jenner (Post Office)	9:40	11:40
Bodega Bay (Spud Point Marina)	10:15	12:15
Bodega Bay (Post Office)	10:20	12:20
Bodega (Post Office)	10:25	12:25
Freestone (Turnoff)	10:35	12:35
Sebastopol (Transit Stop at Main & Bodega)	10:45	12:45
Amtrak Bus (On Railroad St at Courtyard by Marriot)	by req.	by req.
2nd St. Transit Mall (Connections with Golden Gate and Sonoma Transit)	11:00	1:00
Coddington (Library)	by req.	by req.
Sonoma Co. Airport (Connections with Sonoma County Airport Express)	by req.	by req.

ROUTE 95- Northbound

	Mon - Sun.
Sonoma Co. Airport (Connections with Sonoma County Airport Express)	3:45
Coddington (Library)	4:00
2nd St. Transit Mall (Connections with Golden Gate and Sonoma Transit)	4:15
Amtrak Bus (On Railroad St at Courtyard by Marriot)	4:20
Sebastopol (Transit Stop at Main & Bodega)	4:35
Freestone (Turnoff)	4:45
Bodega (Bodega Store)	4:50
Bodega Bay (Hwy 1 & Tides Inn)	5:00
Jenner (Store)	5:30
Fort Ross Store	6:00
Stewarts Point (Store)	6:20
Sea Ranch (Lodge)	Note 1
Sea Ranch Apts.	by req.
Gualala (Sundstrom Mall)	6:45
Anchor Bay	6:50
Point Arena (Pharmacy)	7:05

Note: 1 = Bus remains on Hwy 1 unless passengers are disembarking at this stop

Exhibit "B"

Monthly Report Format

EXHIBIT B
Summary of Operating Data
Operator: Mendocino Transit Authority

For the Month of _____

Description	"Month/Year"	YTD thru "Month/Year"	Budget
-------------	--------------	--------------------------	--------

Operating Data
Revenue Miles
Revenue Hours
Passenger Trips
Lift-assisted Trips

Operating Expenses
Administration
Maintenance
Operations

Depreciation \$0.00 per mile

Contingency

Total

Fare Revenue

Other Revenue

Route Deficit

Sonoma County
Share at 56.00%

Reimbursement Requested \$ **For** **"Month/Year"**

By: _____

Date: _____

Exhibit "C"
13(c) Obligations

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210



July 25, 2003

Mr. Leslie Rogers
Regional Administrator
Federal Transit Administration
Region IX
201 Mission Street, Suite 2210
San Francisco, California 94105

Re: FTA Application
Sonoma County Transit
Capitalized Preventive Maintenance, Non-
Fixed Route ADA Paratransit Service
CA-90-Y204 Revised

Dear Mr. Rogers:

This is in reply to the request from your office that we review the above-captioned application for a grant under Title 49 of the U.S. Code, Chapter 53.

Since there were no previously certified protective arrangements that could appropriately be applied to this grant, the Department of Labor proposed the attached arrangements for certification pursuant to Section 5333(b). Sonoma County Transit and the Service Employees International Union (SEIU), the Amalgamated Transit Union (ATU) Locals 1575 and 1700 and the International Association of Machinists (IAM), which represent transportation related employees in the service area of the project, have accepted the terms of the attached Operating Assistance Protective Arrangements dated July 25, 2003, and shall each be deemed a party to the Arrangements. These Arrangements provide to employees represented by the unions, protections satisfying the requirements of 49 U.S.C. Section 5333(b).

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the attached *OPERATING ASSISTANCE PROTECTIVE ARRANGEMENT PURSUANT TO SECTION 5333(b) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53*, For Sonoma County Transit and the SEIU, the ATU Locals 1575 and 1700 and the IAM, July 25, 2003, FTA Grant CA-90-Y204 Revised, shall be made applicable to the preventive maintenance and the non-fixed route ADA paratransit service portion of the instant project and made part of the contract of assistance, by reference;
2. The term "project" as used in the above referenced arrangements shall be deemed to cover and refer to the instant project;
3. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned arrangements for the resolution of such disputes; and
4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union which is a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the above-referenced arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

Should a dispute remain after exhausting any available remedies under the protective arrangements and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a

neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Handwritten signature of Kelley Andrews in black ink.

Kelley Andrews, Director
Division of Statutory Programs

Enclosure

cc: Donald Durkee/FTA
Steven Schmitz/Sonoma County Transit
Leo E. Wetzel/ATU
Thomas Buffenbarger/IAM
Andrew Stern/SEIU

**OPERATING ASSISTANCE PROTECTIVE ARRANGEMENT
PURSUANT TO SECTION 5333(b) OF
TITLE 49 OF THE U.S. CODE, CHAPTER 53**

For

**Sonoma County Transit and the Service Employees International Union (SEIU),
the Amalgamated Transit Union (ATU) Locals 1575 and 1700 and the
International Association of Machinists (IAM)**

July 25, 2003

FTA GRANT

CA-90-Y204

The following terms and conditions shall apply and shall be specified in any contract governing federal operating assistance to the recipient(s) referenced in the title of this arrangement ("Recipient"):

(1) The term "Project", as used in this arrangement, shall not be limited to the particular facility, service, or operation assisted by federal funds, but shall include any changes, whether organizational, operational, technological, or otherwise, which are a result of the assistance provided. The phrase "as a result of the Project" shall, when used in this arrangement, include events occurring in anticipation of, during, and subsequent to the Project and any program of efficiencies or economies related thereto; provided, however, that volume rises and falls of business, or changes in volume and character of employment brought about solely by causes other than the Project (including any economies or efficiencies unrelated to the Project) are not within the purview of this arrangement.

(2) The Project, as defined in paragraph (1) shall be performed and carried out in full compliance with the protective conditions described herein.

(3) All rights, privileges, and benefits (including pension rights and benefits) of employees covered by this arrangement (including employees having already retired) under existing collective bargaining agreements or otherwise, or under any revision or renewal thereof, shall be preserved and continued; provided, however, that such rights, privileges and benefits which are not foreclosed from further bargaining under applicable law or contract may be modified by collective bargaining and agreement by the Recipient and the union involved to substitute other rights, privileges and benefits. Unless otherwise provided, nothing in this arrangement shall be deemed to restrict any rights the Recipient may otherwise have to direct the working forces and manage its business as it deems best, in accordance with the applicable collective bargaining agreement.

(4) The collective bargaining rights of employees covered by this arrangement, including the right to arbitrate labor disputes and to maintain union security and checkoff arrangements, as provided by applicable laws, policies and/or existing collective bargaining agreements, shall be preserved and continued.* Provided, however, that this provision shall not be interpreted so as to require the Recipient to retain any such rights which exist by virtue of a collective bargaining agreement after such agreement is no longer in effect.

In the event that the Recipient and the union(s) referenced in the title to this protective arrangement have an established collective bargaining relationship, the Recipient agrees that it will bargain collectively with the union or otherwise arrange for the continuation of collective bargaining, and that it will enter into agreement with the union or arrange for such agreements to be entered into, relative to all subjects which are or may be proper subjects of collective bargaining. If, at any time, applicable law or contracts permit or grant to employees covered by this arrangement the right to utilize any economic measures, nothing in this arrangement shall be deemed to foreclose the exercise of such right.

(5) (a) In the event the Recipient contemplates any change in the organization or operation of its system which may result in the dismissal or displacement of employees, or rearrangement of the working forces covered by this arrangement, as a result of the Project, the Recipient shall do so only in accordance with the provisions of subparagraph (b) hereof. Provided, however, that changes which are not a result of the Project, but which grow out of the normal exercise of seniority rights occasioned by seasonal or other normal schedule changes and regular picking procedures under the applicable collective bargaining agreement, shall not be considered within the purview of this paragraph.

(b) The Recipient shall give to the unions representing the employees affected thereby, at least sixty (60) days' written notice of each proposed change, which may result in the dismissal or displacement of such employees or rearrangement of the working forces as a result of the Project, by sending

* As an addendum to this arrangement, there shall be attached where applicable the arbitration or other dispute settlement procedures or arrangements provided for in the existing collective bargaining agreements or any other existing agreements between the Recipient and the Union, subject to any changes in such agreements as may be agreed upon or determined by interest arbitration proceedings.

certified mail notice to the union representatives of such employees. Such notice shall contain a full and adequate statement of the proposed changes, including an estimate of the number of employees affected by the intended changes, and the number and classifications of any jobs within the jurisdiction and control of the Recipient, including those in the employment of any entity bound by this arrangement pursuant to paragraph (19) hereof, available to be filled by such affected employees.

At the request of either the Recipient or the representatives of the affected employees, negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this arrangement shall commence immediately. These negotiations shall include determining the selection of forces from among the employees of other urban mass transportation employers who may be affected as a result of the Project, to establish which such employees shall be offered employment for which they are qualified or can be trained; not, however, in contravention of collective bargaining agreements relating thereto. If no agreement is reached within twenty (20) days from the commencement of negotiations, any party to the dispute may submit it to arbitration in accordance with the procedures contained in paragraph (15) hereof. In any such arbitration, final decision must be reached within sixty (60) days after selection or appointment of the neutral arbitrator. In any such arbitration, the terms of this arrangement are to be interpreted and applied in favor of providing employee projections and benefits no less than those established pursuant to §11347 of Title 49 of the U.S. Code.

(6) (a) Whenever an employee, retained in service, recalled to service, or employed by the Recipient pursuant to paragraphs (5), (7)(e), or (18) hereof is placed in a worse position with respect to compensation as a result of the Project, he shall be considered a "displaced employee", and shall be paid a monthly "displacement allowance" to be determined in accordance with this paragraph. Said displacement allowance shall be paid each displaced employee during the protective period following the date on which he is first "displaced", and shall continue during the protective period so long as the employee is unable, in the exercise of his seniority rights, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for.

(b) The displacement allowance shall be a monthly allowance determined

by computing the total compensation received by the employee, including vacation allowances and monthly compensation guarantees, and his total time paid for during the last twelve (12) months in which he performed compensated service more than fifty per centum of each such months, based upon his normal work schedule, immediately preceding the date of his displacement as a result of the Project, and by dividing separately the total compensation and the total time paid for by twelve, thereby producing the average monthly compensation and the average monthly time paid for. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for. If the displaced employee's compensation in his current position is less in any month during his protective period than the aforesaid average compensation (adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for), he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time, but he shall be compensated in addition thereto at the rate of the current position for any time worked in excess of the average monthly time paid for. If a displaced employee fails to exercise his seniority rights to secure another position to which he is entitled under the then existing collective bargaining agreement, and which carries a wage rate and compensation exceeding that of the position which he elects to retain, he shall thereafter be treated, for the purposes of this paragraph, as occupying the position he elects to decline.

(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his employment.

(7) (a) Whenever any employee is laid off or otherwise deprived of employment as a result of the Project, in accordance with any collective bargaining agreement applicable to his employment, he shall be considered a "dismissed employee" and shall be paid a monthly dismissal allowance to be determined in accordance with this paragraph. Said dismissal allowance shall first be paid each dismissed employee on the thirtieth (30th) day following the day on which he is "dismissed" and shall continue during the protective period, as follow:

<u>Employee's length of service</u>	<u>Period of protection</u>
<u>prior to adverse effect</u>	equivalent period
1 day to 6 years	6 years
6 years or more	

The monthly dismissal allowance shall be equivalent to one-twelfth (1/12th) of the total compensation received by him in the last twelve (12) months of his employment in which he performed compensation service more than fifty per centum of each such months based on his normal work schedule to the date on which he was first deprived of employment as a result of the Project. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for.

(b) An employee shall be regarded as deprived of employment and entitled to a dismissal allowance when the position he holds is abolished as a result of the Project, or when the position he holds is not abolished but he loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a result of the Project or as a result of the exercise of seniority rights by other employees brought about as a result of the Project, and he is unable to obtain another position, either by the exercise of his seniority rights, or through the Recipient, in accordance with subparagraph (e). In the absence of proper notice followed by an agreement or decision pursuant to paragraph (5) hereof, no employee who has been deprived of employment as a result of the Project shall be required to exercise his seniority rights to secure another position in order to qualify for a dismissal allowance hereunder.

(c) Each employee receiving a dismissal allowance shall keep the Recipient informed as to his current address and the current name and address of any other person by whom he may be regularly employed, or if he is self-employed.

(d) The dismissal allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished when he is absent from service, he will be entitled to the dismissal allowance when he is available for service. The employee temporarily filling said position at the time it was abolished will be given a dismissal allowance on the basis of that position, until the regular employee is available for service, and thereafter shall revert to his previous status and will be given the protections of the arrangement in said position, if any are due him.

(e) An employee receiving a dismissal allowance shall be subject to call to return to service by his former employer after being notified in accordance with the terms of the then-existing collective bargaining agreement. Prior to such call to return to work by his employer, he may be required by the

Recipient to accept reasonably comparable employment for which he is physically and mentally qualified, or for which he can become qualified after a reasonable training or retraining period, provided it does not require a change in residence or infringe upon the employment rights of other employees under then-existing collective bargaining agreements.

(f) When an employee who is receiving a dismissal allowance again commences employment in accordance with subparagraph (e) above, said allowance shall cease while he is so reemployed, and the period of time during which he is so reemployed shall be deducted from the total period for which he is entitled to receive a dismissal allowance. During the time of such reemployment, he shall be entitled to the protections of this arrangement to the extent they are applicable.

(g) The dismissal allowance of any employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings from such other employment or self-employment, any benefits received from any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his union representative, and the Recipient shall agree upon a procedure by which the Recipient shall be kept currently informed of the earnings of such employee in employment other than with his former employer, including self-employment, and the benefits received.

(h) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the failure of the employee without good cause to return to service in accordance with the applicable labor agreement, or to accept employment as provided under subparagraph (e) above, or in the event of his resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his employment.

(i) A dismissed employee receiving a dismissal allowance shall actively seek and not refuse other reasonably comparable employment offered him for which he is physically and mentally qualified and does not require a change in his place of residence. Failure of the dismissed employee to comply with this obligation shall be grounds for discontinuance of his allowance; provided that said dismissal allowance shall not be discontinued until final determination is made either by agreement between the Recipient and the employee or his representative, or by final arbitration decision rendered in accordance with paragraph (15) of this arrangement that such employee did not comply with this obligation.

(8) In determining length of service of a displaced or dismissed employee for purposes of this arrangement, such employee shall be given full service credits in accordance with the records and labor agreements applicable to him and he shall be given additional service credits for each month in which he receives a dismissal or displacement allowance as if he were continuing to perform services in his former position.

(9) No employee shall be entitled to either a displacement or dismissal allowance under paragraphs (6) or (7) hereof because of the abolishment of a position to which, at some future time, he could have bid, been transferred, or promoted.

(10) No employee receiving a dismissal or displacement allowance shall be deprived, during his protected period, of any rights, privileges, or benefits attaching to his employment, including, without limitation, group life insurance, hospitalization and medical care, free transportation for himself and his family, sick leave, continued status and participation under any disability or retirement program, and such other employee benefits as Railroad Retirement, Social Security, Workmen's Compensation, and unemployment compensation, as well as any other benefits to which he may be entitled under the same conditions and so long as such benefits continue to be accorded to other employees of the bargaining unit, in active service or furloughed as the case may be.

(11) (a) Any employee covered by this arrangement who is retained in the service of his employer, or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment in order to retain or secure active employment with the Recipient in accordance with this arrangement, and who is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects, for the traveling expenses for himself and members of his immediate family, including living expenses for himself and his immediate family, and for his own actual wage loss during the time necessary for such transfer and for a reasonable time thereafter, not to exceed five (5) working days. The exact extent of the responsibility of the Recipient under this paragraph, and the ways and means of transportation, shall be agreed upon in advance between the Recipient and the affected employee or his representatives.

(b) If any such employee is laid off within three (3) years after changing

(e) Nothing in this arrangement shall be construed to enlarge or limit the right of any party to utilize, upon the expiration of any collective bargaining agreement or otherwise, any economic measures which are not inconsistent or

his point of employment in accordance with paragraph (a) hereof, and elects to move his place of residence back to his original point of employment, the Recipient shall assume the expenses, losses and costs of moving to the same extent provided in subparagraph (a) of this paragraph (11) and paragraph (12)(a) hereof.

(c) No claim for reimbursement shall be paid under the provisions of this paragraph unless such claim is presented to the Recipient within ninety (90) days after the date on which the expenses were incurred.

(d) Except as otherwise provided in subparagraph (b), changes in place of residence, subsequent to the initial changes as a result of the Project, which are not a result of the Project but grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.

(12) (a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the employer (or who is later restored to service after being entitled to receive a dismissal allowance), who is required to change the point of his employment as a result of the Project, and is thereby required to move his place of residence.

If the employee owns his own home in the locality from which he is required to move, he shall, at his option, be reimbursed by the Recipient for any loss suffered in the sale of his home for less than its fair market value, plus conventional fees and closing costs, such loss to be paid within thirty (30) days of settlement or closing on the sale of the home. In each case, the fair market value of the home in question shall be determined, as of a date sufficiently prior to the date of the Project, so as to be unaffected thereby. The Recipient shall, in each instance, be afforded an opportunity to purchase the home at such fair market value before it is sold by the employee to any other person and to reimburse the seller for his conventional fees and closing costs.

If the employee is under a contract to purchase his home, the Recipient shall protect him against loss under such contract, and in addition, shall relieve him from any further obligation thereunder.

If the employee holds an unexpired lease of a dwelling occupied by him as his home, the Recipient shall protect him from all loss and cost in securing the cancellation of said lease.

(b) No claim for loss shall be paid under the provisions of this paragraph

unless such claim is presented to the Recipient within one year after the effective date of the change in residence.

(c) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through a joint conference between the employee, or his union, and the Recipient. In the event they are unable to agree, the dispute or controversy may be referred by the Recipient or the union to a board of competent real estate appraisers selected in the following manner: one (1) to be selected by the representatives of the employee, and one (1) by the Recipient, and these two, if unable to agree within thirty (30) days upon the valuation, shall endeavor by agreement within ten (10) days thereafter to select a third appraiser or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the State or local Board of Real Estate Commissioners to designate within ten (10) days a third appraiser, whose designation will be binding upon the parties and whose jurisdiction shall be limited to determination of the issues raised in this paragraph only. A decision of a majority of the appraisers shall be required and said decision shall be final, binding, and conclusive. The compensation and expenses of the neutral appraiser including expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(d) Except as otherwise provided in paragraph (11)(b) hereof, changes in place of residence, subsequent to the initial changes as a result of the Project, which are not a result of the Project but grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.

(e) "Change in residence" means transfer to a work location which is either (A) outside a radius of twenty (20) miles of the employee's former work location and farther from his residence than was his former work location, or (B) is more than thirty (30) normal highway route miles from his residence and also farther from his residence than was his former work location.

(13) A dismissed employee entitled to protection under this arrangement may, at his option within twenty-one (21) days of his dismissal, resign and (in lieu of all other benefits and protections provided in this arrangement) accept a lump sum payment computed in accordance with section (9) of the Washington Job Protection Agreement of May 1936:

<u>Length of Service</u>		<u>Separation Allowance</u>
1	year and less than 2 years	3 months' pay
2	" " " " 3 "	6 " "
3	" " " " 5 "	9 " "
5	" " " " 10 "	12 " "
10	" " " " 15 "	12 " "
15	" " over	12 " "

In the case of an employee with less than one year's service, five days' pay, computed by multiplying by 5 the normal daily earnings (including regularly scheduled overtime, but excluding other overtime payments) received by the employee in the position last occupied, for each month in which he performed service, will be paid as the lump sum.

(a) Length of service shall be computed as provided in Section 7(b) of the Washington Job Protection Agreement, as follows:

For the purposes of this arrangement, the length of service of the employee shall be determined from the date he last acquired an employment status with the employing carrier and he shall be given credit for one month's service for each month in which he performed any service (in any capacity whatsoever) and twelve (12) such months shall be credited as one year's service.

The employment status of an employee shall not be interrupted by furlough in instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization, he will be given credit for performing service while so engaged on leave of absence from the service of a carrier.

(b) One month's pay shall be computed by multiplying by 30 the normal daily earnings (including regularly scheduled overtime, but excluding other overtime payments) received by the employee in the position last occupied prior to time of his dismissal as a result of the Project.

(14) Whenever used herein, unless the context requires otherwise, the term "protective period" means that period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of six

(6) years therefrom, provided, however, that the protective period for any particular employee during which he is entitled to receive the benefits of these provisions shall not continue for a longer period following the date he was displaced or dismissed than the employee's length of service, as shown by the records and labor agreements applicable to his employment prior to the date of his displacement or his dismissal.

(15) (a) In the event there arises any labor dispute with respect to the protection afforded by this arrangement, or with respect to the interpretation, application or enforcement of the provisions of this arrangement, not otherwise governed by Section (12)(c) hereof, the Labor-Management Relations Act, as amended, Railway Labor Act, as amended, or by impasse resolution provisions in a collective bargaining or protective arrangement involving the Recipient and the Union, which cannot be settled by the parties thereto within thirty (30) days after the dispute or controversy arises, it may be submitted at the written request of the Recipient or the union to a board of arbitration to be selected as hereinafter provided. One arbitrator is to be chosen by each interested party, and the arbitrators thus selected shall endeavor to select a neutral arbitrator who shall serve as chairman. Each party shall appoint its arbitrator within five (5) days after notice of submission to arbitration has been given. Should the arbitrators selected by the parties be unable to agree upon the selection of the neutral arbitrator within ten (10) days after notice of submission to arbitration has been given, then the arbitrator selected by any party may request the American Arbitration Association to furnish, from among members of the National Academy of Arbitrators who are then available to serve, five (5) arbitrators from which the neutral arbitrator shall be selected. The arbitrators appointed by the parties shall, within five (5) days after the receipt of such list, determine by lot the order of elimination and thereafter each shall, in that order, alternately eliminate one name until only one name remains. The remaining person on the list shall be the neutral arbitrator. If any party fails to select its arbitrator within the prescribed time limit, the highest officer of the Union or of the Recipient or their nominees, as the case may be, shall be deemed to be the selected arbitrator, and the board of arbitration shall then function and its decision shall have the same force and effect as though all parties had selected their arbitrators. Unless otherwise provided, in the case of arbitration proceedings, under paragraph (5) of this arrangement, the board of arbitration shall meet within fifteen (15) days after selection or appointment of the neutral arbitrator and shall render its decision within forty-five (45) days after the hearing of the dispute has been concluded and the record closed. The decision by majority vote of the arbitration board shall be final and binding as the decision of the arbitration board, except as provided in subparagraph (b)

below. All the conditions of the arrangement shall continue to be effective during the arbitration proceedings.

(b) In the case of any labor dispute otherwise covered by subparagraph (a) but involving multiple parties, or employees of urban mass transportation employers other than those of the Recipient, which cannot be settled by collective bargaining, such labor dispute may be submitted, at the written request of any of the parties to this arrangement involved in the dispute, to a single arbitrator who is mutually acceptable to the parties. Failing mutual agreement within ten (10) days as to the selection of an arbitrator, any of the parties involving may request the American Arbitration Association to furnish an impartial arbitrator from among members of the National Academy of Arbitrators who is then available to serve. Unless otherwise provided, in the case of arbitration proceedings under paragraph (5) of this arrangement, the arbitrator thus appointed shall convene the hearing within fifteen (15) days after his selection or appointment and shall render his decision within forty-five (45) days after the hearing of the dispute or controversy has been concluded and the record closed. The decision of the neutral arbitrator shall be conclusive upon all parties to the dispute. All the conditions of the arrangement shall continue to be effective during the arbitration proceeding. Authority of the arbitrator shall be limited to the determination of the dispute arising out of the interpretation, application, or operation of the provisions of this arrangement. The arbitrator shall not have any authority whatsoever to alter, amend, or modify any of the provisions of any collective bargaining agreement.

(c) The compensation and expenses of the neutral arbitrator, and any other jointly incurred expenses, shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

(d) In the event of any dispute as to whether or not a particular employee was affected by the Project, it shall be his obligation to identify the Project and specify the pertinent facts of the Project relied upon. It shall then be the Recipient's burden to prove that factors other than the Project affected the employee. The claiming employee shall prevail if it is established that the Project had an effect upon the employee even if other factors may also have affected the employee (Hodgson's Affidavit in Civil Action No. 825-71).

(e) Nothing in this arrangement shall be construed to enlarge or limit the right of any party to utilize, upon the expiration of any collective bargaining agreement or otherwise, any economic measures which are not inconsistent or

in conflict with applicable laws or this arrangement.

(16) Nothing in this arrangement shall be construed as depriving any employee of any rights or benefits which such employee may have under any existing job security or other protective conditions or arrangements by collective bargaining agreement or law where applicable, including P.L. 93-236, enacted January 2, 1974; provided that there shall be no duplication of benefits to any employees, and, provided further, that any benefit under the arrangement shall be construed to include the conditions, responsibilities, and obligations accompanying such benefits.

(17) The Recipient shall be financially responsible for the application of these conditions and will make the necessary arrangements so that any employee affected as a result of the Project may file a claim through his union representative with the Recipient within sixty (60) days of the date he is terminated or laid off as a result of the Project, or within eighteen (18) months of the date his position with respect to his employment is otherwise worsened as a result of the Project; provided, in the latter case, if the events giving rise to the claim have occurred over an extended period, the 18-month limitation shall be measured from the last such event; provided, further, that no benefits shall be payable for any period prior to six (6) months from the date of the filing of the claim. Unless such claims are filed with the Recipient within said time limitations, the Recipient shall thereafter be relieved of all liabilities and obligations related to said claims. The Recipient will fully honor the claim, making appropriate payments, or will give notice to the claimant and his representative of the basis for denying or modifying such claim, giving reasons therefor. In the event the Recipient fails to honor such claim, the Union may invoke the following procedures for further joint investigation of the claim by giving notice in writing of its desire to pursue such procedures. Within ten (10) days from the receipt of such notice, the parties shall exchange such factual material as may be requested of them relevant to the disposition of the claim and shall jointly take such steps as may be necessary or desirable to obtain from any third party such additional factual materials as may be relevant. In the event the claim is so rejected by the Recipient, the claim may be processed to arbitration as herein above provided by paragraph (15). Prior to the arbitration hearing, the parties shall exchange a list of intended witnesses. In conjunction with such proceedings, the impartial arbitrator shall have the power to subpoena witnesses upon the request of any party and to compel the production of documents and other information denied in the pre-arbitration period which is relevant to the disposition of the claim.

Nothing included herein as an obligation of the Recipient shall be construed to relieve any other urban mass transportation employer of the employees covered hereby of any obligations which it has under existing collective bargaining agreements, including but not limited to obligations arising from the benefits referred to in paragraph (10) hereof, nor make any such employer a third-party beneficiary of the Recipient's obligations contained herein, nor deprive the Recipient of any right of subrogation.

(18) During the employee's protective period, a dismissed employee shall, if he so requests, in writing, be granted priority of employment to fill any vacant position within the jurisdiction and control of the Recipient, including those in the employment of any entity bound by this arrangement pursuant to paragraph (19) hereof, which is reasonably comparable to that which he held when dismissed, for which he is, or by training or retraining can become, qualified; not, however, in contravention of collective bargaining agreements related thereto. In the event such employee requests such training or re-training to fill such vacant position, the Recipient shall provide for such training or re-training at no cost to the employee. The employee shall be paid the salary or hourly rate provided for in the applicable collective bargaining agreement for such position, plus any displacement allowance to which he may be otherwise entitled. If such dismissed employee who has made such request fails, without good cause, within ten (10) days to accept an offer of a position comparable to that which he held when dismissed for which he is qualified, or for which he has satisfactorily completed such training, he shall, effective at the expiration of such ten-day period, forfeit all rights and benefits under this arrangement.

As between employees who request employment pursuant to this paragraph, the following order where applicable shall prevail in hiring such employees:

(a) Employees in the craft or class of the vacancy shall be given priority over employees without seniority in such craft or class;

(b) As between employees having seniority in the craft or class of the vacancy, the senior employees, based upon their service in that craft or class, as shown on the appropriate seniority roster, shall prevail over junior employees;

(c) As between employees not having seniority in the craft or class of the vacancy, the senior employees, based upon their service in the crafts or classes

in which they do have seniority as shown on the appropriate seniority rosters, shall prevail over junior employees.

(19) This arrangement shall be binding upon the successors and assigns of the parties hereto, and no provisions, terms, or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by reason of the arrangements made by or for the Recipient to manage and operate the system.

Any person, enterprise, body, or agency, whether publicly - or privately-owned, which shall undertake the management, provision and/or operation of the Project services or the Recipient's transit system, or any part or portion thereof, under contractual arrangements of any form with the Recipient, its successors or assigns, shall agree to be bound by the terms of this arrangement and accept the responsibility with the Recipient for full performance of these conditions. As a condition precedent to any such contractual arrangements, the Recipient shall require such person, enterprise, body or agency to so agree.

(20) The employees covered by this arrangement shall continue to receive any applicable coverage under Social Security, Railroad Retirement, Workmen's Compensation, unemployment compensation, and the like. In no event shall these benefits be worsened as a result of the Project.

(21) In the event any provision of this arrangement is held to be invalid, or otherwise unenforceable under the federal, State, or local law, in the context of a particular Project, the remaining provisions of this arrangement shall not be affected and the invalid or unenforceable provision shall be renegotiated by the Recipient and the interested union representatives of the employees involved for purpose of adequate replacement under Section 5333(b). If such negotiation shall not result in mutually satisfactory agreement, any party may invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements for application only to the particular Project, which shall be incorporated in this arrangement only as applied to that Project, and any other appropriate action, remedy, or relief.

(22) The designated Recipient, as hereinabove defined, signatory hereto, shall be the sole provider of mass transportation services to the Project and such services shall be provided exclusively by employees of the Recipient covered by this agreement, in accordance with this agreement and any applicable collective bargaining agreement. The parties recognize, however, that certain of the recipients signatory hereto, providing urban mass transportation services,

have heretofore provided such services through contracts by purchase, leasing, or other arrangements and hereby agree that such practices may continue. Whenever any other employer provides such services through contracts by purchase, leasing, or other arrangements with the Recipient, or on its behalf, the provisions of this agreement shall apply.

(23) An employee covered by this arrangement, who is not dismissed, displaced, or otherwise worsened in his position with regard to his employment as a result of the Project, but who is dismissed, displaced, or otherwise worsened solely because of the total or partial termination of the Project or exhaustion of Project funding, shall not be deemed eligible for a dismissal or displacement allowance within the meaning of paragraphs (6) and (7) of this arrangement.

(24) If any employer of the employees covered by this arrangement shall have rearranged or adjusted its forces in anticipation of the Project, with the effect of depriving an employee of benefits to which he should be entitled under this arrangement, the provisions of this arrangement shall apply to such employee as of the date when he was so affected.

(25) In the context of a particular Project, the Recipient and any union which is referenced in the title of this arrangement shall be deemed a party to this arrangement as applied to the Project.

(26) In the event any project to which this arrangement applies is approved for assistance, the foregoing terms and conditions shall be made part of the contract of assistance between the federal government and the applicant for federal funds and between the applicant and any recipient of federal funds; provided, however, that this arrangement shall not merge into the contract of assistance but shall be independently binding and enforceable by and upon the parties thereto, in accordance with its terms, nor shall any other employee protective arrangement nor any collective bargaining agreement merge into this agreement, but each shall be independently binding and enforceable by and upon the parties thereto, in accordance with its terms.



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 31
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Transportation and Public Works

Staff Name and Phone Number:

Johannes J. Hoevertsz 707-565-2231

Supervisorial District(s):

Countywide

Title: Sonoma County Transit - Lifeline Transportation Program Funding

Recommended Actions:

1. Adopt a resolution seeking Lifeline Transportation Program funding from the Metropolitan Transportation Commission (MTC) to continue providing weekday commute feeder bus service and assist with the purchase of one compressed natural gas (CNG)-powered replacement bus.
2. Authorize the Director of Transportation and Public Works to execute all required actions and documents, including any amendments thereto, with MTC as required to obtain Lifeline Transportation Program funding.

Executive Summary:

The Department of Transportation and Public Works is requesting that the Board authorize the County to submit an application for funding from the Lifeline Transportation Program to continue weekday commute feeder bus service serving the Healdsburg, Lower Russian River, and Sonoma Springs areas, and assist with the purchase of one 40 foot compressed natural gas (CNG)-powered replacement bus.

Discussion:

The regional Lifeline Transportation Funding Program supports projects that address mobility and accessibility needs in low-income communities throughout the nine-county Bay Area. The program is funded through the Metropolitan Transportation Commission (MTC) with a combination of federal and state funding sources including State Transit Assistance (STA) and the Jobs Access and Reverse Commute (JARC) federal funding program. For this funding cycle, Sonoma County Transit will be allocated an estimated \$803,616. MTC requires a 20% local funding match for all Lifeline Transportation Programs, which will come from existing transit funding sources.

Lifeline Transportation funding guidelines were established by MTC with the goal of supporting community-based transportation projects developed through a collaborative and inclusive process. Within Sonoma County Transit's service area, Community-Based Transportation Plans were developed by

the Sonoma County Transportation Authority and included locally-based transportation needs assessments for the Healdsburg, Lower Russian River, and Sonoma Springs areas.

The Community-Based Transportation Plans (CBTP's) identified the need for increased service frequency during weekday commute periods. In conjunction with the inauguration of SMART's passenger rail service in August 2017, Sonoma County Transit introduced routes 52, 53, 54 and 56, which serve low-income communities in the Healdsburg, Lower Russian River and Sonoma Springs CBTP areas. These routes provide feeder bus service to SMART and more frequent service to where jobs and services are located along the Highway 101 corridor. Lifeline Transportation Program funding through the State Transit Assistance program in the amount of \$579,621 will be requested to continue these feeder bus routes during weekday commute times serving low-income CBTP areas in the County.

In addition to the continuation of weekday commute feeder bus service, Lifeline Transportation Program funding in the amount of \$223,995 through the JARC federal transit funding program will be requested to assist with the purchase of one 40' CNG-powered replacement bus. The replacement bus will be deployed on routes primarily serving the respective CBTP areas to ensure the provision of reliable and convenient transit service to outlying low-income areas of the County.

MTC's program guidelines require the supporting resolution to acknowledge Sonoma County Transit's compliance with the California Environmental Quality Act (CEQA) with respect to the program for which it is requesting funding. The Department of Transportation and Public Works complies with CEQA in a variety of ways, including by undertaking review and filing applicable notices regarding continuing transit operations for each fiscal year as part of the annual claims process for state transit operations funding.

Prior Board Actions:

03/10/15: Resolution adopted by the Board of Supervisors approving resolution requesting Lifeline Transportation Program funding for to expand feeder bus service during weekday commute periods and assist with the purchase of CNG replacement buses. Resolution No. 15-0079.

05/08/12: Resolution adopted by the Board of Supervisors approving resolution requesting STA Lifeline Transportation Program funding to support Sonoma County Transit routes 20, 30 and 60, including adding capacity during peak commute times. Resolution No. 12-0221.

03/27/12: Resolution adopted by the Board of Supervisors approving resolution requesting Proposition 1B Lifeline Transportation Program funding for Sonoma County Transit's bus stop enhancements and CNG bus replacement projects. Resolution No. 12-0139.

Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community

The use of regional Lifeline Transportation Program funding to continue peak commute feeder bus service and assist with the purchase of one 40 foot CNG-powered replacement bus will help ensure the provision of a safe, reliable, comfortable and cost-effective public transit system for residents and visitors.

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses		929,263	362,263
Additional Appropriation Requested			
Total Expenditures		929,263	362,263
Funding Sources			
General Fund/WA GF			
State/Federal		929,263	362,263
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources		929,263	362,263
Narrative Explanation of Fiscal Impacts:			
Project budget includes \$803,616 in regional Lifeline Transportation Program funding and \$487,910 in local matching funding from existing transit funding sources. Appropriations are requested as part of the FY 18-19 Recommended Budget and will also be included in the FY 19-20 Recommended Budget.			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
Resolution			
Related Items "On File" with the Clerk of the Board:			
Lifeline Transportation Program Funding Applications			



County of Sonoma
State of California

Date: May 8, 2018

Item Number: _____
Resolution Number: _____

4/5 Vote Required

Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California, Authorizing The Filing Of Applications And Required Actions Necessary For Lifeline Transportation Program Funding From The Metropolitan Transportation Commission To Continue Feeder Bus Service During Weekday Commute Periods And Assist With The Purchase Of One 40-Foot Compressed Natural Gas-Powered Replacement Bus.

Whereas, the Metropolitan Transportation Commission (MTC) has established a Lifeline Transportation Program to assist in funding projects that 1) are intended to result in improved mobility for low-income residents of the nine San Francisco Bay Area counties, 2) are developed through a collaborative and inclusive planning process and 3) are proposed to address transportation needs identified through a substantive community-based transportation plan or are otherwise based on a documented assessment of needs; and

Whereas, MTC has adopted principles, pursuant to MTC Resolution No. 4309, to guide implementation of the Cycle 5 Lifeline Transportation Program for the two year period during Fiscal Year 2016-17 and Fiscal Year 2017-18, and designates a countywide entity in each of the nine bay area counties to help with recommending project selections and project administration; and

Whereas, the Sonoma County Transportation Authority (SCTA) has been designated by MTC as the Lifeline Transportation Program Administrator in Sonoma County on behalf of MTC; and

Whereas, SCTA conducted a competitive call for projects for the Lifeline Transportation Program in Sonoma County; and

Whereas, the County of Sonoma – Sonoma County Transit submitted projects in response to the SCTA's call for projects for the Lifeline Transportation Program; and

Whereas, SCTA has confirmed that the County of Sonoma – Sonoma County Transit's proposed projects to continue weekday commute feeder bus service and assist with the purchase of one 40-foot compressed natural gas-powered replacement bus is consistent with the Lifeline Transportation Program goals as set out in MTC Resolution No. 4309; and

Whereas, after review, SCTA recommends that the County of Sonoma – Sonoma County Transit’s proposed projects to continue weekday commute feeder bus service and assist with the purchase of one 40-foot compressed natural gas-powered replacement bus be funded, in part, under the Lifeline Transportation Program; and

Whereas, the County of Sonoma – Sonoma County Transit agrees to meet project delivery and obligation deadlines, comply with funding conditions placed on the receipt of funds allocated to the Lifeline Transportation Program, provide for the required local matching funds, and satisfy all other conditions set forth in MTC Resolution No. 4309; and

Whereas, the County of Sonoma - Sonoma County Transit certifies that the projects and purposes for which funds are being requested will comply with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), the State’s Guidelines for Implementation (14 California Code of Regulations Sections 15000 et seq.) and any applicable National Environmental Policy Act (NEPA), 42 USC Section 4-1 et seq., requirements and regulations; and

Whereas, there is no legal impediment to the County of Sonoma – Sonoma County Transit making the funding request; and

Whereas, there is no pending or threatened litigation which might in any way adversely affect the ability of the County of Sonoma – Sonoma County Transit to deliver the proposed projects for which funds are being requested.

Now, Therefore, Be It Resolved, that the County of Sonoma – Sonoma County Transit is authorized to apply for MTC funds available under the Lifeline Transportation Program, in the amounts requested for which the County of Sonoma – Sonoma County Transit is eligible, to continue weekday commute feeder bus service and assist with the purchase of one 40-foot compressed natural gas-powered replacement bus.

Be It Further Resolved that the Director of the Department of Transportation and Public Works is authorized to execute all required actions and documents, including any amendments thereto, with MTC as required to obtain Lifeline Transportation Program funding.

Be it Further Resolved that staff of the County of Sonoma – Sonoma County Transit shall forward a copy of this Resolution, and such other information as may be required, to MTC, SCTA and such other agencies as may be appropriate.

Supervisors:

Gorin: Rabbitt: Zane: Hopkins: Gore:

Ayes: Noes: Absent: Abstain:

So Ordered.

NOTICE OF EXEMPTION

TO: County of Sonoma
County Clerk
2300 County Center Drive
Suite B-177
Santa Rosa, CA 95403

FROM: County of Sonoma
Transportation & Public Works Dept.
2300 County Center Drive
Suite B-100
Santa Rosa, CA 95403

The Sonoma County Department of Transportation and Public Works proposes to carry out the following project and, pursuant to Section 23A-11 of the Sonoma County Code, determines that this project is exempt from the requirements of the California Environmental Quality Act (CEQA):

PROJECT DESCRIPTION: The project calls for the continuation of Sonoma County Transit weekday commute feeder fixed-route service during FY 2018-19 and FY 2019-20.

REASON WHY THIS PROJECT IS EXEMPT: The project is exempt under 14 CFR 15061(b)(3) of the State CEQA Guidelines, the general rule that CEQA does not apply to a project when it can be seen with certainty that there will be no significant effect on the environment. The project calls for the continuation of Sonoma County Transit weekday commute feeder fixed-route service in existing areas. These actions will have no adverse effect on the environment.

This Notice of Exemption is filed pursuant to the provisions of Section 15062 of the State CEQA Guidelines.

Johannes Hovertsz, Director
Transportation & Public Works Dept.
(707) 565-2231

For more project information, please contact
Sonoma County Transit at (707) 585-7516.

Project approved May 8, 2018
by Sonoma County Board of Supervisors

Item #



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 32
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Transportation and Public Works

Staff Name and Phone Number:

Johannes J. Hoevertsz 707-565-2231

Supervisorial District(s):

Countywide

Title: Sonoma County Transit – Purchase of One Thirty-Foot Replacement Transit Coach (BP-17B)

Recommended Actions:

Approve and authorize Chair to execute agreement with Creative Bus Sales Inc., for the purchase of One Thirty-Foot Heavy-Duty, Low-Floor, Natural Gas-powered transit coach from Creative Bus Sales Inc., not to exceed \$651,268.

Executive Summary:

This request seeks authorization for the purchase of one thirty-foot, low-floor, heavy-duty, compressed natural gas powered (CNG) El Dorado National EZ Rider II transit coach from Creative Bus Sales, Inc. The new bus will replace a similar CNG bus placed into service in 2004. The Federal Transit Administration permits use of federal transit funds to replace buses after 12 years of service.

The new vehicle will further the County's efforts to improve and modernize its transit fleet with clean fuel coaches. This replacement vehicle purchase will provide for a more comfortable riding experience for passengers, reduce operational maintenance costs and improve service reliability.

Discussion:

The 30-foot coach associated with this request will be funded, in part, with Federal Transit Administration Section 5311 (Rural Area) transit funds. These funds are administered by Caltrans and subject to Caltrans' procurement requirements unlike the purchase of three 40-foot transit coaches that are also being pursued by the Department. The 40-foot coaches are funded, in part, by federal formula funds that allow the use of an existing purchase agreement with Creative Bus Sales to purchase 40-foot coaches on an "option" basis.

To satisfy federal Section 5311 and Caltrans procurement requirements, Caltrans has established a procurement agreement through the California Association for Coordinated Transportation (CalACT) for the purchase of Section 5311-funded vehicles, of this type, through Creative Bus Sales, Inc. Based on Sonoma County Transit's grant application, Caltrans has authorized Sonoma County Transit's purchase of

the proposed replacement vehicle from Creative Bus Sales and has granted \$439,388 to assist with the purchase.

Creative Bus Sales has provided Sonoma County Transit a proposal to sell and deliver the desired vehicle for a total of \$592,062 (includes sales tax). The vehicle would be placed into service shortly after its anticipated delivery of July 2019. As with prior bus purchases, the proposed agreement includes a contingency (10% of contract price) to allow for regulatory changes and implementation of features, unforeseen at this time, to ensure up-to-date technologies at time of delivery.

The new bus will be from the same manufacturer and similar in appearance (both interior and exterior) to Sonoma County Transit newest 30 foot buses placed into service in May 2017.

This project has been included in Sonoma County Transit's FY 2018-19 requested budget.

Prior Board Actions:

08-30-2016 – Board approved and authorized Chair to execute agreement with Creative Bus Sales Inc., for the purchase of Two-30 foot Heavy-Duty, Low-Floor, Natural Gas-powered transit coaches, not to exceed \$1,183,831.

04-14-2015 – Board approved and authorized Chair to execute agreement with Creative Bus Sales Inc., for the purchase of Four-30 foot Heavy-Duty, Natural Gas-Powered transit coaches, not to exceed \$2,222,049.

Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community

The purchase of new clean fuel transit coaches furthers the County's continuing efforts to improve public transit services, ADA accessibility and sustainability.

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses		\$651,268	
Additional Appropriation Requested			
Total Expenditures		\$651,268	
Funding Sources			
General Fund/WA GF			
State/Federal		\$651,268	
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources		\$651,268	
Narrative Explanation of Fiscal Impacts:			
Funding for the agreement is included in the FY 2018-19 recommended Transit Division Budget and is consistent with Sonoma County Transit's FY 2018-19 Metropolitan Transportation Commission annual claim. The requested amount of \$651,268 includes a 10% contingency for unanticipated costs.			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
Agreement			
Related Items "On File" with the Clerk of the Board:			
None			

**COUNTY OF SONOMA PURCHASE AGREEMENT FOR ONE (1)
THRITY-FOOT (30') LOW-FLOOR, COMPRESSED NATURAL GAS
(CNG) TRANSIT COACH (BP-17B)**

The following is an Agreement, dated as of _____, 2018, by and between the County of Sonoma, hereinafter referred to as "COUNTY," and Creative Bus Sales Inc., hereinafter referred to as "CONTRACTOR."

WHEREAS, Caltrans has provided \$439,388 in Federal Section 5311 funds to assist with the purchase of replacement transit coaches for Sonoma County Transit (grant funding agreement 64BC17-00531).

WHEREAS, CONTRACTOR has been approved by Caltrans to provide desired vehicles to Sonoma County Transit in accordance its MTBA/CalACT Cooperative Bid # 12-03.

WHEREAS, on November 6, 2017, CONTRACTOR provided a proposal to COUNTY, in accordance with MTBA/CalACT Cooperative Bid #12-03, that provides vehicle specifications, meets COUNTY requirements, and is consistent with past bus purchases from CONTRACTOR, particularly COUNTY Bus Purchase 17A executed on August 30, 2016.

WHEREAS, combined with the aforementioned Federal Section 5311 funds, Sonoma County Transit has received sufficient other capital funding to support the purchase of one (1) – 30' low-floor, natural gas powered, transit coach per CONTRACTOR'S November 6, 2017 proposal.

WHEREAS, CONTRACTOR and COUNTY, for the consideration hereinafter named, agree as follows:

AGREEMENT

1. **SCOPE OF WORK** - CONTRACTOR shall provide and deliver a bus vehicle and perform all work and furnish all the labor, materials, tools, equipment, services and incidentals, in full accordance with its proposal provided to COUNTY, dated November 6, 2017 and contained in attachment "A." CONTRACTOR shall also warrant the subject bus vehicle pursuant to CONTRACTOR's standard new vehicle warranty.
2. **TIME OF PERFORMANCE** - CONTRACTOR shall complete all of the work called for under this Agreement, as more particularly described in Section 1 above, on or before July 31, 2019. Liquidated damages shall begin, per Section 11, on August 1, 2019.
3. **CONTRACT PRICE** - CONTRACTOR shall faithfully perform the work required under this Agreement for the sum of Five-Hundred and Ninety-Two Thousand, Sixty-Two Dollars (\$592,062). Price paid for the bus to be provided under this Agreement shall be based on the following:
 - a. Heavy-Duty Low-Floor 30' CNG Transit Coach \$ 497,019

b. Documentation Fees	\$ 80
c. ADA Related Equipment Installed in Vehicle (included in Item a, above.)	\$ 46,411
d. 8.125% State Sales Tax (items a & b, above)	\$ 40,389
e. CalACT Procurement Fee	\$ 8,151
f. Tire Fees	\$ 12
 Total price for delivered vehicle (exclusive of any permitted adjustments)	 \$ 592,062
 <u>Total:</u>	 <u>\$ 592,062</u>

4. CONTRACTOR shall invoice COUNTY for the bus following delivery. Any additions or subtractions from this Agreement sum shall be made only on written authority of authorized representatives of CONTRACTOR and COUNTY. COUNTY's Transit Systems Manager is designated as the authorized representative of COUNTY.

5. COMPONENT PARTS OF AGREEMENT FOR PURCHASE OF ONE LOW-FLOOR TRANSIT COACH - This Agreement shall consist of the following documents, each of which is on file in the office of the COUNTY Transit Systems Manager, and which are incorporated into and made a part of the Agreement:

- a. This Agreement.
- b. CONTRACTOR's Proposal to Sonoma County Transit dated November 6, 2017
- c. ENC Pre-Shipper (Production Order) for BP-17A

Exhibits attached to the documents listed above are included. To the maximum extent reasonable, the Agreement documents shall be interpreted so that the provisions in each document are harmonized and reconciled with the provisions in all other contract documents. However, in the event that there is a conflict among the Agreement documents that cannot be reasonably reconciled, the Agreement shall be interpreted so that the provision(s) in the Agreement document first listed above supersedes the conflicting provision(s) in the later-listed Agreement document above.

5. SERVICE OF NOTICE - Any notice required or permitted to be given under this Agreement shall be deemed given when personally delivered to recipient thereof or mailed by registered or certified mail, return receipt requested, postage prepaid, to the appropriate recipient thereof, addressed as follows:

CONTRACTOR:

Creative Bus Sales
Attention: Tony Matijevich, President
13501 Benson Ave.
Chino, CA 91710

Phone: (800) 326-2877

COUNTY:

Sonoma County Transit
Attention: Bryan Albee, Transit Systems Manager
355 W. Robles Avenue
Santa Rosa, California 95407

Phone: (707) 585-7516

6. **GOVERNING LAW** - This Agreement shall be governed and construed in accordance with the laws of the state of California. The parties agree that the venue for any court proceeding relating in any way to this Agreement shall lie in Santa Rosa, California. CONTRACTOR and COUNTY acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. CONTRACTOR and COUNTY further acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
7. **STATUS OF CONTRACTOR** - The parties intend that CONTRACTOR, in performing the work hereinafter specified, shall act as an independent contractor and shall have control of the work and the manner in which it is performed. CONTRACTOR is not to be considered an agent or employee of COUNTY and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits COUNTY provides its employees.
8. **PERFORMANCE** - Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arises with respect to the performance of either party, the other may, in writing, demand adequate assurance of due performance; and until he receives such assurance may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.
9. **NONDISCRIMINATION** - CONTRACTOR shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race creed, color, sex, age, marital status, physical or mental disability, national origin, or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by this reference.
10. **MERGER**- This writing and other documents referenced as part of this Agreement herein are intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to California Code of Civil Procedure §1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties. Provided the total funding level does not exceed the contract price

plus a ten percent (10%) contingency, COUNTY Transit Systems Manager and CONTRACTOR may agree, in writing, to changes in or additions to the work plan.

11. REASONABLE LIQUIDATED DAMAGES - COUNTY and CONTRACTOR agree that the sum of Two Hundred Dollars (\$200.00) shall be deducted from the CONTRACTOR's compensation as liquidated damages for each and every calendar day delay in the delivery of the bus beyond the time of delivery specified in this Agreement. For example, if one bus is delivered three weeks beyond the specified time of delivery, liquidated damages to be deducted amounts to \$4,200.00 (21 days late x \$200/ bus x 1 bus = \$4,200.00) COUNTY and CONTRACTOR acknowledge and agree that the specified sum per day is a reasonable estimate of the damages that COUNTY will suffer in the event of such a delay. COUNTY and CONTRACTOR agree that COUNTY may deduct any liquidated damages due COUNTY from the amounts otherwise due CONTRACTOR.

13. INDEMNIFICATION - CONTRACTOR agrees to accept all responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release COUNTY, its officers, agents, and employees, from and against any and all actions, claims, damages, disabilities or expenses that may be asserted by any person or entity, including CONTRACTOR, arising out of or in connection with the performance of CONTRACTOR hereunder, whether or not there is concurrent negligence on the part of COUNTY, but excluding liability due to the sole active negligence or sole willful misconduct of COUNTY. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for CONTRACTOR or its agents under Workers' Compensation acts, disability benefits acts or other employee benefit acts.

14. Federal Certifications: CONTRACTOR agrees to execute the Federal Certifications contained in Attachment "B," as part of this agreement.

CONTRACTOR acknowledges that this purchase in part will be based on state and/or federal grant funding. CONTRACTOR shall comply with all state and federal grant requirements, including all applicable laws, regulations, rules, guidance, and orders. Such requirements may change based on changes in federal law, regulations or guidance, or in applicable grant funding requirements. All applicable provisions of FTA Circular 4220.1F (as may be amended) are hereby incorporated by reference and compliance with such shall be required. CONTRACTOR shall include all required federal provisions in its third party agreements as applicable to lower tier recipients.

15. No Suspension or Debarment. CONTRACTOR warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. CONTRACTOR also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If CONTRACTOR becomes debarred, CONTRACTOR has the obligation to inform the COUNTY.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the later date set forth below.

CREATIVE BUS SALES

COUNTY OF SONOMA

By: _____

By: _____

Chair, Board of Supervisors

Date: _____

ATTEST:

By: _____

Clerk of the Board

APPROVED AS TO FORM FOR COUNTY:

By: _____

County Counsel

Date: _____

REVIEWED AS TO SUBSTANCE:

By: _____

Director, Transportation & Public Works

Date: _____

By: _____

Transit Systems Manager

Date: _____

Attachment “A”

Proposal from Creative Bus Sales to
Sonoma County Transit – dated November 6, 2017



Creative Bus Sales

13501 Benson Avenue · Chino, CA 91710 800.326.2877



CalACT Cooperative Contract - #12-03

Vehicle Type:	Class H - (ElDorado National)		Line Item Number:		
Contact:	Bryan Albee		Type of Ramp:	<input type="checkbox"/> Braun <input type="checkbox"/> Ricon <input checked="" type="checkbox"/> Lift-U	
Agency:	Sonoma County Transit		Ramp Location:	<input type="checkbox"/> Front <input checked="" type="checkbox"/> Rear	
Address:	355 West Robles Avenue		Seat Material:	<input type="checkbox"/> Vinyl <input checked="" type="checkbox"/> Cloth	
City, State, Zip:	Santa Rosa, CA 95407		Seat Color:	Custom	
Phone:	(707) 585-7516		Engine Type:	CNG - NZE	
Fax:					
E-Mail:	bkalbee@sctransit.com				
Quantity:	CLIN	Description	Price	Ext. Price	ADA
1	1	Class H - LF 32 (Low Floor - ElDorado Easy Rider - 32')	\$401,166.60	\$401,166.60	\$29,000.00
Published Options					
1	1	Bike Rack - (3-Position) Trilogy w/Deploy Light	\$2,322.76	\$2,322.76	
1	1	Electronic Signs - Rear Route Sign (PACE Back End)	\$694.61	\$694.61	
1	1	Electronics - Multiplex Upgrade Over Std.	\$1,583.70	\$1,583.70	
1	1	Farebox - GFI Odyssey	\$14,291.00	\$14,291.00	
1	1	Farebox - Guardrail	\$527.90	\$527.90	
1	1	Farebox - Prewire, Stanchion, Light	\$580.69	\$580.69	
1	1	Farebox - GFI Trim Transfer	\$5,105.79	\$5,105.79	
1	1	HVAC - Brushless Motor	\$2,639.50	\$2,639.50	
1	1	HVAC - Drivers Dash AC/Heat/Defrost	\$3,130.45	\$3,130.45	
1	1	Lighting - LED Headlights	\$0.00	\$0.00	
1	1	SCT Paint Design	\$4,810.32	\$4,810.32	
1	1	Power Roof Escape/Vent Hatch	\$522.62	\$522.62	
1	1	Wheels - Aluminum	\$3,009.03	\$3,009.03	
500	1	Delivery Cost per Mile	\$3.01	\$1,505.00	
1		Extended Warranty - Engine Per IB 11.3, WR 1.1.7	\$7,033.12	\$7,033.12	

1	1	Cummins ISLG-NZ 280HP	\$14,879.00	\$14,879.00	
Non-Published Options					
1		Pretoria - Overhead Luggage Racks (Solid Base) w/Lighting	\$8,002.41	\$8,002.41	
1		LED Interior Passenger Lighting - (40% Night Run Light Output)	\$1,600.48	\$1,600.48	
1		Batteries - (4) Group 31	\$160.04	\$160.04	
2		Drivers Fan	\$133.37	\$266.74	
1		Front & Rear Shop Air Connections	\$213.39	\$213.39	
1		Transynd Transmission Fluid	\$133.37	\$133.37	
1		Morse Engine Rear Run Box Variable Speed	\$320.10	\$320.10	
1		Engine & Transmission Probalyzer Ports	\$80.02	\$80.02	
3		Aluminum Spare Wheel	\$800.24	\$2,400.72	
1		Rear Tow Hooks	\$373.45	\$373.45	
1		Anderson Jump Start Link In Engine Compartment	\$213.40	\$213.40	
1		Battery Cables 4/0 or 2/0 For 24v With Neopreme Jacket	\$160.05	\$160.05	
1		Floor Mounted Hazard Warning Switch	\$320.10	\$320.10	
1		Silent Alarm Switch	\$106.70	\$106.70	
1		Ramp - Lift U Master Power Switch at Driver's Seat	\$8,642.61	\$8,642.61	\$8,642.81
1		Heated Grid Glazing For Destination Sign	\$373.45	\$373.45	
1		Transign Front Run Sign	\$906.94	\$906.94	
1		Heel Switch For Dimmer	\$160.05	\$160.05	
1		Additional Ametek Guage In Dash	\$213.40	\$213.40	
1		Veeder Root Hubdometer RT 1000 Electronic	\$213.40	\$213.40	
1		Additional Side Mount Turn Signals	\$129.66	\$129.66	
1		Floor Mounted Directional Signals	\$533.49	\$533.49	
1		Additional Set Amber/Red Rear Dialight Lights	\$373.45	\$373.45	
1		Descrete Audible 87dba Turn Signal Warning	\$373.45	\$373.45	\$373.45
1		LED License Plate Light	\$37.34	\$37.34	
1		Rear High Mount Collision Avoidance Light	\$69.35	\$69.35	
1		Additional Front/Side Corner Turn Signals LED	\$144.04	\$144.04	
2		LED Interior Lights At Door Area	\$194.37	\$388.74	
5		Engine Compartment Lights	\$80.02	\$400.10	
1		Cleaner Switch	\$80.02	\$80.02	

1		LED Farebox Light	\$240.07	\$240.07	
1		Transign "Watch Your Step" Electronic Sign	\$560.16	\$560.16	\$560.16
1		Motorola 2500 XLT Two Way Radio Per Spec	\$2,133.98	\$2,133.98	
1		Noise Suppression	\$160.05	\$160.05	
1		REI PA System	\$560.16	\$560.16	
1		Inmotion Wireless Internet Public Wifi Spot	\$1,066.99	\$1,066.99	
1		Next Bus/Next Stop Intragrated Voice System	\$5,868.44	\$5,868.44	
1		REI Buswatch HD 800 Digital Video Security With 8 Cameras	\$5,121.55	\$5,121.55	
1		Next Bus APC	\$4,161.26	\$4,161.26	
1		Stainless Steel Wheelwells	\$1,600.48	\$1,600.48	
1		Composite Floor	\$533.49	\$533.49	
1		Stainless Steek Kick Panels & Wheelwell Facing	\$533.49	\$533.49	
1		Interior Sound Deadening Material	\$533.49	\$533.49	
2		Additional Stanchions	\$106.70	\$213.40	
4		Bentech Passenger Overhead Grabrails	\$213.40	\$853.60	
1		Dura Hidden Frame Windows	\$5,606.12	\$5,606.12	
3		Convex Mirrors 5" & 6"	\$37.34	\$112.02	
1		Vapor "Slide Glide" Ameriview Doors	\$1,600.48	\$1,600.48	
1		Vapor Contact Less Accoustic (CLASS) System	\$2,454.07	\$2,454.07	
1		Watch Your Step Decal (Rear Step Area)	\$26.67	\$26.67	
1		Decals - Bus Numbers & Interior/Exterior English/Spanish	\$1,066.99	\$1,066.99	
1		BRT Front End With Blended Pod	\$2,133.98	\$2,133.98	
1		Interior Ad Racks	\$240.07	\$240.07	
1		Schedule & Ad Rack	\$773.56	\$773.56	
1		PACE Style Ceiling Panel Joints	\$133.37	\$133.37	
1		Driver Coat Hook & Strap	\$37.34	\$37.34	
1		Carpet Rear Wall Like LADOT	\$266.75	\$266.75	
1		Driver's Storage Compartment	\$240.07	\$240.07	
1		Fabric Sidewalls to Bottoms of Windows	\$533.49	\$533.49	
1		Melamine Ceiling & Sidewalls To Bottom of Windows	\$800.24	\$800.24	
1		Stainless Steel Hatch Over Battery	\$160.05	\$160.05	
1		Flush Mount Licence Plate Brackets	\$0.00	\$0.00	

1		S1 Guard	\$2,347.37	\$2,347.37	
1		Yarder Read Ad Frame 21" x 70"	\$186.72	\$186.72	
1		Ansul 5# Dry Fire Extinguisher	\$80.02	\$80.02	
1		Xpect 24 Unit First Aid Kit	\$90.69	\$90.69	
1		Pathagen Kit	\$101.36	\$101.36	
1		Safety Equipment Box	\$373.45	\$373.45	
1		Signal Stat Triangle Kit	\$69.35	\$69.35	
2		Globe Model #303 Transfer Cutters	\$133.37	\$266.74	
1		American Seating Reliant/Secura 3-Point Tie-down System	\$7,034.66	\$7,034.66	\$7,034.66
1		Additional Touch Tape & Chime Buttons	\$800.24	\$800.24	\$800.24
1		USSC 9100 ALX With Seat Cushion and Belt Alarm	\$560.16	\$560.16	
			Class H - Base Price	\$401,166.60	
			Published Options	\$62,635.49	
			Non-Published Options	\$79,627.10	
			Total	\$543,429.19	\$46,411.32
			Doc Prep Fee	\$80.00	
			Non-Taxable	\$46,411.32	
			Taxable Amount	\$497,097.87	
			Santa Rosa* ▼ Tax Total	\$40,389.20	8.125%
			Sub-Total	\$583,898.39	
			CalACT Fee	\$8,151.44	
			DMV Fee	\$0.00	Exempt
			Tire Fee	\$12.25	
			Delivery	\$0.00	
			Total	\$592,062.08	
			Number of Units	1	
			Final Total	\$592,062.08	
Delivery Included up to 100 Miles					

Attachment “B”

Federal Certifications

EXHIBIT B, Certificate 1
CERTIFICATION OF ELIGIBILITY

The _____ (Name of Contractor) hereby certifies that it is not included on the United States Comptroller General's Consolidated List of Persons or firms Currently Debarred for Violations of Various Public Contracts Incorporating Labor Standard Provisions.

Signed

Title:

Date:

**EXHIBIT B, Certificate 2
CERTIFICATION OF NON-COLLUSION**

By submission of this proposal, each offerer and each person signing on behalf of any offerer certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

The contents of this proposal and of any subsequently submitted best and final offer have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any other matter relating to such proposal with any other offerer or with any competitor;

Unless otherwise required by law, the contents of this proposal and of any subsequently submitted best and final offer have not been knowingly disclosed by the offerer and will not knowingly be disclosed by the offerer prior to opening, directly or indirectly, to any other offerer or to any competitor; and,

No attempt has been made or will be made by the offerer to induce any other person, partnership or corporation to submit or not to submit a proposal or a best and final offer for the purposes of restricting competition.

Offerer	Date
----------------	-------------

Authorized Signature

Notary

Subscribed and sworn before me this _____ day of _____, 20XX _____.

_____ My commission expires _____, 20XX _____.

EXHIBIT B, Certificate 3

BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS FOR COACHES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT

Certificate of Compliance

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Date: _____

Signature: _____

Company Name: _____

Title: _____

Certificate of Non-Compliance

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7:

Date: _____

Signature: _____

Company Name: _____

Title: _____

EXHIBIT B, Certificate 4

CARGO PREFERENCE-USE OF UNITED STATES FLAG VESSELS

Pursuant to 46 U.S.C 1241 46 CFR Part 381, the contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

Date: _____

Signature: _____

Company Name: _____

Title: _____

EXHIBIT B, Certificate 5
FLY AMERICA REQUIREMENTS

Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with The General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

Signature

Print Name

Title

Dated

Attest

EXHIBIT B, Certificate 6
TRANSIT VEHICLE MANUFACTURER
DISADVANTAGED BUSINESS ENTERPRISES CERTIFICATE

Transit Vehicle Manufacturer (TVM) Disadvantaged Business Enterprise Pursuant to the provisions of Section 105(f) of the Surface Transportation Assistance Act of 1982, each bidder for this contract must certify that it has complied with the requirements of 49 CFR Part 26.49, regarding the participation of disadvantaged business enterprises in FTA-assisted procurements of transit vehicles. Absent this certification, properly completed and signed, a bid shall be deemed non-responsive.

Certification: I hereby certify, for the bidder named below, that it has complied with the provisions of 49 CFR Part 26.49 and that I am duly authorized by said bidder to make this certification.

Signed: _____

Title: _____

Company: _____

Date: _____

EXHIBIT B, Certificate 7
COACH MANUFACTURER'S CERTIFICATION

THE _____

Hereby certifies that the coach offered in this bid has been designed, manufactured, assembled and tested for transit purposes and is suitable for extended service in heavy, stop-and-go traffic.

Name

Date

Title

Company

EXHIBIT B, Certificate 8

CERTIFICATION OF COMPLIANCE WITH FTA'S COACH TESTING REQUIREMENTS

[Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date: _____

Signature: _____

Company Name: _____

Title: _____

EXHIBIT B, Certificate 9

DEBARMENT CERTIFICATION

CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

The Primary Participant (applicant for an FTA grant or cooperative agreement, or potential contractor for a major third party contract), _____ certified to the best of its knowledge and belief, that it and its principals:

Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and

Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(If the primary participant (applicant for an FTA grant, or cooperative agreement, or potential third party contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.)

The Primary Participant (Applicant for an FTA Grant or Cooperative Agreement, or Potential Contractor for a Major Third Party Contract), _____, Certifies or Affirms the Truthfulness and Accuracy of the Statements Submitted on or with this Certification and Understands that the Provisions of 31 U.S.C. Sections 3801 ET. SEQ. are Applicable Thereto.

Signature of Authorized Official

Title of Authorized Official

The undersigned chief legal counsel for the _____ hereby certifies that the _____ has authority under State and local law to comply with the subject assurances and that the certification above has been legally made.

Signature of Authorized Official

Title of Authorized Official

Signature of Applicant's Attorney

Date

EXHIBIT B, Certificate 10

DEBARMENT CERTIFICATION

CERTIFICATION OF LOWER-TIER PARTICIPANTS REGARDING DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION

The Lower Tier Participant (potential sub-grantee or sub-recipient under an FTA project, potential third party contractor, or potential subcontractor under a major third party contract), _____, certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(If the Lower Tier Participant (potential sub-grantee or sub-recipient under an FTA project, potential third party contractor, or potential subcontractor under a major third party contract) is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this proposal).

The lower-tier participant (potential sub-grantee or sub-recipient under an FTA project, potential third party contractor, or potential subcontractor under a major third party contract) _____, certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Sections 3801 et. Seq. Are applicable thereto.

Signature of Authorized Official

Title of Authorized Official

The undersigned chief legal counsel for the _____ hereby certifies that the _____ has the authority under State and local law to comply with the subject assurances and that the certification above has been legally made.

Signature of Authorized Official

Title of Authorized Official

Signature of Applicant's Attorney

Date

EXHIBIT B, Certificate 11

49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

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.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to 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 [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et. seq.*)]

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, loans, 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 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or 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. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

EXHIBIT B, Certificate 12
DRUG-FREE WORKPLACE CERTIFICATION

COMPANY/ORGANIZATION NAME

The contractor or grant recipient named above hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The above named contractor or grant recipient will:

Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).

Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b), to inform employees about all the following:

- The dangers of drugs in the workplace,
- The person's or organization's policy of maintaining a drug-free workplace,
- Any available counseling, rehabilitation and employee assistance programs, and Penalties that may be imposed upon employees for drug violations.
- Provide as required by Government Code Section 8355(c), that every employee who works on the proposed contract or grant:
- Will receive a copy of the company's drug-free policy statement and
- Will agree to abide by the terms of the company's statement as a condition of employment on the contract or grant.

CERTIFICATION

I, the official named below, hereby swear that I am duly authorized legally to bind the contractor or grant recipient to the above described certification. I am fully aware that this certification, executed on the date and in the City below, is made under penalty of perjury under the laws of the State of California.

OFFICIAL'S NAME

DATE EXECUTED AND EXECUTED IN THE CITY OF

CONTRACT OR GRANT RECIPIENT SIGNATURE

TITLE

FEDERAL I.D. NUMBER

EXHIBIT B, Certificate 13
FAIR EMPLOYMENT PRACTICES CERTIFICATE

The undersigned, in submitting a bid for performing the following work by contract, hereby certifies that the bidder will meet the above standards of affirmative compliance with the Fair Employment Practices Act.

(Type) PRODUCTS AND SERVICES

(Type) BIDDING COMPANY

By SIGNATURE

(Type) NAME OF SIGNER

(Type) TITLE

Address NUMBER AND STREET

CITY/STATE/ZIP CODE

TELEPHONE

EXHIBIT B, Certificate 14
CIVIL RIGHTS REQUIREMENTS

The following requirements apply to the underlying contract:

- (1) **Nondiscrimination** – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132, and Federal Transit Law at 49 U.S.C. 5332, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor Inc. agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- (2) **Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:
 - (a) **Race, Color, Creed, National Origin, Sex** – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity;: 42 U.S.C. 2000e note), and which any applicable Federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the Project. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
 - (b) **Age** – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 62§3 and Federal transit law at 49 U.S.C. 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
 - (c) **Disabilities** – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

EXHIBIT B, Certificate 14, CIVIL RIGHTS REQUIREMENTS (Continued)

Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Signature

Title

Company/Organization

Date

Attest

EXHIBIT B, Certificate 15

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provision contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any County of Sonoma (COUNTY) requests which would cause the COUNTY to be in violation of the FTA terms and conditions.

Signature

Print Name

Title

Dated

Attest

**EXHIBIT B, Certificate 16
LOCATION OF PARTS AND TECHNICAL SERVICES**

Location of nearest Technical Service Representative to the COUNTY.

Name:

Address:

City/State/Zip:

Telephone:

Location of nearest Engine and Transmission Warranty Service facility to the COUNTY.

Name:

Address:

City/State/Zip:

Telephone:

Location of nearest Parts Distribution Center to the COUNTY.

Name:

Address:

City/State/Zip:

Telephone:

Delivery of Parts and Components to be purchased for Service and Maintenance.

Regular Method of Shipment: _____



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 33
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Transportation and Public Works

Staff Name and Phone Number:

Johannes J. Hoevertsz 707-565-2231

Supervisorial District(s):

Countywide

Title: Sonoma County Transit – Purchase of Three Forty-Foot Replacement Transit Coaches (BP-16C)

Recommended Actions:

Approve and authorize Chair to execute agreement with Creative Bus Sales for the purchase of three forty-foot low-floor, natural gas powered, heavy-duty transit coaches for Sonoma County Transit, not to exceed \$2,007,473.

Executive Summary:

This request seeks approval for the purchase of three option buses as provided for in the 2013 agreement between the County and Creative Bus Sales, not to exceed \$2,007,473. This replacement vehicle purchase will provide for a more comfortable riding experience for passengers, reduce operational maintenance costs and improve service reliability.

Discussion:

On June 4, 2013, the Board awarded a contract to Creative Bus Sales (CBS), for the purchase of nine 40-foot, natural gas powered, El Dorado National Axes buses to replace nine Sonoma County Transit buses that had met their federal retirement thresholds. The award followed a competitive procurement process that involved one other proposer. The nine-bus purchase also provided Sonoma County Transit the ability to purchase up to twenty-one option buses within a five-year period.

On March 10, 2015, the Board approved the purchase of three option buses that were placed into service in January 2016. On August 30, 2016, the Board approved the purchase of two option buses that were placed into service in May 2017.

This request seeks approval for the purchase of three option buses as provided for in the 2013 agreement between the County and Creative Bus Sales. The requested buses will replace similar buses purchased in 2005 that are eligible for replacement per Federal Transit Administration guidelines. This will be the final purchase under the 2013 agreement.

Per the June 2013 contract with Creative Bus Sales, pricing for vehicles purchased after the initial order are to be adjusted per the Producers Price Index (PPI). The PPI is recognized by the Federal Transit Administration as an allowable metric in which to adjust option prices for equipment procurements that occur over time. Adjusted for the PPI, the price for the buses associated with this action will be \$608,325 each, including sales tax, delivery and fees.

As with prior bus purchases, the proposed agreement includes a contingency (10%) to allow for regulatory changes and implementation of features, unforeseen at this time, to ensure up-to-date technologies at the time vehicles are delivered. The Agreement calls for delivery of the buses by no later than July 31, 2019.

This project has been included in Sonoma County Transit's FY 2018-19 requested budget.

Prior Board Actions:

08-30-2016 – Board approved and authorized Chair to execute agreement with Creative Bus Sales Inc., for the purchase of two 40-foot low-floor, natural gas powered, heavy-duty transit coaches for Sonoma County Transit, not to exceed \$1,266,135.

03-10-2015 – Board approved and authorized Chair to execute agreement with Creative Bus Sales Inc., for the purchase of three 40-foot low-floor, natural gas powered, heavy-duty transit coaches for Sonoma County Transit, not to exceed \$1,786,280.

Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community

The purchase of new clean fuel transit coaches furthers the County's continuing efforts to improve public transit services, ADA accessibility and sustainability.

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses		\$2,007,473	
Additional Appropriation Requested			
Total Expenditures		\$2,007,473	
Funding Sources			
General Fund/WA GF			
State/Federal		\$2,007,473	
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources		\$2,007,473	
Narrative Explanation of Fiscal Impacts:			
Funding for the agreement is included in the FY 2018-19 recommended Transit Division Budget and is consistent with Sonoma County Transit's FY 2018-19 Metropolitan Transportation Commission annual claim. The requested amount of \$2,007,473 includes a 10% contingency for unanticipated costs.			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
Agreement			
Related Items "On File" with the Clerk of the Board:			

**COUNTY OF SONOMA PURCHASE AGREEMENT FOR THREE (3) – 40’
LOW-FLOOR, COMPRESSED NATURAL GAS (CNG) TRANSIT
COACHES – (BP-16C)**

The following is an Agreement, dated as of _____, 2018, by and between the County of Sonoma, hereinafter referred to as “COUNTY,” and Creative Bus Sales, Inc., hereinafter referred to as “CONTRACTOR.”

WHEREAS, COUNTY and CONTRACTOR entered into an agreement for the purchase of nine (9) - 40’ natural gas-powered, low-floor transit coaches on June 4, 2013, commonly referred to as County Bus Purchase 16 or “BP-16” (hereinafter referred to as “BP-16”).

WHEREAS, Contractor’s proposal associated with BP-16, dated December 17, 2012, provided provides COUNTY the ability to acquire up to twenty-one additional 40’ natural gas-powered transit coaches, on an option basis, up to five years after June 4, 2013 (the date of the initial purchase award).

WHEREAS, between 2014 and 2016, COUNTY purchased a total of five (5) option buses pursuant to BP-16, referred to as BP-16A, and BP-16B.

WHEREAS, COUNTY desires to purchase three (3) more buses pursuant to the purchase option remaining under BP-16.

WHEREAS, CONTRACTOR and COUNTY, for the consideration hereinafter named, agree as follows:

AGREEMENT

1. SCOPE OF WORK - CONTRACTOR shall provide and deliver three (3) - 40’ Low-Floor Compressed Natural Gas (CNG) powered transit coaches in accordance with specifications stated in BP-16 and COUNTY’s most recent order BP-16B. .
2. TIME OF PERFORMANCE - CONTRACTOR shall complete all of the work called for under this Agreement, as more particularly described in Section 1 above, no later than July 31, 2019. Liquidated damages shall begin, per Section 11, on August 1, 2019.
3. CONTRACT PRICE - CONTRACTOR shall faithfully perform the work required under this Agreement for the sum of One Million, Eight-Hundred and Twenty-Four Thousand, Nine-Hundred and Seventy-Five Dollars (\$1,824,975).

Price paid for each bus provided under this Agreement shall be as follows:

a.	Heavy-Duty Low-Floor 40' CNG Transit Coach	\$ 529,054
b.	Documentation Fees	\$ 80
c.	ADA Related Equipment Installed in Vehicle	\$ 35,684
d.	8.125% State Sales Tax (items a & b, above)	\$ 43,495
e.	Tire Fees	\$ 12
	Total price for each delivered base vehicle (exclusive of any permitted adjustments)	\$ 608,325
	<u>Total for three (3) buses:</u>	<u>\$ 1,824,975</u>

4. CONTRACTOR shall invoice COUNTY for each bus separately following delivery. Any additions or subtractions from this Agreement sum shall be made only on written authority of authorized representatives of CONTRACTOR and COUNTY. COUNTY's Transit Systems Manager is designated as the authorized representative of COUNTY.
5. COMPONENT PARTS OF AGREEMENT FOR PURCHASE OF THREE LOW-FLOOR TRANSIT COACHES - This Agreement shall consist of the following documents, each of which is on file in the office of the COUNTY Transit Systems Manager, and which are incorporated into and made a part of the Agreement:
 - a. This Agreement.
 - b. CONTRACTOR'S Warranty clarification dated April 10, 2013.
 - c. CONTRACTOR's Best and Final Offer clarification dated March 26, 2013.
 - d. COUNTY's Best and Final Offer dated March 5, 2013.
 - e. CONTRACTOR's Technical Proposal submitted in response to the October 24, 2012, RFP.
 - f. COUNTY's RFP released October 24, 2012.
 - g. ENC Pre-Shipper (Production Order) for BP-16B

Exhibits attached to the documents listed above are included. To the maximum extent reasonable, the Agreement documents shall be interpreted so that the provisions in each document are harmonized and reconciled with the provisions in all other Agreement documents. However, in the event that there is a conflict among the Agreement documents that cannot be reasonably reconciled, the Agreement shall be interpreted so that the provision(s) in the Agreement document first listed above supersedes the conflicting provision(s) in the later-listed Agreement document above.

6. SERVICE OF NOTICE - Any notice required or permitted to be given under this Agreement shall be deemed given when personally delivered to recipient thereof or mailed by registered or certified mail, return receipt requested, postage prepaid, to the appropriate recipient thereof, addressed as follows:

CONTRACTOR:

Creative Bus Sales
Attention: Tony Matijevich, President
13501 Benson Ave.
Chino, CA 91710

Phone: (800) 326-2877

COUNTY:

Sonoma County Transit
Attention: Bryan Albee, Transit Systems Manager
355 W. Robles Avenue
Santa Rosa, California 95407

Phone: (707) 585-7516

Fax: (707) 585-2927

7. **GOVERNING LAW** - This Agreement shall be governed and construed in accordance with the laws of the state of California. The parties agree that the venue for any court proceeding relating in any way to this Agreement shall lie in Santa Rosa, California. CONTRACTOR and COUNTY acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. CONTRACTOR and COUNTY further acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
8. **STATUS OF CONTRACTOR** - The parties intend that CONTRACTOR, in performing the work hereinafter specified, shall act as an independent contractor and shall have control of the work and the manner in which it is performed. CONTRACTOR is not to be considered an agent or employee of COUNTY and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits COUNTY provides its employees.
9. **PERFORMANCE** - Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arises with respect to the performance of either party, the other may, in writing, demand adequate assurance of due performance; and until he receives such assurance may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.
10. **NONDISCRIMINATION** - CONTRACTOR shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race creed, color, sex, age, marital status, physical or mental disability, national origin, or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by this reference.
11. **MERGER**- This writing and other documents referenced as part of this Agreement herein

are intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to California Code of Civil Procedure §1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties. Provided the total funding level does not exceed the contract price plus a ten percent (10%) contingency, COUNTY Transit Systems Manager and CONTRACTOR may agree, in writing, to changes in or additions to the work plan.

12. REASONABLE LIQUIDATED DAMAGES - COUNTY and CONTRACTOR agree that the sum of Two Hundred Dollars (\$200.00) per bus shall be deducted from the CONTRACTOR's compensation as liquidated damages for each and every calendar day delay in the delivery of the bus beyond the time of delivery specified in this Agreement. For example, if a bus is delivered three weeks beyond the specified time of delivery, liquidated damages to be deducted amounts to \$4,200.00 (21 days late x \$200/bus x 1 bus = \$4,200.00). COUNTY and CONTRACTOR acknowledge and agree that the sum per day is a reasonable estimate of the damages that COUNTY will suffer in the event of such a delay. COUNTY and CONTRACTOR agree that COUNTY may deduct any liquidated damages due COUNTY from the amounts otherwise due CONTRACTOR.
13. INDEMNIFICATION - CONTRACTOR agrees to accept all responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release COUNTY, its officers, agents, and employees, from and against any and all actions, claims, damages, disabilities or expenses that may be asserted by any person or entity, including CONTRACTOR, arising out of or in connection with the performance of CONTRACTOR hereunder, whether or not there is concurrent negligence on the part of COUNTY, but excluding liability due to the sole active negligence or sole willful misconduct of COUNTY. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for CONTRACTOR or its agents under Workers' Compensation acts, disability benefits acts or other employee benefit acts.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the later date set forth below.

CREATIVE BUS SALES

COUNTY OF SONOMA

By: _____

By: _____
Chair, Board of Supervisors

Date: _____

ATTEST:

By: _____
Clerk of the Board

APPROVED AS TO FORM FOR COUNTY:

By: _____
County Counsel

Date: _____

REVIEWED AS TO SUBSTANCE:

By: _____
Director, Transportation & Public Works

Date: _____

By: _____
Transit Systems Manager

Date: _____



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 34
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Transportation and Public Works

Staff Name and Phone Number:

Johannes J. Hoevertsz (707) 565-2231

Supervisorial District(s):

All

Title: On-Call Agreements for Cultural Resources Services

Recommended Actions:

1. Authorize the Chair to execute On-Call Agreements with four (4) Cultural Resources Services consultants for a not-to-exceed amount of \$750,000 each and a combined not-to-exceed amount of \$3,000,000, with terms ending in April 2021;
2. Delegate to the Director the authority to execute on behalf of the County, individual Task Order(s) under the Agreement for any amount up to the not-to-exceed amounts for each Agreement; and
3. Delegate to the Director the authority to develop, amend and execute on behalf of the County, any documents necessary to administer the Agreement, including a form of Task Order; provided that such documents and any amendments thereto are in a form approved by County Counsel.

Executive Summary:

The Department of Transportation and Public Works (Department) is requesting the Board authorize the Chair to sign four (4) agreements with On-Call Cultural Resource Services Consultants to create a short list from which the Department can solicit and issue task orders for individual projects. The four consultants the Department recommends executing agreements with are (1) AECOM Technical Services, Inc.; (2) Alta Archeological Consulting, Inc., (3) LSA Associates, Inc., and (4) Mead & Hunt, Inc.

Consultants engaged through this shortlist will primarily work on bridge replacement projects. During the environmental study and permitting processes, the area of land affected by placement of the new bridge must be studied for sites of archeological or historical architectural significance. The Department works closely with the Permit Sonoma Environmental Section during this process and identifies sites that may need further studies.

Neither the Department nor Permit Sonoma have the necessary in-house expertise and certification to perform studies on identified sites and will solicit from and issue Task Orders to this shortlist of four Consultants when Caltrans Environmental or the State Historic Preservation Office mandate additional study as a condition of approval to proceed with an infrastructure project.

The Department currently has 14 bridges that are being designed and will be constructed by 2025. Even though these agreements have terms ending in April 2021, the Department anticipates this On-Call shortlist will provide capacity to respond to any cultural studies that may arise during this time.

Discussion:

When the Department hires a design consultant to produce plans, specifications, and estimates for a bridge replacement or major infrastructure improvement project, part of the scope of work is focused on the necessary environmental studies. As part of this scope, sites that have a known potential for archeological or historical architectural significance are identified and the consultant is required to perform the necessary studies.

In some cases, it is not possible to identify sites prior to the start of design work or the significance or scale of a site may not be possible to identify prior to beginning its investigation and regulatory agencies may mandate significantly more in-depth studies. In these cases the additional work falls outside the agreed scope of work for the design consultant already engaged by the Department.

While it is possible to amend an agreement with an existing design consultant to increase the scope of work, the Department also recognizes a benefit to having the flexibility to engage a separate consultant to complete the cultural resources work. There are two advantages to having a shortlist of Cultural Resource Services firms available to perform this work:

1. The majority of environmental studies and processes are overseen by Permit Sonoma's Environmental Section. In these instances they will act as the project managers, giving greater oversight and control of the work and reports produced by these consultants.
2. By using a shortlist, the Department is able to select consultants to work on specific projects based on proposal quality and cost. When amending an existing contract to increase a Design Consultant's Scope of Work, there is less flexibility and opportunity to negotiate cost.

While most of the work performed will be eligible for funding under the Federal Highway Bridge Program, there is also a local match required in some instances.

An example of where the cultural resources consultant on-call agreements could be used is the Frazier Creek Bridge Replacement Project. With the Frazier Creek project an extensive archeological site was identified after a design consultant had begun work. Additionally, the extent and importance of the site means that Caltrans has requested a more in-depth study prior to the acceptance of any new bridge design.

The Request for Qualifications was originally released by Permit Sonoma in May 2017 with 8 consultants responding. (See List of Proposals in Attachment 1). Consultant proposals were evaluated for qualifications and similar experience. Interviews were also conducted with all accepted proposers and a panel of three reviewers from the Department and Permit Sonoma, selected the four consultants the Department recommends executing agreements with (1) AECOM Technical Services, Inc.; (2) Alta Archeological Consulting, Inc., (3) LSA Associates, Inc., and (4) Mead & Hunt, Inc.

In September the Department agreed to accept responsibility for administering these contracts based on the Department's expertise in Caltrans compliant contracts. Completion of this procurement was further delayed by the October Wildfires and the process of obtaining approval of the contract from Caltrans Audit and Investigations.

Once the agreements are executed, the Department will solicit the four consultants on individual projects by issuing project specific Task Orders to the shortlisted firms. Responses to these Task Orders will be evaluated on a quality and cost basis and work will be awarded accordingly. The impact of not executing these agreements would cause a delay to delivering bridge replacement projects and potential cost increases that may not be covered by federal funds.

The Department recommends the Board authorize the Chair to execute these four (4) On-Call contracts.

Prior Board Actions:

None

Strategic Plan Alignment Goal 3: Invest in the Future

This On-Call list invests in the future by assisting the Department in delivering major infrastructure improvements.

Fiscal Summary

Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses		250,000	250,000
Additional Appropriation Requested			
Total Expenditures		250,000	250,000

Funding Sources

General Fund/WA GF			
State/Federal		250,000	250,000
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources		250,000	250,000

Narrative Explanation of Fiscal Impacts:

Annual costs for Cultural Resource Services is uncertain but there will be sufficient appropriations included in the requested FY 2018-19 Capital Improvement Operating Budget. Funding for these services will come from federal Highway Bridge Program grants or, if a local match is required, the State of California’s Senate Bill 1 funding or gas tax.

Staffing Impacts

Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)

Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
List of Proposers AECOM Technical Services Inc. Agreement Alta Archeological Consulting LLC Agreement LSA Associates Inc. Agreement Mead & Hunt Inc. Agreement			
Related Items "On File" with the Clerk of the Board:			

ATTACHMENT 1

Alphabetical List of Consultant Proposals (Shortlisted firms underlined)

1. **AECOM Technical Services Inc.**
2. **Alta Archeological Consulting Inc.**
3. Dudek Inc.
4. Anthropological Studies Center, Sonoma State University
5. **LSA Associates Inc.**
6. **Mead & Hunt Inc.**
7. Tom Origer & Associates
8. Pacific Legacy Inc.

Standard Professional Services Agreement (“PSA”)
On-Call Cultural Resources Consulting Services

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and AECOM Technical Services Inc. (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the County’s Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Cultural Resources Consulting Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in the Request for Qualifications and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in , the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County. With respect to performance under this Agreement, Consultant shall employ the following key personnel: Project Manager.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED]

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

The total amount payable by County for all Task Orders resulting from this Agreement shall not exceed \$750,000.00. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.

2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This contract shall go into effect on (_____) contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The contract shall end on (_____), unless extended by contract amendment.

3.2 Contract Execution.

Consultant is advised that any recommendation for contract award is not binding on County until the contract is fully executed and approved by County.

3.3 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the

terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1. Notice Period.

County reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice.

4.2 Grounds for Termination.

County may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If County terminates this Agreement with Consultant, County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

4.3 Liability.

The maximum amount for which the Government shall be liable if this Agreement is terminated is 975,000 dollars.

4.4 Authority to Terminate.

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Department Head, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept all responsibility for loss or damage to any person or entity, including County, and to indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against County based upon a claim relating to such Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant's obligations under this Section apply whether or not there is concurrent or contributory negligence on County's part, but to the extent required by law, excluding liability due to County's conduct. County shall have the right to select its legal counsel at Consultant's expense, subject to Consultant's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment

B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment.

Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under

the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, “OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)”, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

9.4 [RESERVED].

9.5 Records Maintenance.

In addition to other record retention and audit requirements set forth elsewhere in this Agreement, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

- 9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.
- 9.6.2 Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.
- 9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- 9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting

from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal contract requirements set forth in Article 13 herein.

9.8 Living Wage Ordinance.

9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinances local preference requirements shall be used to select or otherwise apply to Consultant.

9.9 Nondiscrimination.

Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 Statement of Compliance.

9.10.1 Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

9.10.2 During the performance of this Contract, Consultant and its subconsultants 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, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and

applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (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 Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

- 9.10.3 The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- 9.10.4 The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents (“documents”), in whatever form or format, assembled or prepared by Consultant or Consultant’s subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County’s right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231

On-Call Cultural
Resources Services

david.cameron@sonoma-county.org

To Consultant:

AECOM Technical Services Inc.
Attn: Jeff Zimmerman
300 Lakeside Drive, Suite 400,
Oakland, CA 94612
(510) 874-3005
jeff.zimmerman@aecom.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Federal Requirements.

13.1 Contract Assurance.

The consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted agreements. Failure by the consultant to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

13.2 Prompt Progress Payments to Subcontractors.

Attention is directed to Section 7108.5 of the California Business and Professions Code, which requires a prime contractor or subcontractor to pay any subcontractor not later than ten (10) days of receipt of each progress payment, unless otherwise agreed to in writing. In addition, federal regulations (Title 49 Code of Federal Regulations Part 26.29) require a prime contractor or subcontractor to pay a subcontractor no later than thirty (30) days of receipt of each payment, unless any delay or postponement of payment among the parties takes place only for good cause and with the prior written approval of County. Section 7108.5 of the California Business and Professions Code also contains enforcement actions and penalties. The requirements apply to both Disadvantaged Business Entities ("DBE") and non-DBE subcontractors. Consultant shall include the foregoing progress payment requirements in every subcontract entered into by Consultant in the performance of its obligations under this Agreement

13.3 Prompt Payment of Withheld Funds to Subcontractors.

No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

13.4 Disadvantaged Business Enterprise (DBE) Participation.

- 13.4.1 This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- 13.4.2 A DBE participation goal will be established for each Task Order. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- 13.4.3 DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as County deems appropriate.
- 13.4.4 Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- 13.4.5 A DBE firm may be terminated only with prior written approval from County and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting County consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).
- 13.4.6 A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used

on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the, contract is commensurate with the work it is actually performing, and other relevant factors.

- 13.4.7 A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- 13.4.8 If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- 13.4.9 Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- 13.4.10 Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by Consultant or Consultant's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- 13.4.11 If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to County's Contract Administrator within 30 days.

13.5 Prevailing Wage.

- 13.5.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.

13.5.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

13.5.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

13.6 Text Messaging While Driving.

In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, and Department of Transportation Order 3902.10, Text Messaging While Driving, text messaging while driving is prohibited in the performance of any duties included in this agreement for both consultant and any sub-consultants hired for performance of duties under this Agreement. Consultant shall include a provision prohibiting texting while driving in all sub-consultant agreements entered into related to the performance of its obligations under this Agreement.

Definitions. The following definitions are to be used in conjunction with this section. "Driving":

- 1) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- 2) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

"Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

13.7 Buy America.

Furnish Steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:

- 1) Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478(3/24/1995)];
- 2) If the total combine cost of the materials does not exceed the great of 0.1 percent of the total bid or \$2,500, materials produced outside the U. S. may be used.

Production includes:

- 1) Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending, grinding, and drilling) or chemical composition;
- 2) Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

13.8 Prohibition of Expending Local Agency, State or Federal funds for Lobbying.

13.8.1 Consultant certifies to the best of his or her knowledge and belief that:

- 1) No state, federal or County appropriated funds have been paid, or will be paid by- or-on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or 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 federal 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; Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

13.8.2 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.

13.8.3 Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

13.9 Cost Principles and Administrative Requirements.

13.9.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, shall be used to determine the cost allowability of individual items.

13.9.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

- 13.9.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, are subject to repayment by Consultant to County.

13.10 Retention of Records/Audit.

For the purpose of determining compliance with Public Contract Code 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, Section 2500 *et seq.*, when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; Consultant, subconsultants, and County shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, County, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

13.11 Audit Review Procedures.

- 13.11.1 Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by County's Chief Financial Officer.
- 13.11.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by County's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- 13.11.3 Neither the pendency of a dispute nor its consideration by County will excuse Consultant from full and timely performance, in accordance with the terms of this contract.
- 13.11.4 Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by County contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by County at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance

of prior reimbursed costs.

13.12 Subcontracting.

- 13.12.1 Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.
- 13.12.2 Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by County's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- 13.12.3 Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by County.
- 13.12.4 All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- 13.12.5 Any substitution of subconsultant(s) must be approved in writing by County's Contract Administrator prior to the start of work by the subconsultant(s).

13.13 Equipment Purchase.

- 13.13.1 Prior authorization in writing, by County's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- 13.13.2 For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by County's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- 13.13.3 Any equipment purchased as a result of this contract is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, Consultant may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Consultant, if it is determined to sell

the equipment, the terms and conditions of such sale must be approved in advance by County.” 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

14. Miscellaneous Provisions.

14.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

14.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

14.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

14.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

14.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

14.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

14.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed

by both parties.

14.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

14.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

14.10 Rebates, Kickback or Other Unlawful Consideration.

Consultant warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

14.11 Funding Requirements.

14.11.1 It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

14.11.2 This contract is valid and enforceable only, if sufficient funds are made available to County for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or County Board of Supervisors that may affect the provisions, terms, or funding of this contract in any manner.

14.11.3 It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

14.11.4 County has the option to void the contract under the 30-day termination clause pursuant to Article 4, or by mutual agreement to amend the contract to reflect any reduction of funds.

14.12 Evaluation of Consultant.

Consultant's performance will be evaluated by County. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

14.13 Claims Filed by County's Construction Contractor.

14.13.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and

at trial or arbitration proceedings.

- 14.13.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.
- 14.13.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.
- 14.13.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14.14 National Labor Relations Board Certification.

In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

14.15 Retention of Funds.

- 14.15.1 Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- 14.15.2 No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the County's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

14.16 Contingent Fee.

Consultant warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, County has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such

commission, percentage, brokerage, or contingent fee.

14.17 Inspection of Work.

Consultant and any subconsultant shall permit County, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

14.18 Safety.

14.18.1 Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County Safety Officer and other County representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

14.18.2 Pursuant to the authority contained in Section 591 of the Vehicle Code, County has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles

14.18.3 Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

15. Attachments & Exhibits.

The following Attachments appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

15.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

15.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Article 13, Article 14.10-14.18 and/or Attachment C, the Federal Requirements set forth in Article 13, 14.10-14.18 and/or Attachment C shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SIGNATURES FOLLOW ON NEXT PAGE -

- THIS SPACE LEFT INTENTIONALLY BLANK -

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Standard Professional Services Agreement (“PSA”)
On-Call Cultural Resources Consulting Services

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and Alta Archeological Consulting LLC (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the County’s Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Cultural Resources Consulting Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in the Request for Qualifications and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in , the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County. With respect to performance under this Agreement, Consultant shall employ the following key personnel: Project Manager.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED]

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

The total amount payable by County for all Task Orders resulting from this Agreement shall not exceed \$750,000.00. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.

2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This contract shall go into effect on (_____) contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The contract shall end on (_____), unless extended by contract amendment.

3.2 Contract Execution.

Consultant is advised that any recommendation for contract award is not binding on County until the contract is fully executed and approved by County.

3.3 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the

terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1. Notice Period.

County reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice.

4.2 Grounds for Termination.

County may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If County terminates this Agreement with Consultant, County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

4.3 Liability.

The maximum amount for which the Government shall be liable if this Agreement is terminated is 975,000 dollars.

4.4 Authority to Terminate.

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Department Head, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept all responsibility for loss or damage to any person or entity, including County, and to indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against County based upon a claim relating to such Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant's obligations under this Section apply whether or not there is concurrent or contributory negligence on County's part, but to the extent required by law, excluding liability due to County's conduct. County shall have the right to select its legal counsel at Consultant's expense, subject to Consultant's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment

B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment.

Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under

the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, “OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)”, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

9.4 [RESERVED].

9.5 Records Maintenance.

In addition to other record retention and audit requirements set forth elsewhere in this Agreement, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

- 9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.
- 9.6.2 Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.
- 9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- 9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting

from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal contract requirements set forth in Article 13 herein.

9.8 Living Wage Ordinance.

9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinances local preference requirements shall be used to select or otherwise apply to Consultant.

9.9 Nondiscrimination.

Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 Statement of Compliance.

9.10.1 Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

9.10.2 During the performance of this Contract, Consultant and its subconsultants 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, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and

applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (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 Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

- 9.10.3 The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- 9.10.4 The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents (“documents”), in whatever form or format, assembled or prepared by Consultant or Consultant’s subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County’s right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231

On-Call Cultural
Resources Services

david.cameron@sonoma-county.org

To Consultant:

Alta Archeological Consulting LLC
Attn: Risa DeGeorgey
15 Third Street,
Santa Rosa, CA 95401
(707) 544-4206
risa@altaac.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Federal Requirements.

13.1 Contract Assurance.

The consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted agreements. Failure by the consultant to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

13.2 Prompt Progress Payments to Subcontractors.

Attention is directed to Section 7108.5 of the California Business and Professions Code, which requires a prime contractor or subcontractor to pay any subcontractor not later than ten (10) days of receipt of each progress payment, unless otherwise agreed to in writing. In addition, federal regulations (Title 49 Code of Federal Regulations Part 26.29) require a prime contractor or subcontractor to pay a subcontractor no later than thirty (30) days of receipt of each payment, unless any delay or postponement of payment among the parties takes place only for good cause and with the prior written approval of County. Section 7108.5 of the California Business and Professions Code also contains enforcement actions and penalties. The requirements apply to both Disadvantaged Business Entities ("DBE") and non-DBE subcontractors. Consultant shall include the foregoing progress payment requirements in every subcontract entered into by Consultant in the performance of its obligations under this Agreement

13.3 Prompt Payment of Withheld Funds to Subcontractors.

No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

13.4 Disadvantaged Business Enterprise (DBE) Participation.

- 13.4.1 This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- 13.4.2 A DBE participation goal will be established for each Task Order. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- 13.4.3 DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as County deems appropriate.
- 13.4.4 Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- 13.4.5 A DBE firm may be terminated only with prior written approval from County and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting County consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).
- 13.4.6 A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used

on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the, contract is commensurate with the work it is actually performing, and other relevant factors.

- 13.4.7 A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- 13.4.8 If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- 13.4.9 Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- 13.4.10 Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by Consultant or Consultant's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- 13.4.11 If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to County's Contract Administrator within 30 days.

13.5 Prevailing Wage.

- 13.5.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.

13.5.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

13.5.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

Note: The Federal “Payment of Predetermined Minimum Wage” applies only to federal-aid construction contracts.

13.6 Text Messaging While Driving.

In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, and Department of Transportation Order 3902.10, Text Messaging While Driving, text messaging while driving is prohibited in the performance of any duties included in this agreement for both consultant and any sub-consultants hired for performance of duties under this Agreement. Consultant shall include a provision prohibiting texting while driving in all sub-consultant agreements entered into related to the performance of its obligations under this Agreement.

Definitions. The following definitions are to be used in conjunction with this section. “Driving”:

- 1) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- 2) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

“Text Messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

13.7 Buy America.

Furnish Steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:

- 1) Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478(3/24/1995)];
- 2) If the total combine cost of the materials does not exceed the great of 0.1 percent of the total bid or \$2,500, materials produced outside the U. S. may be used.

Production includes:

- 1) Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending, grinding, and drilling) or chemical composition;
- 2) Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

13.8 Prohibition of Expending Local Agency, State or Federal funds for Lobbying.

13.8.1 Consultant certifies to the best of his or her knowledge and belief that:

- 1) No state, federal or County appropriated funds have been paid, or will be paid by- or-on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or 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 federal 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; Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

13.8.2 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.

13.8.3 Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

13.9 Cost Principles and Administrative Requirements.

13.9.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, shall be used to determine the cost allowability of individual items.

13.9.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

- 13.9.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, are subject to repayment by Consultant to County.

13.10 Retention of Records/Audit.

For the purpose of determining compliance with Public Contract Code 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, Section 2500 *et seq.*, when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; Consultant, subconsultants, and County shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, County, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

13.11 Audit Review Procedures.

- 13.11.1 Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by County's Chief Financial Officer.
- 13.11.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by County's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- 13.11.3 Neither the pendency of a dispute nor its consideration by County will excuse Consultant from full and timely performance, in accordance with the terms of this contract.
- 13.11.4 Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by County contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by County at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance

of prior reimbursed costs.

13.12 Subcontracting.

- 13.12.1 Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.
- 13.12.2 Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by County's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- 13.12.3 Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by County.
- 13.12.4 All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- 13.12.5 Any substitution of subconsultant(s) must be approved in writing by County's Contract Administrator prior to the start of work by the subconsultant(s).

13.13 Equipment Purchase.

- 13.13.1 Prior authorization in writing, by County's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- 13.13.2 For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by County's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- 13.13.3 Any equipment purchased as a result of this contract is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, Consultant may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Consultant, if it is determined to sell

the equipment, the terms and conditions of such sale must be approved in advance by County.” 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

14. Miscellaneous Provisions.

14.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

14.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

14.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

14.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

14.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

14.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

14.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed

by both parties.

14.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

14.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

14.10 Rebates, Kickback or Other Unlawful Consideration.

Consultant warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

14.11 Funding Requirements.

14.11.1 It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

14.11.2 This contract is valid and enforceable only, if sufficient funds are made available to County for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or County Board of Supervisors that may affect the provisions, terms, or funding of this contract in any manner.

14.11.3 It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

14.11.4 County has the option to void the contract under the 30-day termination clause pursuant to Article 4, or by mutual agreement to amend the contract to reflect any reduction of funds.

14.12 Evaluation of Consultant.

Consultant's performance will be evaluated by County. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

14.13 Claims Filed by County's Construction Contractor.

14.13.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and

at trial or arbitration proceedings.

- 14.13.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.
- 14.13.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.
- 14.13.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14.14 National Labor Relations Board Certification.

In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

14.15 Retention of Funds.

- 14.15.1 Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- 14.15.2 No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the County's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

14.16 Contingent Fee.

Consultant warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, County has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such

commission, percentage, brokerage, or contingent fee.

14.17 Inspection of Work.

Consultant and any subconsultant shall permit County, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

14.18 Safety.

14.18.1 Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County Safety Officer and other County representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

14.18.2 Pursuant to the authority contained in Section 591 of the Vehicle Code, County has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles

14.18.3 Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

15. Attachments & Exhibits.

The following Attachments appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

15.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

15.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Article 13, Article 14.10-14.18 and/or Attachment C, the Federal Requirements set forth in Article 13, 14.10-14.18 and/or Attachment C shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**SIGNATURES FOLLOW ON NEXT PAGE -
- THIS SPACE LEFT INTENTIONALLY BLANK -**

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Standard Professional Services Agreement (“PSA”)
On-Call Cultural Resources Consulting Services

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and LSA Associates Inc. (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the County’s Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Cultural Resources Consulting Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in the Request for Qualifications and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in , the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County. With respect to performance under this Agreement, Consultant shall employ the following key personnel: Project Manager.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED]

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

The total amount payable by County for all Task Orders resulting from this Agreement shall not exceed \$750,000.00. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.

2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This contract shall go into effect on (_____) contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The contract shall end on (_____), unless extended by contract amendment.

3.2 Contract Execution.

Consultant is advised that any recommendation for contract award is not binding on County until the contract is fully executed and approved by County.

3.3 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the

terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1. Notice Period.

County reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice.

4.2 Grounds for Termination.

County may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If County terminates this Agreement with Consultant, County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

4.3 Liability.

The maximum amount for which the Government shall be liable if this Agreement is terminated is 975,000 dollars.

4.4 Authority to Terminate.

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Department Head, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept all responsibility for loss or damage to any person or entity, including County, and to indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against County based upon a claim relating to such Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant's obligations under this Section apply whether or not there is concurrent or contributory negligence on County's part, but to the extent required by law, excluding liability due to County's conduct. County shall have the right to select its legal counsel at Consultant's expense, subject to Consultant's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment

B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment.

Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under

the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, “OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)”, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

9.4 [RESERVED].

9.5 Records Maintenance.

In addition to other record retention and audit requirements set forth elsewhere in this Agreement, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

- 9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.
- 9.6.2 Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.
- 9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- 9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting

from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal contract requirements set forth in Article 13 herein.

9.8 Living Wage Ordinance.

9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinances local preference requirements shall be used to select or otherwise apply to Consultant.

9.9 Nondiscrimination.

Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 Statement of Compliance.

9.10.1 Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

9.10.2 During the performance of this Contract, Consultant and its subconsultants 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, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and

applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (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 Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

- 9.10.3 The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- 9.10.4 The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents (“documents”), in whatever form or format, assembled or prepared by Consultant or Consultant’s subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231

On-Call Cultural
Resources Services

david.cameron@sonoma-county.org

To Consultant:

LSA Associates Inc.
Attn: Andrew Pulcheon
157 Park Place,
Point Richmond, CA 94801
(510) 236-6810
andrew.pulcheon@lsa.net

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Federal Requirements.

13.1 Contract Assurance.

The consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted agreements. Failure by the consultant to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

13.2 Prompt Progress Payments to Subcontractors.

Attention is directed to Section 7108.5 of the California Business and Professions Code, which requires a prime contractor or subcontractor to pay any subcontractor not later than ten (10) days of receipt of each progress payment, unless otherwise agreed to in writing. In addition, federal regulations (Title 49 Code of Federal Regulations Part 26.29) require a prime contractor or subcontractor to pay a subcontractor no later than thirty (30) days of receipt of each payment, unless any delay or postponement of payment among the parties takes place only for good cause and with the prior written approval of County. Section 7108.5 of the California Business and Professions Code also contains enforcement actions and penalties. The requirements apply to both Disadvantaged Business Entities ("DBE") and non-DBE subcontractors. Consultant shall include the foregoing progress payment requirements in every subcontract entered into by Consultant in the performance of its obligations under this Agreement

13.3 Prompt Payment of Withheld Funds to Subcontractors.

No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

13.4 Disadvantaged Business Enterprise (DBE) Participation.

- 13.4.1 This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- 13.4.2 A DBE participation goal will be established for each Task Order. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- 13.4.3 DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as County deems appropriate.
- 13.4.4 Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- 13.4.5 A DBE firm may be terminated only with prior written approval from County and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting County consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).
- 13.4.6 A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used

on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the, contract is commensurate with the work it is actually performing, and other relevant factors.

- 13.4.7 A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- 13.4.8 If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- 13.4.9 Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- 13.4.10 Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by Consultant or Consultant's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- 13.4.11 If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to County's Contract Administrator within 30 days.

13.5 Prevailing Wage.

- 13.5.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.

13.5.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

13.5.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

13.6 Text Messaging While Driving.

In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, and Department of Transportation Order 3902.10, Text Messaging While Driving, text messaging while driving is prohibited in the performance of any duties included in this agreement for both consultant and any sub-consultants hired for performance of duties under this Agreement. Consultant shall include a provision prohibiting texting while driving in all sub-consultant agreements entered into related to the performance of its obligations under this Agreement.

Definitions. The following definitions are to be used in conjunction with this section. "Driving":

- 1) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- 2) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

"Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

13.7 Buy America.

Furnish Steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:

- 1) Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478(3/24/1995)];
- 2) If the total combine cost of the materials does not exceed the great of 0.1 percent of the total bid or \$2,500, materials produced outside the U. S. may be used.

Production includes:

- 1) Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending, grinding, and drilling) or chemical composition;
- 2) Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

13.8 Prohibition of Expending Local Agency, State or Federal funds for Lobbying.

13.8.1 Consultant certifies to the best of his or her knowledge and belief that:

- 1) No state, federal or County appropriated funds have been paid, or will be paid by- or-on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or 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 federal 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; Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

13.8.2 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.

13.8.3 Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

13.9 Cost Principles and Administrative Requirements.

13.9.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, shall be used to determine the cost allowability of individual items.

13.9.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

- 13.9.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, are subject to repayment by Consultant to County.

13.10 Retention of Records/Audit.

For the purpose of determining compliance with Public Contract Code 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, Section 2500 *et seq.*, when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; Consultant, subconsultants, and County shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, County, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

13.11 Audit Review Procedures.

- 13.11.1 Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by County's Chief Financial Officer.
- 13.11.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by County's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- 13.11.3 Neither the pendency of a dispute nor its consideration by County will excuse Consultant from full and timely performance, in accordance with the terms of this contract.
- 13.11.4 Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by County contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by County at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance

of prior reimbursed costs.

13.12 Subcontracting.

- 13.12.1 Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.
- 13.12.2 Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by County's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- 13.12.3 Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by County.
- 13.12.4 All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- 13.12.5 Any substitution of subconsultant(s) must be approved in writing by County's Contract Administrator prior to the start of work by the subconsultant(s).

13.13 Equipment Purchase.

- 13.13.1 Prior authorization in writing, by County's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- 13.13.2 For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by County's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- 13.13.3 Any equipment purchased as a result of this contract is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, Consultant may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Consultant, if it is determined to sell

the equipment, the terms and conditions of such sale must be approved in advance by County.” 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

14. Miscellaneous Provisions.

14.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

14.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

14.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

14.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

14.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

14.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

14.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed

by both parties.

14.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

14.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

14.10 Rebates, Kickback or Other Unlawful Consideration.

Consultant warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

14.11 Funding Requirements.

14.11.1 It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

14.11.2 This contract is valid and enforceable only, if sufficient funds are made available to County for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or County Board of Supervisors that may affect the provisions, terms, or funding of this contract in any manner.

14.11.3 It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

14.11.4 County has the option to void the contract under the 30-day termination clause pursuant to Article 4, or by mutual agreement to amend the contract to reflect any reduction of funds.

14.12 Evaluation of Consultant.

Consultant's performance will be evaluated by County. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

14.13 Claims Filed by County's Construction Contractor.

14.13.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and

at trial or arbitration proceedings.

- 14.13.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.
- 14.13.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.
- 14.13.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14.14 National Labor Relations Board Certification.

In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

14.15 Retention of Funds.

- 14.15.1 Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- 14.15.2 No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the County's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

14.16 Contingent Fee.

Consultant warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, County has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such

commission, percentage, brokerage, or contingent fee.

14.17 Inspection of Work.

Consultant and any subconsultant shall permit County, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

14.18 Safety.

14.18.1 Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County Safety Officer and other County representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

14.18.2 Pursuant to the authority contained in Section 591 of the Vehicle Code, County has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles

14.18.3 Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

15. Attachments & Exhibits.

The following Attachments appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

15.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

15.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Article 13, Article 14.10-14.18 and/or Attachment C, the Federal Requirements set forth in Article 13, 14.10-14.18 and/or Attachment C shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**SIGNATURES FOLLOW ON NEXT PAGE -
- THIS SPACE LEFT INTENTIONALLY BLANK -**

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Standard Professional Services Agreement (“PSA”)
On-Call Cultural Resources Consulting Services

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and Mead & Hunt Inc. (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified professional architectural historian; and

WHEREAS, in the judgment of the County’s Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Cultural Resources Consulting Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in the Request for Qualifications and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in , the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County. With respect to performance under this Agreement, Consultant shall employ the following key personnel: Project Manager.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED]

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

The total amount payable by County for all Task Orders resulting from this Agreement shall not exceed \$750,000.00. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.

2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This contract shall go into effect on (_____) contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The contract shall end on (_____), unless extended by contract amendment.

3.2 Contract Execution.

Consultant is advised that any recommendation for contract award is not binding on County until the contract is fully executed and approved by County.

3.3 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the

terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1. Notice Period.

County reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice.

4.2 Grounds for Termination.

County may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If County terminates this Agreement with Consultant, County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

4.3 Liability.

The maximum amount for which the Government shall be liable if this Agreement is terminated is 975,000 dollars.

4.4 Authority to Terminate.

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Department Head, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept all responsibility for loss or damage to any person or entity, including County, and to indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against County based upon a claim relating to such Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant's obligations under this Section apply whether or not there is concurrent or contributory negligence on County's part, but to the extent required by law, excluding liability due to County's conduct. County shall have the right to select its legal counsel at Consultant's expense, subject to Consultant's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment

B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment.

Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under

the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, “OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)”, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

9.4 [RESERVED].

9.5 Records Maintenance.

In addition to other record retention and audit requirements set forth elsewhere in this Agreement, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

- 9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.
- 9.6.2 Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.
- 9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- 9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting

from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal contract requirements set forth in Article 13 herein.

9.8 Living Wage Ordinance.

9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinances local preference requirements shall be used to select or otherwise apply to Consultant.

9.9 Nondiscrimination.

Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 Statement of Compliance.

9.10.1 Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

9.10.2 During the performance of this Contract, Consultant and its subconsultants 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, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and

applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (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 Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

- 9.10.3 The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- 9.10.4 The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents (“documents”), in whatever form or format, assembled or prepared by Consultant or Consultant’s subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231

On-Call Cultural
Resources Services

david.cameron@sonoma-county.org

To Consultant:

Mead & Hunt Inc.
Attn: Chad Moffett
180 Promenade Circle, Suite 240
Sacramento, CA 95834
(916) 993-4655
chad.moffett@meadhunt.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Federal Requirements.

13.1 Contract Assurance.

The consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted agreements. Failure by the consultant to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

13.2 Prompt Progress Payments to Subcontractors.

Attention is directed to Section 7108.5 of the California Business and Professions Code, which requires a prime contractor or subcontractor to pay any subcontractor not later than ten (10) days of receipt of each progress payment, unless otherwise agreed to in writing. In addition, federal regulations (Title 49 Code of Federal Regulations Part 26.29) require a prime contractor or subcontractor to pay a subcontractor no later than thirty (30) days of receipt of each payment, unless any delay or postponement of payment among the parties takes place only for good cause and with the prior written approval of County. Section 7108.5 of the California Business and Professions Code also contains enforcement actions and penalties. The requirements apply to both Disadvantaged Business Entities ("DBE") and non-DBE subcontractors. Consultant shall include the foregoing progress payment requirements in every subcontract entered into by Consultant in the performance of its obligations under this Agreement

13.3 Prompt Payment of Withheld Funds to Subcontractors.

No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

13.4 Disadvantaged Business Enterprise (DBE) Participation.

- 13.4.1 This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- 13.4.2 A DBE participation goal will be established for each Task Order. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- 13.4.3 DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as County deems appropriate.
- 13.4.4 Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- 13.4.5 A DBE firm may be terminated only with prior written approval from County and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting County consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).
- 13.4.6 A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used

on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the, contract is commensurate with the work it is actually performing, and other relevant factors.

- 13.4.7 A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- 13.4.8 If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- 13.4.9 Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- 13.4.10 Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by Consultant or Consultant's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- 13.4.11 If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to County's Contract Administrator within 30 days.

13.5 Prevailing Wage.

- 13.5.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.

13.5.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

13.5.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

Note: The Federal “Payment of Predetermined Minimum Wage” applies only to federal-aid construction contracts.

13.6 Text Messaging While Driving.

In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, and Department of Transportation Order 3902.10, Text Messaging While Driving, text messaging while driving is prohibited in the performance of any duties included in this agreement for both consultant and any sub-consultants hired for performance of duties under this Agreement. Consultant shall include a provision prohibiting texting while driving in all sub-consultant agreements entered into related to the performance of its obligations under this Agreement.

Definitions. The following definitions are to be used in conjunction with this section. “Driving”:

- 1) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- 2) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

“Text Messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

13.7 Buy America.

Furnish Steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:

- 1) Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478(3/24/1995)];
- 2) If the total combine cost of the materials does not exceed the great of 0.1 percent of the total bid or \$2,500, materials produced outside the U. S. may be used.

Production includes:

- 1) Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending, grinding, and drilling) or chemical composition;
- 2) Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

13.8 Prohibition of Expending Local Agency, State or Federal funds for Lobbying.

13.8.1 Consultant certifies to the best of his or her knowledge and belief that:

- 1) No state, federal or County appropriated funds have been paid, or will be paid by- or-on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or 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 federal 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; Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

13.8.2 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.

13.8.3 Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

13.9 Cost Principles and Administrative Requirements.

13.9.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, shall be used to determine the cost allowability of individual items.

13.9.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

- 13.9.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, are subject to repayment by Consultant to County.

13.10 Retention of Records/Audit.

For the purpose of determining compliance with Public Contract Code 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, Section 2500 *et seq.*, when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; Consultant, subconsultants, and County shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, County, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

13.11 Audit Review Procedures.

- 13.11.1 Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by County's Chief Financial Officer.
- 13.11.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by County's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- 13.11.3 Neither the pendency of a dispute nor its consideration by County will excuse Consultant from full and timely performance, in accordance with the terms of this contract.
- 13.11.4 Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by County contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by County at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance

of prior reimbursed costs.

13.12 Subcontracting.

- 13.12.1 Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.
- 13.12.2 Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by County's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- 13.12.3 Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by County.
- 13.12.4 All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- 13.12.5 Any substitution of subconsultant(s) must be approved in writing by County's Contract Administrator prior to the start of work by the subconsultant(s).

13.13 Equipment Purchase.

- 13.13.1 Prior authorization in writing, by County's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- 13.13.2 For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by County's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- 13.13.3 Any equipment purchased as a result of this contract is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, Consultant may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Consultant, if it is determined to sell

the equipment, the terms and conditions of such sale must be approved in advance by County.” 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

14. Miscellaneous Provisions.

14.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

14.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

14.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

14.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

14.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

14.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

14.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed

by both parties.

14.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

14.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

14.10 Rebates, Kickback or Other Unlawful Consideration.

Consultant warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

14.11 Funding Requirements.

14.11.1 It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

14.11.2 This contract is valid and enforceable only, if sufficient funds are made available to County for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or County Board of Supervisors that may affect the provisions, terms, or funding of this contract in any manner.

14.11.3 It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

14.11.4 County has the option to void the contract under the 30-day termination clause pursuant to Article 4, or by mutual agreement to amend the contract to reflect any reduction of funds.

14.12 Evaluation of Consultant.

Consultant's performance will be evaluated by County. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

14.13 Claims Filed by County's Construction Contractor.

14.13.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and

at trial or arbitration proceedings.

- 14.13.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.
- 14.13.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.
- 14.13.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14.14 National Labor Relations Board Certification.

In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

14.15 Retention of Funds.

- 14.15.1 Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- 14.15.2 No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the County's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

14.16 Contingent Fee.

Consultant warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, County has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such

commission, percentage, brokerage, or contingent fee.

14.17 Inspection of Work.

Consultant and any subconsultant shall permit County, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

14.18 Safety.

14.18.1 Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County Safety Officer and other County representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

14.18.2 Pursuant to the authority contained in Section 591 of the Vehicle Code, County has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles

14.18.3 Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

15. Attachments & Exhibits.

The following Attachments appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

15.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

15.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Article 13, Article 14.10-14.18 and/or Attachment C, the Federal Requirements set forth in Article 13, 14.10-14.18 and/or Attachment C shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**SIGNATURES FOLLOW ON NEXT PAGE -
- THIS SPACE LEFT INTENTIONALLY BLANK -**

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 35
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Transportation and Public Works

Staff Name and Phone Number:

Johannes J. Hoevertsz (707) 565-2231

Supervisorial District(s):

All

Title: Out-of-State Travel Request – Airport Manager

Recommended Actions:

Approve out-of-state travel request – Airport Manager

Executive Summary:

The Department of Transportation and Public Works is seeking approval for one (1) out-of-state trip by the Airport Manager for Airport business for FY 17-18.

Discussion:

Pursuant to the Travel and Meal Reimbursement Policy (Administrative Policy #3-2) Department Heads are authorized to approve the first two (2) out-of-state trips and the County Administrator may approve a third out-of-state travel in a fiscal year. Subsequent out-of-state trips require Board of Supervisor's approval.

The Airport Manager is authorized for five (5) out-of-state trips for FY 17-18.

The Director of Transportation and Public Works authorized two out-of-state trips:

One trip to Las Vegas, NV to attend the American Association of Airport Executives Board Meeting and National Airports Conference to represent the Southwest Chapter of the American Association of Airport Executives from September 29-October 2, 2017; and

Two, a trip to Seattle, WA to attend meetings with route planners and the marketing department with Alaska Airlines to discuss schedule plans for 2018 from November 1-2, 2017.

The County Administrator authorized a third combined trip in Minneapolis, MN to meet with Sun Country Airlines and to Chicago, IL to meet with United Airlines at their headquarters to attend air service planning meetings to discuss schedules and plans for 2018 and to promote Denver service from November 27-29, 2017.

On December 12th, 2017, the Board of Supervisor's authorized two (2) additional trips for FY 17-18:

One trip to the American Association of Airport Executives Board of Directors meeting and Aviation Issues Conference in Kona, Hawaii, January 7-11, 2018 to fulfill the duties as President of the Southwest Chapter of the American Association of Airport Executives on the American Association of Airport Executives Board of Directors; and

A second trip to Washington, DC on March 19-22, 2018, to attend the American Association of Airport Executives Chapter Officers meeting and Legislative Conference. Also fulfilling duties as the President of the Southwest Chapter of the American Association of Airport Executives at the annual Chapter officers meeting, and to attend the Legislative conference to learn about legislative agenda for the coming year.

Although it is not uncommon for the Airport Manager to travel out-of-state during the course of business, this is an exceptionally high year for travel since the County now has four airlines and one-on-one meetings with individual airlines are essential to maintain good communications and to promote the Airport and market opportunities for service enhancements in Sonoma County. In addition, the Airport Manager is the President of the Southwest Chapter of the American Association of Airport Executives representing airports in California, Arizona, Nevada and Hawaii and in that role represents the Chapter at Chapter board meetings and conferences, national conferences, and American Association of Airport Executives board meetings. While the Airport Manager is traveling, he is available by phone and email and other Airport staff are available to handle on-site issues as they arise.

The Department of Transportation and Public Works is requesting that the Airport Manager be allowed one (1) additional out-of-state trip at the end of this fiscal year for the following purpose:

Attend the Airports Council International Jumpstart 2018 Conference in Cleveland, OH June 3 to 7, 2018. This conference will allow the Airport to secure up to ten (10) one-on-one meetings to develop and maintain relationships with current and potential airlines promoting market opportunities in Sonoma County.

Prior Board Actions:

12/12/17: Board authorized out-of-state travel for Airport Manager
12/13/16: Board authorized out-of-state travel for Airport Manager
10/4/16: Board authorized out-of-state travel for Airport Manager
3/15/16: Board authorized out-of-state travel for Airport Manager in FY 15-16

Strategic Plan Alignment Goal 2: Economic and Environmental Stewardship

Provides opportunities to meet with airlines on a one-to-one basis to discuss potential service opportunities and to gain the most recent industry information and discuss Airport needs with Federal officials. Also provides opportunities to promote Sonoma County tourism and businesses.

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses	\$2,250		
Additional Appropriation Requested			
Total Expenditures	\$2,250		
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other	\$2,250		
Use of Fund Balance			
Contingencies			
Total Sources	\$2,250		
Narrative Explanation of Fiscal Impacts:			
Business Travel and Conference expenses were included in the FY 17-18 Airport Operations budget and there are sufficient appropriations to pay for the requested travel costs of \$2,250. Airport Fees and Charges fund travel expenses.			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
None			
Attachments:			
None			
Related Items "On File" with the Clerk of the Board:			
None			



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 36
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Transportation and Public Works

Staff Name and Phone Number:

Johannes J. Hoevertsz, (707) 565-2231

Supervisorial District(s):

All

Title: Charles M. Schulz – Sonoma County Airport Consent to Lease Assignment

Recommended Actions:

Authorize the Chair to: (1) execute the consent to assignment by Cornerstone Properties II S, LLC, a California limited liability company assignment of its 1976 Lease for the property with borders west of N. Laughlin Rd, south of Airport Blvd and east of Flightline Dr. including three buildings and associated parking lot, to its affiliate, CPSA – Airport Industrial Park, LLC, a California limited liability company; and (2) authorize the Director of Transportation and Public Works to execute any other documents reasonably required to effect said consent to lease assignment.

Executive Summary:

Cornerstone Properties II S, LLC, a California limited liability company (“Assignor”) desires to assign to CPSA – Airport Industrial Park, LLC, a California limited liability company (“Assignee”) all of its right, title and interest in, to, and under the original lease dated October 20, 1976, which will be effective as of the date the Board of Supervisors consents to the assignment and assumption of the lease between the County and the Assignor. The Assignor and the Assignee are affiliated and this assignment does not involve a significant change of ownership. California Government Code §25537 establishes that the Board of Supervisors is the authority to execute leases (including amendments and assignments) of this duration and amount.

Discussion:

The County and National Controls, Inc., a Delaware corporation, entered into an Amended Airport Industrial Park Lease, dated November 18, 1977 (to correct and clarify the original Airport Park Lease dated October 20, 1976). The Lease was amended on March 7, 1978 and again on April 25, 1978, and was assigned by the lessee to American Property Investors VI, a Colorado limited partnership, later to American Real Estate Holdings Limited Partnership, a Delaware limited partnership. The final prior assignment of the lease was by American Real Estate Holdings Limited Partnership to Cornerstone

Properties II S, LLC, a California limited partnership. The lease was amended a third time on September 12, 2006 ("Lease"), which is the currently operative form of the agreement.

Cornerstone Properties II S, LLC, a California limited liability company desires to assign to CPSA – Airport Industrial Park, LLC, a California limited liability company all of its right, title and interest in, to, and under the current Lease and the Leased Premises. Under the terms of the document, the Assignment of Leasehold Interest will be effective as of the date the Board of Supervisors consents to the assignment and assumption of the lease.

The transfer of the lease requires the Consent of the County to be effective. County staff has reviewed the proposed assignment and determined that the transfer will not negatively impact the County's rights under the lease. The parties to this transfer are affiliates and this transfer does not involve a significant change of ownership. Accordingly, staff recommends the Board approve the proposed transfer and authorize the Chair to execute the consent to assignment, and authorize the Director of the Department of Transportation and Public Works to execute any additional documents necessary to complete the transfer.

Prior Board Actions:

None.

Strategic Plan Alignment Goal 2: Economic and Environmental Stewardship

Successful operation of our local airport is a significant contributor to a strong and diverse economy that supports job growth and job retention for all residents.

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			
Narrative Explanation of Fiscal Impacts:			
None.			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
None.			
Attachments:			
Consent to Assignment Agreement, Map			
Related Items “On File” with the Clerk of the Board:			

CONSENT TO ASSIGNMENT AGREEMENT

This Consent to Assignment Agreement ("Consent") is made as of _____, 2018, by and among the COUNTY OF SONOMA, a political subdivision of the State of California ("County"), CORNERSTONE PROPERTIES II S, LLC, a California limited liability company ("Assignor"), and CPSA – AIRPORT INDUSTRIAL PARK, LLC, a California limited liability company ("Assignee"). County, Assignor and Assignee are sometimes collectively referred to herein as the "parties" and singularly, as "party."

RECITALS

This Consent is made with regard to the following facts:

A. County and National Controls, Inc., a Delaware corporation, entered into an Amended Airport Industrial Park Lease, dated November 18, 1977 (to correct and clarify the original Airport Park Lease dated October 20, 1976) and then entered in to an Amendment to Airport Industrial Park Lease, dated March 7, 1978, between County and National Controls, Inc., and then entered into a Second Amendment to Amended Airport Industrial Park Lease dated April 25, 1978, and as assigned by National Controls, Inc. to American Property Investors VI, a Colorado limited partnership, and as assigned by American Property Investors VI to American Real Estate Holdings Limited Partnership, a Delaware limited partnership, and as assigned by American Real Estate Holdings Limited Partnership to Cornerstone Properties II S, LLC, a California limited partnership and then entered into a Third Amendment to Amended Airport Industrial Lease, dated September 12, 2006 ("Lease"), for real property located at the Charles M. Schulz-Sonoma County Airport ("Airport") as more particularly described in Exhibit "A" attached hereto and hereafter referred to as the "Leased Premises."

B. Assignor desires to assign to Assignee all of its right, title, and interest in, to, and under the Lease and the Leased Premises under the provisions of the Assignment of Leasehold Interest effective as of the date the Board of Supervisors consents to the assignment and assumption of the lease contemplated herein, between Assignor and Assignee ("Assignment"), a copy of which is attached to this Consent as Exhibit "B".

C. Assignor and Assignee are affiliated and this transfer does not involve a significant change of ownership.

D. Assignor and Assignee desire to obtain County's consent to the Assignment and County is willing to consent to the Assignment on the following terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Consent, and for valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows.

AGREEMENT

1. Assumption and Limitation on Release. Except as provided below, effective on the date of Assignment, Assignee expressly assumes and agrees for the benefit of County to be bound by, and to perform and comply with, every obligation of Assignor under the Lease. Assignor hereby acknowledges and agrees that it continues to be liable for obligations arising under the Lease prior to the Assignment date.

2. Subsequent Assignments; Recapture. This Consent does not constitute consent to any subsequent subletting or assignment and does not relieve Assignee or any person claiming under or through Assignee of the obligation to obtain the consent of County of the Lease to any future assignment or sublease. Notwithstanding the foregoing, County may consent to subsequent sublettings and assignments of the Lease, or amend the Lease without notifying Assignor or anyone else liable under the Lease, including any guarantor of the Lease, and without obtaining their consent, and that action by County will not relieve those persons of liability.

3. Default under the Lease. In the event of any default of Assignee under the Lease, County may proceed directly against Assignee, any guarantors, or anyone else liable under the Lease without first exhausting County's remedies against any other person or entity liable under the Lease to County. Notwithstanding the foregoing, no act or omission of Assignee or anyone claiming under or through Assignee that violates any of the provisions of the Lease will be deemed a default under the Lease by Assignor.

4. General Provisions.

4.1 Assignment Conditioned on Accuracy of Provided Documents. In requesting County approval of the assignment, Assignor and Assignee have provided documents regarding Assignee's structure and assets, including, but not limited to, incorporation documents and an operating agreement. The Consent herein is conditioned on the accuracy and legitimacy of these documents and such Consent will be inoperative if these documents are substantially found to be materially false.

4.2 Consideration for Assignment. Assignor and Assignee represent and warrant that there are no additional payments of rent or any other monetary consideration of any type which has been paid or is payable by Assignee to Assignor in connection with the Assignment or the Premises,.

4.3 Brokerage Commission. Assignor and Assignee agree that County will not be liable for any brokerage commission or finder's fee in connection with the consummation of the Assignment or this Consent, Assignor and Assignee will protect, defend, indemnify and hold County harmless from any brokerage commission or finder's fee in connection with the consummation of the Assignment or this Consent, and from any cost or expense (including attorney fees) incurred by County in resisting any claim for any such brokerage commission or finder's fee. The provisions of this Section 4.3

shall survive the expiration or earlier termination of both the Assignment and this Consent.

4.4 Controlling Law. The terms and provisions of this Consent will be construed in accordance with and will be governed by the laws of the State of California.

4.5 Captions. Captions to the sections in this Consent are included for convenience only and do not modify any of the terms of this Consent.

4.6 Entire Agreement; Waiver. This Consent constitutes the final, complete and exclusive statement between the parties to this Consent pertaining to the terms of County's consent to the Assignment, supersedes all prior and contemporaneous understandings or agreements of the parties, and is binding on and inures to the benefit of their respective heirs, representatives, successors and assigns. No party has been induced to enter into this Consent by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Consent. Any agreement made after the date of this Consent is ineffective to modify, waive, or terminate this Consent in whole or in part, unless that agreement is in writing, is signed by the parties to this Consent, and specifically states that agreement modifies this Consent.

4.7 Attorney Fees. If any party commences litigation against any other party for the specific performance of this Consent, for damages for the breach hereof or otherwise for enforcement of any remedy hereunder, the prevailing party shall be entitled to recover from the applicable party such costs and reasonable attorney fees as may have been incurred.

4.8 Waiver. Except as explicitly stated in this Consent, nothing contained in this Consent will be deemed or construed to modify, waive, impair, or affect any of the covenants, agreements, terms, provisions, or conditions contained in the Lease. In addition, the acceptance of rents by County from Assignee or anyone else liable under the Lease will not be deemed a waiver by County of any provisions of the Lease.

4.9 Notice. Any notice that may or must be given by any party under this Consent will be delivered (i) personally, (ii) by certified mail, return receipt requested, or (iii) by a nationally recognized overnight courier, addressed to the party to whom it is intended. Any notice given to County, Assignor or Assignee shall be sent to the respective address set forth below, or to such other address as that party may designate for service of notice by a notice given in accordance with the provisions of this provisions of this Section 4.9.

County: County of Sonoma
Department of Transportation & Public Works,
Airport Division
Attn: Airport Manager
2290 Airport Blvd.
Santa Rosa, California 95403

Assignee: CPSA – Airport Industrial Park, LLC
5401 Old Redwood Hwy., Suite 110
Petaluma, CA 94954


Assignor: Cornerstone Properties II S, LLC
5401 Old Redwood Hwy., Suite 110
Petaluma, CA 94954

A notice sent pursuant to the terms of this Section 4.9 shall be deemed delivered (A) when delivery is attempted, if delivered personally, (B) three (3) business days after deposit into the United States mail, or (C) the day following deposit with a nationally recognized overnight courier.


4.10 Capitalized Terms. All terms spelled with initial capital letter in this Consent that are not expressly defined in this Consent will have the respective meanings given such terms in the Lease. County, Assignor and Assignee have executed this Consent as of the above date.

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ASSIGNEE: CPSA – Airport Industrial Park, LLC, a California limited liability company

By: DocuSigned by:
Alon Adani 
8A2D93722958431...
Alon Adani
Title: Member

ASSIGNOR: CORNERSTONE PROPERTIES II S, LLC, a California limited liability company

By: DocuSigned by:
Alon Adani 
8A2D93722958431...
Alon Adani
Title: Manager

COUNTY: COUNTY OF SONOMA, a political subdivision of the State of California

By: _____
James Gore
Title: Chair, Sonoma County Board of Supervisors

APPROVED AS TO FORM FOR COUNTY:

Deputy County Counsel

APPROVED AS TO SUBSTANCE FOR COUNTY:

Airport Manager

EXHIBIT "A"
LEASED PREMISES

SENT BY:

5-27-88 ; 1:24PM ; ROBINSON & COE-

707 527 2624;# 7/ 7

DESCRIPTION

All that certain real property situate, lying and being in the County of Sonoma, State of California, bounded and described as follows:

Being Lot A as shown on that certain Record of Survey recorded in the office of the County Recorder on February 27, 1978 in Book 264 of Maps, page 21, Sonoma County Records.

RESERVING THEREFROM an easement for water pipeline, utility and incidental purposes over a strip of land 12.00 feet in width, measured at right angles, parallel with, adjacent to and lying to the right of the following described line.

Beginning at the northeast corner of the above described parcel; thence from said point of beginning S. 0° 27' 46" East 925.95 feet to the point of termination of the herein above described line.

The side line of said easement shall be lengthened and shortened to intersect with the North and South boundaries of the above described parcel.

SAID EASEMENT is hereby reserved for the purpose of installing, maintaining, repairing and doing necessary work in conjunction with the utilities.

The County shall repair and return the land within the easement to the condition that existed at the time the construction, repair or work began.

No building or structure shall be built over said easement.

ALSO RESERVING THEREFROM to the County of Sonoma, its successors and assigns for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein leased, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereinafter used for navigation of or flight in the air, using said airspace for landing at, taking off from or operating on Sonoma County Airport.

EXHIBIT "B"

ASSIGNMENT AND ASSUMPTION OF LEASE

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ASSIGNMENT AND ASSUMPTION AGREEMENT

9/14/2016

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT dated _____ (the "Assignment"), is entered into by and between CORNERSTONE PROPERTIES II S, LLC, a California limited liability company ("Assignor"), and CPSA – AIRPORT INDUSTRIAL PARK, LLC, a California limited liability company ("Assignee").

WITNESSETH:

WHEREAS, Assignor is the tenant under that certain Amended Airport Industrial Park Lease dated November 18, 1977, as amended by that certain Amendment to Airport Industrial Park Lease dated March 7, 1978, as amended by that certain Second Amendment to Amended Airport Industrial Park Lease dated April 25, 1978, as amended by that certain Third Amendment to Amended Airport Industrial Park Lease dated September 12, 2006 (the "Ground Lease") between the County of Sonoma, a political subdivision of the State of California ("Landlord") and Assignor; and

WHEREAS, Assignor desires to assign its interest as tenant in the Ground Lease to Assignee, and Assignee desires to accept the assignment thereof.

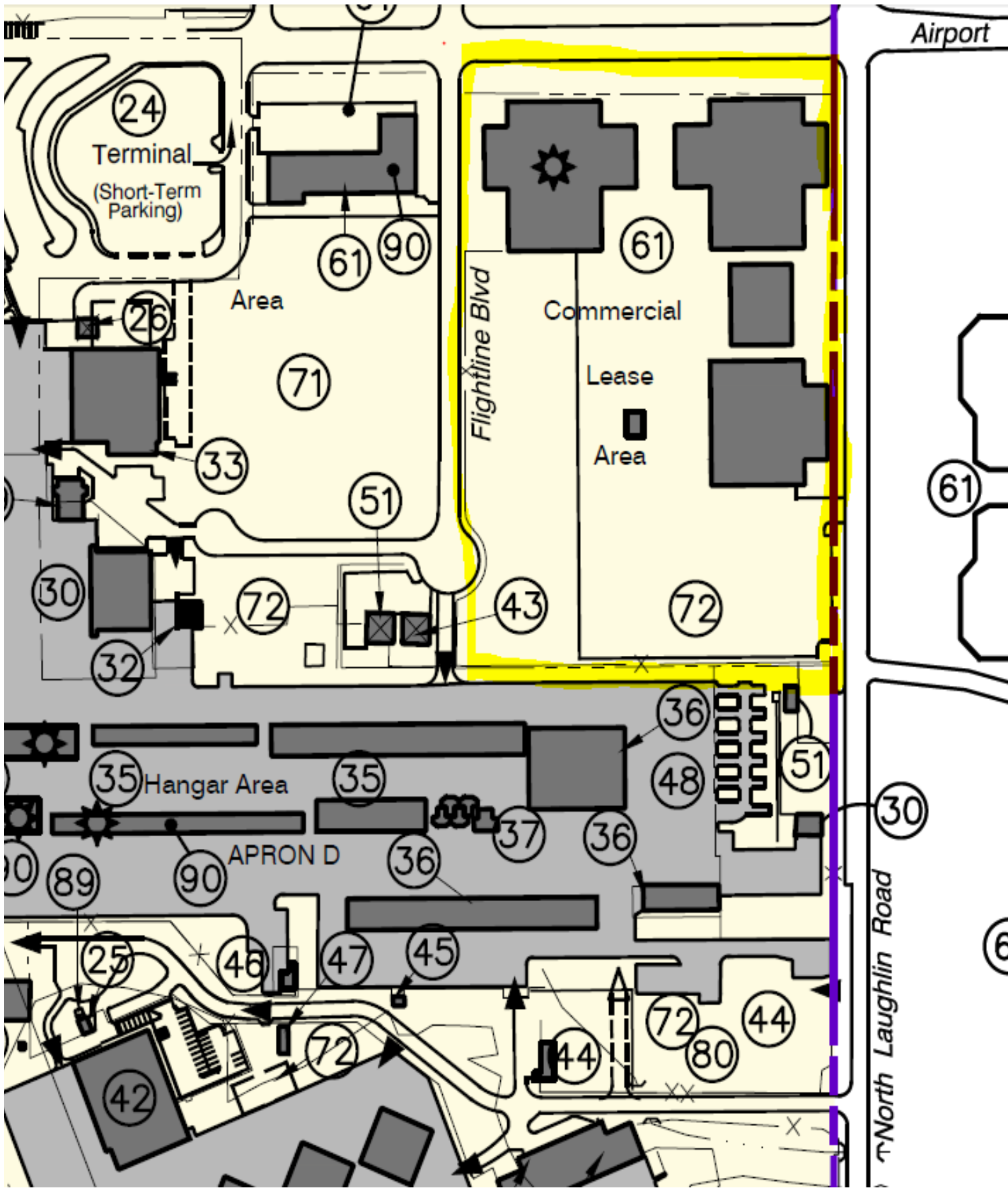
NOW, THEREFORE, in consideration of the promises and conditions contained herein, the parties hereby agree as follows:

1. Assignor hereby assigns to Assignee all of its right, title and interest in and to the Ground Lease.
2. Assignor represents and warrants, to the best of Assignor's knowledge, that, as of the date hereof:
 - (a) There are no current assignments of or agreements to assign the Ground Lease to any other party.
 - (b) The Ground Lease is in full force and effect and there exist no defaults on the part of Assignor thereunder, nor does Assignor have any actual knowledge of any defaults or any acts or events which with the passage of time or the giving of notice could become defaults thereunder on the part of the Landlord thereunder.
3. Assignor hereby agrees to indemnify Assignee against and hold Assignee harmless from any and all cost, liability, loss, damage or expense, including without limitation, reasonable attorneys' fees, originating prior to the date hereof and arising out of the failure of Assignor, prior to the date hereof, to perform Assignor's obligations under the Ground Lease.
4. Assignee hereby agrees to indemnify Assignor against and hold Assignor harmless from any and all cost, liability, loss, damage, expense, claims or causes of action (including but not limited to reasonable attorneys' fees), incurred by Assignor and originating as of or after the date of this Assignment and arising out of Assignee's failure to fully perform any and

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all obligations and responsibilities under the Ground Lease, including but not limited to payment of rent.

5. This Assignment shall be binding on and inure to the benefit of the parties to it, their heirs, executors, administrators, successors in interest, and assigns.
6. If any term or provision of this Assignment shall be held invalid or unenforceable, the remainder of this Assignment shall not be affected.
7. No waiver or breach of any covenant or provision shall be deemed a waiver of any other covenant or provision, and no waiver shall be valid unless in writing and executed by the waiving party.
8. The singular form shall include the plural and vice versa. This Assignment shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to sections are to this Assignment.
9. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.
10. This Assignment may not be amended or altered except by a written instrument executed by Assignor and Assignee.
11. Whenever requested to do so by the other party, each party shall execute, acknowledge, and deliver any further conveyances, assignments, confirmations, satisfactions, releases, powers of attorney, instruments of further assurance, approvals, consents, and any further instruments or documents that are necessary, expedient, or proper to complete any conveyances, transfers, sales, and assignments contemplated by this Assignment. In addition, each party shall do any other acts and execute, acknowledge, and deliver any requested documents in order to carry out the intent and purpose of this Assignment.
12. In the event of any litigation between Assignor and Assignee arising out of the obligations of the parties under this Assignment or concerning the meaning or interpretation of any provision contained herein, the losing party shall pay the prevailing party's costs and expenses of such litigation, including, without limitation, reasonable attorneys' fees.
13. Nothing in this Assignment, express or implied, is intended to confer upon any person, other than the parties and their respective successors and assigns, any rights or remedies.
14. This Assignment shall be governed and construed in accordance with California law.





County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 37
(This Section for use by Clerk of the Board Only.)

To: The Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Department of Transportation and Public Works

Staff Name and Phone Number:

Johannes J. Hoevertsz, (707) 565-2231

Supervisorial District(s):

All

Title: Award of Contract for the Charles M. Schulz – Sonoma County Airport Apron D Rehabilitation & Pavement Preservation

Recommended Actions:

1. Approve plans and specifications for the Airports Apron D Rehabilitation and Pavement Preservation
2. Award and authorize the Chair to execute a construction contract to the lowest responsible bidder, VSS International, Inc. in the amount of \$181,120 for Apron D Rehabilitation and Pavement Preservation within the Air Operations Area at the Charles M. Schulz – Sonoma County Airport, 2290 Airport Blvd, Santa Rosa.

Executive Summary:

Apron D and the Apron D Taxilane, situated in the Air Operations Area of Charles M. Schulz – Sonoma County Airport are an essential component of the Airport's day to day functions providing access for aircraft from Apron D to the Airport's main Taxiway. The effective life of the composition pavement of Apron D and its supporting Taxilane is more than 10 years old, which is the recommended life span of this pavement. The Apron D Rehabilitation and Pavement Preservation project would extend the life of the current Apron D composition another 5 or more years.

Discussion:

Airport Aprons serve multiple essential airport functions such as loading/unloading passengers, loading/unloading of cargo, refueling aircraft, parking aircraft, and aircraft maintenance. There are six aircraft parking aprons designated A through F at the Charles M. Schulz – Sonoma County Airport. Apron D is located on the south-east corner of the airport, north of Becker Blvd. and provides storage hangars (e.g., portable, shade, box, executive/corporate) primarily for general aviation aircraft domiciled at the Sonoma County Airport. Apron D has a corresponding Taxilane extending out to the main Airport Taxiway. Taxilanes are the portions of the aircraft parking area used for access between the Apron and the main Taxiways for landing and take-off.

Airport apron and taxilane composition pavements are constructed to support the extensive weight loads of aircraft and to guarantee a firm, stable, smooth, all-year, all-weather base surface. To ensure

the composition pavement's stability, the pavement must be adequate quality and thickness that it will not fail beneath the load of landed aircraft.

The average life of the Airport apron and taxilane pavement is approximately 10 years. Apron D and its corresponding Taxilane are already past their 10-year lifespan. In a February 2016 Airport Pavement Management System report, prepared by the Airport's primary civil engineering firm, Mead & Hunt, the pavement condition of Apron D was rated "Very Poor". By completing the Apron D Rehabilitation and Pavement Preservation project, the Airport will prevent potential catastrophic failure of the pavement and extend its useful life by another 5 years.

The Apron D Rehabilitation and Pavement Preservations project was advertised for bids from September 5th 2017 until October 16th, 2017. Along with posting the bid publicly, 41 bid invitations were sent to firms and builders exchanges. The bid request for this project included a Base Bid for Apron D pavement repair, surface preparation, and a combination microsurface seal/fog seal and pavement marking application. An Alternate Bid for the Apron D/Taxilane surface preparation, microsurface seal and pavement marking application was also included as part of the bid request.

One bid was received in response to the bid process from VSS International, Inc., located at 3785 Channel Dr., West Sacramento, CA. Total bid amount submitted was \$181,120. VSS International confirmed that their total quote of \$181,120 included both the Apron D Rehabilitation and Pavement Preservations Base Bid as well as the Alternate Bid for the Taxilane surface preparation, microsurface seal and pavement markings.

The engineer's estimate for the cost of the entire project including Base Bid (\$149,980) and the Alternate Bid (\$34,909.50) was \$184,889. VSS International, Inc. was the sole responsive bidder at \$181,120 (included both the Base Bid and Alternate Bids) which was \$3,769 below the engineer's estimate. Based on the amount and the fact that VSS International was the sole bidder, the Airport recommends awarding the contract to VSS International, Inc. The time lapse between bid opening and award was caused by the 2017 Complex Fires and the Contractor has agreed to hold the prices on the bid as submitted.

Once the Board has approved the contract award, the Apron D Rehabilitation and Pavement Preservation project should be completed within 3 weeks.

Prior Board Actions:

None

Strategic Plan Alignment Goal 3: Invest in the Future

This action supports the Airport's mission to successfully manage a key component of the County's transportation infrastructure and continue to be a significant contributor to a strong and diverse economy that supports job growth and job retention for Sonoma County. This action advocates for a well maintained transportation and facility network that promotes mobility, health and safety, connectivity and convenience.

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses	\$181,120.00		
Additional Appropriation Requested			
Total Expenditures	\$181,120.00		
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other	\$181,120.00		
Use of Fund Balance			
Contingencies			
Total Sources	\$181,120.00		
Narrative Explanation of Fiscal Impacts:			
<p>In order to comply with FAA regulations and grant requirements the Airport allocates money on an annual basis for pavement rehabilitation and renovation projects. In FY 17-18 \$200,000 was budgeted for this purpose however, due to unforeseen expenditures, the Airport is requesting a budget adjustment to increase appropriations for the full amount of this contract.</p> <p>The primary drivers of these unforeseen expenditures are a \$385,000 revenue guarantee expense for American Airlines (partially offset by a Department of Transportation Air Service Development Grant), and a \$50,000 investment in an automated noise monitoring system which allows the Airport to identify aircraft associated with specific noise complaints.</p>			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
None			
Attachments:			
None			

Related Items “On File” with the Clerk of the Board:

Specifications, Bid Book and Plans



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 38
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Transportation and Public Works

Staff Name and Phone Number:

Johannes J. Hoevertsz: (707) 565-2231

Supervisorial District(s):

All

Title: On-Call Engineering Design Services Agreements for Road and Bridge Infrastructure Improvement Projects

Recommended Actions:

1. Authorize the Chair to execute On-Call Agreements with 16 shortlisted Engineering Design Services consultants with a not-to-exceed amount of \$975,000 per Consultant and a combined not-to-exceed amount of \$15,600,000, with terms ending three years from the executed date.
2. Delegate to the Director the authority to execute on behalf of the County, individual Task Order(s) under the Agreement for any amount up to the not-to-exceed amounts for each Agreement; and
3. Delegate to the Director the authority to develop, amend and execute on behalf of the County, any documents necessary to administer the Agreement, including a form of Task Order; if such documents and any amendments thereto are in a form approved by County Counsel.

Executive Summary:

The storm events in January and February 2017 and fires in October 2017 caused considerable damage to County roads and roadway facilities. While the Department's Road Maintenance and Engineering Divisions responded admirably to these disasters, the Department does not have the staffing capacity to accommodate the multiple design projects that form part of the long-term recovery from these events. In addition these contracts will increase the Department's capacity to rapidly respond to future need. The Department may not use the full dollar amount of all contracts, and the request for Qualifications and Professional Services Agreement contain articles stating there is no guaranteed minimum quantity of work.

The Department of Transportation and Public Works (Department) is requesting the Board authorize the Chair to sign 32 on-call agreements with a shortlist of 16 Engineering Design consultants. There are 32 agreements for 16 consultants because each of the 16 consultants will sign two on-call agreements; one for work funded by Federal Highway dollars, and the other for work funded by FEMA:

1. Federal Highway Authority On-Call Agreement: The first agreement will be used for work funded locally, by the state, or by the Federal Highway Authority (FHWA).

2. Federal Emergency Management Agency (FEMA) On-Call Agreement: The second agreement will be used for work funded by Federal Emergency Management Agency (FEMA).

The not-to-exceed dollar amount of work that any one consultant can perform is \$975,000 total, regardless of whether the work proceeds under the FHWA on-call agreement or the FEMA on-call agreement. It was necessary to use two agreements and separate work funded by the Federal Highway Authority (FHWA) and FEMA to avoid potential conflict between competing regulations and requirements associated with the different sources of funding (FHWA and FEMA). Neither the FHWA version of the on-call agreement, nor the FEMA version of the on-call agreement guarantee any specific amount of work or dollar amount to any of the 16 consultants on the shortlist.

Discussion:

The Request for Qualifications to Provide On-Call Engineering Design Services was originally released on September 29, 2017 however, completion of the procurement process was heavily delayed by the October Wildfires. The modified schedule required proposals to be submitted by the end of November with the intent to evaluate and notify the shortlist by the end of December. The Department received 23 proposals and from these selected the 16 most qualified firms based on their past experience and qualifications, to be placed on the On-Call shortlist. A list of firms who submitted proposals, along with identification of those 16 proposers recommended is included with this Summary as "Attachment 1."

There were four main reasons behind the decision to seek an On-Call List of this nature:

1. Rapid response to disaster recovery: The January and February 2017 storms caused significant damage to county roads including slip-outs on roads such as Cazadero Highway, Old Cazadero Road, and Old Monte Rio Road.
2. Building long term capacity and resilience: Creation of this shortlist allows the Department to design infrastructure improvements and design local construction standards which increases capacity to respond to future needs, including emergencies. For example, having pre-approved, local construction standards will decrease the time it takes to design a slide repair for a specific road in Sonoma County and therefore shorten the time that the public has to wait for repairs to be made.
3. Delivering current infrastructure projects: Following the October Wildfires, the Board restated their commitment to delivering the much-needed road improvements that they began in 2012 and have so far committed \$67.4 million of General Fund and one-time dollars to pavement preservation, as well as, the ongoing bridge replacement program that will see 14 bridges retrofitted or replaced by 2023. The ongoing work to deliver this commitment requires the full capacity of the Department's road and bridge design sections. The additional focus on disaster recovery and resilience projects requires a rapid increase in the Department's staffing capacity, to work in these areas.
4. Additional technical expertise: The Department currently has several areas of technical expertise that are not available in-house. These include traffic engineering, hydrologic engineering and transportation planning. Several of the firms on the shortlist are experts in these specific fields and will supplement the Department's skillset.

The Request for Qualifications was prepared in accordance with the California Department of Transportation's (Caltrans) "Two-step" method. This means the procurement includes a general scope of duties from which firms write a proposal and develop a cost estimate.

Should the Board approve the execution of the on-call agreements as recommended, the Department will solicit individual projects from the shortlist using project-specific “Task Orders.” These Task Orders contain a specific scope of work and each shortlisted firm will have the opportunity to provide a detailed cost estimate based on the rates of compensation established in their original proposal. After reviewing responses from shortlisted firms, the Department will select a proposer and execute the individual Task Order for the project.

Though this method is time intensive at the beginning, it allows the Department to react quickly once the shortlist is established. A Request for Proposals can take from four to six months to go from proposal to executed contract however, a Task Order can be advertised and awarded in as little as two weeks. As an example, the Department estimates that this could make the difference between completing an emergency slide repair within 18 months of occurrence as opposed to a possible period of 3-5 months.

The Department anticipates that the first Task Orders will all relate to the FEMA funded sites from the January and February 2017 storms. FEMA funding for repair of these sites is time-limited and in order to meet their deadlines, the On-Call Design Services Agreements provide the Department with the necessary capacity, in lieu of in-house staff availability.

While the Department may not use the full \$15.6 million value of these agreements, they will provide critical capacity to deliver the infrastructure and recovery projects currently committed to, as well as for future disaster recovery efforts. If these agreements are not approved, timely completion of current and future FEMA-funded projects could be jeopardized.

Prior Board Actions:

None

Strategic Plan Alignment Goal 3: Invest in the Future

These agreements invest in the future by increasing the Department’s capacity to deliver current infrastructure improvements as well as delivering disaster recovery projects.

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses		\$300,000	\$300,000
Additional Appropriation Requested			
Total Expenditures		\$300,000	\$300,000
Funding Sources			
General Fund/WA GF			
State/Federal		\$300,000	\$300,000
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources		\$300,000	\$300,000
Narrative Explanation of Fiscal Impacts:			
Annual costs for On-Call Engineering Services is uncertain but there will be sufficient appropriations included in the Capital Improvement Operating Budget. Funding for these services will come from local, FEMA, and Caltrans.			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
Attachment 1: List of Proposals Attachment 2a: Biggs Cardosa Associates- FEMA Attachment 2b: Biggs Cardosa Associates- FHWA Attachment 3a: Cinquini & Passarino Inc.- FEMA Attachment 3b: Cinquini & Passarino Inc.- FHWA Attachment 4a: Coastland Civil Engineering Inc.- FEMA Attachment 4b: Coastland Civil Engineering Inc.- FHWA Attachment 5a: Cornerstone Structural Engineering Group- FEMA			

Attachment 5b: Cornerstone Structural Engineering Group- FHWA
Attachment 6a: Drake Haglan and Associates- FEMA
Attachment 6b: Drake Haglan and Associates- FHWA
Attachment 7a: Green Valley Consulting Engineers- FEMA
Attachment 7b: Green Valley Consulting Engineers- FHWA
Attachment 8a: Kleinfelder Inc.- FEMA
Attachment 8b: Kleinfelder Inc.- FHWA
Attachment 9a: Mark Thomas- FEMA
Attachment 9b: Mark Thomas- FHWA
Attachment 10a: MOE Engineering Inc.- FEMA
Attachment 10b: MOE Engineering Inc.- FHWA
Attachment 11a: Moffatt & Nichol- FEMA
Attachment 11b: Moffatt & Nichol- FHWA
Attachment 12a: NV5- FEMA
Attachment 12b: NV5- FHWA
Attachment 13a: OPAC Consulting Engineers Inc.- FEMA
Attachment 13b: OPAC Consulting Engineers Inc.- FHWA
Attachment 14a: Quincy Engineering- FEMA
Attachment 14b: Quincy Engineering- FHWA
Attachment 15a: TJKM Transportation Consultants- FEMA
Attachment 15b: TJKM Transportation Consultants- FHWA
Attachment 16a: TRC Engineering Inc.- FEMA
Attachment 16b: TRC Engineering Inc.- FHWA
Attachment 17a: TY Lin International- FEMA
Attachment 17b: TY Lin International - FHWA

Related Items “On File” with the Clerk of the Board:

ATTACHMENT 1

Alphabetical List of Consultant Proposals (Shortlisted firms underlined)

1. **Biggs Cardoso Associates Inc.**
2. California Infrastructure Consultancy, Inc.
3. **Cinquini & Passarino Inc.**
4. **Coastland Civil Engineering, Inc.**
5. **Cornerstone Structural Engineering Group**
6. **Drake Haglan and Associates**
7. GHD Inc.
8. **Green Valley Consulting Engineers**
9. Kimly Horn
10. **Kleinfelder, Inc.**
11. **Mark Thomas**
12. MGE Engineering, Inc.
13. **MOE Engineering, Inc.**
14. **Moffat & Nichol**
15. **NV5**
16. **OPAC Consulting Engineers, Inc.**
17. Parisi CSW Design Group
18. Questa Engineering Group
19. **Quincy Engineering**
20. R.E.Y. Engineers, INC.
21. **TJKM**
22. **TRC Engineering Inc.**
23. **T.Y. Lin International**

Professional Services Agreement (“PSA”)
On-Call Design Services FEMA Agreement – OC18-D2

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and Biggs Cardosa Associates Inc. (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in Attachment “A,” attached hereto and incorporated herein by this reference (hereinafter "Cost Proposal"), and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in Attachment “A”, the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

1.6 Federal Requirements.

Task Orders under this Agreement may be funded by The Federal Emergency Management Agency (FEMA). Consultant shall comply with all applicable Federal Requirements attached hereto as Exhibit "A" – Federal Provisions.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in

this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED].

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

2.8.1 The total amount payable by County for all Task Orders issued under this Agreement shall not exceed \$975,000.00.

- 2.8.2 The not-to-exceed amount of \$975,000 set forth in section 2.8.1 is an aggregate not-to-exceed amount across this Agreement and an Agreement No. OC18-D1 with Consultant. Any compensation expended by County to pay Consultant under Agreement No. OC18-D1 will reduce the not-to-exceed amount set forth in section 2.8.1 of this Agreement by the same amount.
- 2.8.3 This Agreement and Agreement No. OC18-D1 will be administered by the County's Transportation and Public Works department to ensure that the total aggregate amount of compensation to Consultant across this Agreement and Agreement No. OC18-D1 does not exceed the amount set forth in section 2.8.1.
- 2.8.5 Consultant acknowledges, understands and agrees that there is no guarantee, either expressed or implied that the dollar amount set forth in section 2.8.1 or any portion thereof will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

- 2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.
- 2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.
- 2.11.3 If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the

facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This Agreement shall go into effect on (_____)contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The Agreement shall end on (_____), unless extended by amendment.

3.2 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1 Termination Without Cause

Notwithstanding any other provision of this Agreement, at any time and without cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to Consultant.

4.2 Termination for Cause

Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

4.3 Delivery of Work Product and Final Payment Upon Termination

In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to County all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subconsultants, consultants, and other agents in connection with this Agreement and shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

4.4 Payment Upon Termination.

Upon termination of this Agreement by County, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked

prior to the termination times the applicable hourly or daily rate; and further provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by Consultant.

4.5 Authority to Terminate

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right

to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment. In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Department and Suspension" requirements set forth in Section IV and Exhibit "A1" (Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Contractors), Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, consultant has the obligation to inform the County.

9.4 [RESERVED]

9.5 Records Maintenance.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Access to Records" requirements set forth in Section III, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

- 9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.
- 9.6.2 Consultant hereby certifies and covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by County, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Consultant's or such other person's financial interests..
- 9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- 9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal requirements set forth in Exhibit "A" (Federal Requirements) attached to this Agreement..

9.8 Living Wage Ordinance.

- 9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinance's local preference requirements shall be used to select or otherwise apply to Consultant.

9.9 Nondiscrimination.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Equal Employment Opportunity Compliance" requirements set forth in Section VI, and without limiting any other provision in this Agreement, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 [RESERVED]

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

In addition to the requirements and rights afforded to FEMA set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements) and to afford FEMA such rights, including the "Notice of Requirements Pertaining to Copyrights" set forth in Section XI and the "Patent Rights" set forth in Section XII, Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this

Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above- described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

9.15 Prevailing Wage.

- 9.15.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 9.15.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.
- 9.15.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

Biggs Cardosa Associates Inc.
Attn: Mahvash M. Harms, P.E.
101 California Street, Suite 875
San Francisco, CA 94111
(415) 986-1911
mharms@biggscardosa.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Miscellaneous Provisions.

13.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other.

Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

13.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

13.10 Claims Filed by County's Construction Contractor.

13.10.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

13.10.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that

are being paid for Consultant's personnel services under this contract.

13.10.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

13.10.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14. Attachments & Exhibits.

The following Attachments and Exhibits appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

14.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

Exhibit A – Federal Requirements

14.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Exhibit "A", the Federal Requirements set forth in Exhibit "A" shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SIGNATURES FOLLOW ON NEXT PAGE -

- THIS SPACE LEFT INTENTIONALLY BLANK -

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Exhibit “A”
FEDERAL PROVISIONS

I. DEFINITIONS

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

II. FEDERAL REQUIREMENTS AND CHANGES

- A.** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The consultant will comply with all applicable federal law, regulations, executive orders , FEMA policies, procedures, and directives.
- B.** Consultant 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. Consultant's failure to so comply shall constitute a material breach of this contract.
- C.** The Consultant 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 subconsultant who will be subject to its provisions.

III. ACCESS TO RECORDS

- A.** The Consultant 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 Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B.** The Consultant 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 Consultant 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, Consultant agrees to maintain same until the County, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.
- D.** The requirements set for in paragraphs A, B, and C above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in Section 21 of the Agreement.

IV. DEBARMENT AND SUSPENSION

- A.** This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Consultant is required to verify that none of the Consultant, 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.** Consultant 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. Consultant agrees that neither Consultant nor any of its third party subconsultants shall enter into any third party subcontracts for any of the work under this Agreement with a third party subconsultant 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 Consultant 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. Consultant agrees to the provisions of Exhibit A1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion— Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Exhibit A1, Consultant is the "prospective lower tier participant."
- D.** The Consultant 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 subconsultant 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 Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, the County, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- F.** The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONSULTANT

- A.** The County and Consultant 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, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B.** The Consultant 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 subconsultant who will be subject to its provisions.

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

Consultant 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.** Consultants and subconsultants 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.** Consultants, and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C.** Consultants and subconsultants 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.** Consultants, and subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

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

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

To the extent required by any Federal grant programs applicable to expected funding or reimbursement of County’s expenses incurred in connection with the services provided under this Agreement, Consultant 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 Consultant shall be bound to the provisions of the Davis-Bacon Act, and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of

California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.

- B. The general prevailing wage rates may be accessed at the Department of Labor Home Page at www.wdol.gov. Under the Davis Bacon heading, click on “Selecting DBA WDs.” In the drop down menu for State, select, “California.” In the drop down menu for County, select “Sonoma.” In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

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

- A. **Compliance:** Consultant 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 Consultant or subconsultant 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 he or she is 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 Consultant and any subconsultant responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such Consultant and subconsultant shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.
- D. **Withholding for unpaid wages and liquidated damages:** The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subconsultant under any such contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subconsultant for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.
- E. **Subcontracts:** The Consultant or subconsultant shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subconsultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subconsultant or lower tier subconsultant with the clauses set forth in paragraphs A through D of this section.

X. NOTICE OF REPORTING REQUIREMENTS

- A. Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

XI. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

- A. Consultant 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 Consultant purchases ownership with the assistance of funds provided under this Agreement.
- B. The Consultant 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 subconsultant who will be subject to its provisions.

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

- A. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the County and Consultant 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 Consultant's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the County and Consultant 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 Consultant agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

XIII. ENERGY CONSERVATION REQUIREMENTS

- A. The Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

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

A. Consultant 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. Consultant 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 Consultant agrees to include paragraph A and B above in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

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

See Paragraph 4.1 of the Agreement.

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

Consultant's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement. See Paragraph 4.2 of the Agreement.

XVII. CHANGES.

See Paragraph 8 of the Agreement.

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

A. Consultant 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. Consultant agrees to the provisions of Exhibit A2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of \$100,000).

- C. Consultant 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 subconsultant who will be subject to its provisions.

XIX. MBE / WBE REQUIREMENTS

The County intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the CONSULTANT 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 CONSULTANT RESPONSIBILITIES

All recipients of this grant funding, as well as their prime Consultants and subconsultants, 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 Consultant and any subconsultants 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 CONSULTANT 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, Consultant shall take the affirmative steps listed in 2 CFR 200.321.

XX. PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200.322)

Consultant shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

XXI. INCORPORATION OF UNIFORM ADMINISTRATIVE REQUIREMENTS

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

XXII. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

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

XXIII. DHS SEAL, LOGO, AND FLAGS.

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

Exhibit A1

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

(Lower Tier refers to the agency or Consultant receiving Federal funds, as well as any subconsultants that the agency or Consultant 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. Consultant is required to sign the certification below which specifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Consultant will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any Consultant 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 an Voluntary Exclusion – Lower Tier Covered Transactions

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

Consultant Signature

Date

Exhibit A2

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

Consultant Signature

Date

Professional Services Agreement (“PSA”)
On-Call Design Services FHWA Agreement – OC18-D1

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and Biggs Cardosa Associates Inc. (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the County’s Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in the Request for Qualifications and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in , the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with County to review the quality of the work and resolve matters of concern;

(b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County. With respect to performance under this Agreement, Consultant shall employ the following key personnel: Project Manager.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED]

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

The total amount payable by County for all Task Orders resulting from this Agreement shall not exceed \$975,000.00. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.

2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This contract shall go into effect on (_____) contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The contract shall end on (_____), unless extended by contract amendment.

3.2 Contract Execution.

Consultant is advised that any recommendation for contract award is not binding on County until the contract is fully executed and approved by County.

3.3 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the

terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1. Notice Period.

County reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice.

4.2 Grounds for Termination.

County may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If County terminates this Agreement with Consultant, County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

4.3 Liability.

The maximum amount for which the Government shall be liable if this Agreement is terminated is 975,000 dollars.

4.4 Authority to Terminate.

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Department Head, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment.

Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion,

or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

9.4 [RESERVED].

9.5 Records Maintenance.

In addition to other record retention and audit requirements set forth elsewhere in this Agreement, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.

9.6.2 Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes

and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal contract requirements set forth in Article 13 herein.

9.8 Living Wage Ordinance.

9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinances local preference requirements shall be used to select or otherwise apply to Consultant.–

9.9 Nondiscrimination.

Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 Statement of Compliance.

9.10.1 Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

9.10.2 During the performance of this Contract, Consultant and its subconsultants 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, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (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 Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

9.10.3 The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

9.10.4 The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon

completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

On-Call Engineering
Design Services

Biggs Cardosa Associates Inc.
Attn: Mahvash M. Harms, P.E.
101 California Street, Suite 875
San Francisco, CA 94111
(415) 986-1911
mharms@biggscardosa.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Federal Requirements.

13.1 Contract Assurance.

The consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted agreements. Failure by the consultant to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

13.2 Prompt Progress Payments to Subcontractors.

Attention is directed to Section 7108.5 of the California Business and Professions Code, which requires a prime contractor or subcontractor to pay any subcontractor not later than ten (10) days of receipt of each progress payment, unless otherwise agreed to in writing. In addition, federal regulations (Title 49 Code of Federal Regulations Part 26.29) require a prime contractor or subcontractor to pay a subcontractor no later than thirty (30) days of receipt of each payment, unless any delay or postponement of payment among the parties takes place only for good cause and with the prior written approval of County. Section 7108.5 of the California Business and Professions Code also contains enforcement actions and penalties. The requirements apply to both Disadvantaged Business Entities ("DBE") and non-DBE subcontractors. Consultant shall include the foregoing progress payment requirements in every subcontract entered into by Consultant in the performance of its obligations under this Agreement

13.3 Prompt Payment of Withheld Funds to Subcontractors.

No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any

delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

13.4 Disadvantaged Business Enterprise (DBE) Participation.

- 13.4.1 This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- 13.4.2 A DBE participation goal will be established for each Task Order. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- 13.4.3 DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as County deems appropriate.
- 13.4.4 Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- 13.4.5 A DBE firm may be terminated only with prior written approval from County and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting County consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).
- 13.4.6 A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under

the, contract is commensurate with the work it is actually performing, and other relevant factors.

- 13.4.7 A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- 13.4.8 If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- 13.4.9 Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- 13.4.10 Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by Consultant or Consultant's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- 13.4.11 If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to County's Contract Administrator within 30 days.

13.5 Prevailing Wage.

- 13.5.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 13.5.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless

the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

- 13.5.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

13.6 Text Messaging While Driving.

In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, and Department of Transportation Order 3902.10, Text Messaging While Driving, text messaging while driving is prohibited in the performance of any duties included in this agreement for both consultant and any sub-consultants hired for performance of duties under this Agreement. Consultant shall include a provision prohibiting texting while driving in all sub-consultant agreements entered into related to the performance of its obligations under this Agreement.

Definitions. The following definitions are to be used in conjunction with this section. "Driving":

- 1) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- 2) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

"Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

13.7 Buy America.

Furnish Steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:

- 1) Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478(3/24/1995)];
- 2) If the total combine cost of the materials does not exceed the great of 0.1 percent of the total bid or \$2,500, materials produced outside the U. S. may be used.

Production includes:

- 1) Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending,

grinding, and drilling or chemical composition;

- 2) Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

13.8 Prohibition of Expending Local Agency, State or Federal funds for Lobbying.

13.8.1 Consultant certifies to the best of his or her knowledge and belief that:

- 1) No state, federal or County appropriated funds have been paid, or will be paid by or on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or 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 federal 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; Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

13.8.2 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.

13.8.3 Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

13.9 Cost Principles and Administrative Requirements.

13.9.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, shall be used to determine the cost allowability of individual items.

13.9.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

13.9.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal

Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, are subject to repayment by Consultant to County.

13.10 Retention of Records/Audit.

For the purpose of determining compliance with Public Contract Code 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, Section 2500 *et seq.*, when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; Consultant, subconsultants, and County shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, County, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

13.11 Audit Review Procedures.

- 13.11.1 Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by County's Chief Financial Officer.
- 13.11.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by County's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- 13.11.3 Neither the pendency of a dispute nor its consideration by County will excuse Consultant from full and timely performance, in accordance with the terms of this contract.
- 13.11.4 Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by County contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by County at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

13.12 Subcontracting.

- 13.12.1 Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.
- 13.12.2 Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by County's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- 13.12.3 Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by County.
- 13.12.4 All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- 13.12.5 Any substitution of subconsultant(s) must be approved in writing by County's Contract Administrator prior to the start of work by the subconsultant(s).

13.13 Equipment Purchase.

- 13.13.1 Prior authorization in writing, by County's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- 13.13.2 For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by County's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- 13.13.3 Any equipment purchased as a result of this contract is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, Consultant may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by County." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment

with a fair market value greater than \$5,000 is credited to the project.

14. Miscellaneous Provisions.

14.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

14.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

14.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

14.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

14.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

14.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

14.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

14.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

14.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

14.10 Rebates, Kickback or Other Unlawful Consideration.

Consultant warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

14.11 Funding Requirements.

14.11.1 It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

14.11.2 This contract is valid and enforceable only, if sufficient funds are made available to County for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or County Board of Supervisors that may affect the provisions, terms, or funding of this contract in any manner.

14.11.3 It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

14.11.4 County has the option to void the contract under the 30-day termination clause pursuant to Article 4, or by mutual agreement to amend the contract to reflect any reduction of funds.

14.12 Evaluation of Consultant.

Consultant's performance will be evaluated by County. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

14.13 Claims Filed by County's Construction Contractor.

14.13.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

- 14.13.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.
- 14.13.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.
- 14.13.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14.14 National Labor Relations Board Certification.

In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

14.15 Retention of Funds.

- 14.15.1 Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- 14.15.2 No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the County's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

14.16 Contingent Fee.

Consultant warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, County has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

14.17 Inspection of Work.

Consultant and any subconsultant shall permit County, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

14.18 Safety.

14.18.1 Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County Safety Officer and other County representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

14.18.2 Pursuant to the authority contained in Section 591 of the Vehicle Code, County has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles

14.18.3 Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

15. Attachments & Exhibits.

The following Attachments appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

15.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

15.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Article 13, Article 14.10-14.18 and/or Attachment C, the Federal Requirements set forth in Article 13, 14.10-14.18 and/or Attachment C shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**SIGNATURES FOLLOW ON NEXT PAGE -
- THIS SPACE LEFT INTENTIONALLY BLANK -**

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Professional Services Agreement (“PSA”)
On-Call Design Services FEMA Agreement – OC18-D2

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and Cinquini & Passarino Inc. (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in Attachment “A,” attached hereto and incorporated herein by this reference (hereinafter "Cost Proposal"), and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in Attachment “A”, the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

1.6 Federal Requirements.

Task Orders under this Agreement may be funded by The Federal Emergency Management Agency (FEMA). Consultant shall comply with all applicable Federal Requirements attached hereto as Exhibit "A" – Federal Provisions.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in

this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED].

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

2.8.1 The total amount payable by County for all Task Orders issued under this Agreement shall not exceed \$975,000.00.

- 2.8.2 The not-to-exceed amount of \$975,000 set forth in section 2.8.1 is an aggregate not-to-exceed amount across this Agreement and an Agreement No. OC18-D1 with Consultant. Any compensation expended by County to pay Consultant under Agreement No. OC18-D1 will reduce the not-to-exceed amount set forth in section 2.8.1 of this Agreement by the same amount.
- 2.8.3 This Agreement and Agreement No. OC18-D1 will be administered by the County's Transportation and Public Works department to ensure that the total aggregate amount of compensation to Consultant across this Agreement and Agreement No. OC18-D1 does not exceed the amount set forth in section 2.8.1.
- 2.8.5 Consultant acknowledges, understands and agrees that there is no guarantee, either expressed or implied that the dollar amount set forth in section 2.8.1 or any portion thereof will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

- 2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.
- 2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.
- 2.11.3 If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the

facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This Agreement shall go into effect on (_____)contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The Agreement shall end on (_____), unless extended by amendment.

3.2 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1 Termination Without Cause

Notwithstanding any other provision of this Agreement, at any time and without cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to Consultant.

4.2 Termination for Cause

Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

4.3 Delivery of Work Product and Final Payment Upon Termination

In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to County all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subconsultants, consultants, and other agents in connection with this Agreement and shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

4.4 Payment Upon Termination.

Upon termination of this Agreement by County, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked

prior to the termination times the applicable hourly or daily rate; and further provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by Consultant.

4.5 Authority to Terminate

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right

to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment. In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Department and Suspension" requirements set forth in Section IV and Exhibit "A1" (Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Contractors), Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, consultant has the obligation to inform the County.

9.4 [RESERVED]

9.5 Records Maintenance.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Access to Records" requirements set forth in Section III, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

- 9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.
- 9.6.2 Consultant hereby certifies and covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by County, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Consultant's or such other person's financial interests..
- 9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- 9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal requirements set forth in Exhibit "A" (Federal Requirements) attached to this Agreement..

9.8 Living Wage Ordinance.

- 9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinance's local preference requirements shall be used to select or otherwise apply to Consultant.

9.9 Nondiscrimination.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Equal Employment Opportunity Compliance" requirements set forth in Section VI, and without limiting any other provision in this Agreement, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 [RESERVED]

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

In addition to the requirements and rights afforded to FEMA set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements) and to afford FEMA such rights, including the "Notice of Requirements Pertaining to Copyrights" set forth in Section XI and the "Patent Rights" set forth in Section XII, Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this

Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above- described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

9.15 Prevailing Wage.

- 9.15.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 9.15.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.
- 9.15.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

Cinquini & Passarino Inc.
Attn: Anthony G. Cinquini, P.E., P.L.S.
1360 North Dutton Avenue, Suite 150
Santa Rosa, CA 95401
(707) 542-6268
tcinquini@cinquinipassarino.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Miscellaneous Provisions.

13.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other.

Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

13.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

13.10 Claims Filed by County's Construction Contractor.

13.10.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

13.10.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that

are being paid for Consultant's personnel services under this contract.

13.10.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

13.10.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14. Attachments & Exhibits.

The following Attachments and Exhibits appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

14.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

Exhibit A – Federal Requirements

14.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Exhibit "A", the Federal Requirements set forth in Exhibit "A" shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SIGNATURES FOLLOW ON NEXT PAGE -

- THIS SPACE LEFT INTENTIONALLY BLANK -

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Exhibit “A”
FEDERAL PROVISIONS

I. DEFINITIONS

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

II. FEDERAL REQUIREMENTS AND CHANGES

- A.** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The consultant will comply with all applicable federal law, regulations, executive orders , FEMA policies, procedures, and directives.
- B.** Consultant 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. Consultant's failure to so comply shall constitute a material breach of this contract.
- C.** The Consultant 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 subconsultant who will be subject to its provisions.

III. ACCESS TO RECORDS

- A.** The Consultant 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 Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B.** The Consultant 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 Consultant 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, Consultant agrees to maintain same until the County, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.
- D.** The requirements set for in paragraphs A, B, and C above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in Section 21 of the Agreement.

IV. DEBARMENT AND SUSPENSION

- A.** This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Consultant is required to verify that none of the Consultant, 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.** Consultant 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. Consultant agrees that neither Consultant nor any of its third party subconsultants shall enter into any third party subcontracts for any of the work under this Agreement with a third party subconsultant 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 Consultant 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. Consultant agrees to the provisions of Exhibit A1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion— Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Exhibit A1, Consultant is the "prospective lower tier participant."
- D.** The Consultant 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 subconsultant 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 Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, the County, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- F.** The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONSULTANT

- A.** The County and Consultant 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, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B.** The Consultant 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 subconsultant who will be subject to its provisions.

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

Consultant 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.** Consultants and subconsultants 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.** Consultants, and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C.** Consultants and subconsultants 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.** Consultants, and subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

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

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

To the extent required by any Federal grant programs applicable to expected funding or reimbursement of County’s expenses incurred in connection with the services provided under this Agreement, Consultant 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 Consultant shall be bound to the provisions of the Davis-Bacon Act, and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of

California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.

- B. The general prevailing wage rates may be accessed at the Department of Labor Home Page at www.wdol.gov. Under the Davis Bacon heading, click on “Selecting DBA WDs.” In the drop down menu for State, select, “California.” In the drop down menu for County, select “Sonoma.” In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

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

- A. **Compliance:** Consultant 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 Consultant or subconsultant 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 he or she is 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 Consultant and any subconsultant responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such Consultant and subconsultant shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.
- D. **Withholding for unpaid wages and liquidated damages:** The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subconsultant under any such contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subconsultant for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.
- E. **Subcontracts:** The Consultant or subconsultant shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subconsultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subconsultant or lower tier subconsultant with the clauses set forth in paragraphs A through D of this section.

X. NOTICE OF REPORTING REQUIREMENTS

- A.** Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

XI. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

- A.** Consultant 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 Consultant purchases ownership with the assistance of funds provided under this Agreement.
- B.** The Consultant 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 subconsultant who will be subject to its provisions.

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

- A. General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the County and Consultant 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 Consultant's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the County and Consultant 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 Consultant agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

XIII. ENERGY CONSERVATION REQUIREMENTS

- A.** The Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

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

A. Consultant 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. Consultant 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 Consultant agrees to include paragraph A and B above in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

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

See Paragraph 4.1 of the Agreement.

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

Consultant's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement. See Paragraph 4.2 of the Agreement.

XVII. CHANGES.

See Paragraph 8 of the Agreement.

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

A. Consultant 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. Consultant agrees to the provisions of Exhibit A2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of \$100,000).

- C. Consultant 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 subconsultant who will be subject to its provisions.

XIX. MBE / WBE REQUIREMENTS

The County intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the CONSULTANT 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 CONSULTANT RESPONSIBILITIES

All recipients of this grant funding, as well as their prime Consultants and subconsultants, 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 Consultant and any subconsultants 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 CONSULTANT 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, Consultant shall take the affirmative steps listed in 2 CFR 200.321.

XX. PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200.322)

Consultant shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

XXI. INCORPORATION OF UNIFORM ADMINISTRATIVE REQUIREMENTS

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

XXII. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

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

XXIII. DHS SEAL, LOGO, AND FLAGS.

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

Exhibit A1

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

(Lower Tier refers to the agency or Consultant receiving Federal funds, as well as any subconsultants that the agency or Consultant 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. Consultant is required to sign the certification below which specifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Consultant will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any Consultant 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 an Voluntary Exclusion – Lower Tier Covered Transactions

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

Consultant Signature

Date

Exhibit A2

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

Consultant Signature

Date

Professional Services Agreement (“PSA”)
On-Call Design Services FHWA Agreement – OC18-D1

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and Cinquini & Passarino Inc. (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the County’s Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in the Request for Qualifications and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in , the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with County to review the quality of the work and resolve matters of concern;

(b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County. With respect to performance under this Agreement, Consultant shall employ the following key personnel: Project Manager.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED]

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

The total amount payable by County for all Task Orders resulting from this Agreement shall not exceed \$975,000.00. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.

2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This contract shall go into effect on (_____) contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The contract shall end on (_____), unless extended by contract amendment.

3.2 Contract Execution.

Consultant is advised that any recommendation for contract award is not binding on County until the contract is fully executed and approved by County.

3.3 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the

terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1. Notice Period.

County reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice.

4.2 Grounds for Termination.

County may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If County terminates this Agreement with Consultant, County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

4.3 Liability.

The maximum amount for which the Government shall be liable if this Agreement is terminated is 975,000 dollars.

4.4 Authority to Terminate.

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Department Head, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment.

Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion,

or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

9.4 [RESERVED].

9.5 Records Maintenance.

In addition to other record retention and audit requirements set forth elsewhere in this Agreement, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.

9.6.2 Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes

and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal contract requirements set forth in Article 13 herein.

9.8 Living Wage Ordinance.

9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinances local preference requirements shall be used to select or otherwise apply to Consultant.–

9.9 Nondiscrimination.

Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 Statement of Compliance.

9.10.1 Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

9.10.2 During the performance of this Contract, Consultant and its subconsultants 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, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (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 Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

9.10.3 The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

9.10.4 The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon

completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

On-Call Engineering
Design Services

Cinquini & Passarino Inc.
Attn: Anthony G. Cinquini, P.E., P.L.S.
1360 North Dutton Avenue, Suite 150
Santa Rosa, CA 95401
(707) 542-6268
tcinquini@cinquinipassarino.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Federal Requirements.

13.1 Contract Assurance.

The consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted agreements. Failure by the consultant to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

13.2 Prompt Progress Payments to Subcontractors.

Attention is directed to Section 7108.5 of the California Business and Professions Code, which requires a prime contractor or subcontractor to pay any subcontractor not later than ten (10) days of receipt of each progress payment, unless otherwise agreed to in writing. In addition, federal regulations (Title 49 Code of Federal Regulations Part 26.29) require a prime contractor or subcontractor to pay a subcontractor no later than thirty (30) days of receipt of each payment, unless any delay or postponement of payment among the parties takes place only for good cause and with the prior written approval of County. Section 7108.5 of the California Business and Professions Code also contains enforcement actions and penalties. The requirements apply to both Disadvantaged Business Entities ("DBE") and non-DBE subcontractors. Consultant shall include the foregoing progress payment requirements in every subcontract entered into by Consultant in the performance of its obligations under this Agreement

13.3 Prompt Payment of Withheld Funds to Subcontractors.

No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any

delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

13.4 Disadvantaged Business Enterprise (DBE) Participation.

- 13.4.1 This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- 13.4.2 A DBE participation goal will be established for each Task Order. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- 13.4.3 DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as County deems appropriate.
- 13.4.4 Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- 13.4.5 A DBE firm may be terminated only with prior written approval from County and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting County consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).
- 13.4.6 A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under

the, contract is commensurate with the work it is actually performing, and other relevant factors.

- 13.4.7 A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- 13.4.8 If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- 13.4.9 Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- 13.4.10 Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by Consultant or Consultant's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- 13.4.11 If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to County's Contract Administrator within 30 days.

13.5 Prevailing Wage.

- 13.5.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 13.5.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless

the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

- 13.5.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

13.6 Text Messaging While Driving.

In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, and Department of Transportation Order 3902.10, Text Messaging While Driving, text messaging while driving is prohibited in the performance of any duties included in this agreement for both consultant and any sub-consultants hired for performance of duties under this Agreement. Consultant shall include a provision prohibiting texting while driving in all sub-consultant agreements entered into related to the performance of its obligations under this Agreement.

Definitions. The following definitions are to be used in conjunction with this section. "Driving":

- 1) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- 2) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

"Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

13.7 Buy America.

Furnish Steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:

- 1) Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478(3/24/1995)];
- 2) If the total combine cost of the materials does not exceed the great of 0.1 percent of the total bid or \$2,500, materials produced outside the U. S. may be used.

Production includes:

- 1) Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending,

grinding, and drilling or chemical composition;

- 2) Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

13.8 Prohibition of Expending Local Agency, State or Federal funds for Lobbying.

13.8.1 Consultant certifies to the best of his or her knowledge and belief that:

- 1) No state, federal or County appropriated funds have been paid, or will be paid by or on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or 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 federal 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; Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

13.8.2 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.

13.8.3 Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

13.9 Cost Principles and Administrative Requirements.

13.9.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, shall be used to determine the cost allowability of individual items.

13.9.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

13.9.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal

Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, are subject to repayment by Consultant to County.

13.10 Retention of Records/Audit.

For the purpose of determining compliance with Public Contract Code 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, Section 2500 *et seq.*, when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; Consultant, subconsultants, and County shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, County, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

13.11 Audit Review Procedures.

- 13.11.1 Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by County's Chief Financial Officer.
- 13.11.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by County's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- 13.11.3 Neither the pendency of a dispute nor its consideration by County will excuse Consultant from full and timely performance, in accordance with the terms of this contract.
- 13.11.4 Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by County contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by County at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

13.12 Subcontracting.

- 13.12.1 Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.
- 13.12.2 Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by County's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- 13.12.3 Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by County.
- 13.12.4 All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- 13.12.5 Any substitution of subconsultant(s) must be approved in writing by County's Contract Administrator prior to the start of work by the subconsultant(s).

13.13 Equipment Purchase.

- 13.13.1 Prior authorization in writing, by County's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- 13.13.2 For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by County's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- 13.13.3 Any equipment purchased as a result of this contract is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, Consultant may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by County." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment

with a fair market value greater than \$5,000 is credited to the project.

14. Miscellaneous Provisions.

14.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

14.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

14.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

14.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

14.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

14.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

14.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

14.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

14.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

14.10 Rebates, Kickback or Other Unlawful Consideration.

Consultant warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

14.11 Funding Requirements.

14.11.1 It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

14.11.2 This contract is valid and enforceable only, if sufficient funds are made available to County for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or County Board of Supervisors that may affect the provisions, terms, or funding of this contract in any manner.

14.11.3 It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

14.11.4 County has the option to void the contract under the 30-day termination clause pursuant to Article 4, or by mutual agreement to amend the contract to reflect any reduction of funds.

14.12 Evaluation of Consultant.

Consultant's performance will be evaluated by County. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

14.13 Claims Filed by County's Construction Contractor.

14.13.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

- 14.13.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.
- 14.13.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.
- 14.13.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14.14 National Labor Relations Board Certification.

In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

14.15 Retention of Funds.

- 14.15.1 Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- 14.15.2 No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the County's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

14.16 Contingent Fee.

Consultant warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, County has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

14.17 Inspection of Work.

Consultant and any subconsultant shall permit County, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

14.18 Safety.

14.18.1 Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County Safety Officer and other County representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

14.18.2 Pursuant to the authority contained in Section 591 of the Vehicle Code, County has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles

14.18.3 Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

15. Attachments & Exhibits.

The following Attachments appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

15.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

15.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Article 13, Article 14.10-14.18 and/or Attachment C, the Federal Requirements set forth in Article 13, 14.10-14.18 and/or Attachment C shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**SIGNATURES FOLLOW ON NEXT PAGE -
- THIS SPACE LEFT INTENTIONALLY BLANK -**

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Professional Services Agreement (“PSA”)
On-Call Design Services FEMA Agreement – OC18-D2

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and Coastland Civil Engineering Inc. (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in Attachment “A,” attached hereto and incorporated herein by this reference (hereinafter "Cost Proposal"), and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in Attachment “A”, the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

1.6 Federal Requirements.

Task Orders under this Agreement may be funded by The Federal Emergency Management Agency (FEMA). Consultant shall comply with all applicable Federal Requirements attached hereto as Exhibit "A" – Federal Provisions.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in

this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED].

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

2.8.1 The total amount payable by County for all Task Orders issued under this Agreement shall not exceed \$975,000.00.

- 2.8.2 The not-to-exceed amount of \$975,000 set forth in section 2.8.1 is an aggregate not-to-exceed amount across this Agreement and an Agreement No. OC18-D1 with Consultant. Any compensation expended by County to pay Consultant under Agreement No. OC18-D1 will reduce the not-to-exceed amount set forth in section 2.8.1 of this Agreement by the same amount.
- 2.8.3 This Agreement and Agreement No. OC18-D1 will be administered by the County's Transportation and Public Works department to ensure that the total aggregate amount of compensation to Consultant across this Agreement and Agreement No. OC18-D1 does not exceed the amount set forth in section 2.8.1.
- 2.8.5 Consultant acknowledges, understands and agrees that there is no guarantee, either expressed or implied that the dollar amount set forth in section 2.8.1 or any portion thereof will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

- 2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.
- 2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.
- 2.11.3 If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the

facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This Agreement shall go into effect on (_____)contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The Agreement shall end on (_____), unless extended by amendment.

3.2 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1 Termination Without Cause

Notwithstanding any other provision of this Agreement, at any time and without cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to Consultant.

4.2 Termination for Cause

Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

4.3 Delivery of Work Product and Final Payment Upon Termination

In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to County all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subconsultants, consultants, and other agents in connection with this Agreement and shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

4.4 Payment Upon Termination.

Upon termination of this Agreement by County, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked

prior to the termination times the applicable hourly or daily rate; and further provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by Consultant.

4.5 Authority to Terminate

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right

to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment. In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Department and Suspension" requirements set forth in Section IV and Exhibit "A1" (Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Contractors), Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, consultant has the obligation to inform the County.

9.4 [RESERVED]

9.5 Records Maintenance.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Access to Records" requirements set forth in Section III, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

- 9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.
- 9.6.2 Consultant hereby certifies and covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by County, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Consultant's or such other person's financial interests..
- 9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- 9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal requirements set forth in Exhibit "A" (Federal Requirements) attached to this Agreement..

9.8 Living Wage Ordinance.

- 9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinance's local preference requirements shall be used to select or otherwise apply to Consultant.

9.9 Nondiscrimination.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Equal Employment Opportunity Compliance" requirements set forth in Section VI, and without limiting any other provision in this Agreement, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 [RESERVED]

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

In addition to the requirements and rights afforded to FEMA set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements) and to afford FEMA such rights, including the "Notice of Requirements Pertaining to Copyrights" set forth in Section XI and the "Patent Rights" set forth in Section XII, Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this

Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

9.15 Prevailing Wage.

- 9.15.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 9.15.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.
- 9.15.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

Coastland Civil engineering Inc.
Heidi Utterback, P.E.
1400 Neotomas Avenue
Santa Rosa, CA 95405
(707) 571 8005
utterback@coastlandcivil.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Miscellaneous Provisions.

13.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other.

Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

13.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

13.10 Claims Filed by County's Construction Contractor.

13.10.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

13.10.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that

are being paid for Consultant's personnel services under this contract.

13.10.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

13.10.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14. Attachments & Exhibits.

The following Attachments and Exhibits appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

14.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

Exhibit A – Federal Requirements

14.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Exhibit "A", the Federal Requirements set forth in Exhibit "A" shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SIGNATURES FOLLOW ON NEXT PAGE -

- THIS SPACE LEFT INTENTIONALLY BLANK -

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Exhibit “A”
FEDERAL PROVISIONS

I. DEFINITIONS

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

II. FEDERAL REQUIREMENTS AND CHANGES

- A.** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The consultant will comply with all applicable federal law, regulations, executive orders , FEMA policies, procedures, and directives.
- B.** Consultant 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. Consultant's failure to so comply shall constitute a material breach of this contract.
- C.** The Consultant 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 subconsultant who will be subject to its provisions.

III. ACCESS TO RECORDS

- A.** The Consultant 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 Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B.** The Consultant 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 Consultant 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, Consultant agrees to maintain same until the County, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.
- D.** The requirements set for in paragraphs A, B, and C above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in Section 21 of the Agreement.

IV. DEBARMENT AND SUSPENSION

- A.** This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Consultant is required to verify that none of the Consultant, 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.** Consultant 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. Consultant agrees that neither Consultant nor any of its third party subconsultants shall enter into any third party subcontracts for any of the work under this Agreement with a third party subconsultant 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 Consultant 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. Consultant agrees to the provisions of Exhibit A1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion— Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Exhibit A1, Consultant is the "prospective lower tier participant."
- D.** The Consultant 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 subconsultant 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 Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, the County, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- F.** The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONSULTANT

- A.** The County and Consultant 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, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B.** The Consultant 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 subconsultant who will be subject to its provisions.

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

Consultant 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.** Consultants and subconsultants 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.** Consultants, and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C.** Consultants and subconsultants 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.** Consultants, and subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

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

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

To the extent required by any Federal grant programs applicable to expected funding or reimbursement of County’s expenses incurred in connection with the services provided under this Agreement, Consultant 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 Consultant shall be bound to the provisions of the Davis-Bacon Act, and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of

California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.

- B. The general prevailing wage rates may be accessed at the Department of Labor Home Page at www.wdol.gov. Under the Davis Bacon heading, click on “Selecting DBA WDs.” In the drop down menu for State, select, “California.” In the drop down menu for County, select “Sonoma.” In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

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

- A. **Compliance:** Consultant 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 Consultant or subconsultant 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 he or she is 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 Consultant and any subconsultant responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such Consultant and subconsultant shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.
- D. **Withholding for unpaid wages and liquidated damages:** The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subconsultant under any such contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subconsultant for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.
- E. **Subcontracts:** The Consultant or subconsultant shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subconsultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subconsultant or lower tier subconsultant with the clauses set forth in paragraphs A through D of this section.

X. NOTICE OF REPORTING REQUIREMENTS

- A. Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

XI. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

- A. Consultant 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 Consultant purchases ownership with the assistance of funds provided under this Agreement.
- B. The Consultant 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 subconsultant who will be subject to its provisions.

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

- A. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the County and Consultant 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 Consultant's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the County and Consultant 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 Consultant agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

XIII. ENERGY CONSERVATION REQUIREMENTS

- A. The Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

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

A. Consultant 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. Consultant 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 Consultant agrees to include paragraph A and B above in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

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

See Paragraph 4.1 of the Agreement.

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

Consultant's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement. See Paragraph 4.2 of the Agreement.

XVII. CHANGES.

See Paragraph 8 of the Agreement.

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

A. Consultant 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. Consultant agrees to the provisions of Exhibit A2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of \$100,000).

- C. Consultant 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 subconsultant who will be subject to its provisions.

XIX. MBE / WBE REQUIREMENTS

The County intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the CONSULTANT 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 CONSULTANT RESPONSIBILITIES

All recipients of this grant funding, as well as their prime Consultants and subconsultants, 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 Consultant and any subconsultants 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 CONSULTANT 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, Consultant shall take the affirmative steps listed in 2 CFR 200.321.

XX. PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200.322)

Consultant shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

XXI. INCORPORATION OF UNIFORM ADMINISTRATIVE REQUIREMENTS

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

XXII. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

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

XXIII. DHS SEAL, LOGO, AND FLAGS.

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

Exhibit A1

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

(Lower Tier refers to the agency or Consultant receiving Federal funds, as well as any subconsultants that the agency or Consultant 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. Consultant is required to sign the certification below which specifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Consultant will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any Consultant 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 an Voluntary Exclusion – Lower Tier Covered Transactions

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

Consultant Signature

Date

Exhibit A2

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

Consultant Signature

Date

Professional Services Agreement (“PSA”)
On-Call Design Services FHWA Agreement – OC18-D1

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and Coastland Civil Engineering Inc. (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the County’s Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in the Request for Qualifications and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in , the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County. With respect to performance under this Agreement, Consultant shall employ the following key personnel: Project Manager.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED]

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

The total amount payable by County for all Task Orders resulting from this Agreement shall not exceed \$975,000.00. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.

2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This contract shall go into effect on (_____) contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The contract shall end on (_____), unless extended by contract amendment.

3.2 Contract Execution.

Consultant is advised that any recommendation for contract award is not binding on County until the contract is fully executed and approved by County.

3.3 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the

terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1. Notice Period.

County reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice.

4.2 Grounds for Termination.

County may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If County terminates this Agreement with Consultant, County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

4.3 Liability.

The maximum amount for which the Government shall be liable if this Agreement is terminated is 975,000 dollars.

4.4 Authority to Terminate.

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Department Head, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment.

Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion,

or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

9.4 [RESERVED].

9.5 Records Maintenance.

In addition to other record retention and audit requirements set forth elsewhere in this Agreement, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.

9.6.2 Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes

and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal contract requirements set forth in Article 13 herein.

9.8 Living Wage Ordinance.

9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinances local preference requirements shall be used to select or otherwise apply to Consultant.–

9.9 Nondiscrimination.

Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 Statement of Compliance.

9.10.1 Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

9.10.2 During the performance of this Contract, Consultant and its subconsultants 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, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (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 Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

9.10.3 The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

9.10.4 The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon

completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

On-Call Engineering
Design Services

Coastland Civil engineering Inc.
Heidi Utterback, P.E.
1400 Neotomas Avenue
Santa Rosa, CA 95405
(707) 571 8005
utterback@coastlandcivil.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Federal Requirements.

13.1 Contract Assurance.

The consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted agreements. Failure by the consultant to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

13.2 Prompt Progress Payments to Subcontractors.

Attention is directed to Section 7108.5 of the California Business and Professions Code, which requires a prime contractor or subcontractor to pay any subcontractor not later than ten (10) days of receipt of each progress payment, unless otherwise agreed to in writing. In addition, federal regulations (Title 49 Code of Federal Regulations Part 26.29) require a prime contractor or subcontractor to pay a subcontractor no later than thirty (30) days of receipt of each payment, unless any delay or postponement of payment among the parties takes place only for good cause and with the prior written approval of County. Section 7108.5 of the California Business and Professions Code also contains enforcement actions and penalties. The requirements apply to both Disadvantaged Business Entities ("DBE") and non-DBE subcontractors. Consultant shall include the foregoing progress payment requirements in every subcontract entered into by Consultant in the performance of its obligations under this Agreement

13.3 Prompt Payment of Withheld Funds to Subcontractors.

No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any

delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

13.4 Disadvantaged Business Enterprise (DBE) Participation.

- 13.4.1 This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- 13.4.2 A DBE participation goal will be established for each Task Order. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- 13.4.3 DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as County deems appropriate.
- 13.4.4 Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- 13.4.5 A DBE firm may be terminated only with prior written approval from County and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting County consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).
- 13.4.6 A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under

the, contract is commensurate with the work it is actually performing, and other relevant factors.

- 13.4.7 A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- 13.4.8 If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- 13.4.9 Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- 13.4.10 Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by Consultant or Consultant's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- 13.4.11 If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to County's Contract Administrator within 30 days.

13.5 Prevailing Wage.

- 13.5.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 13.5.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless

the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

- 13.5.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

13.6 Text Messaging While Driving.

In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, and Department of Transportation Order 3902.10, Text Messaging While Driving, text messaging while driving is prohibited in the performance of any duties included in this agreement for both consultant and any sub-consultants hired for performance of duties under this Agreement. Consultant shall include a provision prohibiting texting while driving in all sub-consultant agreements entered into related to the performance of its obligations under this Agreement.

Definitions. The following definitions are to be used in conjunction with this section. "Driving":

- 1) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- 2) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

"Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

13.7 Buy America.

Furnish Steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:

- 1) Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478(3/24/1995)];
- 2) If the total combine cost of the materials does not exceed the great of 0.1 percent of the total bid or \$2,500, materials produced outside the U. S. may be used.

Production includes:

- 1) Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending,

grinding, and drilling or chemical composition;

- 2) Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

13.8 Prohibition of Expending Local Agency, State or Federal funds for Lobbying.

13.8.1 Consultant certifies to the best of his or her knowledge and belief that:

- 1) No state, federal or County appropriated funds have been paid, or will be paid by or on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or 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 federal 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; Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

13.8.2 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.

13.8.3 Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

13.9 Cost Principles and Administrative Requirements.

13.9.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, shall be used to determine the cost allowability of individual items.

13.9.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

13.9.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal

Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, are subject to repayment by Consultant to County.

13.10 Retention of Records/Audit.

For the purpose of determining compliance with Public Contract Code 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, Section 2500 *et seq.*, when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; Consultant, subconsultants, and County shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, County, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

13.11 Audit Review Procedures.

- 13.11.1 Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by County's Chief Financial Officer.
- 13.11.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by County's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- 13.11.3 Neither the pendency of a dispute nor its consideration by County will excuse Consultant from full and timely performance, in accordance with the terms of this contract.
- 13.11.4 Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by County contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by County at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

13.12 Subcontracting.

- 13.12.1 Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.
- 13.12.2 Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by County's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- 13.12.3 Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by County.
- 13.12.4 All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- 13.12.5 Any substitution of subconsultant(s) must be approved in writing by County's Contract Administrator prior to the start of work by the subconsultant(s).

13.13 Equipment Purchase.

- 13.13.1 Prior authorization in writing, by County's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- 13.13.2 For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by County's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- 13.13.3 Any equipment purchased as a result of this contract is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, Consultant may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by County." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment

with a fair market value greater than \$5,000 is credited to the project.

14. Miscellaneous Provisions.

14.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

14.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

14.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

14.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

14.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

14.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

14.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

14.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

14.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

14.10 Rebates, Kickback or Other Unlawful Consideration.

Consultant warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

14.11 Funding Requirements.

- 14.11.1 It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.
- 14.11.2 This contract is valid and enforceable only, if sufficient funds are made available to County for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or County Board of Supervisors that may affect the provisions, terms, or funding of this contract in any manner.
- 14.11.3 It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.
- 14.11.4 County has the option to void the contract under the 30-day termination clause pursuant to Article 4, or by mutual agreement to amend the contract to reflect any reduction of funds.

14.12 Evaluation of Consultant.

Consultant's performance will be evaluated by County. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

14.13 Claims Filed by County's Construction Contractor.

- 14.13.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

- 14.13.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.
- 14.13.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.
- 14.13.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14.14 National Labor Relations Board Certification.

In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

14.15 Retention of Funds.

- 14.15.1 Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- 14.15.2 No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the County's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

14.16 Contingent Fee.

Consultant warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, County has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

14.17 Inspection of Work.

Consultant and any subconsultant shall permit County, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

14.18 Safety.

14.18.1 Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County Safety Officer and other County representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

14.18.2 Pursuant to the authority contained in Section 591 of the Vehicle Code, County has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles

14.18.3 Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

15. Attachments & Exhibits.

The following Attachments appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

15.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

15.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Article 13, Article 14.10-14.18 and/or Attachment C, the Federal Requirements set forth in Article 13, 14.10-14.18 and/or Attachment C shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**SIGNATURES FOLLOW ON NEXT PAGE -
- THIS SPACE LEFT INTENTIONALLY BLANK -**

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Professional Services Agreement (“PSA”)
On-Call Design Services FEMA Agreement – OC18-D2

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and Cornerstone Structural Engineering Group (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in Attachment “A,” attached hereto and incorporated herein by this reference (hereinafter "Cost Proposal"), and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in Attachment “A”, the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

1.6 Federal Requirements.

Task Orders under this Agreement may be funded by The Federal Emergency Management Agency (FEMA). Consultant shall comply with all applicable Federal Requirements attached hereto as Exhibit "A" – Federal Provisions.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in

this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED].

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

2.8.1 The total amount payable by County for all Task Orders issued under this Agreement shall not exceed \$975,000.00.

- 2.8.2 The not-to-exceed amount of \$975,000 set forth in section 2.8.1 is an aggregate not-to-exceed amount across this Agreement and an Agreement No. OC18-D1 with Consultant. Any compensation expended by County to pay Consultant under Agreement No. OC18-D1 will reduce the not-to-exceed amount set forth in section 2.8.1 of this Agreement by the same amount.
- 2.8.3 This Agreement and Agreement No. OC18-D1 will be administered by the County's Transportation and Public Works department to ensure that the total aggregate amount of compensation to Consultant across this Agreement and Agreement No. OC18-D1 does not exceed the amount set forth in section 2.8.1.
- 2.8.5 Consultant acknowledges, understands and agrees that there is no guarantee, either expressed or implied that the dollar amount set forth in section 2.8.1 or any portion thereof will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

- 2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.
- 2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.
- 2.11.3 If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the

facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This Agreement shall go into effect on (_____)contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The Agreement shall end on (_____), unless extended by amendment.

3.2 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1 Termination Without Cause

Notwithstanding any other provision of this Agreement, at any time and without cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to Consultant.

4.2 Termination for Cause

Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

4.3 Delivery of Work Product and Final Payment Upon Termination

In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to County all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subconsultants, consultants, and other agents in connection with this Agreement and shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

4.4 Payment Upon Termination.

Upon termination of this Agreement by County, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked

prior to the termination times the applicable hourly or daily rate; and further provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by Consultant.

4.5 Authority to Terminate

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right

to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment. In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Department and Suspension" requirements set forth in Section IV and Exhibit "A1" (Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Contractors), Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, consultant has the obligation to inform the County.

9.4 [RESERVED]

9.5 Records Maintenance.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Access to Records" requirements set forth in Section III, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

- 9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.
- 9.6.2 Consultant hereby certifies and covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by County, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Consultant's or such other person's financial interests..
- 9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- 9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal requirements set forth in Exhibit "A" (Federal Requirements) attached to this Agreement..

9.8 Living Wage Ordinance.

- 9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinance's local preference requirements shall be used to select or otherwise apply to Consultant.

9.9 Nondiscrimination.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Equal Employment Opportunity Compliance" requirements set forth in Section VI, and without limiting any other provision in this Agreement, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 [RESERVED]

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

In addition to the requirements and rights afforded to FEMA set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements) and to afford FEMA such rights, including the "Notice of Requirements Pertaining to Copyrights" set forth in Section XI and the "Patent Rights" set forth in Section XII, Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this

Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above- described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

9.15 Prevailing Wage.

- 9.15.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 9.15.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.
- 9.15.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

Cornerstone Structural Engineering Group
Attn: Todd M. Goolkasian, S.E.
986 West Alluvial Avenue, Suite 201
Fresno, CA 93711
(559) 320-3200
tgoolkasian@cseg.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Miscellaneous Provisions.

13.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other.

Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

13.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

13.10 Claims Filed by County's Construction Contractor.

13.10.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

13.10.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that

are being paid for Consultant's personnel services under this contract.

13.10.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

13.10.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14. Attachments & Exhibits.

The following Attachments and Exhibits appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

14.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

Exhibit A – Federal Requirements

14.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Exhibit "A", the Federal Requirements set forth in Exhibit "A" shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SIGNATURES FOLLOW ON NEXT PAGE -

- THIS SPACE LEFT INTENTIONALLY BLANK -

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Exhibit “A”
FEDERAL PROVISIONS

I. DEFINITIONS

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

II. FEDERAL REQUIREMENTS AND CHANGES

- A.** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The consultant will comply with all applicable federal law, regulations, executive orders , FEMA policies, procedures, and directives.
- B.** Consultant 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. Consultant's failure to so comply shall constitute a material breach of this contract.
- C.** The Consultant 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 subconsultant who will be subject to its provisions.

III. ACCESS TO RECORDS

- A.** The Consultant 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 Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B.** The Consultant 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 Consultant 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, Consultant agrees to maintain same until the County, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.
- D.** The requirements set for in paragraphs A, B, and C above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in Section 21 of the Agreement.

IV. DEBARMENT AND SUSPENSION

- A.** This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Consultant is required to verify that none of the Consultant, 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.** Consultant 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. Consultant agrees that neither Consultant nor any of its third party subconsultants shall enter into any third party subcontracts for any of the work under this Agreement with a third party subconsultant 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 Consultant 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. Consultant agrees to the provisions of Exhibit A1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion— Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Exhibit A1, Consultant is the "prospective lower tier participant."
- D.** The Consultant 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 subconsultant 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 Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, the County, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- F.** The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONSULTANT

- A.** The County and Consultant 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, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B.** The Consultant 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 subconsultant who will be subject to its provisions.

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

Consultant 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.** Consultants and subconsultants 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.** Consultants, and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C.** Consultants and subconsultants 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.** Consultants, and subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

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

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

To the extent required by any Federal grant programs applicable to expected funding or reimbursement of County’s expenses incurred in connection with the services provided under this Agreement, Consultant 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 Consultant shall be bound to the provisions of the Davis-Bacon Act, and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of

California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.

- B. The general prevailing wage rates may be accessed at the Department of Labor Home Page at www.wdol.gov. Under the Davis Bacon heading, click on “Selecting DBA WDs.” In the drop down menu for State, select, “California.” In the drop down menu for County, select “Sonoma.” In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

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

- A. **Compliance:** Consultant 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 Consultant or subconsultant 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 he or she is 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 Consultant and any subconsultant responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such Consultant and subconsultant shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.
- D. **Withholding for unpaid wages and liquidated damages:** The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subconsultant under any such contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subconsultant for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.
- E. **Subcontracts:** The Consultant or subconsultant shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subconsultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subconsultant or lower tier subconsultant with the clauses set forth in paragraphs A through D of this section.

X. NOTICE OF REPORTING REQUIREMENTS

- A. Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

XI. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

- A. Consultant 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 Consultant purchases ownership with the assistance of funds provided under this Agreement.
- B. The Consultant 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 subconsultant who will be subject to its provisions.

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

- A. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the County and Consultant 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 Consultant's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the County and Consultant 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 Consultant agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

XIII. ENERGY CONSERVATION REQUIREMENTS

- A. The Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

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

A. Consultant 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. Consultant 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 Consultant agrees to include paragraph A and B above in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

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

See Paragraph 4.1 of the Agreement.

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

Consultant's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement. See Paragraph 4.2 of the Agreement.

XVII. CHANGES.

See Paragraph 8 of the Agreement.

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

A. Consultant 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. Consultant agrees to the provisions of Exhibit A2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of \$100,000).

- C. Consultant 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 subconsultant who will be subject to its provisions.

XIX. MBE / WBE REQUIREMENTS

The County intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the CONSULTANT 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 CONSULTANT RESPONSIBILITIES

All recipients of this grant funding, as well as their prime Consultants and subconsultants, 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 Consultant and any subconsultants 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 CONSULTANT 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, Consultant shall take the affirmative steps listed in 2 CFR 200.321.

XX. PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200.322)

Consultant shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

XXI. INCORPORATION OF UNIFORM ADMINISTRATIVE REQUIREMENTS

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

XXII. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

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

XXIII. DHS SEAL, LOGO, AND FLAGS.

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

Exhibit A1

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

(Lower Tier refers to the agency or Consultant receiving Federal funds, as well as any subconsultants that the agency or Consultant 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. Consultant is required to sign the certification below which specifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Consultant will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any Consultant 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 an Voluntary Exclusion – Lower Tier Covered Transactions

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

Consultant Signature

Date

Exhibit A2

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

Consultant Signature

Date

Professional Services Agreement (“PSA”)
On-Call Design Services FHWA Agreement – OC18-D1

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and Cornerstone Structural Engineering Group (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the County’s Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in the Request for Qualifications and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in , the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County. With respect to performance under this Agreement, Consultant shall employ the following key personnel: Project Manager.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED]

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

The total amount payable by County for all Task Orders resulting from this Agreement shall not exceed \$975,000.00. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.

2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This contract shall go into effect on (_____) contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The contract shall end on (_____), unless extended by contract amendment.

3.2 Contract Execution.

Consultant is advised that any recommendation for contract award is not binding on County until the contract is fully executed and approved by County.

3.3 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the

terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1. Notice Period.

County reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice.

4.2 Grounds for Termination.

County may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If County terminates this Agreement with Consultant, County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

4.3 Liability.

The maximum amount for which the Government shall be liable if this Agreement is terminated is 975,000 dollars.

4.4 Authority to Terminate.

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Department Head, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment.

Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion,

or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

9.4 [RESERVED].

9.5 Records Maintenance.

In addition to other record retention and audit requirements set forth elsewhere in this Agreement, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.

9.6.2 Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes

and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal contract requirements set forth in Article 13 herein.

9.8 Living Wage Ordinance.

9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinances local preference requirements shall be used to select or otherwise apply to Consultant.–

9.9 Nondiscrimination.

Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 Statement of Compliance.

9.10.1 Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

9.10.2 During the performance of this Contract, Consultant and its subconsultants 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, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (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 Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

- 9.10.3 The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- 9.10.4 The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon

completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

On-Call Engineering
Design Services

Cornerstone Structural Engineering Group
Attn: Todd M. Goolkasian, S.E.
986 West Alluvial Avenue, Suite 201
Fresno, CA 93711
(559) 320-3200
tgoolkasian@cseg.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Federal Requirements.

13.1 Contract Assurance.

The consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted agreements. Failure by the consultant to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

13.2 Prompt Progress Payments to Subcontractors.

Attention is directed to Section 7108.5 of the California Business and Professions Code, which requires a prime contractor or subcontractor to pay any subcontractor not later than ten (10) days of receipt of each progress payment, unless otherwise agreed to in writing. In addition, federal regulations (Title 49 Code of Federal Regulations Part 26.29) require a prime contractor or subcontractor to pay a subcontractor no later than thirty (30) days of receipt of each payment, unless any delay or postponement of payment among the parties takes place only for good cause and with the prior written approval of County. Section 7108.5 of the California Business and Professions Code also contains enforcement actions and penalties. The requirements apply to both Disadvantaged Business Entities ("DBE") and non-DBE subcontractors. Consultant shall include the foregoing progress payment requirements in every subcontract entered into by Consultant in the performance of its obligations under this Agreement

13.3 Prompt Payment of Withheld Funds to Subcontractors.

No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any

delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

13.4 Disadvantaged Business Enterprise (DBE) Participation.

- 13.4.1 This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- 13.4.2 A DBE participation goal will be established for each Task Order. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- 13.4.3 DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as County deems appropriate.
- 13.4.4 Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- 13.4.5 A DBE firm may be terminated only with prior written approval from County and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting County consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).
- 13.4.6 A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under

the, contract is commensurate with the work it is actually performing, and other relevant factors.

- 13.4.7 A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- 13.4.8 If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- 13.4.9 Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- 13.4.10 Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by Consultant or Consultant's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- 13.4.11 If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to County's Contract Administrator within 30 days.

13.5 Prevailing Wage.

- 13.5.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 13.5.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless

the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

- 13.5.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

13.6 Text Messaging While Driving.

In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, and Department of Transportation Order 3902.10, Text Messaging While Driving, text messaging while driving is prohibited in the performance of any duties included in this agreement for both consultant and any sub-consultants hired for performance of duties under this Agreement. Consultant shall include a provision prohibiting texting while driving in all sub-consultant agreements entered into related to the performance of its obligations under this Agreement.

Definitions. The following definitions are to be used in conjunction with this section. "Driving":

- 1) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- 2) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

"Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

13.7 Buy America.

Furnish Steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:

- 1) Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478(3/24/1995)];
- 2) If the total combine cost of the materials does not exceed the great of 0.1 percent of the total bid or \$2,500, materials produced outside the U. S. may be used.

Production includes:

- 1) Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending,

grinding, and drilling or chemical composition;

- 2) Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

13.8 Prohibition of Expending Local Agency, State or Federal funds for Lobbying.

13.8.1 Consultant certifies to the best of his or her knowledge and belief that:

- 1) No state, federal or County appropriated funds have been paid, or will be paid by or on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or 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 federal 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; Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

13.8.2 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.

13.8.3 Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

13.9 Cost Principles and Administrative Requirements.

13.9.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, shall be used to determine the cost allowability of individual items.

13.9.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

13.9.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal

Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, are subject to repayment by Consultant to County.

13.10 Retention of Records/Audit.

For the purpose of determining compliance with Public Contract Code 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, Section 2500 *et seq.*, when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; Consultant, subconsultants, and County shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, County, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

13.11 Audit Review Procedures.

- 13.11.1 Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by County's Chief Financial Officer.
- 13.11.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by County's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- 13.11.3 Neither the pendency of a dispute nor its consideration by County will excuse Consultant from full and timely performance, in accordance with the terms of this contract.
- 13.11.4 Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by County contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by County at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

13.12 Subcontracting.

- 13.12.1 Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.
- 13.12.2 Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by County's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- 13.12.3 Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by County.
- 13.12.4 All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- 13.12.5 Any substitution of subconsultant(s) must be approved in writing by County's Contract Administrator prior to the start of work by the subconsultant(s).

13.13 Equipment Purchase.

- 13.13.1 Prior authorization in writing, by County's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- 13.13.2 For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by County's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- 13.13.3 Any equipment purchased as a result of this contract is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, Consultant may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by County." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment

with a fair market value greater than \$5,000 is credited to the project.

14. Miscellaneous Provisions.

14.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

14.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

14.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

14.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

14.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

14.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

14.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

14.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

14.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

14.10 Rebates, Kickback or Other Unlawful Consideration.

Consultant warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

14.11 Funding Requirements.

14.11.1 It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

14.11.2 This contract is valid and enforceable only, if sufficient funds are made available to County for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or County Board of Supervisors that may affect the provisions, terms, or funding of this contract in any manner.

14.11.3 It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

14.11.4 County has the option to void the contract under the 30-day termination clause pursuant to Article 4, or by mutual agreement to amend the contract to reflect any reduction of funds.

14.12 Evaluation of Consultant.

Consultant's performance will be evaluated by County. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

14.13 Claims Filed by County's Construction Contractor.

14.13.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

- 14.13.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.
- 14.13.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.
- 14.13.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14.14 National Labor Relations Board Certification.

In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

14.15 Retention of Funds.

- 14.15.1 Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- 14.15.2 No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the County's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

14.16 Contingent Fee.

Consultant warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, County has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

14.17 Inspection of Work.

Consultant and any subconsultant shall permit County, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

14.18 Safety.

14.18.1 Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County Safety Officer and other County representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

14.18.2 Pursuant to the authority contained in Section 591 of the Vehicle Code, County has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles

14.18.3 Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

15. Attachments & Exhibits.

The following Attachments appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

15.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

15.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Article 13, Article 14.10-14.18 and/or Attachment C, the Federal Requirements set forth in Article 13, 14.10-14.18 and/or Attachment C shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**SIGNATURES FOLLOW ON NEXT PAGE -
- THIS SPACE LEFT INTENTIONALLY BLANK -**

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Professional Services Agreement (“PSA”)
On-Call Design Services FEMA Agreement – OC18-D2

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and Drake Haglan and Associates (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in Attachment “A,” attached hereto and incorporated herein by this reference (hereinafter "Cost Proposal"), and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in Attachment “A”, the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

1.6 Federal Requirements.

Task Orders under this Agreement may be funded by The Federal Emergency Management Agency (FEMA). Consultant shall comply with all applicable Federal Requirements attached hereto as Exhibit "A" – Federal Provisions.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in

this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED].

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

2.8.1 The total amount payable by County for all Task Orders issued under this Agreement shall not exceed \$975,000.00.

- 2.8.2 The not-to-exceed amount of \$975,000 set forth in section 2.8.1 is an aggregate not-to-exceed amount across this Agreement and an Agreement No. OC18-D1 with Consultant. Any compensation expended by County to pay Consultant under Agreement No. OC18-D1 will reduce the not-to-exceed amount set forth in section 2.8.1 of this Agreement by the same amount.
- 2.8.3 This Agreement and Agreement No. OC18-D1 will be administered by the County's Transportation and Public Works department to ensure that the total aggregate amount of compensation to Consultant across this Agreement and Agreement No. OC18-D1 does not exceed the amount set forth in section 2.8.1.
- 2.8.5 Consultant acknowledges, understands and agrees that there is no guarantee, either expressed or implied that the dollar amount set forth in section 2.8.1 or any portion thereof will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

- 2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.
- 2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.
- 2.11.3 If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the

facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This Agreement shall go into effect on (_____)contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The Agreement shall end on (_____), unless extended by amendment.

3.2 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1 Termination Without Cause

Notwithstanding any other provision of this Agreement, at any time and without cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to Consultant.

4.2 Termination for Cause

Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

4.3 Delivery of Work Product and Final Payment Upon Termination

In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to County all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subconsultants, consultants, and other agents in connection with this Agreement and shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

4.4 Payment Upon Termination.

Upon termination of this Agreement by County, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked

prior to the termination times the applicable hourly or daily rate; and further provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by Consultant.

4.5 Authority to Terminate

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right

to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment. In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Department and Suspension" requirements set forth in Section IV and Exhibit "A1" (Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Contractors), Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, consultant has the obligation to inform the County.

9.4 [RESERVED]

9.5 Records Maintenance.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Access to Records" requirements set forth in Section III, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

- 9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.
- 9.6.2 Consultant hereby certifies and covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by County, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Consultant's or such other person's financial interests..
- 9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- 9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal requirements set forth in Exhibit "A" (Federal Requirements) attached to this Agreement..

9.8 Living Wage Ordinance.

- 9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinance's local preference requirements shall be used to select or otherwise apply to Consultant.

9.9 Nondiscrimination.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Equal Employment Opportunity Compliance" requirements set forth in Section VI, and without limiting any other provision in this Agreement, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 [RESERVED]

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

In addition to the requirements and rights afforded to FEMA set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements) and to afford FEMA such rights, including the "Notice of Requirements Pertaining to Copyrights" set forth in Section XI and the "Patent Rights" set forth in Section XII, Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this

Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

9.15 Prevailing Wage.

- 9.15.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 9.15.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.
- 9.15.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

Drake Haglan and Associates
Attn: Kevin Ross, P.E.
11060 White Rock Road, Suite 200
Rancho Cordova, CA 95670
(916) 363-4210
kross@drakehaglan.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Miscellaneous Provisions.

13.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other.

Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

13.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

13.10 Claims Filed by County's Construction Contractor.

13.10.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

13.10.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that

are being paid for Consultant's personnel services under this contract.

13.10.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

13.10.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14. Attachments & Exhibits.

The following Attachments and Exhibits appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

14.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

Exhibit A – Federal Requirements

14.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Exhibit "A", the Federal Requirements set forth in Exhibit "A" shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SIGNATURES FOLLOW ON NEXT PAGE -

- THIS SPACE LEFT INTENTIONALLY BLANK -

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Exhibit “A”
FEDERAL PROVISIONS

I. DEFINITIONS

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

II. FEDERAL REQUIREMENTS AND CHANGES

- A.** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The consultant will comply with all applicable federal law, regulations, executive orders , FEMA policies, procedures, and directives.
- B.** Consultant 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. Consultant's failure to so comply shall constitute a material breach of this contract.
- C.** The Consultant 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 subconsultant who will be subject to its provisions.

III. ACCESS TO RECORDS

- A.** The Consultant 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 Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B.** The Consultant 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 Consultant 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, Consultant agrees to maintain same until the County, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.
- D.** The requirements set for in paragraphs A, B, and C above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in Section 21 of the Agreement.

IV. DEBARMENT AND SUSPENSION

- A.** This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Consultant is required to verify that none of the Consultant, 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.** Consultant 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. Consultant agrees that neither Consultant nor any of its third party subconsultants shall enter into any third party subcontracts for any of the work under this Agreement with a third party subconsultant 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 Consultant 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. Consultant agrees to the provisions of Exhibit A1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion— Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Exhibit A1, Consultant is the "prospective lower tier participant."
- D.** The Consultant 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 subconsultant 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 Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, the County, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- F.** The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONSULTANT

- A.** The County and Consultant 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, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B.** The Consultant 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 subconsultant who will be subject to its provisions.

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

Consultant 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.** Consultants and subconsultants 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.** Consultants, and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C.** Consultants and subconsultants 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.** Consultants, and subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

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

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

To the extent required by any Federal grant programs applicable to expected funding or reimbursement of County’s expenses incurred in connection with the services provided under this Agreement, Consultant 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 Consultant shall be bound to the provisions of the Davis-Bacon Act, and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of

California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.

- B. The general prevailing wage rates may be accessed at the Department of Labor Home Page at www.wdol.gov. Under the Davis Bacon heading, click on “Selecting DBA WDs.” In the drop down menu for State, select, “California.” In the drop down menu for County, select “Sonoma.” In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

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

- A. **Compliance:** Consultant 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 Consultant or subconsultant 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 he or she is 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 Consultant and any subconsultant responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such Consultant and subconsultant shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.
- D. **Withholding for unpaid wages and liquidated damages:** The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subconsultant under any such contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subconsultant for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.
- E. **Subcontracts:** The Consultant or subconsultant shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subconsultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subconsultant or lower tier subconsultant with the clauses set forth in paragraphs A through D of this section.

X. NOTICE OF REPORTING REQUIREMENTS

- A. Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

XI. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

- A. Consultant 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 Consultant purchases ownership with the assistance of funds provided under this Agreement.
- B. The Consultant 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 subconsultant who will be subject to its provisions.

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

- A. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the County and Consultant 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 Consultant's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the County and Consultant 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 Consultant agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

XIII. ENERGY CONSERVATION REQUIREMENTS

- A. The Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

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

A. Consultant 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. Consultant 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 Consultant agrees to include paragraph A and B above in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

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

See Paragraph 4.1 of the Agreement.

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

Consultant's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement. See Paragraph 4.2 of the Agreement.

XVII. CHANGES.

See Paragraph 8 of the Agreement.

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

A. Consultant 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. Consultant agrees to the provisions of Exhibit A2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of \$100,000).

- C. Consultant 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 subconsultant who will be subject to its provisions.

XIX. MBE / WBE REQUIREMENTS

The County intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the CONSULTANT 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 CONSULTANT RESPONSIBILITIES

All recipients of this grant funding, as well as their prime Consultants and subconsultants, 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 Consultant and any subconsultants 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 CONSULTANT 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, Consultant shall take the affirmative steps listed in 2 CFR 200.321.

XX. PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200.322)

Consultant shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

XXI. INCORPORATION OF UNIFORM ADMINISTRATIVE REQUIREMENTS

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

XXII. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

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

XXIII. DHS SEAL, LOGO, AND FLAGS.

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

Exhibit A1

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

(Lower Tier refers to the agency or Consultant receiving Federal funds, as well as any subconsultants that the agency or Consultant 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. Consultant is required to sign the certification below which specifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Consultant will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any Consultant 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 an Voluntary Exclusion – Lower Tier Covered Transactions

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

Consultant Signature

Date

Exhibit A2

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

Consultant Signature

Date

Professional Services Agreement (“PSA”)
On-Call Design Services FHWA Agreement – OC18-D1

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and Drake Haglan and Associates (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the County’s Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in the Request for Qualifications and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in , the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County. With respect to performance under this Agreement, Consultant shall employ the following key personnel: Project Manager.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED]

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

The total amount payable by County for all Task Orders resulting from this Agreement shall not exceed \$975,000.00. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.

2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This contract shall go into effect on (_____) contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The contract shall end on (_____), unless extended by contract amendment.

3.2 Contract Execution.

Consultant is advised that any recommendation for contract award is not binding on County until the contract is fully executed and approved by County.

3.3 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the

terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1. Notice Period.

County reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice.

4.2 Grounds for Termination.

County may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If County terminates this Agreement with Consultant, County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

4.3 Liability.

The maximum amount for which the Government shall be liable if this Agreement is terminated is 975,000 dollars.

4.4 Authority to Terminate.

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Department Head, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment.

Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion,

or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

9.4 [RESERVED].

9.5 Records Maintenance.

In addition to other record retention and audit requirements set forth elsewhere in this Agreement, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.

9.6.2 Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes

and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal contract requirements set forth in Article 13 herein.

9.8 Living Wage Ordinance.

9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinances local preference requirements shall be used to select or otherwise apply to Consultant.–

9.9 Nondiscrimination.

Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 Statement of Compliance.

9.10.1 Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

9.10.2 During the performance of this Contract, Consultant and its subconsultants 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, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (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 Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

9.10.3 The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

9.10.4 The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon

completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

On-Call Engineering
Design Services

Drake Haglan and Associates
Attn: Kevin Ross, P.E.
11060 White Rock Road, Suite 200
Rancho Cordova, CA 95670
(916) 363-4210
kross@drakehaglan.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Federal Requirements.

13.1 Contract Assurance.

The consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted agreements. Failure by the consultant to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

13.2 Prompt Progress Payments to Subcontractors.

Attention is directed to Section 7108.5 of the California Business and Professions Code, which requires a prime contractor or subcontractor to pay any subcontractor not later than ten (10) days of receipt of each progress payment, unless otherwise agreed to in writing. In addition, federal regulations (Title 49 Code of Federal Regulations Part 26.29) require a prime contractor or subcontractor to pay a subcontractor no later than thirty (30) days of receipt of each payment, unless any delay or postponement of payment among the parties takes place only for good cause and with the prior written approval of County. Section 7108.5 of the California Business and Professions Code also contains enforcement actions and penalties. The requirements apply to both Disadvantaged Business Entities ("DBE") and non-DBE subcontractors. Consultant shall include the foregoing progress payment requirements in every subcontract entered into by Consultant in the performance of its obligations under this Agreement

13.3 Prompt Payment of Withheld Funds to Subcontractors.

No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any

delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

13.4 Disadvantaged Business Enterprise (DBE) Participation.

- 13.4.1 This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- 13.4.2 A DBE participation goal will be established for each Task Order. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- 13.4.3 DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as County deems appropriate.
- 13.4.4 Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- 13.4.5 A DBE firm may be terminated only with prior written approval from County and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting County consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).
- 13.4.6 A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under

the, contract is commensurate with the work it is actually performing, and other relevant factors.

- 13.4.7 A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- 13.4.8 If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- 13.4.9 Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- 13.4.10 Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by Consultant or Consultant's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- 13.4.11 If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to County's Contract Administrator within 30 days.

13.5 Prevailing Wage.

- 13.5.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 13.5.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless

the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

- 13.5.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

13.6 Text Messaging While Driving.

In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, and Department of Transportation Order 3902.10, Text Messaging While Driving, text messaging while driving is prohibited in the performance of any duties included in this agreement for both consultant and any sub-consultants hired for performance of duties under this Agreement. Consultant shall include a provision prohibiting texting while driving in all sub-consultant agreements entered into related to the performance of its obligations under this Agreement.

Definitions. The following definitions are to be used in conjunction with this section. "Driving":

- 1) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- 2) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

"Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

13.7 Buy America.

Furnish Steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:

- 1) Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478(3/24/1995)];
- 2) If the total combine cost of the materials does not exceed the great of 0.1 percent of the total bid or \$2,500, materials produced outside the U. S. may be used.

Production includes:

- 1) Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending,

grinding, and drilling or chemical composition;

- 2) Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

13.8 Prohibition of Expending Local Agency, State or Federal funds for Lobbying.

13.8.1 Consultant certifies to the best of his or her knowledge and belief that:

- 1) No state, federal or County appropriated funds have been paid, or will be paid by or on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or 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 federal 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; Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

13.8.2 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.

13.8.3 Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

13.9 Cost Principles and Administrative Requirements.

13.9.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, shall be used to determine the cost allowability of individual items.

13.9.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

13.9.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal

Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, are subject to repayment by Consultant to County.

13.10 Retention of Records/Audit.

For the purpose of determining compliance with Public Contract Code 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, Section 2500 *et seq.*, when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; Consultant, subconsultants, and County shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, County, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

13.11 Audit Review Procedures.

- 13.11.1 Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by County's Chief Financial Officer.
- 13.11.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by County's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- 13.11.3 Neither the pendency of a dispute nor its consideration by County will excuse Consultant from full and timely performance, in accordance with the terms of this contract.
- 13.11.4 Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by County contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by County at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

13.12 Subcontracting.

- 13.12.1 Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.
- 13.12.2 Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by County's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- 13.12.3 Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by County.
- 13.12.4 All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- 13.12.5 Any substitution of subconsultant(s) must be approved in writing by County's Contract Administrator prior to the start of work by the subconsultant(s).

13.13 Equipment Purchase.

- 13.13.1 Prior authorization in writing, by County's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- 13.13.2 For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by County's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- 13.13.3 Any equipment purchased as a result of this contract is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, Consultant may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by County." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment

with a fair market value greater than \$5,000 is credited to the project.

14. Miscellaneous Provisions.

14.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

14.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

14.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

14.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

14.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

14.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

14.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

14.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

14.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

14.10 Rebates, Kickback or Other Unlawful Consideration.

Consultant warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

14.11 Funding Requirements.

- 14.11.1 It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.
- 14.11.2 This contract is valid and enforceable only, if sufficient funds are made available to County for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or County Board of Supervisors that may affect the provisions, terms, or funding of this contract in any manner.
- 14.11.3 It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.
- 14.11.4 County has the option to void the contract under the 30-day termination clause pursuant to Article 4, or by mutual agreement to amend the contract to reflect any reduction of funds.

14.12 Evaluation of Consultant.

Consultant's performance will be evaluated by County. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

14.13 Claims Filed by County's Construction Contractor.

- 14.13.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

- 14.13.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.
- 14.13.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.
- 14.13.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14.14 National Labor Relations Board Certification.

In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

14.15 Retention of Funds.

- 14.15.1 Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- 14.15.2 No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the County's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

14.16 Contingent Fee.

Consultant warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, County has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

14.17 Inspection of Work.

Consultant and any subconsultant shall permit County, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

14.18 Safety.

14.18.1 Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County Safety Officer and other County representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

14.18.2 Pursuant to the authority contained in Section 591 of the Vehicle Code, County has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles

14.18.3 Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

15. Attachments & Exhibits.

The following Attachments appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

15.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

15.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Article 13, Article 14.10-14.18 and/or Attachment C, the Federal Requirements set forth in Article 13, 14.10-14.18 and/or Attachment C shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**SIGNATURES FOLLOW ON NEXT PAGE -
- THIS SPACE LEFT INTENTIONALLY BLANK -**

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Professional Services Agreement (“PSA”)
On-Call Design Services FEMA Agreement – OC18-D2

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and Green Valley Consulting Engineers (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in Attachment “A,” attached hereto and incorporated herein by this reference (hereinafter "Cost Proposal"), and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in Attachment “A”, the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

1.6 Federal Requirements.

Task Orders under this Agreement may be funded by The Federal Emergency Management Agency (FEMA). Consultant shall comply with all applicable Federal Requirements attached hereto as Exhibit "A" – Federal Provisions.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in

this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED].

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

2.8.1 The total amount payable by County for all Task Orders issued under this Agreement shall not exceed \$975,000.00.

- 2.8.2 The not-to-exceed amount of \$975,000 set forth in section 2.8.1 is an aggregate not-to-exceed amount across this Agreement and an Agreement No. OC18-D1 with Consultant. Any compensation expended by County to pay Consultant under Agreement No. OC18-D1 will reduce the not-to-exceed amount set forth in section 2.8.1 of this Agreement by the same amount.
- 2.8.3 This Agreement and Agreement No. OC18-D1 will be administered by the County's Transportation and Public Works department to ensure that the total aggregate amount of compensation to Consultant across this Agreement and Agreement No. OC18-D1 does not exceed the amount set forth in section 2.8.1.
- 2.8.5 Consultant acknowledges, understands and agrees that there is no guarantee, either expressed or implied that the dollar amount set forth in section 2.8.1 or any portion thereof will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

- 2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.
- 2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.
- 2.11.3 If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the

facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This Agreement shall go into effect on (_____)contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The Agreement shall end on (_____), unless extended by amendment.

3.2 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1 Termination Without Cause

Notwithstanding any other provision of this Agreement, at any time and without cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to Consultant.

4.2 Termination for Cause

Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

4.3 Delivery of Work Product and Final Payment Upon Termination

In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to County all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subconsultants, consultants, and other agents in connection with this Agreement and shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

4.4 Payment Upon Termination.

Upon termination of this Agreement by County, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked

prior to the termination times the applicable hourly or daily rate; and further provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by Consultant.

4.5 Authority to Terminate

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right

to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment. In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Department and Suspension" requirements set forth in Section IV and Exhibit "A1" (Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Contractors), Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, consultant has the obligation to inform the County.

9.4 [RESERVED]

9.5 Records Maintenance.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Access to Records" requirements set forth in Section III, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

- 9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.
- 9.6.2 Consultant hereby certifies and covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by County, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Consultant's or such other person's financial interests..
- 9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- 9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal requirements set forth in Exhibit "A" (Federal Requirements) attached to this Agreement..

9.8 Living Wage Ordinance.

- 9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinance's local preference requirements shall be used to select or otherwise apply to Consultant.

9.9 Nondiscrimination.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Equal Employment Opportunity Compliance" requirements set forth in Section VI, and without limiting any other provision in this Agreement, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 [RESERVED]

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

In addition to the requirements and rights afforded to FEMA set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements) and to afford FEMA such rights, including the "Notice of Requirements Pertaining to Copyrights" set forth in Section XI and the "Patent Rights" set forth in Section XII, Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this

Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

9.15 Prevailing Wage.

- 9.15.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 9.15.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.
- 9.15.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

Green valley Consulting Engineers
Attn: Liz Ellis, P.E.
335 Tesconi Circle
Santa Rosa, CA 95407
(707) 579-0388
lizellis@gvalley.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Miscellaneous Provisions.

13.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other.

Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

13.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

13.10 Claims Filed by County's Construction Contractor.

13.10.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

13.10.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that

are being paid for Consultant's personnel services under this contract.

13.10.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

13.10.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14. Attachments & Exhibits.

The following Attachments and Exhibits appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

14.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

Exhibit A – Federal Requirements

14.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Exhibit "A", the Federal Requirements set forth in Exhibit "A" shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SIGNATURES FOLLOW ON NEXT PAGE -

- THIS SPACE LEFT INTENTIONALLY BLANK -

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Exhibit “A”
FEDERAL PROVISIONS

I. DEFINITIONS

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

II. FEDERAL REQUIREMENTS AND CHANGES

- A.** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The consultant will comply with all applicable federal law, regulations, executive orders , FEMA policies, procedures, and directives.
- B.** Consultant 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. Consultant's failure to so comply shall constitute a material breach of this contract.
- C.** The Consultant 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 subconsultant who will be subject to its provisions.

III. ACCESS TO RECORDS

- A.** The Consultant 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 Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B.** The Consultant 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 Consultant 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, Consultant agrees to maintain same until the County, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.
- D.** The requirements set for in paragraphs A, B, and C above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in Section 21 of the Agreement.

IV. DEBARMENT AND SUSPENSION

- A.** This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Consultant is required to verify that none of the Consultant, 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.** Consultant 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. Consultant agrees that neither Consultant nor any of its third party subconsultants shall enter into any third party subcontracts for any of the work under this Agreement with a third party subconsultant 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 Consultant 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. Consultant agrees to the provisions of Exhibit A1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion— Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Exhibit A1, Consultant is the "prospective lower tier participant."
- D.** The Consultant 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 subconsultant 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 Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, the County, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- F.** The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONSULTANT

- A.** The County and Consultant 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, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B.** The Consultant 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 subconsultant who will be subject to its provisions.

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

Consultant 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.** Consultants and subconsultants 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.** Consultants, and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C.** Consultants and subconsultants 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.** Consultants, and subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

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

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

To the extent required by any Federal grant programs applicable to expected funding or reimbursement of County’s expenses incurred in connection with the services provided under this Agreement, Consultant 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 Consultant shall be bound to the provisions of the Davis-Bacon Act, and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of

California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.

- B. The general prevailing wage rates may be accessed at the Department of Labor Home Page at www.wdol.gov. Under the Davis Bacon heading, click on “Selecting DBA WDs.” In the drop down menu for State, select, “California.” In the drop down menu for County, select “Sonoma.” In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

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

- A. **Compliance:** Consultant 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 Consultant or subconsultant 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 he or she is 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 Consultant and any subconsultant responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such Consultant and subconsultant shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.
- D. **Withholding for unpaid wages and liquidated damages:** The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subconsultant under any such contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subconsultant for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.
- E. **Subcontracts:** The Consultant or subconsultant shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subconsultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subconsultant or lower tier subconsultant with the clauses set forth in paragraphs A through D of this section.

X. NOTICE OF REPORTING REQUIREMENTS

- A. Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

XI. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

- A. Consultant 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 Consultant purchases ownership with the assistance of funds provided under this Agreement.
- B. The Consultant 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 subconsultant who will be subject to its provisions.

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

- A. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the County and Consultant 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 Consultant's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the County and Consultant 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 Consultant agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

XIII. ENERGY CONSERVATION REQUIREMENTS

- A. The Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

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

A. Consultant 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. Consultant 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 Consultant agrees to include paragraph A and B above in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

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

See Paragraph 4.1 of the Agreement.

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

Consultant's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement. See Paragraph 4.2 of the Agreement.

XVII. CHANGES.

See Paragraph 8 of the Agreement.

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

A. Consultant 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. Consultant agrees to the provisions of Exhibit A2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of \$100,000).

- C. Consultant 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 subconsultant who will be subject to its provisions.

XIX. MBE / WBE REQUIREMENTS

The County intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the CONSULTANT 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 CONSULTANT RESPONSIBILITIES

All recipients of this grant funding, as well as their prime Consultants and subconsultants, 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 Consultant and any subconsultants 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 CONSULTANT 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, Consultant shall take the affirmative steps listed in 2 CFR 200.321.

XX. PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200.322)

Consultant shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

XXI. INCORPORATION OF UNIFORM ADMINISTRATIVE REQUIREMENTS

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

XXII. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

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

XXIII. DHS SEAL, LOGO, AND FLAGS.

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

Exhibit A1

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

(Lower Tier refers to the agency or Consultant receiving Federal funds, as well as any subconsultants that the agency or Consultant 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. Consultant is required to sign the certification below which specifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Consultant will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any Consultant 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 an Voluntary Exclusion – Lower Tier Covered Transactions

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

Consultant Signature

Date

Exhibit A2

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

Consultant Signature

Date

Professional Services Agreement (“PSA”)
On-Call Design Services FHWA Agreement – OC18-D1

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and Green Valley Consulting Engineers (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the County’s Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in the Request for Qualifications and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in , the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County. With respect to performance under this Agreement, Consultant shall employ the following key personnel: Project Manager.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED]

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

The total amount payable by County for all Task Orders resulting from this Agreement shall not exceed \$975,000.00. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.

2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This contract shall go into effect on (_____) contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The contract shall end on (_____), unless extended by contract amendment.

3.2 Contract Execution.

Consultant is advised that any recommendation for contract award is not binding on County until the contract is fully executed and approved by County.

3.3 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the

terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1. Notice Period.

County reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice.

4.2 Grounds for Termination.

County may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If County terminates this Agreement with Consultant, County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

4.3 Liability.

The maximum amount for which the Government shall be liable if this Agreement is terminated is 975,000 dollars.

4.4 Authority to Terminate.

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Department Head, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment.

Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion,

or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

9.4 [RESERVED].

9.5 Records Maintenance.

In addition to other record retention and audit requirements set forth elsewhere in this Agreement, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.

9.6.2 Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes

and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal contract requirements set forth in Article 13 herein.

9.8 Living Wage Ordinance.

9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinances local preference requirements shall be used to select or otherwise apply to Consultant.–

9.9 Nondiscrimination.

Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 Statement of Compliance.

9.10.1 Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

9.10.2 During the performance of this Contract, Consultant and its subconsultants 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, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (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 Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

9.10.3 The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

9.10.4 The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon

completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

On-Call Engineering
Design Services

Green valley Consulting Engineers
Attn: Liz Ellis, P.E.
335 Tesconi Circle
Santa Rosa, CA 95407
(707) 579-0388
lizellis@gvalley.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Federal Requirements.

13.1 Contract Assurance.

The consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted agreements. Failure by the consultant to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

13.2 Prompt Progress Payments to Subcontractors.

Attention is directed to Section 7108.5 of the California Business and Professions Code, which requires a prime contractor or subcontractor to pay any subcontractor not later than ten (10) days of receipt of each progress payment, unless otherwise agreed to in writing. In addition, federal regulations (Title 49 Code of Federal Regulations Part 26.29) require a prime contractor or subcontractor to pay a subcontractor no later than thirty (30) days of receipt of each payment, unless any delay or postponement of payment among the parties takes place only for good cause and with the prior written approval of County. Section 7108.5 of the California Business and Professions Code also contains enforcement actions and penalties. The requirements apply to both Disadvantaged Business Entities ("DBE") and non-DBE subcontractors. Consultant shall include the foregoing progress payment requirements in every subcontract entered into by Consultant in the performance of its obligations under this Agreement

13.3 Prompt Payment of Withheld Funds to Subcontractors.

No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any

delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

13.4 Disadvantaged Business Enterprise (DBE) Participation.

- 13.4.1 This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- 13.4.2 A DBE participation goal will be established for each Task Order. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- 13.4.3 DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as County deems appropriate.
- 13.4.4 Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- 13.4.5 A DBE firm may be terminated only with prior written approval from County and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting County consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).
- 13.4.6 A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under

the, contract is commensurate with the work it is actually performing, and other relevant factors.

- 13.4.7 A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- 13.4.8 If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- 13.4.9 Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- 13.4.10 Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by Consultant or Consultant's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- 13.4.11 If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to County's Contract Administrator within 30 days.

13.5 Prevailing Wage.

- 13.5.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 13.5.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless

the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

- 13.5.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

13.6 Text Messaging While Driving.

In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, and Department of Transportation Order 3902.10, Text Messaging While Driving, text messaging while driving is prohibited in the performance of any duties included in this agreement for both consultant and any sub-consultants hired for performance of duties under this Agreement. Consultant shall include a provision prohibiting texting while driving in all sub-consultant agreements entered into related to the performance of its obligations under this Agreement.

Definitions. The following definitions are to be used in conjunction with this section. "Driving":

- 1) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- 2) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

"Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

13.7 Buy America.

Furnish Steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:

- 1) Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478(3/24/1995)];
- 2) If the total combine cost of the materials does not exceed the great of 0.1 percent of the total bid or \$2,500, materials produced outside the U. S. may be used.

Production includes:

- 1) Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending,

grinding, and drilling or chemical composition;

- 2) Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

13.8 Prohibition of Expending Local Agency, State or Federal funds for Lobbying.

13.8.1 Consultant certifies to the best of his or her knowledge and belief that:

- 1) No state, federal or County appropriated funds have been paid, or will be paid by or on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or 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 federal 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; Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

13.8.2 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.

13.8.3 Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

13.9 Cost Principles and Administrative Requirements.

13.9.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, shall be used to determine the cost allowability of individual items.

13.9.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

13.9.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal

Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, are subject to repayment by Consultant to County.

13.10 Retention of Records/Audit.

For the purpose of determining compliance with Public Contract Code 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, Section 2500 *et seq.*, when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; Consultant, subconsultants, and County shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, County, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

13.11 Audit Review Procedures.

- 13.11.1 Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by County's Chief Financial Officer.
- 13.11.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by County's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- 13.11.3 Neither the pendency of a dispute nor its consideration by County will excuse Consultant from full and timely performance, in accordance with the terms of this contract.
- 13.11.4 Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by County contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by County at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

13.12 Subcontracting.

- 13.12.1 Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.
- 13.12.2 Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by County's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- 13.12.3 Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by County.
- 13.12.4 All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- 13.12.5 Any substitution of subconsultant(s) must be approved in writing by County's Contract Administrator prior to the start of work by the subconsultant(s).

13.13 Equipment Purchase.

- 13.13.1 Prior authorization in writing, by County's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- 13.13.2 For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by County's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- 13.13.3 Any equipment purchased as a result of this contract is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, Consultant may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by County." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment

with a fair market value greater than \$5,000 is credited to the project.

14. Miscellaneous Provisions.

14.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

14.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

14.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

14.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

14.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

14.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

14.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

14.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

14.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

14.10 Rebates, Kickback or Other Unlawful Consideration.

Consultant warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

14.11 Funding Requirements.

14.11.1 It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

14.11.2 This contract is valid and enforceable only, if sufficient funds are made available to County for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or County Board of Supervisors that may affect the provisions, terms, or funding of this contract in any manner.

14.11.3 It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

14.11.4 County has the option to void the contract under the 30-day termination clause pursuant to Article 4, or by mutual agreement to amend the contract to reflect any reduction of funds.

14.12 Evaluation of Consultant.

Consultant's performance will be evaluated by County. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

14.13 Claims Filed by County's Construction Contractor.

14.13.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

- 14.13.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.
- 14.13.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.
- 14.13.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14.14 National Labor Relations Board Certification.

In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

14.15 Retention of Funds.

- 14.15.1 Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- 14.15.2 No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the County's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

14.16 Contingent Fee.

Consultant warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, County has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

14.17 Inspection of Work.

Consultant and any subconsultant shall permit County, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

14.18 Safety.

14.18.1 Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County Safety Officer and other County representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

14.18.2 Pursuant to the authority contained in Section 591 of the Vehicle Code, County has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles

14.18.3 Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

15. Attachments & Exhibits.

The following Attachments appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

15.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

15.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Article 13, Article 14.10-14.18 and/or Attachment C, the Federal Requirements set forth in Article 13, 14.10-14.18 and/or Attachment C shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**SIGNATURES FOLLOW ON NEXT PAGE -
- THIS SPACE LEFT INTENTIONALLY BLANK -**

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Professional Services Agreement (“PSA”)
On-Call Design Services FEMA Agreement – OC18-D2

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and Kleinfelder Inc. (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in Attachment “A,” attached hereto and incorporated herein by this reference (hereinafter "Cost Proposal"), and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in Attachment “A”, the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

1.6 Federal Requirements.

Task Orders under this Agreement may be funded by The Federal Emergency Management Agency (FEMA). Consultant shall comply with all applicable Federal Requirements attached hereto as Exhibit "A" – Federal Provisions.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in

this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED].

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

2.8.1 The total amount payable by County for all Task Orders issued under this Agreement shall not exceed \$975,000.00.

- 2.8.2 The not-to-exceed amount of \$975,000 set forth in section 2.8.1 is an aggregate not-to-exceed amount across this Agreement and an Agreement No. OC18-D1 with Consultant. Any compensation expended by County to pay Consultant under Agreement No. OC18-D1 will reduce the not-to-exceed amount set forth in section 2.8.1 of this Agreement by the same amount.
- 2.8.3 This Agreement and Agreement No. OC18-D1 will be administered by the County's Transportation and Public Works department to ensure that the total aggregate amount of compensation to Consultant across this Agreement and Agreement No. OC18-D1 does not exceed the amount set forth in section 2.8.1.
- 2.8.5 Consultant acknowledges, understands and agrees that there is no guarantee, either expressed or implied that the dollar amount set forth in section 2.8.1 or any portion thereof will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

- 2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.
- 2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.
- 2.11.3 If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the

facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This Agreement shall go into effect on (_____)contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The Agreement shall end on (_____), unless extended by amendment.

3.2 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1 Termination Without Cause

Notwithstanding any other provision of this Agreement, at any time and without cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to Consultant.

4.2 Termination for Cause

Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

4.3 Delivery of Work Product and Final Payment Upon Termination

In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to County all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subconsultants, consultants, and other agents in connection with this Agreement and shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

4.4 Payment Upon Termination.

Upon termination of this Agreement by County, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked

prior to the termination times the applicable hourly or daily rate; and further provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by Consultant.

4.5 Authority to Terminate

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right

to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment. In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Department and Suspension" requirements set forth in Section IV and Exhibit "A1" (Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Contractors), Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, consultant has the obligation to inform the County.

9.4 [RESERVED]

9.5 Records Maintenance.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Access to Records" requirements set forth in Section III, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

- 9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.
- 9.6.2 Consultant hereby certifies and covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by County, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Consultant's or such other person's financial interests..
- 9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- 9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal requirements set forth in Exhibit "A" (Federal Requirements) attached to this Agreement..

9.8 Living Wage Ordinance.

- 9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinance's local preference requirements shall be used to select or otherwise apply to Consultant.

9.9 Nondiscrimination.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Equal Employment Opportunity Compliance" requirements set forth in Section VI, and without limiting any other provision in this Agreement, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 [RESERVED]

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

In addition to the requirements and rights afforded to FEMA set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements) and to afford FEMA such rights, including the "Notice of Requirements Pertaining to Copyrights" set forth in Section XI and the "Patent Rights" set forth in Section XII, Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this

Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above- described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

9.15 Prevailing Wage.

- 9.15.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 9.15.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.
- 9.15.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

Kleinfelder, Inc.
Attn: Bill McCormick, PG. CEG.
2240 Northpoint Parkway
Santa Rosa, CA 95407
(707) 571-1883
bmccormick@kleinfelder.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Miscellaneous Provisions.

13.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other.

Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

13.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

13.10 Claims Filed by County's Construction Contractor.

13.10.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

13.10.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that

are being paid for Consultant's personnel services under this contract.

13.10.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

13.10.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14. Attachments & Exhibits.

The following Attachments and Exhibits appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

14.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

Exhibit A – Federal Requirements

14.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Exhibit "A", the Federal Requirements set forth in Exhibit "A" shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SIGNATURES FOLLOW ON NEXT PAGE -

- THIS SPACE LEFT INTENTIONALLY BLANK -

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Exhibit “A”
FEDERAL PROVISIONS

I. DEFINITIONS

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

II. FEDERAL REQUIREMENTS AND CHANGES

- A.** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The consultant will comply with all applicable federal law, regulations, executive orders , FEMA policies, procedures, and directives.
- B.** Consultant 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. Consultant's failure to so comply shall constitute a material breach of this contract.
- C.** The Consultant 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 subconsultant who will be subject to its provisions.

III. ACCESS TO RECORDS

- A.** The Consultant 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 Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B.** The Consultant 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 Consultant 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, Consultant agrees to maintain same until the County, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.
- D.** The requirements set for in paragraphs A, B, and C above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in Section 21 of the Agreement.

IV. DEBARMENT AND SUSPENSION

- A.** This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Consultant is required to verify that none of the Consultant, 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.** Consultant 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. Consultant agrees that neither Consultant nor any of its third party subconsultants shall enter into any third party subcontracts for any of the work under this Agreement with a third party subconsultant 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 Consultant 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. Consultant agrees to the provisions of Exhibit A1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion— Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Exhibit A1, Consultant is the "prospective lower tier participant."
- D.** The Consultant 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 subconsultant 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 Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, the County, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- F.** The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONSULTANT

- A.** The County and Consultant 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, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B.** The Consultant 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 subconsultant who will be subject to its provisions.

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

Consultant 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.** Consultants and subconsultants 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.** Consultants, and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C.** Consultants and subconsultants 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.** Consultants, and subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

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

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

To the extent required by any Federal grant programs applicable to expected funding or reimbursement of County’s expenses incurred in connection with the services provided under this Agreement, Consultant 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 Consultant shall be bound to the provisions of the Davis-Bacon Act, and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of

California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.

- B. The general prevailing wage rates may be accessed at the Department of Labor Home Page at www.wdol.gov. Under the Davis Bacon heading, click on “Selecting DBA WDs.” In the drop down menu for State, select, “California.” In the drop down menu for County, select “Sonoma.” In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

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

- A. **Compliance:** Consultant 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 Consultant or subconsultant 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 he or she is 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 Consultant and any subconsultant responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such Consultant and subconsultant shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.
- D. **Withholding for unpaid wages and liquidated damages:** The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subconsultant under any such contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subconsultant for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.
- E. **Subcontracts:** The Consultant or subconsultant shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subconsultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subconsultant or lower tier subconsultant with the clauses set forth in paragraphs A through D of this section.

X. NOTICE OF REPORTING REQUIREMENTS

- A. Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

XI. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

- A. Consultant 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 Consultant purchases ownership with the assistance of funds provided under this Agreement.
- B. The Consultant 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 subconsultant who will be subject to its provisions.

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

- A. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the County and Consultant 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 Consultant's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the County and Consultant 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 Consultant agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

XIII. ENERGY CONSERVATION REQUIREMENTS

- A. The Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

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

A. Consultant 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. Consultant 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 Consultant agrees to include paragraph A and B above in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

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

See Paragraph 4.1 of the Agreement.

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

Consultant's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement. See Paragraph 4.2 of the Agreement.

XVII. CHANGES.

See Paragraph 8 of the Agreement.

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

A. Consultant 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. Consultant agrees to the provisions of Exhibit A2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of \$100,000).

- C. Consultant 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 subconsultant who will be subject to its provisions.

XIX. MBE / WBE REQUIREMENTS

The County intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the CONSULTANT 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 CONSULTANT RESPONSIBILITIES

All recipients of this grant funding, as well as their prime Consultants and subconsultants, 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 Consultant and any subconsultants 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 CONSULTANT 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, Consultant shall take the affirmative steps listed in 2 CFR 200.321.

XX. PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200.322)

Consultant shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

XXI. INCORPORATION OF UNIFORM ADMINISTRATIVE REQUIREMENTS

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

XXII. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

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

XXIII. DHS SEAL, LOGO, AND FLAGS.

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

Exhibit A1

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

(Lower Tier refers to the agency or Consultant receiving Federal funds, as well as any subconsultants that the agency or Consultant 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. Consultant is required to sign the certification below which specifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Consultant will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any Consultant 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 an Voluntary Exclusion – Lower Tier Covered Transactions

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

Consultant Signature

Date

Exhibit A2

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

Consultant Signature

Date

Professional Services Agreement (“PSA”)
On-Call Design Services FHWA Agreement – OC18-D1

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and Kleinfelder, Inc. (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the County’s Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in the Request for Qualifications and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in , the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County. With respect to performance under this Agreement, Consultant shall employ the following key personnel: Project Manager.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED]

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

The total amount payable by County for all Task Orders resulting from this Agreement shall not exceed \$975,000.00. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.

2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This contract shall go into effect on (_____) contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The contract shall end on (_____), unless extended by contract amendment.

3.2 Contract Execution.

Consultant is advised that any recommendation for contract award is not binding on County until the contract is fully executed and approved by County.

3.3 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the

terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1. Notice Period.

County reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice.

4.2 Grounds for Termination.

County may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If County terminates this Agreement with Consultant, County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

4.3 Liability.

The maximum amount for which the Government shall be liable if this Agreement is terminated is 975,000 dollars.

4.4 Authority to Terminate.

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Department Head, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment.

Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion,

or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

9.4 [RESERVED].

9.5 Records Maintenance.

In addition to other record retention and audit requirements set forth elsewhere in this Agreement, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.

9.6.2 Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes

and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal contract requirements set forth in Article 13 herein.

9.8 Living Wage Ordinance.

9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinances local preference requirements shall be used to select or otherwise apply to Consultant.–

9.9 Nondiscrimination.

Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 Statement of Compliance.

9.10.1 Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

9.10.2 During the performance of this Contract, Consultant and its subconsultants 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, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (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 Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

9.10.3 The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

9.10.4 The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon

completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

On-Call Engineering
Design Services

Kleinfelder, Inc.
Attn: Bill McCormick, PG. CEG.
2240 Northpoint Parkway
Santa Rosa, CA 95407
(707) 571-1883
bmccormick@kleinfelder.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Federal Requirements.

13.1 Contract Assurance.

The consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted agreements. Failure by the consultant to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

13.2 Prompt Progress Payments to Subcontractors.

Attention is directed to Section 7108.5 of the California Business and Professions Code, which requires a prime contractor or subcontractor to pay any subcontractor not later than ten (10) days of receipt of each progress payment, unless otherwise agreed to in writing. In addition, federal regulations (Title 49 Code of Federal Regulations Part 26.29) require a prime contractor or subcontractor to pay a subcontractor no later than thirty (30) days of receipt of each payment, unless any delay or postponement of payment among the parties takes place only for good cause and with the prior written approval of County. Section 7108.5 of the California Business and Professions Code also contains enforcement actions and penalties. The requirements apply to both Disadvantaged Business Entities ("DBE") and non-DBE subcontractors. Consultant shall include the foregoing progress payment requirements in every subcontract entered into by Consultant in the performance of its obligations under this Agreement

13.3 Prompt Payment of Withheld Funds to Subcontractors.

No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any

delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

13.4 Disadvantaged Business Enterprise (DBE) Participation.

- 13.4.1 This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- 13.4.2 A DBE participation goal will be established for each Task Order. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- 13.4.3 DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as County deems appropriate.
- 13.4.4 Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- 13.4.5 A DBE firm may be terminated only with prior written approval from County and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting County consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).
- 13.4.6 A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under

the, contract is commensurate with the work it is actually performing, and other relevant factors.

- 13.4.7 A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- 13.4.8 If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- 13.4.9 Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- 13.4.10 Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by Consultant or Consultant's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- 13.4.11 If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to County's Contract Administrator within 30 days.

13.5 Prevailing Wage.

- 13.5.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 13.5.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless

the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

- 13.5.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

13.6 Text Messaging While Driving.

In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, and Department of Transportation Order 3902.10, Text Messaging While Driving, text messaging while driving is prohibited in the performance of any duties included in this agreement for both consultant and any sub-consultants hired for performance of duties under this Agreement. Consultant shall include a provision prohibiting texting while driving in all sub-consultant agreements entered into related to the performance of its obligations under this Agreement.

Definitions. The following definitions are to be used in conjunction with this section. "Driving":

- 1) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- 2) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

"Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

13.7 Buy America.

Furnish Steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:

- 1) Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478(3/24/1995)];
- 2) If the total combine cost of the materials does not exceed the great of 0.1 percent of the total bid or \$2,500, materials produced outside the U. S. may be used.

Production includes:

- 1) Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending,

grinding, and drilling or chemical composition;

- 2) Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

13.8 Prohibition of Expending Local Agency, State or Federal funds for Lobbying.

13.8.1 Consultant certifies to the best of his or her knowledge and belief that:

- 1) No state, federal or County appropriated funds have been paid, or will be paid by or on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or 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 federal 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; Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

13.8.2 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.

13.8.3 Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

13.9 Cost Principles and Administrative Requirements.

13.9.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, shall be used to determine the cost allowability of individual items.

13.9.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

13.9.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal

Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, are subject to repayment by Consultant to County.

13.10 Retention of Records/Audit.

For the purpose of determining compliance with Public Contract Code 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, Section 2500 *et seq.*, when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; Consultant, subconsultants, and County shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, County, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

13.11 Audit Review Procedures.

- 13.11.1 Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by County's Chief Financial Officer.
- 13.11.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by County's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- 13.11.3 Neither the pendency of a dispute nor its consideration by County will excuse Consultant from full and timely performance, in accordance with the terms of this contract.
- 13.11.4 Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by County contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by County at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

13.12 Subcontracting.

- 13.12.1 Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.
- 13.12.2 Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by County's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- 13.12.3 Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by County.
- 13.12.4 All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- 13.12.5 Any substitution of subconsultant(s) must be approved in writing by County's Contract Administrator prior to the start of work by the subconsultant(s).

13.13 Equipment Purchase.

- 13.13.1 Prior authorization in writing, by County's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- 13.13.2 For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by County's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- 13.13.3 Any equipment purchased as a result of this contract is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, Consultant may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by County." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment

with a fair market value greater than \$5,000 is credited to the project.

14. Miscellaneous Provisions.

14.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

14.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

14.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

14.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

14.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

14.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

14.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

14.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

14.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

14.10 Rebates, Kickback or Other Unlawful Consideration.

Consultant warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

14.11 Funding Requirements.

14.11.1 It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

14.11.2 This contract is valid and enforceable only, if sufficient funds are made available to County for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or County Board of Supervisors that may affect the provisions, terms, or funding of this contract in any manner.

14.11.3 It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

14.11.4 County has the option to void the contract under the 30-day termination clause pursuant to Article 4, or by mutual agreement to amend the contract to reflect any reduction of funds.

14.12 Evaluation of Consultant.

Consultant's performance will be evaluated by County. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

14.13 Claims Filed by County's Construction Contractor.

14.13.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

- 14.13.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.
- 14.13.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.
- 14.13.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14.14 National Labor Relations Board Certification.

In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

14.15 Retention of Funds.

- 14.15.1 Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- 14.15.2 No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the County's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

14.16 Contingent Fee.

Consultant warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, County has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

14.17 Inspection of Work.

Consultant and any subconsultant shall permit County, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

14.18 Safety.

14.18.1 Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County Safety Officer and other County representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

14.18.2 Pursuant to the authority contained in Section 591 of the Vehicle Code, County has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles

14.18.3 Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

15. Attachments & Exhibits.

The following Attachments appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

15.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

15.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Article 13, Article 14.10-14.18 and/or Attachment C, the Federal Requirements set forth in Article 13, 14.10-14.18 and/or Attachment C shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**SIGNATURES FOLLOW ON NEXT PAGE -
- THIS SPACE LEFT INTENTIONALLY BLANK -**

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Professional Services Agreement (“PSA”)
On-Call Design Services FEMA Agreement – OC18-D2

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and Mark Thomas (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in Attachment “A,” attached hereto and incorporated herein by this reference (hereinafter "Cost Proposal"), and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in Attachment “A”, the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

1.6 Federal Requirements.

Task Orders under this Agreement may be funded by The Federal Emergency Management Agency (FEMA). Consultant shall comply with all applicable Federal Requirements attached hereto as Exhibit "A" – Federal Provisions.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in

this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED].

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

2.8.1 The total amount payable by County for all Task Orders issued under this Agreement shall not exceed \$975,000.00.

- 2.8.2 The not-to-exceed amount of \$975,000 set forth in section 2.8.1 is an aggregate not-to-exceed amount across this Agreement and an Agreement No. OC18-D1 with Consultant. Any compensation expended by County to pay Consultant under Agreement No. OC18-D1 will reduce the not-to-exceed amount set forth in section 2.8.1 of this Agreement by the same amount.
- 2.8.3 This Agreement and Agreement No. OC18-D1 will be administered by the County's Transportation and Public Works department to ensure that the total aggregate amount of compensation to Consultant across this Agreement and Agreement No. OC18-D1 does not exceed the amount set forth in section 2.8.1.
- 2.8.5 Consultant acknowledges, understands and agrees that there is no guarantee, either expressed or implied that the dollar amount set forth in section 2.8.1 or any portion thereof will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

- 2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.
- 2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.
- 2.11.3 If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the

facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This Agreement shall go into effect on (_____)contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The Agreement shall end on (_____), unless extended by amendment.

3.2 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1 Termination Without Cause

Notwithstanding any other provision of this Agreement, at any time and without cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to Consultant.

4.2 Termination for Cause

Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

4.3 Delivery of Work Product and Final Payment Upon Termination

In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to County all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subconsultants, consultants, and other agents in connection with this Agreement and shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

4.4 Payment Upon Termination.

Upon termination of this Agreement by County, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked

prior to the termination times the applicable hourly or daily rate; and further provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by Consultant.

4.5 Authority to Terminate

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right

to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment. In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Department and Suspension" requirements set forth in Section IV and Exhibit "A1" (Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Contractors), Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, consultant has the obligation to inform the County.

9.4 [RESERVED]

9.5 Records Maintenance.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Access to Records" requirements set forth in Section III, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

- 9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.
- 9.6.2 Consultant hereby certifies and covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by County, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Consultant's or such other person's financial interests..
- 9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- 9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal requirements set forth in Exhibit "A" (Federal Requirements) attached to this Agreement..

9.8 Living Wage Ordinance.

- 9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinance's local preference requirements shall be used to select or otherwise apply to Consultant.

9.9 Nondiscrimination.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Equal Employment Opportunity Compliance" requirements set forth in Section VI, and without limiting any other provision in this Agreement, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 [RESERVED]

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

In addition to the requirements and rights afforded to FEMA set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements) and to afford FEMA such rights, including the "Notice of Requirements Pertaining to Copyrights" set forth in Section XI and the "Patent Rights" set forth in Section XII, Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this

Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above- described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

9.15 Prevailing Wage.

- 9.15.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 9.15.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.
- 9.15.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

Mark Thomas
Attn: Shawn O'Keefe, PE. QSD
300 Oak Road, Suite 650
Walnut Creek, CA 94597
(925) 938-0383
sokeefe@markthomas.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Miscellaneous Provisions.

13.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other.

Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

13.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

13.10 Claims Filed by County's Construction Contractor.

13.10.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

13.10.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that

are being paid for Consultant's personnel services under this contract.

13.10.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

13.10.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14. Attachments & Exhibits.

The following Attachments and Exhibits appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

14.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

Exhibit A – Federal Requirements

14.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Exhibit "A", the Federal Requirements set forth in Exhibit "A" shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SIGNATURES FOLLOW ON NEXT PAGE -

- THIS SPACE LEFT INTENTIONALLY BLANK -

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Exhibit “A”
FEDERAL PROVISIONS

I. DEFINITIONS

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

II. FEDERAL REQUIREMENTS AND CHANGES

- A.** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The consultant will comply with all applicable federal law, regulations, executive orders , FEMA policies, procedures, and directives.
- B.** Consultant 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. Consultant's failure to so comply shall constitute a material breach of this contract.
- C.** The Consultant 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 subconsultant who will be subject to its provisions.

III. ACCESS TO RECORDS

- A.** The Consultant 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 Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B.** The Consultant 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 Consultant 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, Consultant agrees to maintain same until the County, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.
- D.** The requirements set for in paragraphs A, B, and C above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in Section 21 of the Agreement.

IV. DEBARMENT AND SUSPENSION

- A.** This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Consultant is required to verify that none of the Consultant, 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.** Consultant 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. Consultant agrees that neither Consultant nor any of its third party subconsultants shall enter into any third party subcontracts for any of the work under this Agreement with a third party subconsultant 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 Consultant 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. Consultant agrees to the provisions of Exhibit A1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion— Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Exhibit A1, Consultant is the "prospective lower tier participant."
- D.** The Consultant 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 subconsultant 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 Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, the County, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- F.** The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONSULTANT

- A.** The County and Consultant 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, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B.** The Consultant 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 subconsultant who will be subject to its provisions.

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

Consultant 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.** Consultants and subconsultants 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.** Consultants, and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C.** Consultants and subconsultants 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.** Consultants, and subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

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

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

To the extent required by any Federal grant programs applicable to expected funding or reimbursement of County’s expenses incurred in connection with the services provided under this Agreement, Consultant 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 Consultant shall be bound to the provisions of the Davis-Bacon Act, and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of

California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.

- B. The general prevailing wage rates may be accessed at the Department of Labor Home Page at www.wdol.gov. Under the Davis Bacon heading, click on “Selecting DBA WDs.” In the drop down menu for State, select, “California.” In the drop down menu for County, select “Sonoma.” In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

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

- A. **Compliance:** Consultant 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 Consultant or subconsultant 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 he or she is 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 Consultant and any subconsultant responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such Consultant and subconsultant shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.
- D. **Withholding for unpaid wages and liquidated damages:** The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subconsultant under any such contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subconsultant for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.
- E. **Subcontracts:** The Consultant or subconsultant shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subconsultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subconsultant or lower tier subconsultant with the clauses set forth in paragraphs A through D of this section.

X. NOTICE OF REPORTING REQUIREMENTS

- A.** Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

XI. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

- A.** Consultant 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 Consultant purchases ownership with the assistance of funds provided under this Agreement.
- B.** The Consultant 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 subconsultant who will be subject to its provisions.

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

- A. General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the County and Consultant 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 Consultant's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the County and Consultant 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 Consultant agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

XIII. ENERGY CONSERVATION REQUIREMENTS

- A.** The Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

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

A. Consultant 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. Consultant 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 Consultant agrees to include paragraph A and B above in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

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

See Paragraph 4.1 of the Agreement.

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

Consultant's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement. See Paragraph 4.2 of the Agreement.

XVII. CHANGES.

See Paragraph 8 of the Agreement.

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

A. Consultant 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. Consultant agrees to the provisions of Exhibit A2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of \$100,000).

- C. Consultant 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 subconsultant who will be subject to its provisions.

XIX. MBE / WBE REQUIREMENTS

The County intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the CONSULTANT 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 CONSULTANT RESPONSIBILITIES

All recipients of this grant funding, as well as their prime Consultants and subconsultants, 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 Consultant and any subconsultants 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 CONSULTANT 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, Consultant shall take the affirmative steps listed in 2 CFR 200.321.

XX. PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200.322)

Consultant shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

XXI. INCORPORATION OF UNIFORM ADMINISTRATIVE REQUIREMENTS

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

XXII. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

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

XXIII. DHS SEAL, LOGO, AND FLAGS.

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

Exhibit A1

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

(Lower Tier refers to the agency or Consultant receiving Federal funds, as well as any subconsultants that the agency or Consultant 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. Consultant is required to sign the certification below which specifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Consultant will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any Consultant 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 an Voluntary Exclusion – Lower Tier Covered Transactions

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

Consultant Signature

Date

Exhibit A2

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

Consultant Signature

Date

Professional Services Agreement (“PSA”)
On-Call Design Services FHWA Agreement – OC18-D1

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and Mark Thomas (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the County’s Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in the Request for Qualifications and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in , the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County. With respect to performance under this Agreement, Consultant shall employ the following key personnel: Project Manager.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED]

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

The total amount payable by County for all Task Orders resulting from this Agreement shall not exceed \$975,000.00. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.

2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This contract shall go into effect on (_____) contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The contract shall end on (_____), unless extended by contract amendment.

3.2 Contract Execution.

Consultant is advised that any recommendation for contract award is not binding on County until the contract is fully executed and approved by County.

3.3 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the

terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1. Notice Period.

County reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice.

4.2 Grounds for Termination.

County may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If County terminates this Agreement with Consultant, County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

4.3 Liability.

The maximum amount for which the Government shall be liable if this Agreement is terminated is 975,000 dollars.

4.4 Authority to Terminate.

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Department Head, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment.

Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion,

or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

9.4 [RESERVED].

9.5 Records Maintenance.

In addition to other record retention and audit requirements set forth elsewhere in this Agreement, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.

9.6.2 Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes

and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal contract requirements set forth in Article 13 herein.

9.8 Living Wage Ordinance.

9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinances local preference requirements shall be used to select or otherwise apply to Consultant.–

9.9 Nondiscrimination.

Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 Statement of Compliance.

9.10.1 Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

9.10.2 During the performance of this Contract, Consultant and its subconsultants 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, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (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 Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

9.10.3 The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

9.10.4 The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon

completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

On-Call Engineering
Design Services

Mark Thomas
Attn: Shawn O’Keefe, PE. QSD
300 Oak Road, Suite 650
Walnut Creek, CA 94597
(925) 938-0383
sokeefe@markthomas.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient’s time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Federal Requirements.

13.1 Contract Assurance.

The consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted agreements. Failure by the consultant to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

13.2 Prompt Progress Payments to Subcontractors.

Attention is directed to Section 7108.5 of the California Business and Professions Code, which requires a prime contractor or subcontractor to pay any subcontractor not later than ten (10) days of receipt of each progress payment, unless otherwise agreed to in writing. In addition, federal regulations (Title 49 Code of Federal Regulations Part 26.29) require a prime contractor or subcontractor to pay a subcontractor no later than thirty (30) days of receipt of each payment, unless any delay or postponement of payment among the parties takes place only for good cause and with the prior written approval of County. Section 7108.5 of the California Business and Professions Code also contains enforcement actions and penalties. The requirements apply to both Disadvantaged Business Entities (“DBE”) and non-DBE subcontractors. Consultant shall include the foregoing progress payment requirements in every subcontract entered into by Consultant in the performance of its obligations under this Agreement

13.3 Prompt Payment of Withheld Funds to Subcontractors.

No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant’s work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any

delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

13.4 Disadvantaged Business Enterprise (DBE) Participation.

- 13.4.1 This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- 13.4.2 A DBE participation goal will be established for each Task Order. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- 13.4.3 DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as County deems appropriate.
- 13.4.4 Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- 13.4.5 A DBE firm may be terminated only with prior written approval from County and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting County consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).
- 13.4.6 A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under

the, contract is commensurate with the work it is actually performing, and other relevant factors.

- 13.4.7 A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- 13.4.8 If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- 13.4.9 Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- 13.4.10 Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by Consultant or Consultant's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- 13.4.11 If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to County's Contract Administrator within 30 days.

13.5 Prevailing Wage.

- 13.5.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 13.5.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless

the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

- 13.5.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

13.6 Text Messaging While Driving.

In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, and Department of Transportation Order 3902.10, Text Messaging While Driving, text messaging while driving is prohibited in the performance of any duties included in this agreement for both consultant and any sub-consultants hired for performance of duties under this Agreement. Consultant shall include a provision prohibiting texting while driving in all sub-consultant agreements entered into related to the performance of its obligations under this Agreement.

Definitions. The following definitions are to be used in conjunction with this section. "Driving":

- 1) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- 2) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

"Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

13.7 Buy America.

Furnish Steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:

- 1) Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478(3/24/1995)];
- 2) If the total combine cost of the materials does not exceed the great of 0.1 percent of the total bid or \$2,500, materials produced outside the U. S. may be used.

Production includes:

- 1) Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending,

grinding, and drilling or chemical composition;

- 2) Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

13.8 Prohibition of Expending Local Agency, State or Federal funds for Lobbying.

13.8.1 Consultant certifies to the best of his or her knowledge and belief that:

- 1) No state, federal or County appropriated funds have been paid, or will be paid by or on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or 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 federal 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; Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

13.8.2 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.

13.8.3 Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

13.9 Cost Principles and Administrative Requirements.

13.9.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, shall be used to determine the cost allowability of individual items.

13.9.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

13.9.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal

Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, are subject to repayment by Consultant to County.

13.10 Retention of Records/Audit.

For the purpose of determining compliance with Public Contract Code 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, Section 2500 *et seq.*, when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; Consultant, subconsultants, and County shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, County, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

13.11 Audit Review Procedures.

- 13.11.1 Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by County's Chief Financial Officer.
- 13.11.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by County's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- 13.11.3 Neither the pendency of a dispute nor its consideration by County will excuse Consultant from full and timely performance, in accordance with the terms of this contract.
- 13.11.4 Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by County contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by County at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

13.12 Subcontracting.

- 13.12.1 Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.
- 13.12.2 Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by County's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- 13.12.3 Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by County.
- 13.12.4 All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- 13.12.5 Any substitution of subconsultant(s) must be approved in writing by County's Contract Administrator prior to the start of work by the subconsultant(s).

13.13 Equipment Purchase.

- 13.13.1 Prior authorization in writing, by County's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- 13.13.2 For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by County's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- 13.13.3 Any equipment purchased as a result of this contract is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, Consultant may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by County." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment

with a fair market value greater than \$5,000 is credited to the project.

14. Miscellaneous Provisions.

14.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

14.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

14.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

14.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

14.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

14.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

14.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

14.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

14.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

14.10 Rebates, Kickback or Other Unlawful Consideration.

Consultant warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

14.11 Funding Requirements.

14.11.1 It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

14.11.2 This contract is valid and enforceable only, if sufficient funds are made available to County for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or County Board of Supervisors that may affect the provisions, terms, or funding of this contract in any manner.

14.11.3 It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

14.11.4 County has the option to void the contract under the 30-day termination clause pursuant to Article 4, or by mutual agreement to amend the contract to reflect any reduction of funds.

14.12 Evaluation of Consultant.

Consultant's performance will be evaluated by County. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

14.13 Claims Filed by County's Construction Contractor.

14.13.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

- 14.13.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.
- 14.13.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.
- 14.13.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14.14 National Labor Relations Board Certification.

In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

14.15 Retention of Funds.

- 14.15.1 Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- 14.15.2 No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the County's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

14.16 Contingent Fee.

Consultant warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, County has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

14.17 Inspection of Work.

Consultant and any subconsultant shall permit County, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

14.18 Safety.

14.18.1 Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County Safety Officer and other County representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

14.18.2 Pursuant to the authority contained in Section 591 of the Vehicle Code, County has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles

14.18.3 Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

15. Attachments & Exhibits.

The following Attachments appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

15.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

15.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Article 13, Article 14.10-14.18 and/or Attachment C, the Federal Requirements set forth in Article 13, 14.10-14.18 and/or Attachment C shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**SIGNATURES FOLLOW ON NEXT PAGE -
- THIS SPACE LEFT INTENTIONALLY BLANK -**

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Professional Services Agreement (“PSA”)
On-Call Design Services FEMA Agreement – OC18-D2

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and MOE Engineering Inc. (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in Attachment “A,” attached hereto and incorporated herein by this reference (hereinafter "Cost Proposal"), and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in Attachment “A”, the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

1.6 Federal Requirements.

Task Orders under this Agreement may be funded by The Federal Emergency Management Agency (FEMA). Consultant shall comply with all applicable Federal Requirements attached hereto as Exhibit "A" – Federal Provisions.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in

this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED].

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

2.8.1 The total amount payable by County for all Task Orders issued under this Agreement shall not exceed \$975,000.00.

- 2.8.2 The not-to-exceed amount of \$975,000 set forth in section 2.8.1 is an aggregate not-to-exceed amount across this Agreement and an Agreement No. OC18-D1 with Consultant. Any compensation expended by County to pay Consultant under Agreement No. OC18-D1 will reduce the not-to-exceed amount set forth in section 2.8.1 of this Agreement by the same amount.
- 2.8.3 This Agreement and Agreement No. OC18-D1 will be administered by the County's Transportation and Public Works department to ensure that the total aggregate amount of compensation to Consultant across this Agreement and Agreement No. OC18-D1 does not exceed the amount set forth in section 2.8.1.
- 2.8.5 Consultant acknowledges, understands and agrees that there is no guarantee, either expressed or implied that the dollar amount set forth in section 2.8.1 or any portion thereof will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

- 2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.
- 2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.
- 2.11.3 If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the

facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This Agreement shall go into effect on (_____)contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The Agreement shall end on (_____), unless extended by amendment.

3.2 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1 Termination Without Cause

Notwithstanding any other provision of this Agreement, at any time and without cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to Consultant.

4.2 Termination for Cause

Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

4.3 Delivery of Work Product and Final Payment Upon Termination

In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to County all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subconsultants, consultants, and other agents in connection with this Agreement and shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

4.4 Payment Upon Termination.

Upon termination of this Agreement by County, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked

prior to the termination times the applicable hourly or daily rate; and further provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by Consultant.

4.5 Authority to Terminate

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right

to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment. In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Department and Suspension" requirements set forth in Section IV and Exhibit "A1" (Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Contractors), Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, consultant has the obligation to inform the County.

9.4 [RESERVED]

9.5 Records Maintenance.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Access to Records" requirements set forth in Section III, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

- 9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.
- 9.6.2 Consultant hereby certifies and covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by County, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Consultant's or such other person's financial interests..
- 9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- 9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal requirements set forth in Exhibit "A" (Federal Requirements) attached to this Agreement..

9.8 Living Wage Ordinance.

- 9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinance's local preference requirements shall be used to select or otherwise apply to Consultant.

9.9 Nondiscrimination.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Equal Employment Opportunity Compliance" requirements set forth in Section VI, and without limiting any other provision in this Agreement, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 [RESERVED]

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

In addition to the requirements and rights afforded to FEMA set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements) and to afford FEMA such rights, including the "Notice of Requirements Pertaining to Copyrights" set forth in Section XI and the "Patent Rights" set forth in Section XII, Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this

Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

9.15 Prevailing Wage.

- 9.15.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 9.15.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.
- 9.15.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

MOE Engineering, Inc.
Attn: John L. Moe, PE
2950 Montecito Avenue
Santa Rosa, CA 95404
(707) 544-6274
John@moeengineering.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Miscellaneous Provisions.

13.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other.

Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

13.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

13.10 Claims Filed by County's Construction Contractor.

13.10.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

13.10.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that

are being paid for Consultant's personnel services under this contract.

13.10.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

13.10.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14. Attachments & Exhibits.

The following Attachments and Exhibits appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

14.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

Exhibit A – Federal Requirements

14.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Exhibit "A", the Federal Requirements set forth in Exhibit "A" shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SIGNATURES FOLLOW ON NEXT PAGE -

- THIS SPACE LEFT INTENTIONALLY BLANK -

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Exhibit “A”
FEDERAL PROVISIONS

I. DEFINITIONS

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

II. FEDERAL REQUIREMENTS AND CHANGES

- A.** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The consultant will comply with all applicable federal law, regulations, executive orders , FEMA policies, procedures, and directives.
- B.** Consultant 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. Consultant's failure to so comply shall constitute a material breach of this contract.
- C.** The Consultant 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 subconsultant who will be subject to its provisions.

III. ACCESS TO RECORDS

- A.** The Consultant 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 Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B.** The Consultant 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 Consultant 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, Consultant agrees to maintain same until the County, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.
- D.** The requirements set for in paragraphs A, B, and C above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in Section 21 of the Agreement.

IV. DEBARMENT AND SUSPENSION

- A.** This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Consultant is required to verify that none of the Consultant, 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.** Consultant 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. Consultant agrees that neither Consultant nor any of its third party subconsultants shall enter into any third party subcontracts for any of the work under this Agreement with a third party subconsultant 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 Consultant 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. Consultant agrees to the provisions of Exhibit A1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion— Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Exhibit A1, Consultant is the "prospective lower tier participant."
- D.** The Consultant 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 subconsultant 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 Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, the County, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- F.** The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONSULTANT

- A.** The County and Consultant 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, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B.** The Consultant 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 subconsultant who will be subject to its provisions.

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

Consultant 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.** Consultants and subconsultants 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.** Consultants, and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C.** Consultants and subconsultants 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.** Consultants, and subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

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

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

To the extent required by any Federal grant programs applicable to expected funding or reimbursement of County’s expenses incurred in connection with the services provided under this Agreement, Consultant 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 Consultant shall be bound to the provisions of the Davis-Bacon Act, and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of

California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.

- B. The general prevailing wage rates may be accessed at the Department of Labor Home Page at www.wdol.gov. Under the Davis Bacon heading, click on “Selecting DBA WDs.” In the drop down menu for State, select, “California.” In the drop down menu for County, select “Sonoma.” In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

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

- A. **Compliance:** Consultant 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 Consultant or subconsultant 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 he or she is 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 Consultant and any subconsultant responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such Consultant and subconsultant shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.
- D. **Withholding for unpaid wages and liquidated damages:** The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subconsultant under any such contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subconsultant for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.
- E. **Subcontracts:** The Consultant or subconsultant shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subconsultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subconsultant or lower tier subconsultant with the clauses set forth in paragraphs A through D of this section.

X. NOTICE OF REPORTING REQUIREMENTS

- A.** Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

XI. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

- A.** Consultant 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 Consultant purchases ownership with the assistance of funds provided under this Agreement.
- B.** The Consultant 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 subconsultant who will be subject to its provisions.

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

- A. General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the County and Consultant 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 Consultant's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the County and Consultant 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 Consultant agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

XIII. ENERGY CONSERVATION REQUIREMENTS

- A.** The Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

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

A. Consultant 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. Consultant 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 Consultant agrees to include paragraph A and B above in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

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

See Paragraph 4.1 of the Agreement.

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

Consultant's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement. See Paragraph 4.2 of the Agreement.

XVII. CHANGES.

See Paragraph 8 of the Agreement.

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

A. Consultant 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. Consultant agrees to the provisions of Exhibit A2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of \$100,000).

- C. Consultant 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 subconsultant who will be subject to its provisions.

XIX. MBE / WBE REQUIREMENTS

The County intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the CONSULTANT 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 CONSULTANT RESPONSIBILITIES

All recipients of this grant funding, as well as their prime Consultants and subconsultants, 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 Consultant and any subconsultants 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 CONSULTANT 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, Consultant shall take the affirmative steps listed in 2 CFR 200.321.

XX. PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200.322)

Consultant shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

XXI. INCORPORATION OF UNIFORM ADMINISTRATIVE REQUIREMENTS

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

XXII. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

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

XXIII. DHS SEAL, LOGO, AND FLAGS.

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

Exhibit A1

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

(Lower Tier refers to the agency or Consultant receiving Federal funds, as well as any subconsultants that the agency or Consultant 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. Consultant is required to sign the certification below which specifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Consultant will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any Consultant 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 an Voluntary Exclusion – Lower Tier Covered Transactions

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

Consultant Signature

Date

Exhibit A2

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

Consultant Signature

Date

Professional Services Agreement (“PSA”)
On-Call Design Services FHWA Agreement – OC18-D1

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and MOE Engineering, Inc. (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the County’s Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in the Request for Qualifications and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in , the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County. With respect to performance under this Agreement, Consultant shall employ the following key personnel: Project Manager.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED]

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

The total amount payable by County for all Task Orders resulting from this Agreement shall not exceed \$975,000.00. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.

2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This contract shall go into effect on (_____) contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The contract shall end on (_____), unless extended by contract amendment.

3.2 Contract Execution.

Consultant is advised that any recommendation for contract award is not binding on County until the contract is fully executed and approved by County.

3.3 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the

terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1. Notice Period.

County reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice.

4.2 Grounds for Termination.

County may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If County terminates this Agreement with Consultant, County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

4.3 Liability.

The maximum amount for which the Government shall be liable if this Agreement is terminated is 975,000 dollars.

4.4 Authority to Terminate.

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Department Head, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment.

Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion,

or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

9.4 [RESERVED].

9.5 Records Maintenance.

In addition to other record retention and audit requirements set forth elsewhere in this Agreement, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.

9.6.2 Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes

and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal contract requirements set forth in Article 13 herein.

9.8 Living Wage Ordinance.

9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinances local preference requirements shall be used to select or otherwise apply to Consultant.–

9.9 Nondiscrimination.

Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 Statement of Compliance.

9.10.1 Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

9.10.2 During the performance of this Contract, Consultant and its subconsultants 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, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (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 Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

9.10.3 The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

9.10.4 The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon

completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

On-Call Engineering
Design Services

MOE Engineering, Inc.
Attn: John L. Moe, PE
2950 Montecito Avenue
Santa Rosa, CA 95404
(707) 544-6274
John@moeengineering.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Federal Requirements.

13.1 Contract Assurance.

The consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted agreements. Failure by the consultant to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

13.2 Prompt Progress Payments to Subcontractors.

Attention is directed to Section 7108.5 of the California Business and Professions Code, which requires a prime contractor or subcontractor to pay any subcontractor not later than ten (10) days of receipt of each progress payment, unless otherwise agreed to in writing. In addition, federal regulations (Title 49 Code of Federal Regulations Part 26.29) require a prime contractor or subcontractor to pay a subcontractor no later than thirty (30) days of receipt of each payment, unless any delay or postponement of payment among the parties takes place only for good cause and with the prior written approval of County. Section 7108.5 of the California Business and Professions Code also contains enforcement actions and penalties. The requirements apply to both Disadvantaged Business Entities ("DBE") and non-DBE subcontractors. Consultant shall include the foregoing progress payment requirements in every subcontract entered into by Consultant in the performance of its obligations under this Agreement

13.3 Prompt Payment of Withheld Funds to Subcontractors.

No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any

delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

13.4 Disadvantaged Business Enterprise (DBE) Participation.

- 13.4.1 This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- 13.4.2 A DBE participation goal will be established for each Task Order. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- 13.4.3 DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as County deems appropriate.
- 13.4.4 Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- 13.4.5 A DBE firm may be terminated only with prior written approval from County and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting County consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).
- 13.4.6 A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under

the, contract is commensurate with the work it is actually performing, and other relevant factors.

- 13.4.7 A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- 13.4.8 If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- 13.4.9 Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- 13.4.10 Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by Consultant or Consultant's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- 13.4.11 If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to County's Contract Administrator within 30 days.

13.5 Prevailing Wage.

- 13.5.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 13.5.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless

the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

- 13.5.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

13.6 Text Messaging While Driving.

In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, and Department of Transportation Order 3902.10, Text Messaging While Driving, text messaging while driving is prohibited in the performance of any duties included in this agreement for both consultant and any sub-consultants hired for performance of duties under this Agreement. Consultant shall include a provision prohibiting texting while driving in all sub-consultant agreements entered into related to the performance of its obligations under this Agreement.

Definitions. The following definitions are to be used in conjunction with this section. "Driving":

- 1) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- 2) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

"Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

13.7 Buy America.

Furnish Steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:

- 1) Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478(3/24/1995)];
- 2) If the total combine cost of the materials does not exceed the great of 0.1 percent of the total bid or \$2,500, materials produced outside the U. S. may be used.

Production includes:

- 1) Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending,

grinding, and drilling or chemical composition;

- 2) Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

13.8 Prohibition of Expending Local Agency, State or Federal funds for Lobbying.

13.8.1 Consultant certifies to the best of his or her knowledge and belief that:

- 1) No state, federal or County appropriated funds have been paid, or will be paid by or on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or 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 federal 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; Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

13.8.2 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.

13.8.3 Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

13.9 Cost Principles and Administrative Requirements.

13.9.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, shall be used to determine the cost allowability of individual items.

13.9.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

13.9.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal

Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, are subject to repayment by Consultant to County.

13.10 Retention of Records/Audit.

For the purpose of determining compliance with Public Contract Code 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, Section 2500 *et seq.*, when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; Consultant, subconsultants, and County shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, County, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

13.11 Audit Review Procedures.

- 13.11.1 Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by County's Chief Financial Officer.
- 13.11.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by County's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- 13.11.3 Neither the pendency of a dispute nor its consideration by County will excuse Consultant from full and timely performance, in accordance with the terms of this contract.
- 13.11.4 Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by County contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by County at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

13.12 Subcontracting.

- 13.12.1 Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.
- 13.12.2 Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by County's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- 13.12.3 Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by County.
- 13.12.4 All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- 13.12.5 Any substitution of subconsultant(s) must be approved in writing by County's Contract Administrator prior to the start of work by the subconsultant(s).

13.13 Equipment Purchase.

- 13.13.1 Prior authorization in writing, by County's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- 13.13.2 For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by County's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- 13.13.3 Any equipment purchased as a result of this contract is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, Consultant may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by County." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment

with a fair market value greater than \$5,000 is credited to the project.

14. Miscellaneous Provisions.

14.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

14.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

14.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

14.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

14.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

14.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

14.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

14.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

14.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

14.10 Rebates, Kickback or Other Unlawful Consideration.

Consultant warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

14.11 Funding Requirements.

14.11.1 It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

14.11.2 This contract is valid and enforceable only, if sufficient funds are made available to County for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or County Board of Supervisors that may affect the provisions, terms, or funding of this contract in any manner.

14.11.3 It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

14.11.4 County has the option to void the contract under the 30-day termination clause pursuant to Article 4, or by mutual agreement to amend the contract to reflect any reduction of funds.

14.12 Evaluation of Consultant.

Consultant's performance will be evaluated by County. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

14.13 Claims Filed by County's Construction Contractor.

14.13.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

- 14.13.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.
- 14.13.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.
- 14.13.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14.14 National Labor Relations Board Certification.

In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

14.15 Retention of Funds.

- 14.15.1 Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- 14.15.2 No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the County's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

14.16 Contingent Fee.

Consultant warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, County has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

14.17 Inspection of Work.

Consultant and any subconsultant shall permit County, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

14.18 Safety.

14.18.1 Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County Safety Officer and other County representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

14.18.2 Pursuant to the authority contained in Section 591 of the Vehicle Code, County has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles

14.18.3 Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

15. Attachments & Exhibits.

The following Attachments appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

15.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

15.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Article 13, Article 14.10-14.18 and/or Attachment C, the Federal Requirements set forth in Article 13, 14.10-14.18 and/or Attachment C shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**SIGNATURES FOLLOW ON NEXT PAGE -
- THIS SPACE LEFT INTENTIONALLY BLANK -**

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Professional Services Agreement (“PSA”)
On-Call Design Services FEMA Agreement – OC18-D2

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and Moffatt & Nichol (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in Attachment “A,” attached hereto and incorporated herein by this reference (hereinafter "Cost Proposal"), and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in Attachment “A”, the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

1.6 Federal Requirements.

Task Orders under this Agreement may be funded by The Federal Emergency Management Agency (FEMA). Consultant shall comply with all applicable Federal Requirements attached hereto as Exhibit "A" – Federal Provisions.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in

this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED].

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

2.8.1 The total amount payable by County for all Task Orders issued under this Agreement shall not exceed \$975,000.00.

- 2.8.2 The not-to-exceed amount of \$975,000 set forth in section 2.8.1 is an aggregate not-to-exceed amount across this Agreement and an Agreement No. OC18-D1 with Consultant. Any compensation expended by County to pay Consultant under Agreement No. OC18-D1 will reduce the not-to-exceed amount set forth in section 2.8.1 of this Agreement by the same amount.
- 2.8.3 This Agreement and Agreement No. OC18-D1 will be administered by the County's Transportation and Public Works department to ensure that the total aggregate amount of compensation to Consultant across this Agreement and Agreement No. OC18-D1 does not exceed the amount set forth in section 2.8.1.
- 2.8.5 Consultant acknowledges, understands and agrees that there is no guarantee, either expressed or implied that the dollar amount set forth in section 2.8.1 or any portion thereof will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

- 2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.
- 2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.
- 2.11.3 If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the

facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This Agreement shall go into effect on (_____)contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The Agreement shall end on (_____), unless extended by amendment.

3.2 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1 Termination Without Cause

Notwithstanding any other provision of this Agreement, at any time and without cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to Consultant.

4.2 Termination for Cause

Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

4.3 Delivery of Work Product and Final Payment Upon Termination

In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to County all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subconsultants, consultants, and other agents in connection with this Agreement and shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

4.4 Payment Upon Termination.

Upon termination of this Agreement by County, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked

prior to the termination times the applicable hourly or daily rate; and further provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by Consultant.

4.5 Authority to Terminate

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right

to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment. In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Department and Suspension" requirements set forth in Section IV and Exhibit "A1" (Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Contractors), Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, consultant has the obligation to inform the County.

9.4 [RESERVED]

9.5 Records Maintenance.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Access to Records" requirements set forth in Section III, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

- 9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.
- 9.6.2 Consultant hereby certifies and covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by County, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Consultant's or such other person's financial interests..
- 9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- 9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal requirements set forth in Exhibit "A" (Federal Requirements) attached to this Agreement..

9.8 Living Wage Ordinance.

- 9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinance's local preference requirements shall be used to select or otherwise apply to Consultant.

9.9 Nondiscrimination.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Equal Employment Opportunity Compliance" requirements set forth in Section VI, and without limiting any other provision in this Agreement, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 [RESERVED]

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

In addition to the requirements and rights afforded to FEMA set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements) and to afford FEMA such rights, including the "Notice of Requirements Pertaining to Copyrights" set forth in Section XI and the "Patent Rights" set forth in Section XII, Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this

Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above- described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

9.15 Prevailing Wage.

- 9.15.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 9.15.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.
- 9.15.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

Moffatt & Nichol
Attn: Garrett Dekker, PE
2185 N. California Blvd., Suite 500
Walnut Creek, CA 94596
(925) 944-5411
gdekker@moffattnichol.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Miscellaneous Provisions.

13.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other.

Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

13.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

13.10 Claims Filed by County's Construction Contractor.

13.10.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

13.10.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that

are being paid for Consultant's personnel services under this contract.

13.10.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

13.10.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14. Attachments & Exhibits.

The following Attachments and Exhibits appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

14.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

Exhibit A – Federal Requirements

14.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Exhibit "A", the Federal Requirements set forth in Exhibit "A" shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SIGNATURES FOLLOW ON NEXT PAGE -

- THIS SPACE LEFT INTENTIONALLY BLANK -

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Exhibit “A”
FEDERAL PROVISIONS

I. DEFINITIONS

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

II. FEDERAL REQUIREMENTS AND CHANGES

- A.** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The consultant will comply with all applicable federal law, regulations, executive orders , FEMA policies, procedures, and directives.
- B.** Consultant 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. Consultant's failure to so comply shall constitute a material breach of this contract.
- C.** The Consultant 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 subconsultant who will be subject to its provisions.

III. ACCESS TO RECORDS

- A.** The Consultant 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 Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B.** The Consultant 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 Consultant 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, Consultant agrees to maintain same until the County, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.
- D.** The requirements set for in paragraphs A, B, and C above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in Section 21 of the Agreement.

IV. DEBARMENT AND SUSPENSION

- A.** This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Consultant is required to verify that none of the Consultant, 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.** Consultant 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. Consultant agrees that neither Consultant nor any of its third party subconsultants shall enter into any third party subcontracts for any of the work under this Agreement with a third party subconsultant 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 Consultant 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. Consultant agrees to the provisions of Exhibit A1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion— Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Exhibit A1, Consultant is the "prospective lower tier participant."
- D.** The Consultant 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 subconsultant 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 Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, the County, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- F.** The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONSULTANT

- A.** The County and Consultant 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, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B.** The Consultant 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 subconsultant who will be subject to its provisions.

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

Consultant 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.** Consultants and subconsultants 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.** Consultants, and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C.** Consultants and subconsultants 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.** Consultants, and subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

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

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

To the extent required by any Federal grant programs applicable to expected funding or reimbursement of County’s expenses incurred in connection with the services provided under this Agreement, Consultant 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 Consultant shall be bound to the provisions of the Davis-Bacon Act, and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of

California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.

- B. The general prevailing wage rates may be accessed at the Department of Labor Home Page at www.wdol.gov. Under the Davis Bacon heading, click on “Selecting DBA WDs.” In the drop down menu for State, select, “California.” In the drop down menu for County, select “Sonoma.” In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

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

- A. **Compliance:** Consultant 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 Consultant or subconsultant 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 he or she is 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 Consultant and any subconsultant responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such Consultant and subconsultant shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.
- D. **Withholding for unpaid wages and liquidated damages:** The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subconsultant under any such contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subconsultant for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.
- E. **Subcontracts:** The Consultant or subconsultant shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subconsultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subconsultant or lower tier subconsultant with the clauses set forth in paragraphs A through D of this section.

X. NOTICE OF REPORTING REQUIREMENTS

- A. Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

XI. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

- A. Consultant 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 Consultant purchases ownership with the assistance of funds provided under this Agreement.
- B. The Consultant 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 subconsultant who will be subject to its provisions.

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

- A. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the County and Consultant 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 Consultant's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the County and Consultant 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 Consultant agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

XIII. ENERGY CONSERVATION REQUIREMENTS

- A. The Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

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

A. Consultant 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. Consultant 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 Consultant agrees to include paragraph A and B above in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

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

See Paragraph 4.1 of the Agreement.

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

Consultant's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement. See Paragraph 4.2 of the Agreement.

XVII. CHANGES.

See Paragraph 8 of the Agreement.

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

A. Consultant 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. Consultant agrees to the provisions of Exhibit A2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of \$100,000).

- C. Consultant 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 subconsultant who will be subject to its provisions.

XIX. MBE / WBE REQUIREMENTS

The County intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the CONSULTANT 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 CONSULTANT RESPONSIBILITIES

All recipients of this grant funding, as well as their prime Consultants and subconsultants, 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 Consultant and any subconsultants 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 CONSULTANT 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, Consultant shall take the affirmative steps listed in 2 CFR 200.321.

XX. PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200.322)

Consultant shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

XXI. INCORPORATION OF UNIFORM ADMINISTRATIVE REQUIREMENTS

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

XXII. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

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

XXIII. DHS SEAL, LOGO, AND FLAGS.

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

Exhibit A1

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

(Lower Tier refers to the agency or Consultant receiving Federal funds, as well as any subconsultants that the agency or Consultant 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. Consultant is required to sign the certification below which specifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Consultant will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any Consultant 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 an Voluntary Exclusion – Lower Tier Covered Transactions

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

Consultant Signature

Date

Exhibit A2

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

Consultant Signature

Date

Professional Services Agreement (“PSA”)
On-Call Design Services FHWA Agreement – OC18-D1

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and Moffatt & Nichol (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the County’s Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in the Request for Qualifications and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in , the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with County to review the quality of the work and resolve matters of concern;

(b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County. With respect to performance under this Agreement, Consultant shall employ the following key personnel: Project Manager.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED]

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

The total amount payable by County for all Task Orders resulting from this Agreement shall not exceed \$975,000.00. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.

2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This contract shall go into effect on (_____) contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The contract shall end on (_____), unless extended by contract amendment.

3.2 Contract Execution.

Consultant is advised that any recommendation for contract award is not binding on County until the contract is fully executed and approved by County.

3.3 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the

terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1. Notice Period.

County reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice.

4.2 Grounds for Termination.

County may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If County terminates this Agreement with Consultant, County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

4.3 Liability.

The maximum amount for which the Government shall be liable if this Agreement is terminated is 975,000 dollars.

4.4 Authority to Terminate.

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Department Head, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment.

Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion,

or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

9.4 [RESERVED].

9.5 Records Maintenance.

In addition to other record retention and audit requirements set forth elsewhere in this Agreement, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.

9.6.2 Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes

and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal contract requirements set forth in Article 13 herein.

9.8 Living Wage Ordinance.

9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinances local preference requirements shall be used to select or otherwise apply to Consultant.–

9.9 Nondiscrimination.

Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 Statement of Compliance.

9.10.1 Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

9.10.2 During the performance of this Contract, Consultant and its subconsultants 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, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (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 Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

9.10.3 The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

9.10.4 The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon

completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

On-Call Engineering
Design Services

Moffatt & Nichol
Attn: Garrett Dekker, PE
2185 N. California Blvd., Suite 500
Walnut Creek, CA 94596
(925) 944-5411
gdekker@moffattnichol.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Federal Requirements.

13.1 Contract Assurance.

The consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted agreements. Failure by the consultant to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

13.2 Prompt Progress Payments to Subcontractors.

Attention is directed to Section 7108.5 of the California Business and Professions Code, which requires a prime contractor or subcontractor to pay any subcontractor not later than ten (10) days of receipt of each progress payment, unless otherwise agreed to in writing. In addition, federal regulations (Title 49 Code of Federal Regulations Part 26.29) require a prime contractor or subcontractor to pay a subcontractor no later than thirty (30) days of receipt of each payment, unless any delay or postponement of payment among the parties takes place only for good cause and with the prior written approval of County. Section 7108.5 of the California Business and Professions Code also contains enforcement actions and penalties. The requirements apply to both Disadvantaged Business Entities ("DBE") and non-DBE subcontractors. Consultant shall include the foregoing progress payment requirements in every subcontract entered into by Consultant in the performance of its obligations under this Agreement

13.3 Prompt Payment of Withheld Funds to Subcontractors.

No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any

delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

13.4 Disadvantaged Business Enterprise (DBE) Participation.

- 13.4.1 This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- 13.4.2 A DBE participation goal will be established for each Task Order. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- 13.4.3 DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as County deems appropriate.
- 13.4.4 Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- 13.4.5 A DBE firm may be terminated only with prior written approval from County and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting County consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).
- 13.4.6 A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under

the, contract is commensurate with the work it is actually performing, and other relevant factors.

- 13.4.7 A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- 13.4.8 If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- 13.4.9 Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- 13.4.10 Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by Consultant or Consultant's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- 13.4.11 If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to County's Contract Administrator within 30 days.

13.5 Prevailing Wage.

- 13.5.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 13.5.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless

the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

- 13.5.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

13.6 Text Messaging While Driving.

In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, and Department of Transportation Order 3902.10, Text Messaging While Driving, text messaging while driving is prohibited in the performance of any duties included in this agreement for both consultant and any sub-consultants hired for performance of duties under this Agreement. Consultant shall include a provision prohibiting texting while driving in all sub-consultant agreements entered into related to the performance of its obligations under this Agreement.

Definitions. The following definitions are to be used in conjunction with this section. "Driving":

- 1) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- 2) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

"Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

13.7 Buy America.

Furnish Steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:

- 1) Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478(3/24/1995)];
- 2) If the total combine cost of the materials does not exceed the great of 0.1 percent of the total bid or \$2,500, materials produced outside the U. S. may be used.

Production includes:

- 1) Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending,

grinding, and drilling or chemical composition;

- 2) Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

13.8 Prohibition of Expending Local Agency, State or Federal funds for Lobbying.

13.8.1 Consultant certifies to the best of his or her knowledge and belief that:

- 1) No state, federal or County appropriated funds have been paid, or will be paid by or on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or 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 federal 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; Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

13.8.2 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.

13.8.3 Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

13.9 Cost Principles and Administrative Requirements.

13.9.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, shall be used to determine the cost allowability of individual items.

13.9.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

13.9.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal

Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, are subject to repayment by Consultant to County.

13.10 Retention of Records/Audit.

For the purpose of determining compliance with Public Contract Code 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, Section 2500 *et seq.*, when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; Consultant, subconsultants, and County shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, County, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

13.11 Audit Review Procedures.

- 13.11.1 Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by County's Chief Financial Officer.
- 13.11.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by County's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- 13.11.3 Neither the pendency of a dispute nor its consideration by County will excuse Consultant from full and timely performance, in accordance with the terms of this contract.
- 13.11.4 Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by County contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by County at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

13.12 Subcontracting.

- 13.12.1 Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.
- 13.12.2 Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by County's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- 13.12.3 Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by County.
- 13.12.4 All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- 13.12.5 Any substitution of subconsultant(s) must be approved in writing by County's Contract Administrator prior to the start of work by the subconsultant(s).

13.13 Equipment Purchase.

- 13.13.1 Prior authorization in writing, by County's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- 13.13.2 For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by County's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- 13.13.3 Any equipment purchased as a result of this contract is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, Consultant may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by County." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment

with a fair market value greater than \$5,000 is credited to the project.

14. Miscellaneous Provisions.

14.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

14.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

14.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

14.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

14.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

14.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

14.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

14.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

14.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

14.10 Rebates, Kickback or Other Unlawful Consideration.

Consultant warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

14.11 Funding Requirements.

14.11.1 It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

14.11.2 This contract is valid and enforceable only, if sufficient funds are made available to County for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or County Board of Supervisors that may affect the provisions, terms, or funding of this contract in any manner.

14.11.3 It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

14.11.4 County has the option to void the contract under the 30-day termination clause pursuant to Article 4, or by mutual agreement to amend the contract to reflect any reduction of funds.

14.12 Evaluation of Consultant.

Consultant's performance will be evaluated by County. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

14.13 Claims Filed by County's Construction Contractor.

14.13.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

- 14.13.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.
- 14.13.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.
- 14.13.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14.14 National Labor Relations Board Certification.

In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

14.15 Retention of Funds.

- 14.15.1 Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- 14.15.2 No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the County's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

14.16 Contingent Fee.

Consultant warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, County has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

14.17 Inspection of Work.

Consultant and any subconsultant shall permit County, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

14.18 Safety.

14.18.1 Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County Safety Officer and other County representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

14.18.2 Pursuant to the authority contained in Section 591 of the Vehicle Code, County has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles

14.18.3 Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

15. Attachments & Exhibits.

The following Attachments appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

15.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

15.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Article 13, Article 14.10-14.18 and/or Attachment C, the Federal Requirements set forth in Article 13, 14.10-14.18 and/or Attachment C shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**SIGNATURES FOLLOW ON NEXT PAGE -
- THIS SPACE LEFT INTENTIONALLY BLANK -**

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Professional Services Agreement (“PSA”)
On-Call Design Services FEMA Agreement – OC18-D2

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and NV5 (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in Attachment “A,” attached hereto and incorporated herein by this reference (hereinafter "Cost Proposal"), and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in Attachment “A”, the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

1.6 Federal Requirements.

Task Orders under this Agreement may be funded by The Federal Emergency Management Agency (FEMA). Consultant shall comply with all applicable Federal Requirements attached hereto as Exhibit "A" – Federal Provisions.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in

this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED].

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

2.8.1 The total amount payable by County for all Task Orders issued under this Agreement shall not exceed \$975,000.00.

- 2.8.2 The not-to-exceed amount of \$975,000 set forth in section 2.8.1 is an aggregate not-to-exceed amount across this Agreement and an Agreement No. OC18-D1 with Consultant. Any compensation expended by County to pay Consultant under Agreement No. OC18-D1 will reduce the not-to-exceed amount set forth in section 2.8.1 of this Agreement by the same amount.
- 2.8.3 This Agreement and Agreement No. OC18-D1 will be administered by the County's Transportation and Public Works department to ensure that the total aggregate amount of compensation to Consultant across this Agreement and Agreement No. OC18-D1 does not exceed the amount set forth in section 2.8.1.
- 2.8.5 Consultant acknowledges, understands and agrees that there is no guarantee, either expressed or implied that the dollar amount set forth in section 2.8.1 or any portion thereof will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

- 2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.
- 2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.
- 2.11.3 If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the

facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This Agreement shall go into effect on (_____)contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The Agreement shall end on (_____), unless extended by amendment.

3.2 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1 Termination Without Cause

Notwithstanding any other provision of this Agreement, at any time and without cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to Consultant.

4.2 Termination for Cause

Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

4.3 Delivery of Work Product and Final Payment Upon Termination

In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to County all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subconsultants, consultants, and other agents in connection with this Agreement and shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

4.4 Payment Upon Termination.

Upon termination of this Agreement by County, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked

prior to the termination times the applicable hourly or daily rate; and further provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by Consultant.

4.5 Authority to Terminate

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right

to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment. In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Department and Suspension" requirements set forth in Section IV and Exhibit "A1" (Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Contractors), Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, consultant has the obligation to inform the County.

9.4 [RESERVED]

9.5 Records Maintenance.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Access to Records" requirements set forth in Section III, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

- 9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.
- 9.6.2 Consultant hereby certifies and covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by County, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Consultant's or such other person's financial interests..
- 9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- 9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal requirements set forth in Exhibit "A" (Federal Requirements) attached to this Agreement.

9.8 Living Wage Ordinance.

- 9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinance's local preference requirements shall be used to select or otherwise apply to Consultant.

9.9 Nondiscrimination.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Equal Employment Opportunity Compliance" requirements set forth in Section VI, and without limiting any other provision in this Agreement, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 [RESERVED]

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

In addition to the requirements and rights afforded to FEMA set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements) and to afford FEMA such rights, including the "Notice of Requirements Pertaining to Copyrights" set forth in Section XI and the "Patent Rights" set forth in Section XII, Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this

Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

9.15 Prevailing Wage.

- 9.15.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 9.15.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.
- 9.15.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

NV5
Attn: Bradley Waldrop, PE
2109 W. Bullard, Suite 145
Fresno, CA 93711
(559) 661-5220
bradley.waldrop@nv5.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Miscellaneous Provisions.

13.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other.

Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

13.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

13.10 Claims Filed by County's Construction Contractor.

13.10.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

13.10.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that

are being paid for Consultant's personnel services under this contract.

13.10.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

13.10.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14. Attachments & Exhibits.

The following Attachments and Exhibits appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

14.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

Exhibit A – Federal Requirements

14.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Exhibit "A", the Federal Requirements set forth in Exhibit "A" shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SIGNATURES FOLLOW ON NEXT PAGE -

- THIS SPACE LEFT INTENTIONALLY BLANK -

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Exhibit "A"
FEDERAL PROVISIONS

I. DEFINITIONS

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

II. FEDERAL REQUIREMENTS AND CHANGES

- A.** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The consultant will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- B.** Consultant 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. Consultant's failure to so comply shall constitute a material breach of this contract.
- C.** The Consultant 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 subconsultant who will be subject to its provisions.

III. ACCESS TO RECORDS

- A.** The Consultant 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 Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B.** The Consultant 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 Consultant 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, Consultant agrees to maintain same until the County, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.
- D.** The requirements set for in paragraphs A, B, and C above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in Section 21 of the Agreement.

IV. DEBARMENT AND SUSPENSION

- A.** This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Consultant is required to verify that none of the Consultant, 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.** Consultant 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. Consultant agrees that neither Consultant nor any of its third party subconsultants shall enter into any third party subcontracts for any of the work under this Agreement with a third party subconsultant 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 Consultant 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. Consultant agrees to the provisions of Exhibit A1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Exhibit A1, Consultant is the "prospective lower tier participant."
- D.** The Consultant 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 subconsultant 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 Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, the County, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- F.** The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONSULTANT

- A.** The County and Consultant 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, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B.** The Consultant 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 subconsultant who will be subject to its provisions.

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

Consultant 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. Consultants and subconsultants 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. Consultants, and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C. Consultants and subconsultants 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. Consultants, and subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

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

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

To the extent required by any Federal grant programs applicable to expected funding or reimbursement of County’s expenses incurred in connection with the services provided under this Agreement, Consultant 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 Consultant shall be bound to the provisions of the Davis-Bacon Act, and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of

California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.

- B. The general prevailing wage rates may be accessed at the Department of Labor Home Page at www.wdol.gov. Under the Davis Bacon heading, click on "Selecting DBA WDs." In the drop down menu for State, select, "California." In the drop down menu for County, select "Sonoma." In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

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

- A. **Compliance:** Consultant 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 Consultant or subconsultant 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 he or she is 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 Consultant and any subconsultant responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such Consultant and subconsultant shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.
- D. **Withholding for unpaid wages and liquidated damages:** The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subconsultant under any such contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subconsultant for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.
- E. **Subcontracts:** The Consultant or subconsultant shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subconsultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subconsultant or lower tier subconsultant with the clauses set forth in paragraphs A through D of this section.

X. NOTICE OF REPORTING REQUIREMENTS

- A. Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

XI. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

- A. Consultant 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 Consultant purchases ownership with the assistance of funds provided under this Agreement.
- B. The Consultant 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 subconsultant who will be subject to its provisions.

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

- A. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the County and Consultant 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 Consultant's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the County and Consultant 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 Consultant agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

XIII. ENERGY CONSERVATION REQUIREMENTS

- A. The Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

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

- A. Consultant 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. Consultant 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 Consultant agrees to include paragraph A and B above in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

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

See Paragraph 4.1 of the Agreement.

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

Consultant's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement. See Paragraph 4.2 of the Agreement.

XVII. CHANGES.

See Paragraph 8 of the Agreement.

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

- A. Consultant 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. Consultant agrees to the provisions of Exhibit A2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of \$100,000).

- C. Consultant 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 subconsultant who will be subject to its provisions.

XIX. MBE / WBE REQUIREMENTS

The County intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the CONSULTANT 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 CONSULTANT RESPONSIBILITIES

All recipients of this grant funding, as well as their prime Consultants and subconsultants, 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 Consultant and any subconsultants 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 CONSULTANT 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, Consultant shall take the affirmative steps listed in 2 CFR 200.321.

XX. PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200.322)

Consultant shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

XXI. INCORPORATION OF UNIFORM ADMINISTRATIVE REQUIREMENTS

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

XXII. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

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

XXIII. DHS SEAL, LOGO, AND FLAGS.

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

Exhibit A1

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

(Lower Tier refers to the agency or Consultant receiving Federal funds, as well as any subconsultants that the agency or Consultant 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. Consultant is required to sign the certification below which specifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Consultant will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any Consultant 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 an Voluntary Exclusion – Lower Tier Covered Transactions

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

Consultant Signature

Date

Exhibit A2

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

Consultant Signature

Date

Standard Professional Services Agreement (“PSA”)
On-Call Design Services FHWA Agreement – OC18-D1

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and NV5 (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the County’s Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in the Request for Qualifications and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in , the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with County to review the quality of the work and resolve matters of concern;

(b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County. With respect to performance under this Agreement, Consultant shall employ the following key personnel: Project Manager.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED]

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

The total amount payable by County for all Task Orders resulting from this Agreement shall not exceed \$975,000.00. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

- 2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.
- 2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.
- 2.11.3 If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This contract shall go into effect on (_____) contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The contract shall end on (_____), unless extended by contract amendment.

3.2 Contract Execution.

Consultant is advised that any recommendation for contract award is not binding on County until the contract is fully executed and approved by County.

3.3 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the

terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1. Notice Period.

County reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice.

4.2 Grounds for Termination.

County may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If County terminates this Agreement with Consultant, County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

4.3 Liability.

The maximum amount for which the Government shall be liable if this Agreement is terminated is 975,000 dollars.

4.4 Authority to Terminate.

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Department Head, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment.

Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion,

or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

9.4 [RESERVED].

9.5 Records Maintenance.

In addition to other record retention and audit requirements set forth elsewhere in this Agreement, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.

9.6.2 Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes

and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal contract requirements set forth in Article 13 herein.

9.8 Living Wage Ordinance.

9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinances local preference requirements shall be used to select or otherwise apply to Consultant.–

9.9 Nondiscrimination.

Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 Statement of Compliance.

9.10.1 Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

9.10.2 During the performance of this Contract, Consultant and its subconsultants 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, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (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 Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

9.10.3 The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

9.10.4 The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon

completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

On-Call Engineering
Design Services

NV5

Attn: Bradley Waldrop, PE
2109 W. Bullard, Suite 145
Fresno, CA 93711
(559) 661-5220
bradley.waldrop@nv5.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Federal Requirements.

13.1 Contract Assurance.

The consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted agreements. Failure by the consultant to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

13.2 Prompt Progress Payments to Subcontractors.

Attention is directed to Section 7108.5 of the California Business and Professions Code, which requires a prime contractor or subcontractor to pay any subcontractor not later than ten (10) days of receipt of each progress payment, unless otherwise agreed to in writing. In addition, federal regulations (Title 49 Code of Federal Regulations Part 26.29) require a prime contractor or subcontractor to pay a subcontractor no later than thirty (30) days of receipt of each payment, unless any delay or postponement of payment among the parties takes place only for good cause and with the prior written approval of County. Section 7108.5 of the California Business and Professions Code also contains enforcement actions and penalties. The requirements apply to both Disadvantaged Business Entities ("DBE") and non-DBE subcontractors. Consultant shall include the foregoing progress payment requirements in every subcontract entered into by Consultant in the performance of its obligations under this Agreement

13.3 Prompt Payment of Withheld Funds to Subcontractors.

No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any

delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

13.4 Disadvantaged Business Enterprise (DBE) Participation.

- 13.4.1 This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- 13.4.2 A DBE participation goal will be established for each Task Order. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- 13.4.3 DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as County deems appropriate.
- 13.4.4 Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- 13.4.5 A DBE firm may be terminated only with prior written approval from County and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting County consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).
- 13.4.6 A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under

the, contract is commensurate with the work it is actually performing, and other relevant factors.

- 13.4.7 A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- 13.4.8 If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- 13.4.9 Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- 13.4.10 Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by Consultant or Consultant's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- 13.4.11 If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to County's Contract Administrator within 30 days.

13.5 Prevailing Wage.

- 13.5.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 13.5.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless

the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

- 13.5.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

13.6 Text Messaging While Driving.

In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, and Department of Transportation Order 3902.10, Text Messaging While Driving, text messaging while driving is prohibited in the performance of any duties included in this agreement for both consultant and any sub-consultants hired for performance of duties under this Agreement. Consultant shall include a provision prohibiting texting while driving in all sub-consultant agreements entered into related to the performance of its obligations under this Agreement.

Definitions. The following definitions are to be used in conjunction with this section. "Driving":

- 1) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- 2) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

"Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

13.7 Buy America.

Furnish Steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:

- 1) Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478(3/24/1995)];
- 2) If the total combine cost of the materials does not exceed the great of 0.1 percent of the total bid or \$2,500, materials produced outside the U. S. may be used.

Production includes:

- 1) Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending,

grinding, and drilling or chemical composition;

- 2) Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

13.8 Prohibition of Expending Local Agency, State or Federal funds for Lobbying.

13.8.1 Consultant certifies to the best of his or her knowledge and belief that:

- 1) No state, federal or County appropriated funds have been paid, or will be paid by-or-on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or 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 federal 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; Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

13.8.2 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.

13.8.3 Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

13.9 Cost Principles and Administrative Requirements.

13.9.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, shall be used to determine the cost allowability of individual items.

13.9.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

13.9.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal

Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, are subject to repayment by Consultant to County.

13.10 Retention of Records/Audit.

For the purpose of determining compliance with Public Contract Code 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, Section 2500 *et seq.*, when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; Consultant, subconsultants, and County shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, County, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

13.11 Audit Review Procedures.

- 13.11.1 Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by County's Chief Financial Officer.
- 13.11.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by County's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- 13.11.3 Neither the pendency of a dispute nor its consideration by County will excuse Consultant from full and timely performance, in accordance with the terms of this contract.
- 13.11.4 Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by County contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by County at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

13.12 Subcontracting.

- 13.12.1 Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.
- 13.12.2 Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by County's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- 13.12.3 Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by County.
- 13.12.4 All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- 13.12.5 Any substitution of subconsultant(s) must be approved in writing by County's Contract Administrator prior to the start of work by the subconsultant(s).

13.13 Equipment Purchase.

- 13.13.1 Prior authorization in writing, by County's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- 13.13.2 For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by County's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- 13.13.3 Any equipment purchased as a result of this contract is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, Consultant may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by County." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment

with a fair market value greater than \$5,000 is credited to the project.

14. Miscellaneous Provisions.

14.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

14.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

14.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

14.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

14.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

14.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

14.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

14.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

14.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

14.10 Rebates, Kickback or Other Unlawful Consideration.

Consultant warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

14.11 Funding Requirements.

14.11.1 It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

14.11.2 This contract is valid and enforceable only, if sufficient funds are made available to County for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or County Board of Supervisors that may affect the provisions, terms, or funding of this contract in any manner.

14.11.3 It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

14.11.4 County has the option to void the contract under the 30-day termination clause pursuant to Article 4, or by mutual agreement to amend the contract to reflect any reduction of funds.

14.12 Evaluation of Consultant.

Consultant's performance will be evaluated by County. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

14.13 Claims Filed by County's Construction Contractor.

14.13.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

- 14.13.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.
- 14.13.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.
- 14.13.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14.14 National Labor Relations Board Certification.

In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

14.15 Retention of Funds.

- 14.15.1 Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- 14.15.2 No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the County's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

14.16 Contingent Fee.

Consultant warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, County has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

14.17 Inspection of Work.

Consultant and any subconsultant shall permit County, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

14.18 Safety.

14.18.1 Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County Safety Officer and other County representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

14.18.2 Pursuant to the authority contained in Section 591 of the Vehicle Code, County has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles

14.18.3 Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

15. Attachments & Exhibits.

The following Attachments appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

15.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

15.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Article 13, Article 14.10-14.18 and/or Attachment C, the Federal Requirements set forth in Article 13, 14.10-14.18 and/or Attachment C shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**SIGNATURES FOLLOW ON NEXT PAGE -
- THIS SPACE LEFT INTENTIONALLY BLANK -**

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Professional Services Agreement (“PSA”)
On-Call Design Services FEMA Agreement – OC18-D2

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and OPAC Consulting Engineers Inc. (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in Attachment “A,” attached hereto and incorporated herein by this reference (hereinafter "Cost Proposal"), and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in Attachment “A”, the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

1.6 Federal Requirements.

Task Orders under this Agreement may be funded by The Federal Emergency Management Agency (FEMA). Consultant shall comply with all applicable Federal Requirements attached hereto as Exhibit "A" – Federal Provisions.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in

this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED].

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

2.8.1 The total amount payable by County for all Task Orders issued under this Agreement shall not exceed \$975,000.00.

- 2.8.2 The not-to-exceed amount of \$975,000 set forth in section 2.8.1 is an aggregate not-to-exceed amount across this Agreement and an Agreement No. OC18-D1 with Consultant. Any compensation expended by County to pay Consultant under Agreement No. OC18-D1 will reduce the not-to-exceed amount set forth in section 2.8.1 of this Agreement by the same amount.
- 2.8.3 This Agreement and Agreement No. OC18-D1 will be administered by the County's Transportation and Public Works department to ensure that the total aggregate amount of compensation to Consultant across this Agreement and Agreement No. OC18-D1 does not exceed the amount set forth in section 2.8.1.
- 2.8.5 Consultant acknowledges, understands and agrees that there is no guarantee, either expressed or implied that the dollar amount set forth in section 2.8.1 or any portion thereof will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

- 2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.
- 2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.
- 2.11.3 If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the

facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This Agreement shall go into effect on (_____)contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The Agreement shall end on (_____), unless extended by amendment.

3.2 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1 Termination Without Cause

Notwithstanding any other provision of this Agreement, at any time and without cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to Consultant.

4.2 Termination for Cause

Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

4.3 Delivery of Work Product and Final Payment Upon Termination

In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to County all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subconsultants, consultants, and other agents in connection with this Agreement and shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

4.4 Payment Upon Termination.

Upon termination of this Agreement by County, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked

prior to the termination times the applicable hourly or daily rate; and further provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by Consultant.

4.5 Authority to Terminate

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right

to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment. In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Department and Suspension" requirements set forth in Section IV and Exhibit "A1" (Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Contractors), Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, consultant has the obligation to inform the County.

9.4 [RESERVED]

9.5 Records Maintenance.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Access to Records" requirements set forth in Section III, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

- 9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.
- 9.6.2 Consultant hereby certifies and covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by County, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Consultant's or such other person's financial interests..
- 9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- 9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal requirements set forth in Exhibit "A" (Federal Requirements) attached to this Agreement..

9.8 Living Wage Ordinance.

- 9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinance's local preference requirements shall be used to select or otherwise apply to Consultant.

9.9 Nondiscrimination.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Equal Employment Opportunity Compliance" requirements set forth in Section VI, and without limiting any other provision in this Agreement, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 [RESERVED]

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

In addition to the requirements and rights afforded to FEMA set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements) and to afford FEMA such rights, including the "Notice of Requirements Pertaining to Copyrights" set forth in Section XI and the "Patent Rights" set forth in Section XII, Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this

Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

9.15 Prevailing Wage.

- 9.15.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 9.15.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.
- 9.15.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

OPAC Consulting Engineers, Inc.
Attn: Francis Drouillard, PE.
315 Bay Street, Second Floor
San Francisco, CA 94133
(415) 989-4551
fdrouillard@opacengineers.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Miscellaneous Provisions.

13.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other.

Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

13.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

13.10 Claims Filed by County's Construction Contractor.

13.10.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

13.10.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that

are being paid for Consultant's personnel services under this contract.

13.10.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

13.10.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14. Attachments & Exhibits.

The following Attachments and Exhibits appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

14.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

Exhibit A – Federal Requirements

14.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Exhibit "A", the Federal Requirements set forth in Exhibit "A" shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SIGNATURES FOLLOW ON NEXT PAGE -

- THIS SPACE LEFT INTENTIONALLY BLANK -

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Exhibit “A”
FEDERAL PROVISIONS

I. DEFINITIONS

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

II. FEDERAL REQUIREMENTS AND CHANGES

- A.** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The consultant will comply with all applicable federal law, regulations, executive orders , FEMA policies, procedures, and directives.
- B.** Consultant 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. Consultant's failure to so comply shall constitute a material breach of this contract.
- C.** The Consultant 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 subconsultant who will be subject to its provisions.

III. ACCESS TO RECORDS

- A.** The Consultant 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 Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B.** The Consultant 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 Consultant 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, Consultant agrees to maintain same until the County, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.
- D.** The requirements set for in paragraphs A, B, and C above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in Section 21 of the Agreement.

IV. DEBARMENT AND SUSPENSION

- A.** This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Consultant is required to verify that none of the Consultant, 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.** Consultant 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. Consultant agrees that neither Consultant nor any of its third party subconsultants shall enter into any third party subcontracts for any of the work under this Agreement with a third party subconsultant 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 Consultant 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. Consultant agrees to the provisions of Exhibit A1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion— Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Exhibit A1, Consultant is the "prospective lower tier participant."
- D.** The Consultant 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 subconsultant 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 Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, the County, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- F.** The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONSULTANT

- A.** The County and Consultant 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, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B.** The Consultant 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 subconsultant who will be subject to its provisions.

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

Consultant 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.** Consultants and subconsultants 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.** Consultants, and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C.** Consultants and subconsultants 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.** Consultants, and subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

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

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

To the extent required by any Federal grant programs applicable to expected funding or reimbursement of County’s expenses incurred in connection with the services provided under this Agreement, Consultant 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 Consultant shall be bound to the provisions of the Davis-Bacon Act, and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of

California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.

- B. The general prevailing wage rates may be accessed at the Department of Labor Home Page at www.wdol.gov. Under the Davis Bacon heading, click on “Selecting DBA WDs.” In the drop down menu for State, select, “California.” In the drop down menu for County, select “Sonoma.” In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

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

- A. **Compliance:** Consultant 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 Consultant or subconsultant 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 he or she is 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 Consultant and any subconsultant responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such Consultant and subconsultant shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.
- D. **Withholding for unpaid wages and liquidated damages:** The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subconsultant under any such contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subconsultant for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.
- E. **Subcontracts:** The Consultant or subconsultant shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subconsultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subconsultant or lower tier subconsultant with the clauses set forth in paragraphs A through D of this section.

X. NOTICE OF REPORTING REQUIREMENTS

- A.** Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

XI. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

- A.** Consultant 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 Consultant purchases ownership with the assistance of funds provided under this Agreement.
- B.** The Consultant 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 subconsultant who will be subject to its provisions.

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

- A. General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the County and Consultant 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 Consultant's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the County and Consultant 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 Consultant agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

XIII. ENERGY CONSERVATION REQUIREMENTS

- A.** The Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

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

A. Consultant 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. Consultant 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 Consultant agrees to include paragraph A and B above in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

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

See Paragraph 4.1 of the Agreement.

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

Consultant's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement. See Paragraph 4.2 of the Agreement.

XVII. CHANGES.

See Paragraph 8 of the Agreement.

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

A. Consultant 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. Consultant agrees to the provisions of Exhibit A2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of \$100,000).

- C. Consultant 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 subconsultant who will be subject to its provisions.

XIX. MBE / WBE REQUIREMENTS

The County intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the CONSULTANT 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 CONSULTANT RESPONSIBILITIES

All recipients of this grant funding, as well as their prime Consultants and subconsultants, 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 Consultant and any subconsultants 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 CONSULTANT 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, Consultant shall take the affirmative steps listed in 2 CFR 200.321.

XX. PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200.322)

Consultant shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

XXI. INCORPORATION OF UNIFORM ADMINISTRATIVE REQUIREMENTS

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

XXII. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

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

XXIII. DHS SEAL, LOGO, AND FLAGS.

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

Exhibit A1

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

(Lower Tier refers to the agency or Consultant receiving Federal funds, as well as any subconsultants that the agency or Consultant 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. Consultant is required to sign the certification below which specifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Consultant will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any Consultant 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 an Voluntary Exclusion – Lower Tier Covered Transactions

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

Consultant Signature

Date

Exhibit A2

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

Consultant Signature

Date

Professional Services Agreement (“PSA”)
On-Call Design Services FHWA Agreement – OC18-D1

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and OPAC Consulting Engineers, Inc. (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the County’s Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in the Request for Qualifications and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in , the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with County to review the quality of the work and resolve matters of concern;

(b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County. With respect to performance under this Agreement, Consultant shall employ the following key personnel: Project Manager.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED]

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

The total amount payable by County for all Task Orders resulting from this Agreement shall not exceed \$975,000.00. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.

2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This contract shall go into effect on (_____) contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The contract shall end on (_____), unless extended by contract amendment.

3.2 Contract Execution.

Consultant is advised that any recommendation for contract award is not binding on County until the contract is fully executed and approved by County.

3.3 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the

terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1. Notice Period.

County reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice.

4.2 Grounds for Termination.

County may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If County terminates this Agreement with Consultant, County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

4.3 Liability.

The maximum amount for which the Government shall be liable if this Agreement is terminated is 975,000 dollars.

4.4 Authority to Terminate.

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Department Head, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment.

Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion,

or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

9.4 [RESERVED].

9.5 Records Maintenance.

In addition to other record retention and audit requirements set forth elsewhere in this Agreement, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.

9.6.2 Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes

and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal contract requirements set forth in Article 13 herein.

9.8 Living Wage Ordinance.

9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinances local preference requirements shall be used to select or otherwise apply to Consultant.–

9.9 Nondiscrimination.

Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 Statement of Compliance.

9.10.1 Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

9.10.2 During the performance of this Contract, Consultant and its subconsultants 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, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (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 Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

9.10.3 The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

9.10.4 The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon

completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

On-Call Engineering
Design Services

OPAC Consulting Engineers, Inc.
Attn: Francis Drouillard, PE.
315 Bay Street, Second Floor
San Francisco, CA 94133
(415) 989-4551
fdrouillard@opacengineers.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Federal Requirements.

13.1 Contract Assurance.

The consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted agreements. Failure by the consultant to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

13.2 Prompt Progress Payments to Subcontractors.

Attention is directed to Section 7108.5 of the California Business and Professions Code, which requires a prime contractor or subcontractor to pay any subcontractor not later than ten (10) days of receipt of each progress payment, unless otherwise agreed to in writing. In addition, federal regulations (Title 49 Code of Federal Regulations Part 26.29) require a prime contractor or subcontractor to pay a subcontractor no later than thirty (30) days of receipt of each payment, unless any delay or postponement of payment among the parties takes place only for good cause and with the prior written approval of County. Section 7108.5 of the California Business and Professions Code also contains enforcement actions and penalties. The requirements apply to both Disadvantaged Business Entities ("DBE") and non-DBE subcontractors. Consultant shall include the foregoing progress payment requirements in every subcontract entered into by Consultant in the performance of its obligations under this Agreement

13.3 Prompt Payment of Withheld Funds to Subcontractors.

No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any

delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

13.4 Disadvantaged Business Enterprise (DBE) Participation.

- 13.4.1 This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- 13.4.2 A DBE participation goal will be established for each Task Order. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- 13.4.3 DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as County deems appropriate.
- 13.4.4 Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- 13.4.5 A DBE firm may be terminated only with prior written approval from County and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting County consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).
- 13.4.6 A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under

the, contract is commensurate with the work it is actually performing, and other relevant factors.

- 13.4.7 A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- 13.4.8 If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- 13.4.9 Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- 13.4.10 Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by Consultant or Consultant's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- 13.4.11 If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to County's Contract Administrator within 30 days.

13.5 Prevailing Wage.

- 13.5.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 13.5.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless

the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

- 13.5.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

13.6 Text Messaging While Driving.

In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, and Department of Transportation Order 3902.10, Text Messaging While Driving, text messaging while driving is prohibited in the performance of any duties included in this agreement for both consultant and any sub-consultants hired for performance of duties under this Agreement. Consultant shall include a provision prohibiting texting while driving in all sub-consultant agreements entered into related to the performance of its obligations under this Agreement.

Definitions. The following definitions are to be used in conjunction with this section. "Driving":

- 1) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- 2) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

"Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

13.7 Buy America.

Furnish Steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:

- 1) Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478(3/24/1995)];
- 2) If the total combine cost of the materials does not exceed the great of 0.1 percent of the total bid or \$2,500, materials produced outside the U. S. may be used.

Production includes:

- 1) Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending,

grinding, and drilling or chemical composition;

- 2) Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

13.8 Prohibition of Expending Local Agency, State or Federal funds for Lobbying.

13.8.1 Consultant certifies to the best of his or her knowledge and belief that:

- 1) No state, federal or County appropriated funds have been paid, or will be paid by or on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or 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 federal 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; Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

13.8.2 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.

13.8.3 Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

13.9 Cost Principles and Administrative Requirements.

13.9.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, shall be used to determine the cost allowability of individual items.

13.9.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

13.9.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal

Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, are subject to repayment by Consultant to County.

13.10 Retention of Records/Audit.

For the purpose of determining compliance with Public Contract Code 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, Section 2500 *et seq.*, when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; Consultant, subconsultants, and County shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, County, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

13.11 Audit Review Procedures.

- 13.11.1 Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by County's Chief Financial Officer.
- 13.11.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by County's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- 13.11.3 Neither the pendency of a dispute nor its consideration by County will excuse Consultant from full and timely performance, in accordance with the terms of this contract.
- 13.11.4 Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by County contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by County at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

13.12 Subcontracting.

- 13.12.1 Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.
- 13.12.2 Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by County's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- 13.12.3 Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by County.
- 13.12.4 All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- 13.12.5 Any substitution of subconsultant(s) must be approved in writing by County's Contract Administrator prior to the start of work by the subconsultant(s).

13.13 Equipment Purchase.

- 13.13.1 Prior authorization in writing, by County's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- 13.13.2 For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by County's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- 13.13.3 Any equipment purchased as a result of this contract is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, Consultant may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by County." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment

with a fair market value greater than \$5,000 is credited to the project.

14. Miscellaneous Provisions.

14.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

14.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

14.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

14.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

14.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

14.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

14.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

14.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

14.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

14.10 Rebates, Kickback or Other Unlawful Consideration.

Consultant warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

14.11 Funding Requirements.

14.11.1 It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

14.11.2 This contract is valid and enforceable only, if sufficient funds are made available to County for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or County Board of Supervisors that may affect the provisions, terms, or funding of this contract in any manner.

14.11.3 It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

14.11.4 County has the option to void the contract under the 30-day termination clause pursuant to Article 4, or by mutual agreement to amend the contract to reflect any reduction of funds.

14.12 Evaluation of Consultant.

Consultant's performance will be evaluated by County. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

14.13 Claims Filed by County's Construction Contractor.

14.13.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

- 14.13.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.
- 14.13.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.
- 14.13.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14.14 National Labor Relations Board Certification.

In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

14.15 Retention of Funds.

- 14.15.1 Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- 14.15.2 No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the County's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

14.16 Contingent Fee.

Consultant warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, County has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

14.17 Inspection of Work.

Consultant and any subconsultant shall permit County, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

14.18 Safety.

14.18.1 Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County Safety Officer and other County representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

14.18.2 Pursuant to the authority contained in Section 591 of the Vehicle Code, County has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles

14.18.3 Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

15. Attachments & Exhibits.

The following Attachments appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

15.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

15.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Article 13, Article 14.10-14.18 and/or Attachment C, the Federal Requirements set forth in Article 13, 14.10-14.18 and/or Attachment C shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**SIGNATURES FOLLOW ON NEXT PAGE -
- THIS SPACE LEFT INTENTIONALLY BLANK -**

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Professional Services Agreement (“PSA”)
On-Call Design Services FEMA Agreement – OC18-D2

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and Quincy Engineering (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in Attachment “A,” attached hereto and incorporated herein by this reference (hereinafter "Cost Proposal"), and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in Attachment “A”, the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

1.6 Federal Requirements.

Task Orders under this Agreement may be funded by The Federal Emergency Management Agency (FEMA). Consultant shall comply with all applicable Federal Requirements attached hereto as Exhibit "A" – Federal Provisions.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in

this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED].

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

2.8.1 The total amount payable by County for all Task Orders issued under this Agreement shall not exceed \$975,000.00.

- 2.8.2 The not-to-exceed amount of \$975,000 set forth in section 2.8.1 is an aggregate not-to-exceed amount across this Agreement and an Agreement No. OC18-D1 with Consultant. Any compensation expended by County to pay Consultant under Agreement No. OC18-D1 will reduce the not-to-exceed amount set forth in section 2.8.1 of this Agreement by the same amount.
- 2.8.3 This Agreement and Agreement No. OC18-D1 will be administered by the County's Transportation and Public Works department to ensure that the total aggregate amount of compensation to Consultant across this Agreement and Agreement No. OC18-D1 does not exceed the amount set forth in section 2.8.1.
- 2.8.5 Consultant acknowledges, understands and agrees that there is no guarantee, either expressed or implied that the dollar amount set forth in section 2.8.1 or any portion thereof will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

- 2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.
- 2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.
- 2.11.3 If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the

facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This Agreement shall go into effect on (_____)contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The Agreement shall end on (_____), unless extended by amendment.

3.2 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1 Termination Without Cause

Notwithstanding any other provision of this Agreement, at any time and without cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to Consultant.

4.2 Termination for Cause

Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

4.3 Delivery of Work Product and Final Payment Upon Termination

In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to County all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subconsultants, consultants, and other agents in connection with this Agreement and shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

4.4 Payment Upon Termination.

Upon termination of this Agreement by County, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked

prior to the termination times the applicable hourly or daily rate; and further provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by Consultant.

4.5 Authority to Terminate

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right

to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment. In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Department and Suspension" requirements set forth in Section IV and Exhibit "A1" (Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Contractors), Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, consultant has the obligation to inform the County.

9.4 [RESERVED]

9.5 Records Maintenance.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Access to Records" requirements set forth in Section III, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

- 9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.
- 9.6.2 Consultant hereby certifies and covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by County, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Consultant's or such other person's financial interests..
- 9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- 9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal requirements set forth in Exhibit "A" (Federal Requirements) attached to this Agreement..

9.8 Living Wage Ordinance.

- 9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinance's local preference requirements shall be used to select or otherwise apply to Consultant.

9.9 Nondiscrimination.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Equal Employment Opportunity Compliance" requirements set forth in Section VI, and without limiting any other provision in this Agreement, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 [RESERVED]

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

In addition to the requirements and rights afforded to FEMA set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements) and to afford FEMA such rights, including the "Notice of Requirements Pertaining to Copyrights" set forth in Section XI and the "Patent Rights" set forth in Section XII, Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this

Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above- described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

9.15 Prevailing Wage.

- 9.15.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 9.15.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.
- 9.15.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

Quincy Engineering
Attn: Greg Young, PE.
11017 Cobblerock Drive, Suite 100
Rancho Cordova, Ca 95670
(916) 368-9181
gregy@quincyeng.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Miscellaneous Provisions.

13.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other.

Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

13.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

13.10 Claims Filed by County's Construction Contractor.

13.10.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

13.10.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that

are being paid for Consultant's personnel services under this contract.

13.10.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

13.10.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14. Attachments & Exhibits.

The following Attachments and Exhibits appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

14.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

Exhibit A – Federal Requirements

14.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Exhibit "A", the Federal Requirements set forth in Exhibit "A" shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SIGNATURES FOLLOW ON NEXT PAGE -

- THIS SPACE LEFT INTENTIONALLY BLANK -

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Exhibit “A”
FEDERAL PROVISIONS

I. DEFINITIONS

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

II. FEDERAL REQUIREMENTS AND CHANGES

- A.** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The consultant will comply with all applicable federal law, regulations, executive orders , FEMA policies, procedures, and directives.
- B.** Consultant 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. Consultant's failure to so comply shall constitute a material breach of this contract.
- C.** The Consultant 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 subconsultant who will be subject to its provisions.

III. ACCESS TO RECORDS

- A.** The Consultant 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 Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B.** The Consultant 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 Consultant 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, Consultant agrees to maintain same until the County, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.
- D.** The requirements set for in paragraphs A, B, and C above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in Section 21 of the Agreement.

IV. DEBARMENT AND SUSPENSION

- A.** This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Consultant is required to verify that none of the Consultant, 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.** Consultant 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. Consultant agrees that neither Consultant nor any of its third party subconsultants shall enter into any third party subcontracts for any of the work under this Agreement with a third party subconsultant 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 Consultant 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. Consultant agrees to the provisions of Exhibit A1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion— Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Exhibit A1, Consultant is the "prospective lower tier participant."
- D.** The Consultant 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 subconsultant 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 Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, the County, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- F.** The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONSULTANT

- A.** The County and Consultant 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, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B.** The Consultant 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 subconsultant who will be subject to its provisions.

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

Consultant 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.** Consultants and subconsultants 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.** Consultants, and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C.** Consultants and subconsultants 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.** Consultants, and subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

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

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

To the extent required by any Federal grant programs applicable to expected funding or reimbursement of County’s expenses incurred in connection with the services provided under this Agreement, Consultant 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 Consultant shall be bound to the provisions of the Davis-Bacon Act, and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of

California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.

- B. The general prevailing wage rates may be accessed at the Department of Labor Home Page at www.wdol.gov. Under the Davis Bacon heading, click on “Selecting DBA WDs.” In the drop down menu for State, select, “California.” In the drop down menu for County, select “Sonoma.” In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

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

- A. **Compliance:** Consultant 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 Consultant or subconsultant 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 he or she is 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 Consultant and any subconsultant responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such Consultant and subconsultant shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.
- D. **Withholding for unpaid wages and liquidated damages:** The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subconsultant under any such contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subconsultant for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.
- E. **Subcontracts:** The Consultant or subconsultant shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subconsultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subconsultant or lower tier subconsultant with the clauses set forth in paragraphs A through D of this section.

X. NOTICE OF REPORTING REQUIREMENTS

- A.** Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

XI. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

- A.** Consultant 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 Consultant purchases ownership with the assistance of funds provided under this Agreement.
- B.** The Consultant 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 subconsultant who will be subject to its provisions.

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

- A. General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the County and Consultant 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 Consultant's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the County and Consultant 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 Consultant agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

XIII. ENERGY CONSERVATION REQUIREMENTS

- A.** The Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

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

A. Consultant 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. Consultant 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 Consultant agrees to include paragraph A and B above in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

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

See Paragraph 4.1 of the Agreement.

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

Consultant's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement. See Paragraph 4.2 of the Agreement.

XVII. CHANGES.

See Paragraph 8 of the Agreement.

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

A. Consultant 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. Consultant agrees to the provisions of Exhibit A2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of \$100,000).

- C. Consultant 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 subconsultant who will be subject to its provisions.

XIX. MBE / WBE REQUIREMENTS

The County intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the CONSULTANT 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 CONSULTANT RESPONSIBILITIES

All recipients of this grant funding, as well as their prime Consultants and subconsultants, 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 Consultant and any subconsultants 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 CONSULTANT 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, Consultant shall take the affirmative steps listed in 2 CFR 200.321.

XX. PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200.322)

Consultant shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

XXI. INCORPORATION OF UNIFORM ADMINISTRATIVE REQUIREMENTS

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

XXII. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

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

XXIII. DHS SEAL, LOGO, AND FLAGS.

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

Exhibit A1

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

(Lower Tier refers to the agency or Consultant receiving Federal funds, as well as any subconsultants that the agency or Consultant 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. Consultant is required to sign the certification below which specifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Consultant will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any Consultant 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 an Voluntary Exclusion – Lower Tier Covered Transactions

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

Consultant Signature

Date

Exhibit A2

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

Consultant Signature

Date

Professional Services Agreement (“PSA”)
On-Call Design Services FHWA Agreement – OC18-D1

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and Quincy Engineering (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the County’s Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in the Request for Qualifications and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in , the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with County to review the quality of the work and resolve matters of concern;

(b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County. With respect to performance under this Agreement, Consultant shall employ the following key personnel: Project Manager.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED]

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

The total amount payable by County for all Task Orders resulting from this Agreement shall not exceed \$975,000.00. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.

2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This contract shall go into effect on (_____) contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The contract shall end on (_____), unless extended by contract amendment.

3.2 Contract Execution.

Consultant is advised that any recommendation for contract award is not binding on County until the contract is fully executed and approved by County.

3.3 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the

terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1. Notice Period.

County reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice.

4.2 Grounds for Termination.

County may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If County terminates this Agreement with Consultant, County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

4.3 Liability.

The maximum amount for which the Government shall be liable if this Agreement is terminated is 975,000 dollars.

4.4 Authority to Terminate.

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Department Head, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment.

Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion,

or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

9.4 [RESERVED].

9.5 Records Maintenance.

In addition to other record retention and audit requirements set forth elsewhere in this Agreement, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.

9.6.2 Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes

and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal contract requirements set forth in Article 13 herein.

9.8 Living Wage Ordinance.

9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinances local preference requirements shall be used to select or otherwise apply to Consultant.–

9.9 Nondiscrimination.

Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 Statement of Compliance.

9.10.1 Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

9.10.2 During the performance of this Contract, Consultant and its subconsultants 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, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (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 Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

9.10.3 The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

9.10.4 The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon

completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

On-Call Engineering
Design Services

Quincy Engineering
Attn: Greg Young, PE.
11017 Cobblers Drive, Suite 100
Rancho Cordova, Ca 95670
(916) 368-9181
gregy@quincyeng.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Federal Requirements.

13.1 Contract Assurance.

The consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted agreements. Failure by the consultant to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

13.2 Prompt Progress Payments to Subcontractors.

Attention is directed to Section 7108.5 of the California Business and Professions Code, which requires a prime contractor or subcontractor to pay any subcontractor not later than ten (10) days of receipt of each progress payment, unless otherwise agreed to in writing. In addition, federal regulations (Title 49 Code of Federal Regulations Part 26.29) require a prime contractor or subcontractor to pay a subcontractor no later than thirty (30) days of receipt of each payment, unless any delay or postponement of payment among the parties takes place only for good cause and with the prior written approval of County. Section 7108.5 of the California Business and Professions Code also contains enforcement actions and penalties. The requirements apply to both Disadvantaged Business Entities ("DBE") and non-DBE subcontractors. Consultant shall include the foregoing progress payment requirements in every subcontract entered into by Consultant in the performance of its obligations under this Agreement

13.3 Prompt Payment of Withheld Funds to Subcontractors.

No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any

delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

13.4 Disadvantaged Business Enterprise (DBE) Participation.

- 13.4.1 This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- 13.4.2 A DBE participation goal will be established for each Task Order. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- 13.4.3 DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as County deems appropriate.
- 13.4.4 Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- 13.4.5 A DBE firm may be terminated only with prior written approval from County and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting County consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).
- 13.4.6 A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under

the, contract is commensurate with the work it is actually performing, and other relevant factors.

- 13.4.7 A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- 13.4.8 If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- 13.4.9 Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- 13.4.10 Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by Consultant or Consultant's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- 13.4.11 If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to County's Contract Administrator within 30 days.

13.5 Prevailing Wage.

- 13.5.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 13.5.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless

the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

- 13.5.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

13.6 Text Messaging While Driving.

In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, and Department of Transportation Order 3902.10, Text Messaging While Driving, text messaging while driving is prohibited in the performance of any duties included in this agreement for both consultant and any sub-consultants hired for performance of duties under this Agreement. Consultant shall include a provision prohibiting texting while driving in all sub-consultant agreements entered into related to the performance of its obligations under this Agreement.

Definitions. The following definitions are to be used in conjunction with this section. "Driving":

- 1) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- 2) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

"Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

13.7 Buy America.

Furnish Steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:

- 1) Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478(3/24/1995)];
- 2) If the total combine cost of the materials does not exceed the great of 0.1 percent of the total bid or \$2,500, materials produced outside the U. S. may be used.

Production includes:

- 1) Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending,

grinding, and drilling or chemical composition;

- 2) Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

13.8 Prohibition of Expending Local Agency, State or Federal funds for Lobbying.

13.8.1 Consultant certifies to the best of his or her knowledge and belief that:

- 1) No state, federal or County appropriated funds have been paid, or will be paid by or on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or 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 federal 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; Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

13.8.2 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.

13.8.3 Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

13.9 Cost Principles and Administrative Requirements.

13.9.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, shall be used to determine the cost allowability of individual items.

13.9.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

13.9.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal

Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, are subject to repayment by Consultant to County.

13.10 Retention of Records/Audit.

For the purpose of determining compliance with Public Contract Code 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, Section 2500 *et seq.*, when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; Consultant, subconsultants, and County shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, County, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

13.11 Audit Review Procedures.

- 13.11.1 Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by County's Chief Financial Officer.
- 13.11.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by County's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- 13.11.3 Neither the pendency of a dispute nor its consideration by County will excuse Consultant from full and timely performance, in accordance with the terms of this contract.
- 13.11.4 Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by County contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by County at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

13.12 Subcontracting.

- 13.12.1 Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.
- 13.12.2 Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by County's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- 13.12.3 Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by County.
- 13.12.4 All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- 13.12.5 Any substitution of subconsultant(s) must be approved in writing by County's Contract Administrator prior to the start of work by the subconsultant(s).

13.13 Equipment Purchase.

- 13.13.1 Prior authorization in writing, by County's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- 13.13.2 For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by County's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- 13.13.3 Any equipment purchased as a result of this contract is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, Consultant may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by County." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment

with a fair market value greater than \$5,000 is credited to the project.

14. Miscellaneous Provisions.

14.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

14.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

14.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

14.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

14.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

14.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

14.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

14.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

14.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

14.10 Rebates, Kickback or Other Unlawful Consideration.

Consultant warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

14.11 Funding Requirements.

14.11.1 It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

14.11.2 This contract is valid and enforceable only, if sufficient funds are made available to County for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or County Board of Supervisors that may affect the provisions, terms, or funding of this contract in any manner.

14.11.3 It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

14.11.4 County has the option to void the contract under the 30-day termination clause pursuant to Article 4, or by mutual agreement to amend the contract to reflect any reduction of funds.

14.12 Evaluation of Consultant.

Consultant's performance will be evaluated by County. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

14.13 Claims Filed by County's Construction Contractor.

14.13.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

- 14.13.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.
- 14.13.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.
- 14.13.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14.14 National Labor Relations Board Certification.

In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

14.15 Retention of Funds.

- 14.15.1 Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- 14.15.2 No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the County's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

14.16 Contingent Fee.

Consultant warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, County has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

14.17 Inspection of Work.

Consultant and any subconsultant shall permit County, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

14.18 Safety.

14.18.1 Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County Safety Officer and other County representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

14.18.2 Pursuant to the authority contained in Section 591 of the Vehicle Code, County has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles

14.18.3 Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

15. Attachments & Exhibits.

The following Attachments appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

15.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

15.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Article 13, Article 14.10-14.18 and/or Attachment C, the Federal Requirements set forth in Article 13, 14.10-14.18 and/or Attachment C shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**SIGNATURES FOLLOW ON NEXT PAGE -
- THIS SPACE LEFT INTENTIONALLY BLANK -**

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Professional Services Agreement (“PSA”)
On-Call Design Services FEMA Agreement – OC18-D2

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and TJKM Transportation Consultants (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in Attachment “A,” attached hereto and incorporated herein by this reference (hereinafter "Cost Proposal"), and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in Attachment “A”, the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

1.6 Federal Requirements.

Task Orders under this Agreement may be funded by The Federal Emergency Management Agency (FEMA). Consultant shall comply with all applicable Federal Requirements attached hereto as Exhibit "A" – Federal Provisions.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in

this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED].

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

2.8.1 The total amount payable by County for all Task Orders issued under this Agreement shall not exceed \$975,000.00.

- 2.8.2 The not-to-exceed amount of \$975,000 set forth in section 2.8.1 is an aggregate not-to-exceed amount across this Agreement and an Agreement No. OC18-D1 with Consultant. Any compensation expended by County to pay Consultant under Agreement No. OC18-D1 will reduce the not-to-exceed amount set forth in section 2.8.1 of this Agreement by the same amount.
- 2.8.3 This Agreement and Agreement No. OC18-D1 will be administered by the County's Transportation and Public Works department to ensure that the total aggregate amount of compensation to Consultant across this Agreement and Agreement No. OC18-D1 does not exceed the amount set forth in section 2.8.1.
- 2.8.5 Consultant acknowledges, understands and agrees that there is no guarantee, either expressed or implied that the dollar amount set forth in section 2.8.1 or any portion thereof will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

- 2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.
- 2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.
- 2.11.3 If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the

facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This Agreement shall go into effect on (_____)contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The Agreement shall end on (_____), unless extended by amendment.

3.2 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1 Termination Without Cause

Notwithstanding any other provision of this Agreement, at any time and without cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to Consultant.

4.2 Termination for Cause

Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

4.3 Delivery of Work Product and Final Payment Upon Termination

In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to County all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subconsultants, consultants, and other agents in connection with this Agreement and shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

4.4 Payment Upon Termination.

Upon termination of this Agreement by County, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked

prior to the termination times the applicable hourly or daily rate; and further provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by Consultant.

4.5 Authority to Terminate

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right

to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment. In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Department and Suspension" requirements set forth in Section IV and Exhibit "A1" (Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Contractors), Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, consultant has the obligation to inform the County.

9.4 [RESERVED]

9.5 Records Maintenance.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Access to Records" requirements set forth in Section III, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

- 9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.
- 9.6.2 Consultant hereby certifies and covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by County, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Consultant's or such other person's financial interests..
- 9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- 9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal requirements set forth in Exhibit "A" (Federal Requirements) attached to this Agreement..

9.8 Living Wage Ordinance.

- 9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinance's local preference requirements shall be used to select or otherwise apply to Consultant.

9.9 Nondiscrimination.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Equal Employment Opportunity Compliance" requirements set forth in Section VI, and without limiting any other provision in this Agreement, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 [RESERVED]

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

In addition to the requirements and rights afforded to FEMA set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements) and to afford FEMA such rights, including the "Notice of Requirements Pertaining to Copyrights" set forth in Section XI and the "Patent Rights" set forth in Section XII, Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this

Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

9.15 Prevailing Wage.

- 9.15.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 9.15.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.
- 9.15.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

TJKM Transportation Consultants
Attn: Atul Patel, TE.
4305 Hacienda Drive, Suite 550
Pleasanton, CA 94588
(925) 264-5003
apatel@tjkm.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Miscellaneous Provisions.

13.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other.

Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

13.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

13.10 Claims Filed by County's Construction Contractor.

13.10.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

13.10.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that

are being paid for Consultant's personnel services under this contract.

13.10.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

13.10.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14. Attachments & Exhibits.

The following Attachments and Exhibits appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

14.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

Exhibit A – Federal Requirements

14.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Exhibit "A", the Federal Requirements set forth in Exhibit "A" shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SIGNATURES FOLLOW ON NEXT PAGE -

- THIS SPACE LEFT INTENTIONALLY BLANK -

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Exhibit "A"
FEDERAL PROVISIONS

I. DEFINITIONS

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

II. FEDERAL REQUIREMENTS AND CHANGES

- A.** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The consultant will comply with all applicable federal law, regulations, executive orders , FEMA policies, procedures, and directives.
- B.** Consultant 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. Consultant's failure to so comply shall constitute a material breach of this contract.
- C.** The Consultant 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 subconsultant who will be subject to its provisions.

III. ACCESS TO RECORDS

- A.** The Consultant 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 Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B.** The Consultant 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 Consultant 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, Consultant agrees to maintain same until the County, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.
- D.** The requirements set for in paragraphs A, B, and C above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in Section 21 of the Agreement.

IV. DEBARMENT AND SUSPENSION

- A.** This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Consultant is required to verify that none of the Consultant, 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.** Consultant 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. Consultant agrees that neither Consultant nor any of its third party subconsultants shall enter into any third party subcontracts for any of the work under this Agreement with a third party subconsultant 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 Consultant 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. Consultant agrees to the provisions of Exhibit A1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion— Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Exhibit A1, Consultant is the "prospective lower tier participant."
- D.** The Consultant 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 subconsultant 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 Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, the County, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- F.** The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONSULTANT

- A.** The County and Consultant 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, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B.** The Consultant 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 subconsultant who will be subject to its provisions.

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

Consultant 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.** Consultants and subconsultants 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.** Consultants, and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C.** Consultants and subconsultants 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.** Consultants, and subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

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

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

To the extent required by any Federal grant programs applicable to expected funding or reimbursement of County’s expenses incurred in connection with the services provided under this Agreement, Consultant 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 Consultant shall be bound to the provisions of the Davis-Bacon Act, and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of

California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.

- B. The general prevailing wage rates may be accessed at the Department of Labor Home Page at www.wdol.gov. Under the Davis Bacon heading, click on “Selecting DBA WDs.” In the drop down menu for State, select, “California.” In the drop down menu for County, select “Sonoma.” In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

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

- A. **Compliance:** Consultant 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 Consultant or subconsultant 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 he or she is 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 Consultant and any subconsultant responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such Consultant and subconsultant shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.
- D. **Withholding for unpaid wages and liquidated damages:** The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subconsultant under any such contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subconsultant for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.
- E. **Subcontracts:** The Consultant or subconsultant shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subconsultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subconsultant or lower tier subconsultant with the clauses set forth in paragraphs A through D of this section.

X. NOTICE OF REPORTING REQUIREMENTS

- A. Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

XI. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

- A. Consultant 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 Consultant purchases ownership with the assistance of funds provided under this Agreement.
- B. The Consultant 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 subconsultant who will be subject to its provisions.

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

- A. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the County and Consultant 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 Consultant's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the County and Consultant 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 Consultant agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

XIII. ENERGY CONSERVATION REQUIREMENTS

- A. The Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

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

A. Consultant 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. Consultant 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 Consultant agrees to include paragraph A and B above in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

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

See Paragraph 4.1 of the Agreement.

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

Consultant's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement. See Paragraph 4.2 of the Agreement.

XVII. CHANGES.

See Paragraph 8 of the Agreement.

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

A. Consultant 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. Consultant agrees to the provisions of Exhibit A2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of \$100,000).

- C. Consultant 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 subconsultant who will be subject to its provisions.

XIX. MBE / WBE REQUIREMENTS

The County intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the CONSULTANT 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 CONSULTANT RESPONSIBILITIES

All recipients of this grant funding, as well as their prime Consultants and subconsultants, 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 Consultant and any subconsultants 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 CONSULTANT 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, Consultant shall take the affirmative steps listed in 2 CFR 200.321.

XX. PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200.322)

Consultant shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

XXI. INCORPORATION OF UNIFORM ADMINISTRATIVE REQUIREMENTS

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

XXII. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

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

XXIII. DHS SEAL, LOGO, AND FLAGS.

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

Exhibit A1

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

(Lower Tier refers to the agency or Consultant receiving Federal funds, as well as any subconsultants that the agency or Consultant 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. Consultant is required to sign the certification below which specifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Consultant will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any Consultant 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 an Voluntary Exclusion – Lower Tier Covered Transactions

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

Consultant Signature

Date

Exhibit A2

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

Consultant Signature

Date

Professional Services Agreement (“PSA”)
On-Call Design Services FHWA Agreement – OC18-D1

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and TJKM Transportation Consultants (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the County’s Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in the Request for Qualifications and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in , the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County. With respect to performance under this Agreement, Consultant shall employ the following key personnel: Project Manager.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED]

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

The total amount payable by County for all Task Orders resulting from this Agreement shall not exceed \$975,000.00. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.

2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This contract shall go into effect on (_____) contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The contract shall end on (_____), unless extended by contract amendment.

3.2 Contract Execution.

Consultant is advised that any recommendation for contract award is not binding on County until the contract is fully executed and approved by County.

3.3 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the

terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1. Notice Period.

County reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice.

4.2 Grounds for Termination.

County may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If County terminates this Agreement with Consultant, County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

4.3 Liability.

The maximum amount for which the Government shall be liable if this Agreement is terminated is 975,000 dollars.

4.4 Authority to Terminate.

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Department Head, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment.

Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion,

or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

9.4 [RESERVED].

9.5 Records Maintenance.

In addition to other record retention and audit requirements set forth elsewhere in this Agreement, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.

9.6.2 Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes

and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal contract requirements set forth in Article 13 herein.

9.8 Living Wage Ordinance.

9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinances local preference requirements shall be used to select or otherwise apply to Consultant.–

9.9 Nondiscrimination.

Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 Statement of Compliance.

9.10.1 Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

9.10.2 During the performance of this Contract, Consultant and its subconsultants 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, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (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 Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

9.10.3 The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

9.10.4 The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon

completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

On-Call Engineering
Design Services

TJKM Transportation Consultants
Attn: Atul Patel, TE.
4305 Hacienda Drive, Suite 550
Pleasanton, CA 94588
(925) 264-5003
apatel@tjkm.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Federal Requirements.

13.1 Contract Assurance.

The consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted agreements. Failure by the consultant to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

13.2 Prompt Progress Payments to Subcontractors.

Attention is directed to Section 7108.5 of the California Business and Professions Code, which requires a prime contractor or subcontractor to pay any subcontractor not later than ten (10) days of receipt of each progress payment, unless otherwise agreed to in writing. In addition, federal regulations (Title 49 Code of Federal Regulations Part 26.29) require a prime contractor or subcontractor to pay a subcontractor no later than thirty (30) days of receipt of each payment, unless any delay or postponement of payment among the parties takes place only for good cause and with the prior written approval of County. Section 7108.5 of the California Business and Professions Code also contains enforcement actions and penalties. The requirements apply to both Disadvantaged Business Entities ("DBE") and non-DBE subcontractors. Consultant shall include the foregoing progress payment requirements in every subcontract entered into by Consultant in the performance of its obligations under this Agreement

13.3 Prompt Payment of Withheld Funds to Subcontractors.

No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any

delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

13.4 Disadvantaged Business Enterprise (DBE) Participation.

- 13.4.1 This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- 13.4.2 A DBE participation goal will be established for each Task Order. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- 13.4.3 DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as County deems appropriate.
- 13.4.4 Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- 13.4.5 A DBE firm may be terminated only with prior written approval from County and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting County consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).
- 13.4.6 A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under

the, contract is commensurate with the work it is actually performing, and other relevant factors.

- 13.4.7 A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- 13.4.8 If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- 13.4.9 Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- 13.4.10 Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by Consultant or Consultant's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- 13.4.11 If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to County's Contract Administrator within 30 days.

13.5 Prevailing Wage.

- 13.5.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 13.5.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless

the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

- 13.5.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

13.6 Text Messaging While Driving.

In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, and Department of Transportation Order 3902.10, Text Messaging While Driving, text messaging while driving is prohibited in the performance of any duties included in this agreement for both consultant and any sub-consultants hired for performance of duties under this Agreement. Consultant shall include a provision prohibiting texting while driving in all sub-consultant agreements entered into related to the performance of its obligations under this Agreement.

Definitions. The following definitions are to be used in conjunction with this section. "Driving":

- 1) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- 2) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

"Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

13.7 Buy America.

Furnish Steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:

- 1) Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478(3/24/1995)];
- 2) If the total combine cost of the materials does not exceed the great of 0.1 percent of the total bid or \$2,500, materials produced outside the U. S. may be used.

Production includes:

- 1) Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending,

grinding, and drilling or chemical composition;

- 2) Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

13.8 Prohibition of Expending Local Agency, State or Federal funds for Lobbying.

13.8.1 Consultant certifies to the best of his or her knowledge and belief that:

- 1) No state, federal or County appropriated funds have been paid, or will be paid by or on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or 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 federal 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; Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

13.8.2 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.

13.8.3 Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

13.9 Cost Principles and Administrative Requirements.

13.9.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, shall be used to determine the cost allowability of individual items.

13.9.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

13.9.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal

Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, are subject to repayment by Consultant to County.

13.10 Retention of Records/Audit.

For the purpose of determining compliance with Public Contract Code 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, Section 2500 *et seq.*, when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; Consultant, subconsultants, and County shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, County, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

13.11 Audit Review Procedures.

- 13.11.1 Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by County's Chief Financial Officer.
- 13.11.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by County's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- 13.11.3 Neither the pendency of a dispute nor its consideration by County will excuse Consultant from full and timely performance, in accordance with the terms of this contract.
- 13.11.4 Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by County contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by County at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

13.12 Subcontracting.

- 13.12.1 Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.
- 13.12.2 Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by County's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- 13.12.3 Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by County.
- 13.12.4 All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- 13.12.5 Any substitution of subconsultant(s) must be approved in writing by County's Contract Administrator prior to the start of work by the subconsultant(s).

13.13 Equipment Purchase.

- 13.13.1 Prior authorization in writing, by County's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- 13.13.2 For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by County's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- 13.13.3 Any equipment purchased as a result of this contract is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, Consultant may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by County." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment

with a fair market value greater than \$5,000 is credited to the project.

14. Miscellaneous Provisions.

14.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

14.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

14.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

14.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

14.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

14.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

14.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

14.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

14.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

14.10 Rebates, Kickback or Other Unlawful Consideration.

Consultant warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

14.11 Funding Requirements.

14.11.1 It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

14.11.2 This contract is valid and enforceable only, if sufficient funds are made available to County for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or County Board of Supervisors that may affect the provisions, terms, or funding of this contract in any manner.

14.11.3 It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

14.11.4 County has the option to void the contract under the 30-day termination clause pursuant to Article 4, or by mutual agreement to amend the contract to reflect any reduction of funds.

14.12 Evaluation of Consultant.

Consultant's performance will be evaluated by County. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

14.13 Claims Filed by County's Construction Contractor.

14.13.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

- 14.13.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.
- 14.13.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.
- 14.13.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14.14 National Labor Relations Board Certification.

In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

14.15 Retention of Funds.

- 14.15.1 Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- 14.15.2 No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the County's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

14.16 Contingent Fee.

Consultant warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, County has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

14.17 Inspection of Work.

Consultant and any subconsultant shall permit County, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

14.18 Safety.

14.18.1 Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County Safety Officer and other County representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

14.18.2 Pursuant to the authority contained in Section 591 of the Vehicle Code, County has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles

14.18.3 Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

15. Attachments & Exhibits.

The following Attachments appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

15.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

15.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Article 13, Article 14.10-14.18 and/or Attachment C, the Federal Requirements set forth in Article 13, 14.10-14.18 and/or Attachment C shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**SIGNATURES FOLLOW ON NEXT PAGE -
- THIS SPACE LEFT INTENTIONALLY BLANK -**

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Professional Services Agreement (“PSA”)
On-Call Design Services FEMA Agreement – OC18-D2

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and TRC Engineering Inc. (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in Attachment “A,” attached hereto and incorporated herein by this reference (hereinafter "Cost Proposal"), and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in Attachment “A”, the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

1.6 Federal Requirements.

Task Orders under this Agreement may be funded by The Federal Emergency Management Agency (FEMA). Consultant shall comply with all applicable Federal Requirements attached hereto as Exhibit "A" – Federal Provisions.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in

this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED].

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

2.8.1 The total amount payable by County for all Task Orders issued under this Agreement shall not exceed \$975,000.00.

- 2.8.2 The not-to-exceed amount of \$975,000 set forth in section 2.8.1 is an aggregate not-to-exceed amount across this Agreement and an Agreement No. OC18-D1 with Consultant. Any compensation expended by County to pay Consultant under Agreement No. OC18-D1 will reduce the not-to-exceed amount set forth in section 2.8.1 of this Agreement by the same amount.
- 2.8.3 This Agreement and Agreement No. OC18-D1 will be administered by the County's Transportation and Public Works department to ensure that the total aggregate amount of compensation to Consultant across this Agreement and Agreement No. OC18-D1 does not exceed the amount set forth in section 2.8.1.
- 2.8.5 Consultant acknowledges, understands and agrees that there is no guarantee, either expressed or implied that the dollar amount set forth in section 2.8.1 or any portion thereof will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

- 2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.
- 2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.
- 2.11.3 If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the

facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This Agreement shall go into effect on (_____)contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The Agreement shall end on (_____), unless extended by amendment.

3.2 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1 Termination Without Cause

Notwithstanding any other provision of this Agreement, at any time and without cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to Consultant.

4.2 Termination for Cause

Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

4.3 Delivery of Work Product and Final Payment Upon Termination

In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to County all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subconsultants, consultants, and other agents in connection with this Agreement and shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

4.4 Payment Upon Termination.

Upon termination of this Agreement by County, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked

prior to the termination times the applicable hourly or daily rate; and further provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by Consultant.

4.5 Authority to Terminate

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right

to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment. In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Department and Suspension" requirements set forth in Section IV and Exhibit "A1" (Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Contractors), Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, consultant has the obligation to inform the County.

9.4 [RESERVED]

9.5 Records Maintenance.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Access to Records" requirements set forth in Section III, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

- 9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.
- 9.6.2 Consultant hereby certifies and covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by County, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Consultant's or such other person's financial interests..
- 9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- 9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal requirements set forth in Exhibit "A" (Federal Requirements) attached to this Agreement..

9.8 Living Wage Ordinance.

- 9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinance's local preference requirements shall be used to select or otherwise apply to Consultant.

9.9 Nondiscrimination.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Equal Employment Opportunity Compliance" requirements set forth in Section VI, and without limiting any other provision in this Agreement, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 [RESERVED]

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

In addition to the requirements and rights afforded to FEMA set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements) and to afford FEMA such rights, including the "Notice of Requirements Pertaining to Copyrights" set forth in Section XI and the "Patent Rights" set forth in Section XII, Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this

Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above- described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

9.15 Prevailing Wage.

- 9.15.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 9.15.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.
- 9.15.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

TRC Engineering, Inc.
Attn: Mark Imbriani, PE.
10680 White Rock Road, Suite 100
Rancho Cordova, CA 95670
(916) 366-0632
mimbriani@trcsolutions.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Miscellaneous Provisions.

13.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other.

Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

13.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

13.10 Claims Filed by County's Construction Contractor.

13.10.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

13.10.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that

are being paid for Consultant's personnel services under this contract.

13.10.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

13.10.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14. Attachments & Exhibits.

The following Attachments and Exhibits appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

14.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

Exhibit A – Federal Requirements

14.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Exhibit "A", the Federal Requirements set forth in Exhibit "A" shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SIGNATURES FOLLOW ON NEXT PAGE -

- THIS SPACE LEFT INTENTIONALLY BLANK -

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Exhibit “A”
FEDERAL PROVISIONS

I. DEFINITIONS

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

II. FEDERAL REQUIREMENTS AND CHANGES

- A.** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The consultant will comply with all applicable federal law, regulations, executive orders , FEMA policies, procedures, and directives.
- B.** Consultant 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. Consultant's failure to so comply shall constitute a material breach of this contract.
- C.** The Consultant 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 subconsultant who will be subject to its provisions.

III. ACCESS TO RECORDS

- A.** The Consultant 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 Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B.** The Consultant 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 Consultant 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, Consultant agrees to maintain same until the County, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.
- D.** The requirements set for in paragraphs A, B, and C above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in Section 21 of the Agreement.

IV. DEBARMENT AND SUSPENSION

- A.** This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Consultant is required to verify that none of the Consultant, 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.** Consultant 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. Consultant agrees that neither Consultant nor any of its third party subconsultants shall enter into any third party subcontracts for any of the work under this Agreement with a third party subconsultant 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 Consultant 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. Consultant agrees to the provisions of Exhibit A1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion— Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Exhibit A1, Consultant is the "prospective lower tier participant."
- D.** The Consultant 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 subconsultant 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 Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, the County, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- F.** The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONSULTANT

- A.** The County and Consultant 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, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B.** The Consultant 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 subconsultant who will be subject to its provisions.

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

Consultant 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.** Consultants and subconsultants 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.** Consultants, and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C.** Consultants and subconsultants 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.** Consultants, and subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

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

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

To the extent required by any Federal grant programs applicable to expected funding or reimbursement of County’s expenses incurred in connection with the services provided under this Agreement, Consultant 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 Consultant shall be bound to the provisions of the Davis-Bacon Act, and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of

California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.

- B. The general prevailing wage rates may be accessed at the Department of Labor Home Page at www.wdol.gov. Under the Davis Bacon heading, click on “Selecting DBA WDs.” In the drop down menu for State, select, “California.” In the drop down menu for County, select “Sonoma.” In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

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

- A. **Compliance:** Consultant 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 Consultant or subconsultant 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 he or she is 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 Consultant and any subconsultant responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such Consultant and subconsultant shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.
- D. **Withholding for unpaid wages and liquidated damages:** The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subconsultant under any such contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subconsultant for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.
- E. **Subcontracts:** The Consultant or subconsultant shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subconsultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subconsultant or lower tier subconsultant with the clauses set forth in paragraphs A through D of this section.

X. NOTICE OF REPORTING REQUIREMENTS

- A. Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

XI. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

- A. Consultant 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 Consultant purchases ownership with the assistance of funds provided under this Agreement.
- B. The Consultant 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 subconsultant who will be subject to its provisions.

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

- A. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the County and Consultant 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 Consultant's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the County and Consultant 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 Consultant agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

XIII. ENERGY CONSERVATION REQUIREMENTS

- A. The Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

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

A. Consultant 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. Consultant 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 Consultant agrees to include paragraph A and B above in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

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

See Paragraph 4.1 of the Agreement.

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

Consultant's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement. See Paragraph 4.2 of the Agreement.

XVII. CHANGES.

See Paragraph 8 of the Agreement.

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

A. Consultant 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. Consultant agrees to the provisions of Exhibit A2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of \$100,000).

- C. Consultant 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 subconsultant who will be subject to its provisions.

XIX. MBE / WBE REQUIREMENTS

The County intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the CONSULTANT 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 CONSULTANT RESPONSIBILITIES

All recipients of this grant funding, as well as their prime Consultants and subconsultants, 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 Consultant and any subconsultants 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 CONSULTANT 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, Consultant shall take the affirmative steps listed in 2 CFR 200.321.

XX. PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200.322)

Consultant shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

XXI. INCORPORATION OF UNIFORM ADMINISTRATIVE REQUIREMENTS

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

XXII. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

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

XXIII. DHS SEAL, LOGO, AND FLAGS.

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

Exhibit A1

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

(Lower Tier refers to the agency or Consultant receiving Federal funds, as well as any subconsultants that the agency or Consultant 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. Consultant is required to sign the certification below which specifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Consultant will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any Consultant 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 an Voluntary Exclusion – Lower Tier Covered Transactions

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

Consultant Signature

Date

Exhibit A2

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

Consultant Signature

Date

Professional Services Agreement (“PSA”)
On-Call Design Services FHWA Agreement – OC18-D1

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and TRC Engineering, Inc. (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the County’s Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in the Request for Qualifications and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in , the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County. With respect to performance under this Agreement, Consultant shall employ the following key personnel: Project Manager.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED]

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

The total amount payable by County for all Task Orders resulting from this Agreement shall not exceed \$975,000.00. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.

2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This contract shall go into effect on (_____) contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The contract shall end on (_____), unless extended by contract amendment.

3.2 Contract Execution.

Consultant is advised that any recommendation for contract award is not binding on County until the contract is fully executed and approved by County.

3.3 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the

terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1. Notice Period.

County reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice.

4.2 Grounds for Termination.

County may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If County terminates this Agreement with Consultant, County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

4.3 Liability.

The maximum amount for which the Government shall be liable if this Agreement is terminated is 975,000 dollars.

4.4 Authority to Terminate.

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Department Head, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment.

Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion,

or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

9.4 [RESERVED].

9.5 Records Maintenance.

In addition to other record retention and audit requirements set forth elsewhere in this Agreement, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.

9.6.2 Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes

and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal contract requirements set forth in Article 13 herein.

9.8 Living Wage Ordinance.

9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinances local preference requirements shall be used to select or otherwise apply to Consultant.–

9.9 Nondiscrimination.

Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 Statement of Compliance.

9.10.1 Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

9.10.2 During the performance of this Contract, Consultant and its subconsultants 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, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (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 Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

9.10.3 The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

9.10.4 The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon

completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

On-Call Engineering
Design Services

TRC Engineering, Inc.
Attn: Mark Imbriani, PE.
10680 White Rock Road, Suite 100
Rancho Cordova, CA 95670
(916) 366-0632
mimbriani@trcsolutions.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Federal Requirements.

13.1 Contract Assurance.

The consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted agreements. Failure by the consultant to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

13.2 Prompt Progress Payments to Subcontractors.

Attention is directed to Section 7108.5 of the California Business and Professions Code, which requires a prime contractor or subcontractor to pay any subcontractor not later than ten (10) days of receipt of each progress payment, unless otherwise agreed to in writing. In addition, federal regulations (Title 49 Code of Federal Regulations Part 26.29) require a prime contractor or subcontractor to pay a subcontractor no later than thirty (30) days of receipt of each payment, unless any delay or postponement of payment among the parties takes place only for good cause and with the prior written approval of County. Section 7108.5 of the California Business and Professions Code also contains enforcement actions and penalties. The requirements apply to both Disadvantaged Business Entities ("DBE") and non-DBE subcontractors. Consultant shall include the foregoing progress payment requirements in every subcontract entered into by Consultant in the performance of its obligations under this Agreement

13.3 Prompt Payment of Withheld Funds to Subcontractors.

No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any

delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

13.4 Disadvantaged Business Enterprise (DBE) Participation.

- 13.4.1 This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- 13.4.2 A DBE participation goal will be established for each Task Order. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- 13.4.3 DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as County deems appropriate.
- 13.4.4 Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- 13.4.5 A DBE firm may be terminated only with prior written approval from County and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting County consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).
- 13.4.6 A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under

the, contract is commensurate with the work it is actually performing, and other relevant factors.

- 13.4.7 A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- 13.4.8 If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- 13.4.9 Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- 13.4.10 Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by Consultant or Consultant's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- 13.4.11 If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to County's Contract Administrator within 30 days.

13.5 Prevailing Wage.

- 13.5.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 13.5.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless

the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

- 13.5.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

13.6 Text Messaging While Driving.

In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, and Department of Transportation Order 3902.10, Text Messaging While Driving, text messaging while driving is prohibited in the performance of any duties included in this agreement for both consultant and any sub-consultants hired for performance of duties under this Agreement. Consultant shall include a provision prohibiting texting while driving in all sub-consultant agreements entered into related to the performance of its obligations under this Agreement.

Definitions. The following definitions are to be used in conjunction with this section. "Driving":

- 1) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- 2) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

"Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

13.7 Buy America.

Furnish Steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:

- 1) Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478(3/24/1995)];
- 2) If the total combine cost of the materials does not exceed the great of 0.1 percent of the total bid or \$2,500, materials produced outside the U. S. may be used.

Production includes:

- 1) Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending,

grinding, and drilling or chemical composition;

- 2) Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

13.8 Prohibition of Expending Local Agency, State or Federal funds for Lobbying.

13.8.1 Consultant certifies to the best of his or her knowledge and belief that:

- 1) No state, federal or County appropriated funds have been paid, or will be paid by or on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or 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 federal 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; Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

13.8.2 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.

13.8.3 Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

13.9 Cost Principles and Administrative Requirements.

13.9.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, shall be used to determine the cost allowability of individual items.

13.9.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

13.9.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal

Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, are subject to repayment by Consultant to County.

13.10 Retention of Records/Audit.

For the purpose of determining compliance with Public Contract Code 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, Section 2500 *et seq.*, when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; Consultant, subconsultants, and County shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, County, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

13.11 Audit Review Procedures.

- 13.11.1 Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by County's Chief Financial Officer.
- 13.11.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by County's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- 13.11.3 Neither the pendency of a dispute nor its consideration by County will excuse Consultant from full and timely performance, in accordance with the terms of this contract.
- 13.11.4 Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by County contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by County at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

13.12 Subcontracting.

- 13.12.1 Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.
- 13.12.2 Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by County's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- 13.12.3 Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by County.
- 13.12.4 All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- 13.12.5 Any substitution of subconsultant(s) must be approved in writing by County's Contract Administrator prior to the start of work by the subconsultant(s).

13.13 Equipment Purchase.

- 13.13.1 Prior authorization in writing, by County's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- 13.13.2 For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by County's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- 13.13.3 Any equipment purchased as a result of this contract is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, Consultant may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by County." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment

with a fair market value greater than \$5,000 is credited to the project.

14. Miscellaneous Provisions.

14.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

14.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

14.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

14.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

14.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

14.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

14.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

14.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

14.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

14.10 Rebates, Kickback or Other Unlawful Consideration.

Consultant warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

14.11 Funding Requirements.

14.11.1 It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

14.11.2 This contract is valid and enforceable only, if sufficient funds are made available to County for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or County Board of Supervisors that may affect the provisions, terms, or funding of this contract in any manner.

14.11.3 It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

14.11.4 County has the option to void the contract under the 30-day termination clause pursuant to Article 4, or by mutual agreement to amend the contract to reflect any reduction of funds.

14.12 Evaluation of Consultant.

Consultant's performance will be evaluated by County. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

14.13 Claims Filed by County's Construction Contractor.

14.13.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

- 14.13.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.
- 14.13.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.
- 14.13.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14.14 National Labor Relations Board Certification.

In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

14.15 Retention of Funds.

- 14.15.1 Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- 14.15.2 No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the County's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

14.16 Contingent Fee.

Consultant warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, County has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

14.17 Inspection of Work.

Consultant and any subconsultant shall permit County, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

14.18 Safety.

14.18.1 Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County Safety Officer and other County representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

14.18.2 Pursuant to the authority contained in Section 591 of the Vehicle Code, County has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles

14.18.3 Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

15. Attachments & Exhibits.

The following Attachments appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

15.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

15.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Article 13, Article 14.10-14.18 and/or Attachment C, the Federal Requirements set forth in Article 13, 14.10-14.18 and/or Attachment C shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**SIGNATURES FOLLOW ON NEXT PAGE -
- THIS SPACE LEFT INTENTIONALLY BLANK -**

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Professional Services Agreement (“PSA”)
On-Call Design Services FEMA Agreement – OC18-D2

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and TY Lin International (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in Attachment “A,” attached hereto and incorporated herein by this reference (hereinafter "Cost Proposal"), and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in Attachment “A”, the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

1.6 Federal Requirements.

Task Orders under this Agreement may be funded by The Federal Emergency Management Agency (FEMA). Consultant shall comply with all applicable Federal Requirements attached hereto as Exhibit "A" – Federal Provisions.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in

this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED].

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

2.8.1 The total amount payable by County for all Task Orders issued under this Agreement shall not exceed \$975,000.00.

- 2.8.2 The not-to-exceed amount of \$975,000 set forth in section 2.8.1 is an aggregate not-to-exceed amount across this Agreement and an Agreement No. OC18-D1 with Consultant. Any compensation expended by County to pay Consultant under Agreement No. OC18-D1 will reduce the not-to-exceed amount set forth in section 2.8.1 of this Agreement by the same amount.
- 2.8.3 This Agreement and Agreement No. OC18-D1 will be administered by the County's Transportation and Public Works department to ensure that the total aggregate amount of compensation to Consultant across this Agreement and Agreement No. OC18-D1 does not exceed the amount set forth in section 2.8.1.
- 2.8.5 Consultant acknowledges, understands and agrees that there is no guarantee, either expressed or implied that the dollar amount set forth in section 2.8.1 or any portion thereof will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

- 2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.
- 2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.
- 2.11.3 If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the

facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This Agreement shall go into effect on (_____)contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The Agreement shall end on (_____), unless extended by amendment.

3.2 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1 Termination Without Cause

Notwithstanding any other provision of this Agreement, at any time and without cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to Consultant.

4.2 Termination for Cause

Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

4.3 Delivery of Work Product and Final Payment Upon Termination

In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to County all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subconsultants, consultants, and other agents in connection with this Agreement and shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

4.4 Payment Upon Termination.

Upon termination of this Agreement by County, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked

prior to the termination times the applicable hourly or daily rate; and further provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by Consultant.

4.5 Authority to Terminate

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right

to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment. In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Department and Suspension" requirements set forth in Section IV and Exhibit "A1" (Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Contractors), Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, consultant has the obligation to inform the County.

9.4 [RESERVED]

9.5 Records Maintenance.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Access to Records" requirements set forth in Section III, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

- 9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.
- 9.6.2 Consultant hereby certifies and covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by County, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Consultant's or such other person's financial interests..
- 9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- 9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal requirements set forth in Exhibit "A" (Federal Requirements) attached to this Agreement..

9.8 Living Wage Ordinance.

- 9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinance's local preference requirements shall be used to select or otherwise apply to Consultant.

9.9 Nondiscrimination.

In addition to the requirements set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements), including the "Equal Employment Opportunity Compliance" requirements set forth in Section VI, and without limiting any other provision in this Agreement, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 [RESERVED]

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

In addition to the requirements and rights afforded to FEMA set forth in Exhibit "A" (Federal Requirements) and without limiting Consultant's obligation to fully comply with the requirements of Exhibit "A" (Federal Requirements) and to afford FEMA such rights, including the "Notice of Requirements Pertaining to Copyrights" set forth in Section XI and the "Patent Rights" set forth in Section XII, Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this

Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above- described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

9.15 Prevailing Wage.

- 9.15.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 9.15.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.
- 9.15.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

T.Y. Lin International
Attn: Michael Pyrz, PE.
1111 Broadway, Suite 2150
Oakland, CA 94607
(510) 457-3030
michael.pyrz@tylin.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Miscellaneous Provisions.

13.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other.

Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

13.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

13.10 Claims Filed by County's Construction Contractor.

13.10.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

13.10.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that

are being paid for Consultant's personnel services under this contract.

13.10.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

13.10.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14. Attachments & Exhibits.

The following Attachments and Exhibits appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

14.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

Exhibit A – Federal Requirements

14.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Exhibit "A", the Federal Requirements set forth in Exhibit "A" shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SIGNATURES FOLLOW ON NEXT PAGE -

- THIS SPACE LEFT INTENTIONALLY BLANK -

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors

Exhibit “A”
FEDERAL PROVISIONS

I. DEFINITIONS

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

II. FEDERAL REQUIREMENTS AND CHANGES

- A.** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The consultant will comply with all applicable federal law, regulations, executive orders , FEMA policies, procedures, and directives.
- B.** Consultant 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. Consultant's failure to so comply shall constitute a material breach of this contract.
- C.** The Consultant 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 subconsultant who will be subject to its provisions.

III. ACCESS TO RECORDS

- A.** The Consultant 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 Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B.** The Consultant 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 Consultant 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, Consultant agrees to maintain same until the County, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.
- D.** The requirements set for in paragraphs A, B, and C above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in Section 21 of the Agreement.

IV. DEBARMENT AND SUSPENSION

- A.** This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Consultant is required to verify that none of the Consultant, 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.** Consultant 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. Consultant agrees that neither Consultant nor any of its third party subconsultants shall enter into any third party subcontracts for any of the work under this Agreement with a third party subconsultant 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 Consultant 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. Consultant agrees to the provisions of Exhibit A1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion— Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Exhibit A1, Consultant is the "prospective lower tier participant."
- D.** The Consultant 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 subconsultant 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 Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, the County, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- F.** The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONSULTANT

- A.** The County and Consultant 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, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B.** The Consultant 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 subconsultant who will be subject to its provisions.

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

Consultant 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.** Consultants and subconsultants 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.** Consultants, and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C.** Consultants and subconsultants 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.** Consultants, and subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

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

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

To the extent required by any Federal grant programs applicable to expected funding or reimbursement of County’s expenses incurred in connection with the services provided under this Agreement, Consultant 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 Consultant shall be bound to the provisions of the Davis-Bacon Act, and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of

California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.

- B. The general prevailing wage rates may be accessed at the Department of Labor Home Page at www.wdol.gov. Under the Davis Bacon heading, click on “Selecting DBA WDs.” In the drop down menu for State, select, “California.” In the drop down menu for County, select “Sonoma.” In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

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

- A. **Compliance:** Consultant 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 Consultant or subconsultant 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 he or she is 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 Consultant and any subconsultant responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such Consultant and subconsultant shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.
- D. **Withholding for unpaid wages and liquidated damages:** The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subconsultant under any such contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subconsultant for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.
- E. **Subcontracts:** The Consultant or subconsultant shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subconsultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subconsultant or lower tier subconsultant with the clauses set forth in paragraphs A through D of this section.

X. NOTICE OF REPORTING REQUIREMENTS

- A.** Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

XI. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

- A.** Consultant 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 Consultant purchases ownership with the assistance of funds provided under this Agreement.
- B.** The Consultant 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 subconsultant who will be subject to its provisions.

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

- A. General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the County and Consultant 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 Consultant's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the County and Consultant 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 Consultant agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

XIII. ENERGY CONSERVATION REQUIREMENTS

- A.** The Consultant 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 Consultant 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 subconsultant who will be subject to its provisions.

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

A. Consultant 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. Consultant 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 Consultant agrees to include paragraph A and B above in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

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

See Paragraph 4.1 of the Agreement.

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

Consultant's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement. See Paragraph 4.2 of the Agreement.

XVII. CHANGES.

See Paragraph 8 of the Agreement.

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

A. Consultant 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. Consultant agrees to the provisions of Exhibit A2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of \$100,000).

- C. Consultant 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 subconsultant who will be subject to its provisions.

XIX. MBE / WBE REQUIREMENTS

The County intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the CONSULTANT 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 CONSULTANT RESPONSIBILITIES

All recipients of this grant funding, as well as their prime Consultants and subconsultants, 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 Consultant and any subconsultants 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 CONSULTANT 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, Consultant shall take the affirmative steps listed in 2 CFR 200.321.

XX. PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200.322)

Consultant shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

XXI. INCORPORATION OF UNIFORM ADMINISTRATIVE REQUIREMENTS

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

XXII. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

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

XXIII. DHS SEAL, LOGO, AND FLAGS.

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

Exhibit A1

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

(Lower Tier refers to the agency or Consultant receiving Federal funds, as well as any subconsultants that the agency or Consultant 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. Consultant is required to sign the certification below which specifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Consultant will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any Consultant 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 an Voluntary Exclusion – Lower Tier Covered Transactions

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

Consultant Signature

Date

Exhibit A2

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

Consultant Signature

Date

Professional Services Agreement (“PSA”)
On-Call Design Services FHWA Agreement – OC18-D1

AGREEMENT FOR [CONSULTING/PROFESSIONAL] SERVICES

This agreement ("Agreement"), dated as of _____, 20__ (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and T.Y. Lin International (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and licensed civil engineer, experienced in the preparation of Plans, Specifications and Estimates, and related services; and

WHEREAS, in the judgment of the County’s Department of Transportation & Public Works, it is necessary and desirable to employ the services of Consultant for On-Call Engineering Design Services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

I. Scope of Services.

1.1 Consultant's Specified Services.

Consultant shall perform the services, if any, described in the Request for Qualifications and as more particularly described in the applicable Task Order assigning the specific project, and within the times or by the dates provided for in , the applicable Task Order and pursuant to Article 7, Prosecution of Work.

1.2 Cooperation With County.

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard.

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with County to review the quality of the work and resolve matters of concern;

(b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- 1.4.1 Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- 1.4.2 Any and all persons identified in this Agreement, any Exhibit or Attachment hereto, or any Task Order issued hereunder as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County. With respect to performance under this Agreement, Consultant shall employ the following key personnel: Project Manager.
- 1.4.3 In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

1.5 Consultant's Reports or Meetings.

- 1.5.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Task Order Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 1.5.2 Consultant's Project Manager shall meet with County's Contract Administrator or Task Order Manager, as needed, to discuss progress on the project(s) or contract related issues.

2. Allowable Costs and Payments.

2.1 Method of payment.

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

2.2 Task Orders.

- 2.2.1 Specific projects will be assigned to Consultant through issuance of Task Orders.
- 2.2.2 After a project to be performed under this Agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County's Task Order Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.
- 2.2.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
- 2.2.4 Consultant shall not commence performance of work or services until this Agreement has been approved by County, and notification to proceed has been issued by County's Task Order Manager. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- 2.2.5 A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- 2.2.6 The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- 2.2.7 The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- 2.2.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- 2.2.9 Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement

2.3 Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

2.4 Milestone Costs.

When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the County's Task Order Manager before exceeding such cost estimate.

2.5 Progress Payments.

Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

2.6 [RESERVED]

2.7 Invoices.

2.7.1 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 13.13 Equipment Purchase of this Agreement, must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to County's Contract Administrator at the following address:

David Cameron
2300 County Center Drive, Suite B-100
Santa Rosa, CA 95403

2.7.2 In addition to compliance with the requirements of this Article 2, including Article 2.7.1 above, Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to subcontractors for work required included in the prime consultant's invoice. Consultant shall submit the Subcontractor Payment Declaration with each invoice.

2.7.3 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

2.8 Contract Value/Not-to-Exceed Compensation.

The total amount payable by County for all Task Orders resulting from this Agreement shall not exceed \$975,000.00. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Task Orders.

2.9 Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

2.10 [RESERVED].

2.11 Taxes.

2.11.1 Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.

2.11.2 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the contractor agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement.

3.1 Term.

This contract shall go into effect on (_____) contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Contract Administrator. The contract shall end on (_____), unless extended by contract amendment.

3.2 Contract Execution.

Consultant is advised that any recommendation for contract award is not binding on County until the contract is fully executed and approved by County.

3.3 Task Order Term

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the

terms of the Agreement shall be extended by contract amendment.

4. Termination

4.1. Notice Period.

County reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice.

4.2 Grounds for Termination.

County may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If County terminates this Agreement with Consultant, County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

4.3 Liability.

The maximum amount for which the Government shall be liable if this Agreement is terminated is 975,000 dollars.

4.4 Authority to Terminate.

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Department Head, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification.

Consultant agrees to accept responsibility for loss or damage to any person or entity, including County, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on County's part, but, to the extent required by law, excluding liability due to County's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Attachment B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work.

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors/Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care.

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant.

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment.

Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion,

or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

9.4 [RESERVED].

9.5 Records Maintenance.

In addition to other record retention and audit requirements set forth elsewhere in this Agreement, Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest.

9.6.1 Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.

9.6.2 Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

9.6.3 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

9.6.4 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

9.7 Statutory Compliance.

Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes

and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees, on behalf of itself and on behalf of all its agents, employees, subconsultants, and subcontractors, to comply with the federal contract requirements set forth in Article 13 herein.

9.8 Living Wage Ordinance.

9.8.1 Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8.2 Notwithstanding the requirement of section 9.8.1 that Consultant comply with the County of Sonoma Living Wage Ordinance (Sonoma County Code Chapter 2, Article XXVI), none of the Living Wage Ordinances local preference requirements shall be used to select or otherwise apply to Consultant.–

9.9 Nondiscrimination.

Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 Statement of Compliance.

9.10.1 Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

9.10.2 During the performance of this Contract, Consultant and its subconsultants 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, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (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 Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

9.10.3 The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

9.10.4 The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

9.11 AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.12 Assignment of Rights.

Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County.

Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.13 Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon

completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.14 Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

10. Demand for Assurance.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County:

Sonoma County Department of Transportation and Public Works
Attn: David Cameron
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403
(707) 565-2231
david.cameron@sonoma-county.org

To Consultant:

On-Call Engineering
Design Services

T.Y. Lin International
Attn: Michael Pyrz, PE.
1111 Broadway, Suite 2150
Oakland, CA 94607
(510) 457-3030
michael.pyrz@tylin.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Federal Requirements.

13.1 Contract Assurance.

The consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted agreements. Failure by the consultant to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

13.2 Prompt Progress Payments to Subcontractors.

Attention is directed to Section 7108.5 of the California Business and Professions Code, which requires a prime contractor or subcontractor to pay any subcontractor not later than ten (10) days of receipt of each progress payment, unless otherwise agreed to in writing. In addition, federal regulations (Title 49 Code of Federal Regulations Part 26.29) require a prime contractor or subcontractor to pay a subcontractor no later than thirty (30) days of receipt of each payment, unless any delay or postponement of payment among the parties takes place only for good cause and with the prior written approval of County. Section 7108.5 of the California Business and Professions Code also contains enforcement actions and penalties. The requirements apply to both Disadvantaged Business Entities ("DBE") and non-DBE subcontractors. Consultant shall include the foregoing progress payment requirements in every subcontract entered into by Consultant in the performance of its obligations under this Agreement

13.3 Prompt Payment of Withheld Funds to Subcontractors.

No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any

delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

13.4 Disadvantaged Business Enterprise (DBE) Participation.

- 13.4.1 This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- 13.4.2 A DBE participation goal will be established for each Task Order. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- 13.4.3 DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as County deems appropriate.
- 13.4.4 Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- 13.4.5 A DBE firm may be terminated only with prior written approval from County and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting County consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).
- 13.4.6 A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under

the, contract is commensurate with the work it is actually performing, and other relevant factors.

- 13.4.7 A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- 13.4.8 If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- 13.4.9 Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- 13.4.10 Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by Consultant or Consultant's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- 13.4.11 If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to County's Contract Administrator within 30 days.

13.5 Prevailing Wage.

- 13.5.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- 13.5.2 Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless

the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

- 13.5.3 When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

13.6 Text Messaging While Driving.

In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, and Department of Transportation Order 3902.10, Text Messaging While Driving, text messaging while driving is prohibited in the performance of any duties included in this agreement for both consultant and any sub-consultants hired for performance of duties under this Agreement. Consultant shall include a provision prohibiting texting while driving in all sub-consultant agreements entered into related to the performance of its obligations under this Agreement.

Definitions. The following definitions are to be used in conjunction with this section. "Driving":

- 1) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- 2) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

"Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

13.7 Buy America.

Furnish Steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:

- 1) Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478(3/24/1995)];
- 2) If the total combine cost of the materials does not exceed the great of 0.1 percent of the total bid or \$2,500, materials produced outside the U. S. may be used.

Production includes:

- 1) Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending,

grinding, and drilling or chemical composition;

- 2) Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

13.8 Prohibition of Expending Local Agency, State or Federal funds for Lobbying.

13.8.1 Consultant certifies to the best of his or her knowledge and belief that:

- 1) No state, federal or County appropriated funds have been paid, or will be paid by or on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or 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 federal 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; Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

13.8.2 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.

13.8.3 Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

13.9 Cost Principles and Administrative Requirements.

13.9.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, shall be used to determine the cost allowability of individual items.

13.9.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

13.9.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal

Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, are subject to repayment by Consultant to County.

13.10 Retention of Records/Audit.

For the purpose of determining compliance with Public Contract Code 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, Section 2500 *et seq.*, when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; Consultant, subconsultants, and County shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, County, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

13.11 Audit Review Procedures.

- 13.11.1 Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by County's Chief Financial Officer.
- 13.11.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by County's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- 13.11.3 Neither the pendency of a dispute nor its consideration by County will excuse Consultant from full and timely performance, in accordance with the terms of this contract.
- 13.11.4 Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by County contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by County at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

13.12 Subcontracting.

- 13.12.1 Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.
- 13.12.2 Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by County's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- 13.12.3 Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by County.
- 13.12.4 All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- 13.12.5 Any substitution of subconsultant(s) must be approved in writing by County's Contract Administrator prior to the start of work by the subconsultant(s).

13.13 Equipment Purchase.

- 13.13.1 Prior authorization in writing, by County's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- 13.13.2 For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by County's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- 13.13.3 Any equipment purchased as a result of this contract is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, Consultant may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by County." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment

with a fair market value greater than \$5,000 is credited to the project.

14. Miscellaneous Provisions.

14.1 No Waiver of Breach.

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

14.2 Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

14.3 Consent.

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

14.4 No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

14.5 Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

14.6 Captions.

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

14.7 Merger.

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

14.8 Survival of Terms.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

14.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof.

14.10 Rebates, Kickback or Other Unlawful Consideration.

Consultant warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

14.11 Funding Requirements.

14.11.1 It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

14.11.2 This contract is valid and enforceable only, if sufficient funds are made available to County for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or County Board of Supervisors that may affect the provisions, terms, or funding of this contract in any manner.

14.11.3 It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

14.11.4 County has the option to void the contract under the 30-day termination clause pursuant to Article 4, or by mutual agreement to amend the contract to reflect any reduction of funds.

14.12 Evaluation of Consultant.

Consultant's performance will be evaluated by County. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

14.13 Claims Filed by County's Construction Contractor.

14.13.1 If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

- 14.13.2 Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.
- 14.13.3 Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.
- 14.13.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

14.14 National Labor Relations Board Certification.

In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

14.15 Retention of Funds.

- 14.15.1 Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- 14.15.2 No retainage will be held by the County from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the County's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

14.16 Contingent Fee.

Consultant warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, County has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

14.17 Inspection of Work.

Consultant and any subconsultant shall permit County, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

14.18 Safety.

14.18.1 Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County Safety Officer and other County representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

14.18.2 Pursuant to the authority contained in Section 591 of the Vehicle Code, County has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles

14.18.3 Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

15. Attachments & Exhibits.

The following Attachments appended to this Agreement are hereby incorporated by reference as if fully set forth herein.

15.1 List of Attachments.

Attachment A – Cost Proposal

Attachment B – Insurance Requirements

15.2 Order of Precedence.

In the event of any conflict between the Attachments and this Agreement, the Agreement shall control. Notwithstanding the foregoing, in the event of any conflict between the Agreement and the Federal Requirements set forth in Article 13, Article 14.10-14.18 and/or Attachment C, the Federal Requirements set forth in Article 13, 14.10-14.18 and/or Attachment C shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**SIGNATURES FOLLOW ON NEXT PAGE -
- THIS SPACE LEFT INTENTIONALLY BLANK -**

CONSULTANT:

By:

Name:

Title:

Date:

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE ON FILE AND APPROVED AS TO SUBSTANCE FOR COUNTY:

By:

Department Head

Date:

APPROVED AS TO FORM FOR COUNTY:

By:

County Counsel

Date:

By:

or Purchasing Agent

Date:

By:

Chair Board of Supervisors

Date:

ATTEST:

Clerk of the Board of Supervisors



County of Sonoma
Agenda Item
Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 39
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Board of Supervisors

Staff Name and Phone Number:

James Gore, Chair (707) 565-2241

Supervisorial District(s):

Countywide

Title: Re-appointment

Recommended Actions:

Re-appoint Paul Kelley to the North Coast Railroad Authority Board for a two year term beginning April 11, 2018 through April 11, 2020.

Executive Summary:

Discussion:

Prior Board Actions:

Strategic Plan Alignment Goal 4: Civic Services and Engagement

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			
Narrative Explanation of Fiscal Impacts:			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
Related Items “On File” with the Clerk of the Board:			



County of Sonoma
Agenda Item
Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 40
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Board of Supervisors

Staff Name and Phone Number:

James Gore (707) 565-2241

Supervisorial District(s):

Fourth District

Title: Re-appointment

Recommended Actions:

Re-appoint Curt Nichols Agricultural Preservation and Open Space District Advisory Committee for a two year term beginning February 16, 2018 and February 16, 2020.

Executive Summary:

Discussion:

Prior Board Actions:

Strategic Plan Alignment Goal 4: Civic Services and Engagement

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			
Narrative Explanation of Fiscal Impacts:			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
Related Items “On File” with the Clerk of the Board:			
The application is on file with the Clerk of the Board.			



County of Sonoma
Agenda Item
Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 41
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Board of Supervisors

Staff Name and Phone Number:

James Gore (707) 565-2241

Supervisorial District(s):

Fourth District

Title: Appointment

Recommended Actions:

Appoint Peter McAweeney to the Mental Health Board beginning May 8, 2018 and expiring December 31, 2020.

Executive Summary:

Discussion:

Prior Board Actions:

Strategic Plan Alignment Goal 4: Civic Services and Engagement

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			
Narrative Explanation of Fiscal Impacts:			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
Related Items “On File” with the Clerk of the Board:			
The application is on file with the Clerk of the Board.			



County of Sonoma
Agenda Item
Summary Report

Agenda Item Number: 42
(This Section for use by Clerk of the Board Only.)

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

To: Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Board of Supervisors

Staff Name and Phone Number:

Supervisor David Rabbitt, 707/565-2241

Supervisorial District(s):

Second District

Title: Reappointment

Recommended Actions:

Approve the reappointment of Erick Ratliff to the Bicycle and Pedestrian Advisory Committee serving a two-year term beginning January 13, 2018 and expiring January 13, 2020 (Second District)

Executive Summary:

Approve the reappointment of Erick Ratliff to the Bicycle and Pedestrian Advisory Committee serving a two-year term beginning January 13, 2018 and expiring January 13, 2020 (Second District)

Discussion:

Prior Board Actions:

Strategic Plan Alignment Goal 4: Civic Services and Engagement

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			
Narrative Explanation of Fiscal Impacts:			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
Related Items “On File” with the Clerk of the Board:			



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 43
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Board of Supervisors

Staff Name and Phone Number:

Supervisor Shirlee Zane
(707) 565-2241

Supervisorial District(s):

Third District

Title: Gold Resolution

Recommended Actions:

Adopt a Gold Resolution recognizing Carroll Estes on the occasion of her 80th birthday and for her many years of research and advocacy on Social Security and Medicare policy, health reform, long term care, and elder women's economic and health security. (Third District).

Executive Summary:

Adopt a Gold Resolution recognizing Carroll Estes on the occasion of her 80th birthday and for her many years of research and advocacy on Social Security and Medicare policy, health reform, long term care, and elder women's economic and health security. (Third District).

Discussion:

Prior Board Actions:

Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			
Narrative Explanation of Fiscal Impacts:			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
Related Items “On File” with the Clerk of the Board:			



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 44
(This Section for use by Clerk of the Board Only.)

To:

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s):

Staff Name and Phone Number:

Supervisor James Gore
(707) 565-2241

Supervisorial District(s):

Fourth District

Title: Gold Resolution

Recommended Actions:

Adopt a Gold Resolution proclaiming May 2018 as Community Action Month throughout Sonoma County in recognition of Community Action Partnership of Sonoma County. (Submitting as Chair)

Executive Summary:

Adopt a Gold Resolution proclaiming May 2018 as Community Action Month throughout Sonoma County in recognition of Community Action Partnership of Sonoma County. (Submitting as Chair)

Discussion:

Prior Board Actions:

Strategic Plan Alignment Goal 4: Civic Services and Engagement

Fiscal Summary			
Expenditures	FY 16-17 Adopted	FY 17-18 Projected	FY 18-19 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			
Narrative Explanation of Fiscal Impacts:			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
Resolution			
Related Items "On File" with the Clerk of the Board:			



County of Sonoma
State of California

Date: May 8, 2018

Item Number: _____
Resolution Number: _____

4/5 Vote Required

Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California, Proclaiming May 2018 As Community Action Month In Recognition Of Community Action Partnership Of Sonoma County.

Whereas, Community Action Agencies were created when the Economic Opportunity Act of 1964 was signed into law; and

Whereas, Community Action Partnership of Sonoma County has a 51-year history of promoting self-sufficiency for those of limited income in Sonoma County; and

Whereas, Community Action Partnership of Sonoma County has made an essential contribution to empower low income families through community engagement, health and wellness, education and financial stability strategies; and

Whereas, Community Action changes people's lives, embodies the spirit of hope, improves communities, and makes America a better place to live. We care about the entire community, and we are dedicated to helping people help themselves and each other; and

Whereas, Sonoma County and the entire United States must continue to fight poverty by providing support and opportunities for all individuals in need of assistance.

Now, Therefore, Be It Resolved that the Board of Supervisors of Sonoma County hereby proclaims, in recognition of the hard work and dedication of Community Action Partnership of Sonoma County, that May 2018 shall be Community Action Month.

Supervisors:

Gorin:

Rabbitt:

Zane:

Hopkins:

Gore:

Resolution #

Date:

Page 2

Ayes:

Noes:

Absent:

Abstain:

So Ordered.



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 45
(This Section for use by Clerk of the Board Only.)

To: County of Sonoma Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Human Resources

Staff Name and Phone Number:

Tracy Cunha, 565-2821

Supervisorial District(s):

Title: Recognition of the 2017-2018 Junior Commission on Human Rights

Recommended Actions:

Recognize twenty-one high school students for their participation on the Junior Commission on Human Rights for the 2017-2018 term.

Executive Summary:

The Junior Commission on Human Rights is a mentorship program that engages high school youth ages 14 to 18 in education and activism around human rights issues within Sonoma County. Additionally, the project provides an opportunity to foster leadership skills by educating their peers and creating ad hoc committees on issues of interest. The students are encouraged to be active participants in their community, engaging with elected officials and human rights organizations, and creating projects that benefit the community. The program also provides a vehicle by which County Supervisors are able to learn about current concerns and issues important to youth, and to advancing human rights in Sonoma County.

Discussion:

The Commission on Human Rights oversees the Junior Commission and students are recruited from high schools and community organizations in all five county districts through an application process. The Junior Commissioner term runs concurrent with the school year from August to May.

The twenty-one Junior Commissioners for the 2017-2018 term are:

1st District:

- Emilia Andersen, 12th Grade, Montgomery High School
- Casey Dai, 11th Grade, Maria Carrillo High School
- Zachery Hejl, 12th Grade, Montgomery High School
- Vivian Ling, 12th Grade, Maria Carrillo High School
- Alana Macken, 11th Grade, Santa Rosa High School (Officer-at-Large)
- Suhas Nagappala, 12th Grade, Montgomery High School

Jacquelyn Torres, 11th Grade, Sonoma Valley High School

2nd District:

Lucia Garay, 10th Grade, Casa Grande High School (Officer-at-Large)

3rd District:

Nicole Barrales, 12th Grade, Montgomery High School
Pavel Cervantes, 12th Grade, Roseland Preparatory (Vice Chair)
Olivia Kulawiak, 11th Grade, Maria Carrillo High School
John Leddy, 10th Grade, Elsie Allen High School
Shynie Lu, 12th Grade, Sonoma Academy (Chair)
Sahel Patel, 12th Grade, Santa Rosa High School
Tara Sullivan, 12th Grade, Maria Carrillo High School

4th District:

Jane Dzung Kinsella, 12th Grade, Healdsburg High School
Carlin Hornbostel, 12th Grade, Cardinal Newman High School
Annapurna Johnson, 12th Grade, Healdsburg High School

5th District:

Rima Makaryan, 10th Grade, Montgomery High School
Bella Nadler, 11th Grade, Analy High School
Taylor Talcott, 11th Grade, Analy High School

After being sworn into office by Dmitra Smith, Vice Chair of the Commission on Human Rights on August 23, 2017, the Junior Commissioners began to discuss human rights issues affecting members of the Sonoma County community. Ad hoc committees were formed to develop goals and objectives for term-long projects to address these issues.

The Junior Commissioners created the following community service projects:

Education Gap Ad hoc:

Drawing from personal experience and observation of decreased representation for Latino students in Advanced Placement classes, this committee conducted a survey and created a report addressing the education gap between Latino students and their Caucasian peers in Sonoma Valley. The report was presented at the Sonoma County Commission on Human Rights' Education Forum in Sonoma Valley on March 28, 2018 and shared with Sonoma Valley educators, administrators, and school board trustees. (Organized by Junior Commissioner Torres).

Homelessness Ad hoc:

In an effort to spread awareness around the issues of homelessness in our community, and to bring attention to the need for more housing, this committee held a public Forum on Homelessness, featuring speakers from partner organizations that provide services to the homeless population, and partnering members of the public with volunteer opportunities. They also created a short film featuring interviews

with members of the homeless community. (Organized by Junior Commissioners Andersen, Hejl, Hornbostel, Leddy, and Nagappala).

Human Trafficking Ad hoc:

This committee promoted *Strong Survival*, the 2016-2017 junior commission documentary that spreads awareness about human trafficking through the story of local survivor and activist, Maya Babow. The film was shared with all middle and high school administrators, screened at various events, and at high school presentations organized with Ms. Babow. In partnership with sexual assault victims' advocacy organization, Verity, the committee also developed a one page fact sheet with information and statistics about human trafficking that exists in our own community. The one sheet was distributed to all middle and high school administrators with a request to share the information with parents so as to spread awareness, and help protect students from traffickers. (Organized by Junior Commissioners Dai, Johnson, Kulawiak, and Lu).

Immigrants' Rights Ad hoc:

The Immigrants' Rights committee created a presentation on myths vs. facts about the immigrant community for schools. In an effort to spread awareness to their peers and provide support for Deferred Action for Childhood Arrivals (DACA) students in their own communities, they also created a poster campaign urging students to engage their members of Congress to enact a Clean Dream Act. The commissioners also distributed Know Your Rights cards and participated in a short documentary film about DREAMers – children who have benefited from DACA following the failure of Congress to pass the Development, Relief and Education for Alien Minors (DREAM Act) (Organized by Junior Commissioners Cervantes, Ling, and Makaryan).

Mental Health and Illness Ad hoc:

Realizing that mental health intersects with many other issues, and noting the decrease in services available at many high schools, this committee created an anonymous online survey to study the perceptions of high school students and the culture surrounding mental illness. Participants answered a set of questions in English and Spanish about their feelings about mental health concerns and their perceptions of available support. The committee compiled the data into a report with recommendations that they shared with Sonoma county high schools. (Organized by Junior Commissioners Nadler, and Talcott).

Racial Equality in Sonoma County Ad hoc:

To promote awareness of the racial issues that exist in our community, this committee created a comprehensive report analyzing the data of the results of last year's anonymous online, peer-to-peer survey that was open to all Sonoma County high school students to evaluate racial climate in their schools. The report, along with recommendations to improve school climate around race, was distributed to Sonoma county high school administrators and district superintendents. The committee participated in several workshops as part of the Day of Dialogue event at Maria Carrillo High School.

The members on Racial Equality also manage the Facebook page Real Humans of Sonoma County, a source of compelling stories from our diverse community

<https://www.facebook.com/realhumansofsonomacounty/>

(Organized by Junior Commissioners Barrales, Garay, Kinsella, Patel, and Sullivan).

Youth Human Rights Ad hoc:

This committee worked to develop a presentation on the rights of youth in education and general education on human rights concepts. (Organized by Junior Commissioner Macken).

These Junior Commission on Human Rights accomplishments are listed on the Commission’s website www.sonomacountychr.org.

In addition to creating community service projects, the Junior Commissioners also organized the county wide March for Our Lives rally at Old Courthouse Square on March 24, 2018. The event drew over 2,000 attendees and included youth speakers, elected officials, and community organizations partnering to provide a platform for Sonoma County students to speak out on gun violence in solidarity with the students of Marjory Stoneman Douglas High School in Parkland, Florida and other students nationwide. It also provided teens with an opportunity to pre-register to vote.

Junior Commissioners also participate in educational field trips. Before the end of the term, the Junior Commissioners will visit the offices of the Human Rights Watch, meet with the San Francisco Youth Commission in City Hall, and visit the California Historical Society and the Museum of the African Diaspora

RECOMMENDATION:

Recognize twenty-one high school students for their participation on the Junior Commission on Human Rights for the 2017-2018 term.

Prior Board Actions:

This is the fifth term of the Junior Commission on Human Rights. The Board has recognized participants since 2013, and participants in their sister commission, the Junior Commission on the Status of Women, since 1996.

Strategic Plan Alignment Goal 4: Civic Services and Engagement

Recognizing youth working to better their community promotes Civic Services and Engagement.

Fiscal Summary			
Expenditures	FY 16-17 Adopted	FY 17-18 Projected	FY 18-19 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			
Narrative Explanation of Fiscal Impacts:			
No fiscal impact. Any expenses associated with the Junior Commission on Human Rights are covered by the Commission on Human Rights annual budget of \$12,000.00 The Commission on Human Rights is under the oversight of the Employee and Volunteer Engagement and Recognition Unit.			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
1) PowerPoint Presentation			
Related Items "On File" with the Clerk of the Board:			



S o n o m a C o u n t y
J u n i o r C o m m i s s i o n
o n H u m a n R i g h t s

2017-2018 Junior Commissioners



Junior Commissioner Schools & Districts

1st District

Emilia Andersen, 12th Grade, Montgomery HS
Casey Dai, 11th Grade, Maria Carrillo HS
Zachary Hejl, 12th Grade, Montgomery HS
Vivian Ling, 12th Grade, Maria Carrillo HS
Alana Macken, 11th Grade, Santa Rosa HS (Officer-at-Large)
Suhas Nagappala, 12th Grade, Montgomery HS
Jacquelyn Torres, 11th Grade, Sonoma Valley HS

2nd District

Lucia Garay, 10th Grade, Casa Grande HS (Officer-at-Large)

3rd District

Nicole Barrales, 12th Grade, Montgomery HS
Pavel Cervantes, 12th Grade, Roseland Preparatory (Vice Chair)
Olivia Kulawiak, 11th Grade, Maria Carrillo HS
John Leddy, 10th Grade, Elsie Allen HS
Shynie Lu, 12th Grade, Sonoma Academy (Chair)
Sahel Patel, 12th Grade, Santa Rosa HS
Tara Sullivan, 12th Grade, Maria Carrillo HS

4th District

Jane Dzung Kinsella, 12th Grade, Healdsburg HS
Carlin Hornbostel, 12th Grade, Cardinal Newman HS
Annapurna Johnson, 12th Grade, Healdsburg HS

5th District

Rima Makaryan, 10th Grade, Montgomery HS
Bella Nadler, 11th Grade, Analy HS
Taylor Talcott, 11th Grade, Analy HS

What is Human Rights work, really?

❖ Awareness

educate yourself on the issues, understand your challenges and the potential for success.

❖ Advocacy

align your service goals to engage, inspire and meet the needs of those affected by the issues and the greater community

❖ Action

create projects that make an impact and have the potential for growth and development

Ad Hoc Committees 2017-2018

- ❖ Education Achievement Gap**
- ❖ Homelessness**
- ❖ Human Trafficking**
- ❖ Immigrants' Rights**
- ❖ Mental Health and Illness**
- ❖ Racial Equality and Justice**
- ❖ Youth Rights**

Achievement Gap

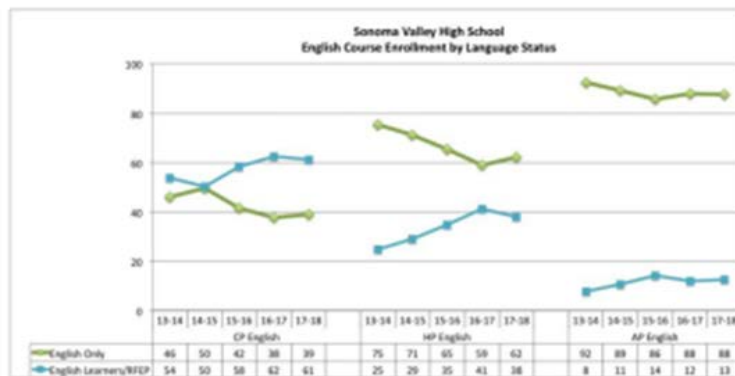
Junior Commissioner Torres



My Experience:

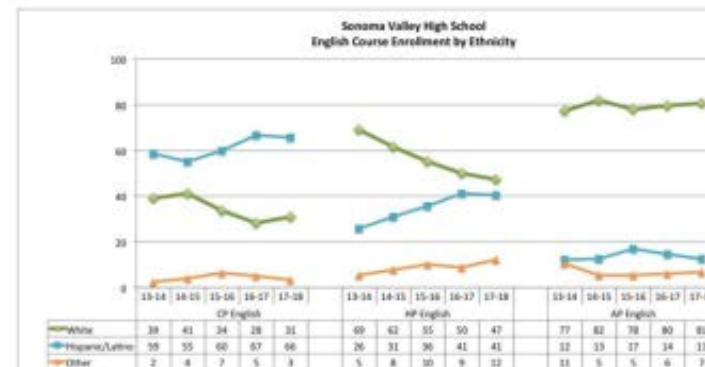
- English Language Learner (1-7 grade)
- Special Education (4-9 grade)
- First Generation College student

CP/Honors/AP Enrollment Data Trends (Language)



This chart is courtesy of Sonoma Valley High School

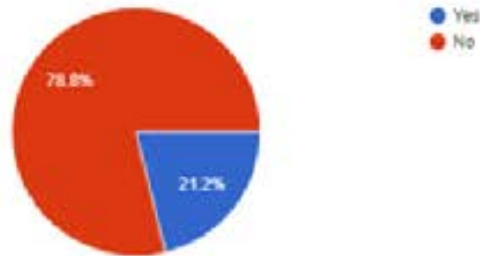
CP/Honors/AP Enrollment Data Trends (Ethnicity)



This chart is courtesy of Sonoma Valley High School

Do you feel like the school administration has good communication with students?

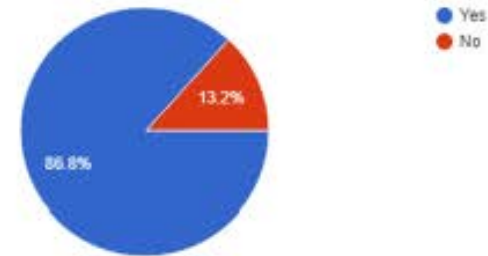
151 responses



This diagram comes from a student survey that I conducted, which consist of a broad selection of students

Is there a gap between minority and white students?

151 responses



This diagram comes from a student survey that I conducted, which consist of a broad selection of students

Student Comments:

"I did not know that AP classes were very important for high school"

"According to a 2017 article from Inside Higher Ed, just over **16% more white people graduate from college than hispanics**. As such, these parents are more likely to expect the same from their children and, as such, will push them to take these higher level classes."

"There tends to be a **stereotype** that Latin students **cannot get to the level of other** "superior races, white."

"The school can definitely try and teach in a **different form**. The material can also be more **diverse** as in teaching about different cultures and their background."

General Solutions/ What we need to focus on:

- Encourage/ Allow Special Ed, minority students to take **AP courses**
- Accessible **support** for disadvantaged students
- Improve **communication** with **all** parents
- Train teachers on how to teach diverse learners
- Make **Gifted Education** testing **mandatory** to all students
- Not only enrolling minority students in advanced classes, there is a responsibility to make sure that they receive **support** and **encouragement** to succeed in those classes.



“It’s been about changing the mindset about who is a gifted student, knowing who has the potential but needs a little more support going into it.”

- LIZ PERRY: Gifted Education Coordinator at Case Elementary School

Homelessness

Junior Commissioners Andersen, Heji, Hornbostel, Leddy, Nagappala

Come and attend...

UNHEARD VOICES

A community forum that addresses the state of Homelessness in Sonoma County

Featuring:

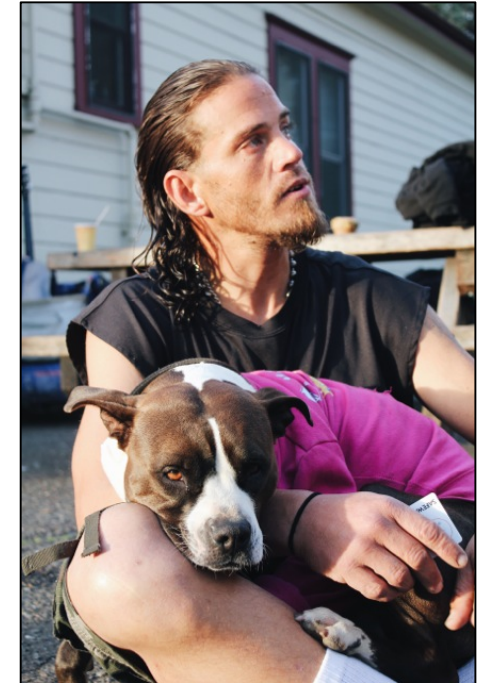
Keynote Speakers:
-Jack Tibbets
-Julie Combs

Unheard Voices Film
Documentary &
Photo Exhibition

Local Organizations:
-The Redwood Gospel Mission
-Habitat for Humanity

April 26th
Chop's Teen Club
6:30-8:00pm

Hosted by the Sonoma County Junior Commission on Human Rights & The Homelessness Ad Hoc Committee



Community Partners

Redwood Gospel Mission, Catholic Charities, SR City Council

Human Trafficking

Junior Commissioners Dai, Lu, Johnson, Kulawiak

"WE NEED TO BETTER EDUCATE OURSELVES, LEARN HOW TRAFFICKERS WORK, AND STOP THE DEMAND. IF YOU CAN STOP THE DEMAND THERE'S NO NEED FOR SUPPLY."

MAYA BABOW, HUMAN TRAFFICKING SURVIVOR ADVOCATE



STRONG SURVIVAL DOCUMENTS HUMAN TRAFFICKING ACTIVIST MAYA'S EXPERIENCES AS A TRAFFICKED YOUTH FROM SONOMA COUNTY

STARTING AT THE AGE OF 12, MAYA OFFERS AN UNFLINCHING AND COURAGEOUS ACCOUNT OF HER EXPERIENCES, EXPLORING THE IMPACT OF THE EMOTIONAL AND PHYSICAL DAMAGE OF HUMAN TRAFFICKING

STRONG SURVIVAL SEEKS TO BRING MORE AWARENESS TO A PERVERSIVE AND OFTEN OVERLOOKED PROBLEM IN SONOMA COUNTY



"I CANNOT COMPREHEND HOW IT IS POSSIBLE FOR HUMANS TO DISRESPECT AND TRAUMATIZE ANOTHER IN SUCH A CRUEL WAY. HOWEVER, I DO KNOW ONE THING: NOW IS THE TIME FOR ALL OF US TO STEP UP AND FINALLY END HUMAN TRAFFICKING."

SHYNIIE LU, FILM DIRECTOR AND JUNIOR COMMISSIONER

STRONG SURVIVAL

SONOMA COUNTY JUNIOR COMMISSION ON HUMAN RIGHTS

#RECOGNIZEYOURROLE



#STRONGSURVIVAL
SONOMA COUNTY JUNIOR COMMISSION ON HUMAN RIGHTS

HUMAN TRAFFICKING: SONOMA COUNTY



HUMAN TRAFFICKING IS THE MODERN DAY MANIFESTATION OF SLAVERY

Traffickers and purchasers of those who are victimized lack a sense of conscience, remorse, and respect for the women, men, children, and youth who are victimized by the atrocities that occur when one is trafficked. Each day in our very own community of Sonoma County more victims are held hostage by human traffickers.

XX SONOMA COUNTY LAW ENFORCEMENT HAVE INVESTIGATED HUMAN TRAFFICKING CASES IN

SANTA ROSA, ROHNERT PARK, PETALUMA, COTATI, AND WINDSOR

XX Victims are usually targeted based on vulnerability. Homelessness, experience in foster care, previous experiences of sexual or domestic violence, and younger age all play a factor in a victim's susceptibility to being trafficked.

XX Perpetrators or "buyers" come from all walks of life and all sorts of backgrounds. Verity's advocates have seen engineers, bankers, brew-masters, jewelers, attorneys, photographers, marijuana growers, laborers, and others. They've seen married men, fathers, single men, and a son-in-law gifting purchased sex to his father-in-law.

The only way to create change in the face of great injustice and danger is to recognize the problem, and address it.

PLEASE SPEAK WITH YOUR STUDENTS AND CHILDREN ABOUT THE DANGERS AND PREVALENCE OF HUMAN TRAFFICKING.

Having honest conversations and establishing networks of trust are invaluable actions that will help end the terrible practice of human trafficking. Organizations such as Verity are working hard to combat this awful abuse of human rights, but only through a community-wide acknowledgement and promise to end this horror can we truly put a stop to human trafficking.

✉ VERITY (SANTA ROSA)
INFO@OURVERITY.ORG
707-546-7273 (24/7 CRISIS LINE)

📺 STRONGSURVIVALFILM.COM
OURVERITY.ORG
SONOMACOUNTY.CA.GOV/COMMISSIONONHUMANRIGHTS/

SONOMA COUNTY JUNIOR COMMISSION ON HUMAN RIGHTS

Community Partners
Verity, Red Cross

Immigrants' Rights

Junior Commissioners Cervantes, Ling, Makaryan

PROTECT IMMIGRANTS
PROTECT CULTURE
PROTECT DIVERSITY
PROTECT AMERICANS
PROTECT STUDENTS
PROTECT YOUR PEERS
PROTECT FAMILIES
PROTECT DREAMERS
PROTECT PEOPLE



-STOP THE TERMINATION OF DACA-
CALL CONGRESS: (478)488 8059

EN CASO DE REDADAS ¿QUÉ PUEDES HACER?



NO ABRAS LA PUERTA

La migra solo puede entrar a tu casa con una orden de arresto emitida por un juez de la corte criminal, o si tu le abres la puerta. ¡No habras la puerta!



GUARDA SILENCIO

Tienes el derecho a permanecer callado/a. Si te confrontan agentes de inmigración, di:

*"Uso mi derecho bajo la quinta enmienda, y tengo el derecho a mantenerme callado/a"



NO FIRMES

No firmes nada que te den los agentes de inmigración.



¡REPORTA Y GRABA!

Reporta inmediatamente al 1-844-363-1423.

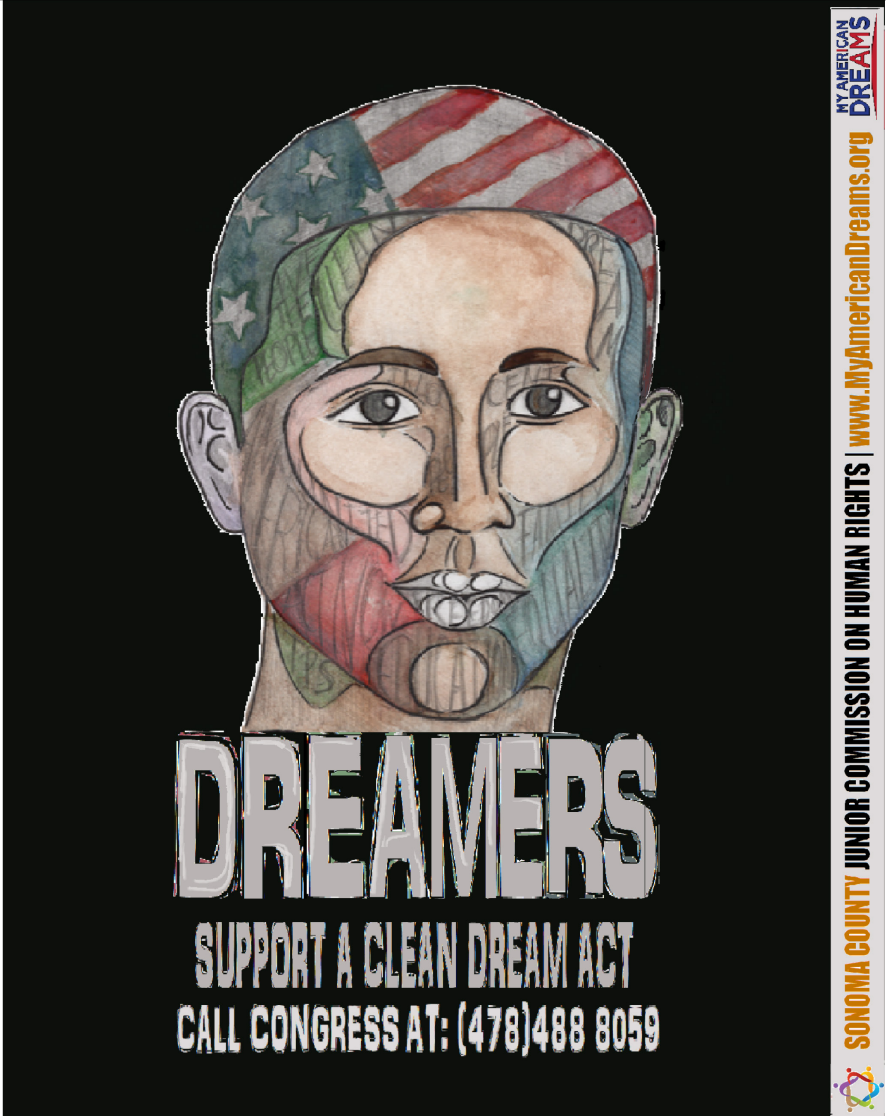
Toma fotos y videos, a menos que estes en suelo federal. Toma notas del número de placa, el número de los agentes, la hora, el tipo de carro, y exáctamente que sucedió.



¡HAZ UN PLAN Y PELEA!

Si inmigración detiene a un ser querido, busca un abogado de confianza, y haz planes para que alguien cuide a tus hijos. Tu puedes pelear un caso de detención y tal vez recibir una fianza. Únete a un equipo local para defenderte de la migra.

Mural Project: DREAMer Art by Junior Commissioner Makaryan



Immigrants' Rights

What Are Immigrants' Rights?

The fundamental constitutional protections of due process and equal protection embodied in our Constitution and Bill of Rights apply to every person, regardless of immigration status.



What Is DACA? Why Is It Important

Requirements for DACA

- Came to the United States before their 16th birthday
- Have lived continuously in the United States since June 15, 2007
- Have completed high school or a GED, have been honorably discharged from the armed forces, or are enrolled in school
- Have not been convicted of a felony or serious misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety



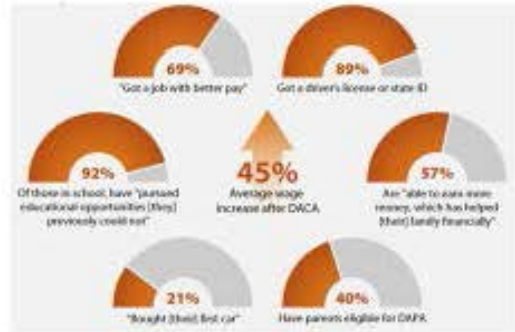
Myths About Immigrants

- **Undocumented immigrants could come the legal way, but choose to be here illegally.**
- Essentially there is no way to immigrate legally for the overwhelming majority of them
- **Immigrants receive a lot of public benefits and therefore are a huge drain on our society's resources**
- Generally speaking, immigrants come to work and to reunite with family members; the ratio between immigrant use of public benefits and the amount of taxes they pay is consistently favorable to the U.S.



What Is DACA? Why is it Important

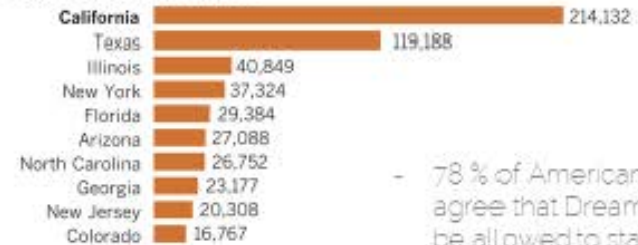
Benefits:



What Is DACA? Why is it Important

California has the most DACA recipients

Top 10 states of residence



- Estimated 6,000 DACA eligible in Sonoma County

- 78% of American voters agree that Dreamers should be allowed to stay in the country.

Can we stop its Termination?

To call Senators:

(202) 224-3121

Mike McGuire: 707-468-8914

senator.mcguire@sen.ca.gov

Marc Levine:

assemblymember.levine@assembly.ca.gov

3501 Civic Center Drive, Room

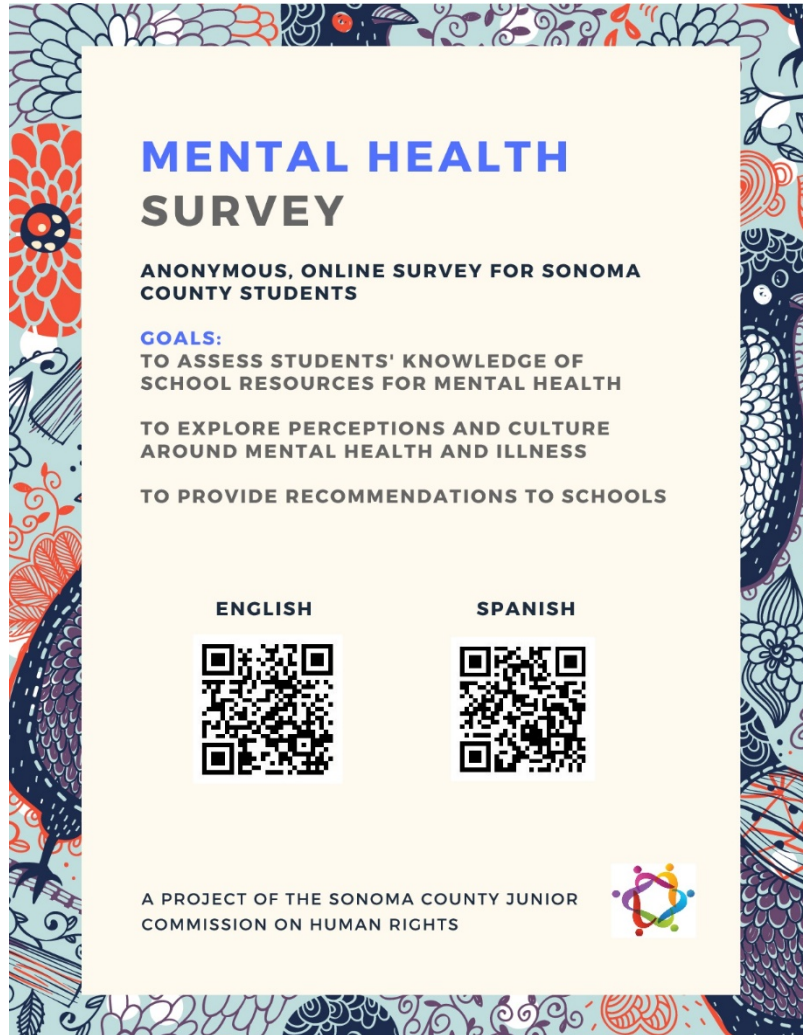
412 San Rafael, CA 94903

Mike Thompson: (202) 225-3311



Mental Health and Illness

Junior Commissioners Nadler, Talcott





MENTAL HEALTH SURVEY

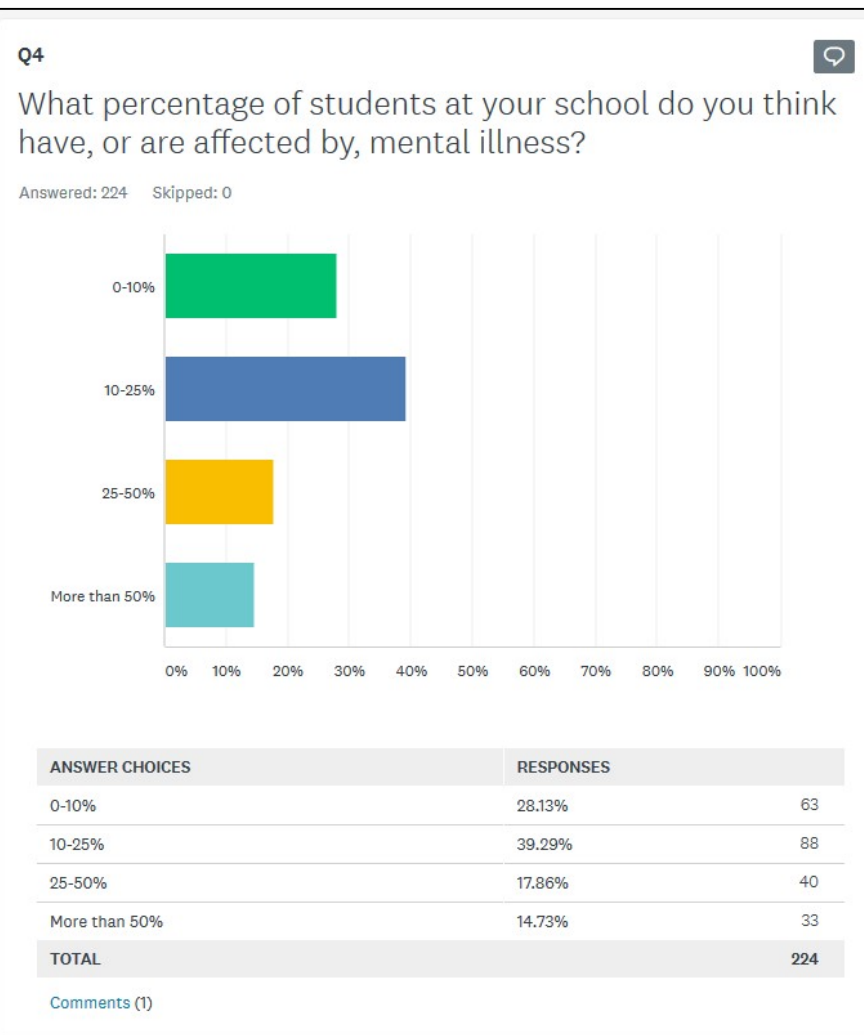

ANONYMOUS, ONLINE SURVEY FOR SONOMA COUNTY STUDENTS

GOALS:
TO ASSESS STUDENTS' KNOWLEDGE OF SCHOOL RESOURCES FOR MENTAL HEALTH
TO EXPLORE PERCEPTIONS AND CULTURE AROUND MENTAL HEALTH AND ILLNESS
TO PROVIDE RECOMMENDATIONS TO SCHOOLS

ENGLISH **SPANISH**



A PROJECT OF THE SONOMA COUNTY JUNIOR COMMISSION ON HUMAN RIGHTS

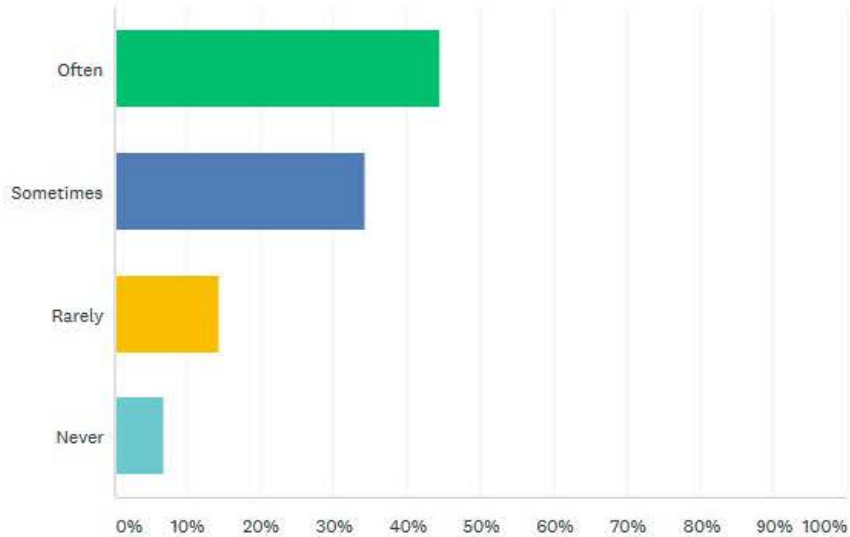


Q8



Have you seen others use mental illness to describe themselves in a way that does not apply to the actual illness? (An example could be “I am so OCD” when someone is talking about how they like things to be neat.)

Answered: 222 Skipped: 2



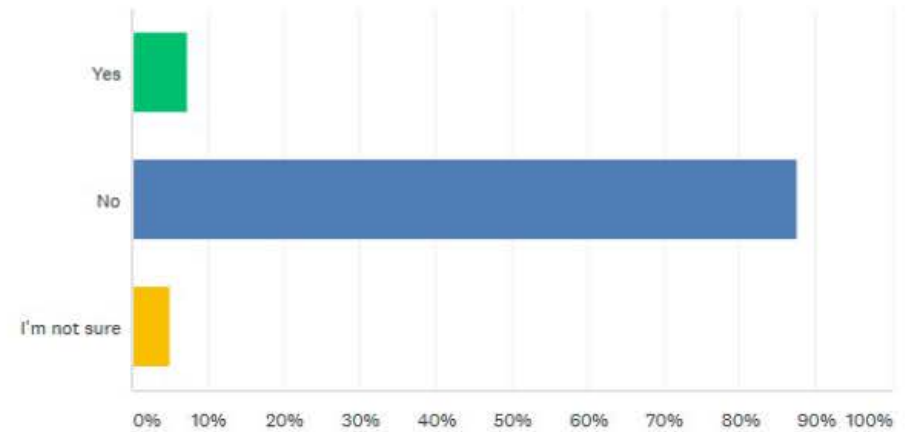
ANSWER CHOICES	RESPONSES	
Often	44.59%	99
Sometimes	34.23%	76
Rarely	14.41%	32
Never	6.76%	15
TOTAL		222

Q10



Do you think labeling people by their mental illness is appropriate?

Answered: 218 Skipped: 6



ANSWER CHOICES	RESPONSES	
Yes	7.34%	16
No	87.61%	191
I'm not sure	5.05%	11
TOTAL		218

Q6



What could your school do better to help students with their mental health?

Answered: 212 Skipped: 12

Treat everyone with respect and have equal opportunities

4/18/2018 10:09 AM

have a mental health awareness day, have a room/designated person.

4/18/2018 10:07 AM

calm down on the pressure and make sure everyone has a friend in the class

4/18/2018 10:06 AM

More education

4/18/2018 10:04 AM

Talk to the students

4/18/2018 10:03 AM

Q6



What could your school do better to help students with their mental health?

Answered: 212 Skipped: 12

Talk to the students

4/18/2018 10:03 AM

Have someone to look out and reach out if someone is seen possibly struggling.

4/18/2018 10:03 AM

Address it and acknowledge that individuals who do feel isolated because of it, are not alone and there are reputable resources to assist them with whatever they're going through. Educate students about mental health because there are actual children who are possibly suffering because they don't understand their condition.

4/18/2018 10:03 AM

We could have more education directly related to mental health and more education about the resources available to us on campus.

4/18/2018 10:00 AM

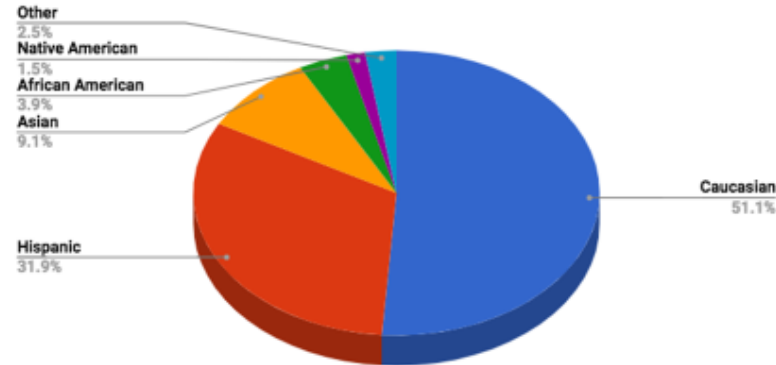
Racial Equality and Justice

Junior Commissioners Barrales, Garay, Kinsella, Patel, Sullivan

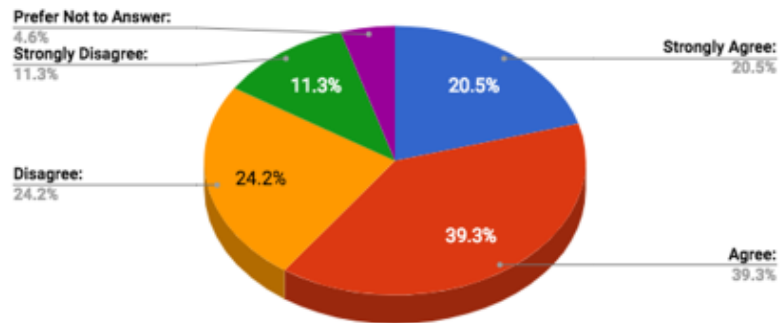
“Someone called my friend a racist name and threatened to reenact Hiroshima and Nagasaki.”

- Maria Carrillo High School student

Ethnicities of survey takers



Students who have witnessed/heard of cases of verbal discrimination against racial minorities at their school.



“People wearing ‘Make Casa Great Again’ hats, coats and shirts.
People chanting go back to Mexico in the quad area.
People wearing shirts that said ‘go back to Mexico’.
People getting away with physical and verbal abuse and harassment after being told repeatedly not to.”

- Casa Grande High School Student

Participating Schools

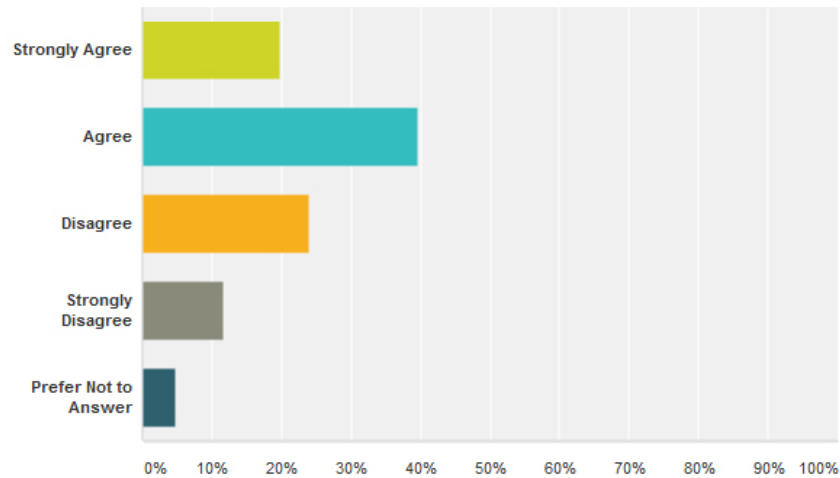
Analy
Cardinal Newman
Carpe Diem
Casa Grande
Credo
El Molino
Headwaters
Healdsburg
Maria Carrillo
Montgomery
Orchard View
Petaluma
Piner
Rancho Cotati
San Antonio
Santa Rosa
Sonoma Mountain
Sonoma Valley

59.5% of those surveyed note issues with verbal discrimination at school.

Q9

I have witnessed/heard of cases of verbal discrimination against racial minorities at my school.

Answered: 529 Skipped: 0



Answer Choices	Responses	Count
Strongly Agree	19.85%	105
Agree	39.70%	210
Disagree	24.01%	127
Strongly Disagree	11.72%	62
Prefer Not to Answer	4.73%	25
Total		529

Community Partner: Save Your VI

#SaveYourVI
KNOW YOUR RIGHTS AT SCHOOL



What to do if you are harassed* (bullied) at school

Students:

*What is harassment?

It's when someone or some people keep saying or doing something to a student even if the student doesn't want them to and has tried to stop it. It's illegal under federal law. Students at any age level have the right not to be harassed.

Title VI states that:

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."



Gender is protected under Title IX and is also under the jurisdiction of the Office for Civil Rights.

<http://www2.ed.gov/about/offices/list/ocr/docs/hq43e4.html>

HARASSMENT IS NOT YOUR FAULT.

You have a protected right to feel safe at school.

It is the right of all students to be free from discrimination from others—other kids or adults—at school.



Write it down

1

Keep notes, make an incident report
Always make a copy (or write it twice).



Tell someone at home

2

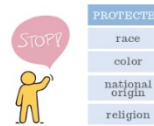
Talk to a parent or trusted adult
Tell someone the first time it happens.



Tell someone at school

3

Notify the school administration about the situation and request, specifically, that they "stop the harassment."



Parents:

What parents can do for any adult if a child reports harassment to you:

Talk to your student to make sure you have all the details of the incident(s). Have your student fill out the Campus Climate Check-Up.

1: NOTIFY THE SCHOOL ADMINISTRATION

Your student's school is required to initiate an internal grievance procedure upon notice of harassment. You may use their procedure AND/OR file an OCR complaint to address an inadequate response to your student's complaints.


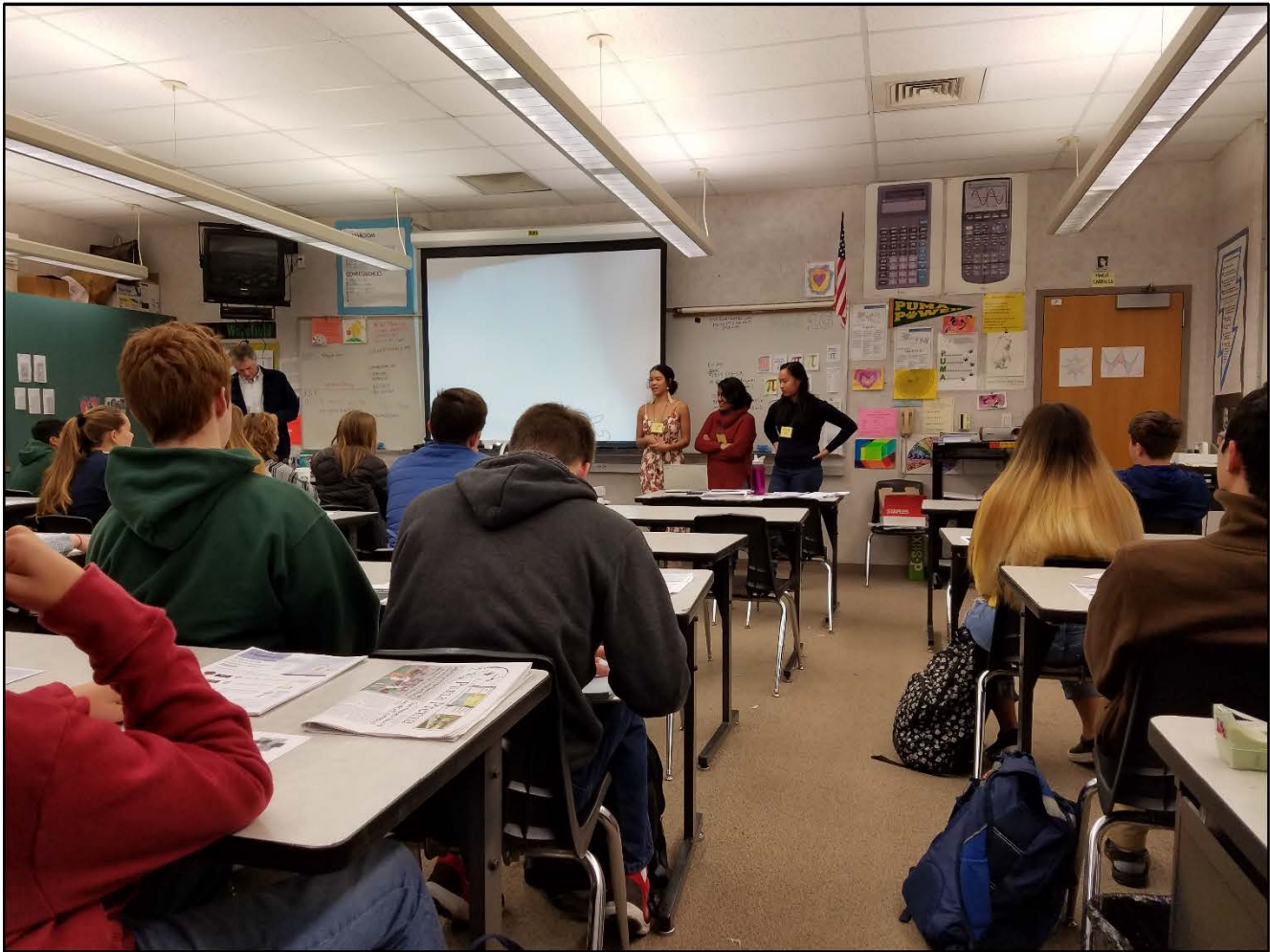
2: FILE AN OFFICE OF CIVIL RIGHTS (OCR) COMPLAINT

Anyone who believes an act of discrimination on the basis of race, color or national origin has occurred against any person or group may file a complaint with OCR under Title VI. The person filing need not be the victim of the alleged discrimination. Complaint letters should explain: who was discriminated against, in what way, by whom, when it took place, who was harmed, and who to contact for more info.

For more info go to:


SonomaCountyRacialJustice.org | SaveYourVI.org | info@safeyourvi.org

Maria Carrillo HS Day of Dialogue



REAL HUMANS OF SONOMA COUNTY

OUR GOAL IS TO SIMPLY SPREAD UNDERSTANDING AND LOVE NOT ONLY IN THE SONOMA COUNTY COMMUNITY, BUT GLOBALLY.



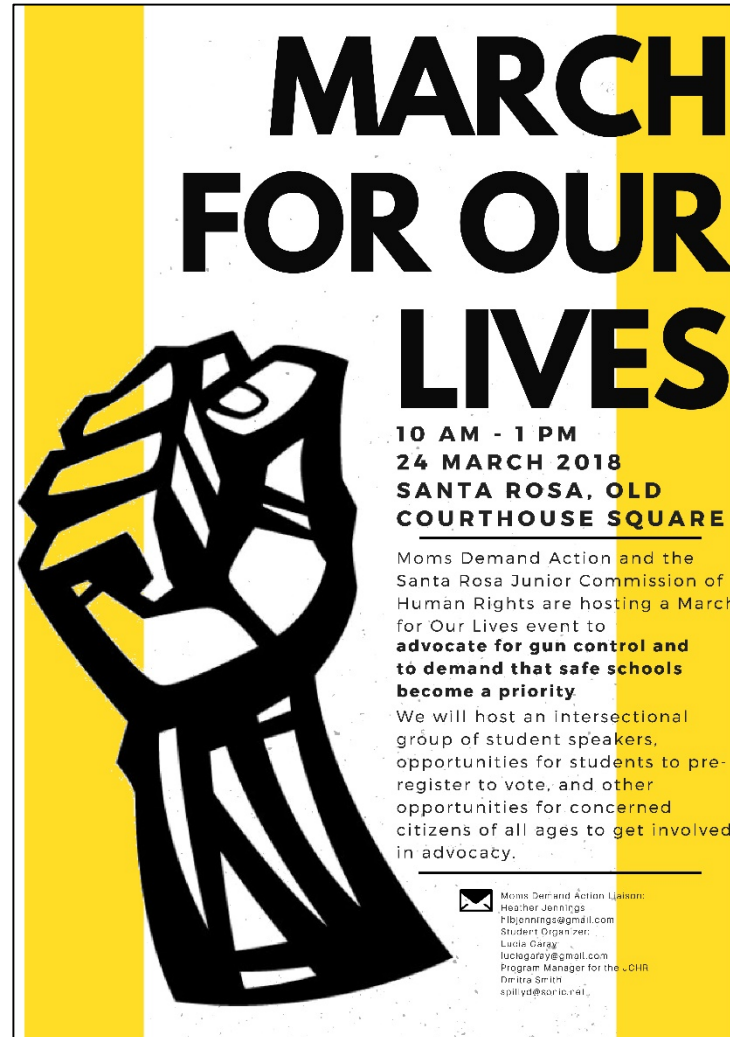
[FACEBOOK.COM/REALHUMANSOFSONOMACOUNTY](https://facebook.com/realhumansofsonomacounty)

A PROJECT OF THE RACIAL EQUALITY AND JUSTICE COMMITTEE

SONOMA COUNTY JUNIOR COMMISSION ON HUMAN RIGHTS

Sonoma County March For Our Lives Rally

Graphics by Junior Commissioner Casey Dai



Estimates of 2,000-5,000 attendees
Partners: Petaluma Moms Demand Action & Students Demand Action

Junior Commissioner and Lead Organizer Lucia Garay



Junior Commissioner Pavel Cervantes



Junior Commissioner Rima Makaryan and Latinx Student Congress member Diana Pacheco



Junior Commissioner Tara Sullivan



Junior Commissioners Torres, Garay, Cervantes, Makaryan, Dai and
Petaluma Students Demand Action organizer Tallulah Lefkowitz



Year End Field Trip

SF Youth Commission, City Hall – Human Rights Watch San Francisco Field Office



**From 2013-2018
we have mentored over 70 students
through the Junior Commission program
Thank you for your support!**





County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 46
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors of Sonoma County

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Board of Supervisors and Department of Health Services

Staff Name and Phone Number:

Supervisor James Gore, 565-2241;
Barbie Robinson, 565-7876

Supervisorial District(s):

Title: Health Care District Month 2018

Recommended Actions:

Adopt a resolution proclaiming May 2018 as Health Care District Month in Sonoma County.

Executive Summary:

This item requests that the Board adopt a resolution proclaiming May 2018 as Health Care District Month in Sonoma County. The following six health care districts currently serve Sonoma County: Cloverdale Health Care District, North Sonoma County Healthcare District, Palm Drive Health Care District, Petaluma Health Care District, Sonoma Valley Health Care District, and Coast Life Support District.

Discussion:

Shortly after the end of World War II, California faced a severe shortage of hospital beds. Many of the more rural and undeveloped areas of the state had almost no access to basic hospital and health care services. To respond to the inadequacy of acute care services in the non-urban areas of the state, the California legislature enacted the Local Hospital District Law in 1945 (§ 32000 et seq. of the Health and Safety Code). The intent was to give rural, low-income areas without ready access to hospital facilities a source of tax dollars that could be used to construct and operate community hospitals and health care institutions, and, in medically underserved areas, to recruit physicians and support their practices (e.g., subsidies, office space, and equipment).

The Local Hospital District Law allowed communities to create a new governmental entity, independent of local and county jurisdictions that had the power to impose property taxes, enter into contracts, purchase property, exercise the power of eminent domain, issue debt, hire staff, and so forth. Typically, the process of creating a hospital district began with a group of citizens in a community or cluster of communities identifying the need for improved access to medical care. Boundaries for a proposed hospital district were usually based on the distance between the communities and the closest available acute care hospital services. Community leaders organized grassroots campaigns to gather support from

the majority of residents in a designated area. That designated area could be within a county, near another underserved area in the county (districts do not need to encompass contiguous areas), or could overlap two counties. In fact, a few of the current health care districts, such as Coast Life Support District, do cross county boundaries.

The first hospital districts were formed in 1946, with several more districts being formed in the late 1940s, and associated hospitals beginning to open in the early 1950s. In 1951, in a response to the needs of these new districts, a new trade organization, the Association of California Healthcare Districts, was formed. Association of California Healthcare Districts' objective was to educate new hospital board members and provide a statewide forum for legislative advocacy. Today that group represents 66 of the 85 health care and hospital districts, both large and small, throughout the state.

Currently, California's 78 health care districts can be found throughout the state, in both urban and rural settings and offering a variety of services including community grant making, chronic disease management education, senior services, ambulance services, primary care clinics, dental clinics, nutritional counseling, physical education, long term care/skilled nursing, senior housing, and acute hospital care. In many instances, health care districts are the sole source of health care in the community; serving as an integral part of the safety net for the state's uninsured/underinsured. In 1994, in recognition of the rapidly expanding role of hospital districts, the state legislature broadened the scope of activity of the districts and renamed the statute to its current reference, Local Health Care District Law.

The following six health care districts currently serve Sonoma County:

Cloverdale Health Care District - The Cloverdale Health Care District is a local government entity, formed in 1958 by a vote of the greater Cloverdale area. The district provides emergency ambulance service to an 85 square mile response area, responding to over 900 calls for service per year. The Cloverdale Health Care District ambulance provides the only paramedic level patient care in Northern Sonoma County and also provides services to parts of Southern Mendocino County. These services include pre-hospital critical care with transport to local and specialty hospitals based on the patient's care requirements. The district's team approach between their agency, other local responder agencies, and specialty hospitals allows them to diagnose and treat heart attack, stroke, and trauma patients at the scene and obtain appropriate services in a timely fashion to save lives and ensure quality of life. The district's focus is to provide essential services to a medically underserved area and to work in cooperation with and to help facilitate care among limited local services.

North Sonoma County Healthcare District - North Sonoma County Healthcare District, located in Healdsburg, was formed in 2001 and has operated the Healdsburg District Hospital (founded in 1905) since 2002. The North Sonoma County Healthcare District is mainly comprised of Windsor, Healdsburg, Geyserville, Cloverdale, and the surrounding areas, totaling approximately 60,000 residents. The hospital currently serves over 10,000 patients a year.

Palm Drive Health Care District - Palm Drive Health Care District, located in Sebastopol, was formed in April 2000. The district operates Sonoma West Medical Center, a 25-bed community hospital, which include a physician-staffed around-the-clock emergency department with an operating room, critical care, and medical surgical unit. The hospital has active research related to Alzheimer's and provides telemedicine services. The district partners with West County Health Centers to provide additional in-home support services in the Russian River Community, more complex wound care at West County Health Centers, facilitation of the Health Action Group for the Russian River Area, and an increase in

West County Health Centers hours to weekends and evenings. The district serves approximately 50,000 people who live in western Sonoma County, including the communities of Sebastopol, Graton, Forestville, Bodega Bay, Carmet, Salmon Creek, Jenner, Duncan's Mills, Guerneville, Occidental, Freestone, Rio Nido, Monte Rio, Guerneville Park, Summerhome, and Mirabel Park.

Petaluma Health Care District - The Petaluma Health Care District was established in 1946 and works to improve the health and well-being of Southern Sonoma county residents through leadership, advocacy, support, partnerships and education. Petaluma Health Care District owns Petaluma Valley Hospital and leases hospital operations to St. Joseph's Health, ensuring access to local quality acute and emergency hospital services benefitting the community. Petaluma Health Care District serves as a community leader and local Health Action Chapter to support a countywide effort to make Sonoma County the healthiest county in California by 2020, which includes identifying community health priorities and addressing the social determinants of health, inequities, and disparities that exist and impact the well-being of the community. Petaluma Health Care District's efforts in improving the health and well-being of the people of Southern Sonoma County led to their being named 2015 Health Care District of the Year by the Association of California Healthcare Districts and also to being recognized as a HeartSafe Community.

Sonoma Valley Health Care District - The Sonoma Valley Health Care District was formed in 1946 and this year celebrates its 70th anniversary. Its mission is to maintain, improve, and restore the health of everyone in the community. The District operates Sonoma Valley Hospital, a 75-bed, full-service acute care hospital, located in the heart of the city of Sonoma and serving the 40,000 residents of the Sonoma Valley. The Hospital provides a broad range of health care services, with medical treatment extending to all but the most specialized issues. It also has a commitment to wellness, promoting improved health and wellbeing both in the Hospital and the community. Recently, the Hospital was extensively renovated and expanded, adding a new wing with a modern Emergency Department and Surgery Center.

Coast Life Support District - The Coast Life Support District was formed in 1986 following special California state legislation and a local election to form a new multi-county agency. Coast Life Support District provides emergency medical services, including emergency ambulance and life support services and other health-related services to a specified area within Sonoma and Mendocino Counties. From the center of the district, the closest medical facilities with 24-hour emergency medical care are a minimum of 1.5-2 hours travel time traversing the coast highway. Due to the longest transports in California to tertiary care, district paramedics routinely provide more comprehensive stabilization and in-transport care than the standard protocols of their urban counterparts. Coast Life Support District's mission is providing and promoting high quality healthcare services, facilities, emergency care and health education to all district residents and visitors. They work collaboratively with their community's Federally Qualified Health Center (one of only four non-hospital facilities designated by the California Emergency Medical Services as an Interim Stabilization and Triage Designation) allowing them to receive ambulance transports. A high percentage of these patients are treated and released locally, thereby minimizing unnecessary transports, avoiding additional clogging of already impacted emergency rooms, and allowing paramedics to stay in the area to be available for other emergencies.

Prior Board Actions:

Most recently, on May 2, 2017 the Board adopted a Gold Resolution Proclaiming May 2017 as Health Care District Month in Sonoma County.

Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community			
Recognizing Health Care District Month in Sonoma County serves to improve community awareness of the work and importance of local health care districts.			
Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures	0	0	0
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources	0	0	0
Narrative Explanation of Fiscal Impacts:			
There is no fiscal impact associated with this item.			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
N/A			
Attachments:			
Resolution			
Related Items "On File" with the Clerk of the Board:			
None			



County of Sonoma

State of California

Date: May 8, 2018

Item Number: _____
Resolution Number: _____

4/5 Vote Required

Resolution of the Board of Supervisors of the County of Sonoma, State of California, Proclaiming May 2018 as Health Care District Month in Sonoma County

Whereas, health care districts are public entities that provide community-based health care services that are important to improving and protecting the quality of life for all Californians;

Whereas, health care districts were created after World War II to address a shortage of access to acute hospital care for many areas of the state, particularly rural areas of California. In 1994 Legislature enacted state law to rename hospital districts as health care districts to better reflect the focus of health care provision outside of hospital settings;

Whereas, health care districts have continued to evolve along with the changing health care environment and collectively provide a wide range of services, which include hospital services, emergency and ambulatory care, community health, wellness and preventative programs and services, skilled nursing and long-term care, community and rural health clinics, ambulance services, adult day care, senior housing and nutritional support, chronic disease management, health education, medical transportation, home health, and hospice;

Whereas, Sonoma County health care districts currently include:

1. Cloverdale Health Care District, located in Cloverdale and formed in 1958
2. North Sonoma County Healthcare District, located in Healdsburg and formed in 2001
3. Palm Drive Health Care District, located in Sebastopol and formed in 2000
4. Petaluma Health Care District, located In Petaluma and formed In 1946
5. Sonoma Valley Health Care District, located in Sonoma and formed in 1946
6. Coast Life Support District, located in Gualala and formed in 1986

Whereas, each health care district is uniquely focused on the unique needs of the community it serves. Health care districts utilize varying revenue streams, workforce sizes, services offered, and geographic locations to cater to the health services most needed by their communities.

Now, Therefore, Be It Resolved that the Board of Supervisors of the County of Sonoma does hereby proclaim May 2018 as Health Care District Month in Sonoma County.

Resolution #
Date: May 8, 2018
Page 2

Supervisors:

Gorin:

Rabbitt:

Zane:

Hopkins:

Gore:

Ayes:

Noes:

Absent:

Abstain:

So Ordered.



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 47
(This Section for use by Clerk of the Board Only.)

To: The Board of Supervisors of Sonoma County

Board Agenda Date: May 8, 2018

Vote Requirement: No Vote Required

Department or Agency Name(s): Sheriff's Office

Staff Name and Phone Number:

Julie Bertoli, 565-1469

Supervisorial District(s):

All Supervisorial Districts

Title: 2018 National Correctional Officers and Employees Week

Recommended Actions:

Adopt a Gold Resolution designating May 6 through May 12, 2018 as National Correctional Officers and Employees Week in Sonoma County, to recognize the efforts of all Correctional staff in keeping our communities safe.

Executive Summary:

Sheriff Rob Giordano, on behalf of the correctional employees of Sonoma County Sheriff's Office, is requesting the Board of Supervisors adopt a Gold Resolution designating May 6, 2017 through May 12, 2018 National Correctional Officers and Employees Week.

Discussion:

The annual observation of National Correctional Officers' Week began in 1984 when President Ronald Reagan signed Proclamation 5187 creating National Correctional Officers' Week to recognize the men and women who work in jails, prisons, and community corrections across the country. National Correctional Officers and Employees Week became the official name of the first full week in May when, in 1986, the U.S. Senate officially changed the name from "National Correctional Officers' Week".

In recent years, the duties of the Sonoma County correctional staff have become increasingly complex and demanding. They are called upon to simultaneously fill custodial, supervisory, and counseling roles. Since the implementation of AB 109/Realignment in October 2011, the size and make up of Sonoma County's inmate population has significantly changed. The makeup of the population now includes more violent, mentally ill, and high-risk offenders with longer stays.

There is a tremendous amount of work that goes into operating detention facilities that is carried out by sworn correctional staff as well as detention support staff that includes janitors, detention assistants, legal processors, kitchen, and healthcare staff.

The professionalism, dedication, and courage exhibited by the Sonoma County correctional employees throughout the performance of these demanding and often conflicting, challenging roles, and amidst historical staffing shortages deserve our utmost respect. It is appropriate that we honor the many contributions and accomplishments of these men and women who are a vital component in the field of corrections.

The resolution before you is requested to provide Sonoma County the opportunity to recognize the complex, dangerous, and challenging responsibilities carried out by each and every staff member inside our detention facilities. Correctional employees take on an enormous level of both personal and professional responsibility each day they come to work. We respectfully request that the Board honor and recognize the dedication and commitment of these employees and thank the selfless men and women who serve within our detention facilities each day. We encourage all our residents to join in recognition and appreciation of the outstanding professional service correctional employees provide to insure the safety and welfare of our community.

Prior Board Actions:

Since 2014, the Sonoma County Board of Supervisors has proclaimed the first full week in May, National Correctional Officers and Employees Week.

Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community

Correctional deputies and detention employees play a critical role in the goal of providing a safe, healthy, and caring community. Taking time to recognize the service of correctional employees reinforces the County’s commitment to this goal and acknowledges the personal sacrifices of correctional employees required to achieve this goal.

Fiscal Summary

Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			

Narrative Explanation of Fiscal Impacts:

No Fiscal Impact

Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
Gold Resolution			
Related Items “On File” with the Clerk of the Board:			



County of Sonoma
State of California

Date: May 8, 2018

Item Number: _____
Resolution Number: _____

4/5 Vote Required

**Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California,
Proclaiming May 6 through May 12, 2018 as National Correctional Officers and Employees
Week in Sonoma County**

Whereas, correctional officers have the difficult and often dangerous assignment of ensuring the custody, safety, and well-being of over two million inmates in our Nation's prisons and jails; and

Whereas, the duties of the correctional officers and employees are complex and demanding, requiring correctional officers to fill, simultaneously, custodial, supervisory, and counseling roles; and

Whereas, correctional officers provide an essential role in our community's public safety. The professionalism, dedication, and courage exhibited by correctional officers and correctional employees through-out the performance of their demanding and often conflicting roles deserve our utmost respect; and

Whereas, in 1984, President Ronald Regan, signed Proclamation 5187, creating "National Correctional Officers' Week." The first full week in May has since been recognized as National Correctional Officers' Week to honor the work of correctional officers and correctional personnel nationwide; and, in 1996, Congress officially changed the name of the week to National Correctional Officers and Employees Week; and

Whereas, members of Sonoma County's community recognize and understand the complex, dangerous, and challenging responsibilities carried out by every staff member inside our detention facilities; and

Now, Therefore, Be It Resolved that the Sonoma County Board of Supervisors does hereby proclaim May 6, 2018 through May 12, 2018 as National Correctional Officers and Employees Week in the County of Sonoma; and strive to raise awareness in the community, express appreciation for the County of Sonoma's correctional officers and employees, and recognize the dedication and commitment of our correctional officers and employees who continue to serve each day.

Resolution #

Date:

Page 2

Supervisors:

Gorin:

Rabbitt:

Gore:

Hopkins:

Zane:

Ayes:

Noes:

Absent:

Abstain:

So Ordered.



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 48
(This Section for use by Clerk of the Board Only.)

To: Sonoma County Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Sonoma County Tourism

Staff Name and Phone Number:

Claudia Vecchio (707) 522-5804

Supervisorial District(s):

Title: Gold Resolution Recognizing May 2018 as National Travel and Tourism Month

Recommended Actions:

Adopt a gold resolution recognizing May 2018 as Sonoma County Travel and Tourism Month

Executive Summary:

Adopt a gold resolution recognizing May 2018, as Sonoma County Travel and Tourism Month

Discussion:

Sonoma County Tourism is asking the Board to adopt a gold resolution recognizing May 2018 as Travel and Tourism Month in Sonoma County, in recognition of an annual tradition for the travel community in the U.S.

Sonoma County Tourism joins with U.S. Travel, the non-profit organization that represents all components of the \$990 billion travel industry in the United States, the entity that celebrates National Travel and Tourism Week (NTTW). This year marks the 35th anniversary of the 1983 congressional resolution that established NTTW.

National Travel and Tourism Week is a time when travel and tourism professionals across the country unite to celebrate the value travel holds for our economy, businesses, and personal well-being.

Millions of visitors come to Sonoma County annually, and overnight visitors spend about \$389 per day, less than half of which is typically spent on lodging. Roughly 90 percent of Sonoma County's visitors are from within the United States. The 10 percent of international visitors to Sonoma County mainly hail from Canada, Western Europe, Mexico, Australia, New Zealand, Japan, and Korea.

Each year, Sonoma County's hospitality industry generates \$1.93 billion in destination spending; collects \$158.4 million in government revenue and employs 20,410 people.

Around one in 10 people are employed by tourism and hospitality businesses in Sonoma County. In fact, 82 percent of Sonoma County tourism businesses are small (fewer than 25 employees); 91 percent of tourism businesses are locally owned, only eight percent of these are franchises; and 39 percent have been in business for more than 20 years, 40 percent have been in business for 10 or fewer years.

Last year, Sonoma County Tourism celebrated National Travel and Tourism Week by launching Sonoma County Tourism Cares: More than 60 Sonoma County hospitality professionals celebrated by volunteering an estimated 250 hours to area non-profit agencies.

Prior Board Actions:

Strategic Plan Alignment Goal 2: Economic and Environmental Stewardship

Sonoma County Tourism’s mission is to promote overnight stays and encourage tourism within Sonoma County. The organization envisions a robust economy for Sonoma County businesses and residents amplified by results-driven tourism planning and marketing. It exists as part of a countywide matrix of economic development entities, government, and private businesses that work to promote and manage the area for the travel and tourism segment.

Fiscal Summary

Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			

Funding Sources

General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			

Narrative Explanation of Fiscal Impacts:

Staffing Impacts

Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)

Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
Attachment 1: Gold Resolution for National Travel and Tourism Month, May 2018			
Related Items "On File" with the Clerk of the Board:			



County of Sonoma State of California

Date: May 8, 2018

Item Number: _____
Resolution Number: _____

4/5 Vote Required

Gold Resolution of The Board of Supervisors of The County of Sonoma, State of California,

Whereas, the hospitality and tourism industry in Sonoma County employs over 20,400 people and comprises more than one in 10 jobs; and

Whereas, Sonoma County's hospitality industry generates \$1.93 billion in destination spending and collects \$158.4 million in government revenue annually; and

Whereas, 82 percent of Sonoma County tourism businesses are small (fewer than 25 employees); 91 percent of tourism businesses are locally owned; 39 percent have been in business for more than 20 years; and 40 percent have been in business for 10 or fewer years; and

Whereas, U.S. Travel Association, the non-profit organization that represents all components of the \$990 billion travel industry in the United States, has designated May 6-12, 2018, the 35th National Travel and Tourism Week; and

Whereas, the National Travel and Tourism Week is a time when travel and tourism professionals across the country unite to celebrate the value travel holds for our economy, businesses, and personal well-being; and

Now, Therefore, Be It Resolved that we, the *County of Sonoma, California*, in recognition and support of the contributions made by the hospitality and tourism industry in Sonoma County do hereby proclaim May, 2018 as Sonoma County Travel and Tourism Month.

Supervisors:

Gorin:	Rabbitt:	Zane:	Hopkins:	Gore:
Ayes:	Noes:	Absent:	Abstain:	

So Ordered.



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 49
(This Section for use by Clerk of the Board Only.)

To: The Board of Supervisors of Sonoma County

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Human Services Department and Department of Health Services

Staff Name and Phone Number:

Kim Seamans, Human Services Department, 707-565-2198
Anthony Taylor, Department of Health Services, 707-565-6624

Supervisorial District(s):

Countywide

Title: CalFresh Awareness Month

Recommended Actions:

Adopt a resolution declaring May 2018 as CalFresh Awareness Month in Sonoma County.

Executive Summary:

The designation of May 2018 as CalFresh Awareness Month is a collaborative effort across Sonoma County to highlight the benefits of the federal Supplemental Nutrition Assistance Program (SNAP) to increase access and participation in food assistance, to reduce hunger, and to promote good nutrition and physical activity. The California Department of Social Services, as well as counties throughout the state, traditionally celebrate CalFresh Awareness month in May each year.

Discussion:

In Sonoma County, there are three components of Supplemental Nutrition Assistance Program (SNAP): CalFresh benefits, SNAP education (SNAP-Ed), and CalFresh vendors. While CalFresh vendor enrollment and oversight is coordinated by the State of California, various County and non-profit organizations coordinate CalFresh benefits and/or SNAP-Ed efforts in Sonoma County, including the Human Services Department, the Department of Health Services, Catholic Charities of the Diocese of Santa Rosa, Petaluma Bounty, Redwood Community Healthcare Coalition, Redwood Empire Food Bank, Area Agency on Aging, the Northern Center for Well-Being and 211-Sonoma. Among other efforts, this partnership seeks to raise awareness and improve utilization of CalFresh benefits and healthy nutrition practices in Sonoma county.

CalFresh benefits are critical to healthy nutrition for many county residents. CalFresh benefits supplement household food budgets, allowing families to put healthy and nutritious food on the table. In Sonoma County 27,325 people receive CalFresh benefits. Of these beneficiaries:

- 42% are children under 21
- 13% are seniors age 60 and above
- 10% are homeless
- 6% are lawful immigrants

CalFresh generates over 6 million dollars annually into Sonoma County's local economy (\$1.79 in economic activity for every \$1 of CalFresh money spent). This helps local farmers markets and Community Supported agriculture and grocers sustain jobs in our community.

Sonoma County's SNAP-Ed program seeks to improve the likelihood that persons eligible for CalFresh will make healthy food and physical activity choices within a limited budget consistent with the current *Dietary Guidelines for Americans* and *Physical Activity Guidelines for Americans*. Sonoma County's SNAP-Ed program focuses on preventing nutrition and activity-related chronic diseases and improving food security among persons eligible for CalFresh by:

- Supporting low resourced schools to develop and implement school wellness policies and programs to support improved nutrition and physical activity behaviors among students, parents, and teachers.
- Providing nutrition education to children, their families and community members as well as vulnerable populations, such as seniors, homeless, and migrants.
- Increasing access to and promoting healthy foods and beverages, including fresh produce at neighborhood retail stores, alternative food sites (such as farmers' markets and community gardens), and emergency food sites (such as food pantries) through adopted and implemented policy and physical site changes.

The Human Services Department and the Department of Health Services partner with community organizations and agencies to provide outreach, education, or enrollment services throughout Sonoma County. Collaboration is central to reaching out to the communities where the need is greatest.

The following activities will take place during CalFresh Awareness Month:

- CalFresh Awareness Month kick-off event at the Redwood Empire Food Bank.
- Fresh fruit cart in Human Services Department lobbies throughout the month.
- Rethink Your Drink local event to coincide with the state-wide Rethink Your Drink campaign on May 16, 2018.
- Farmers Market L.I.F.E (Local Incentive for Food and Economy) market match program for CalFresh customers increased to a maximum of \$20 at all participating Farmers Markets for the month of May.
- Launch of new promotional efforts to increase attendance at SNAP-Ed nutrition education classes for adults and use of CalFresh benefits at farmers' markets that offer the market match program.
- Launch of campaign to encourage the use of meal planning tools, healthy recipes and weekly email health tips from EatFresh.org.
- Launch of the 2018 Senior Farmer's Market Nutrition Program (SFMNP) in Sonoma County, providing low-income older adults with \$20 coupons to purchase fresh fruits and vegetables at local Farmer's Markets through November 2018.

Prior Board Actions:			
On May 2, 2017, the Board adopted a resolution recognizing CalFresh Awareness Month.			
Strategic Plan Alignment Goal 4: Civic Services and Engagement			
To publically recognize the benefits of the federal Supplemental Nutrition Assistance Program (SNAP) and CalFresh in Sonoma County.			
Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures	0	0	0
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources	0	0	0
Narrative Explanation of Fiscal Impacts:			
N/A			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
N/A			
Attachments:			
Resolution			
Related Items "On File" with the Clerk of the Board:			
None			



County of Sonoma

State of California

Date: May 8, 2018

Item Number: _____

Resolution Number: _____



4/5 Vote Required

Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California, Declaring May 2018 as CalFresh Awareness Month in Sonoma County.

Whereas, access to safe, nutritious, and culturally acceptable food is a basic human right and is essential to human health; and

Whereas, food security is a state in which all persons obtain a nutritionally adequate, culturally acceptable diet at all times through local non-emergency sources; and

Whereas, food security is the foundation of a strong and healthy community; and

Whereas, food insecurity results in poor nutritional intake, unhealthy eating behaviors that persist sometimes for decades after the food insecurity experience, and is associated with poor health outcomes in all populations and higher health care costs; and

Whereas, a robust CalFresh program (known nationally as SNAP, the Supplemental Nutrition Assistance Program) is critical to providing financial resources for food to thousands of Sonoma County Residents; and

Whereas, a robust SNAP education program (SNAP-Ed) is critical to improve the likelihood that persons eligible for CalFresh will make health food and physical activity choices within a limited budget consistent with the current *Dietary Guidelines for Americans and Physical Activity Guidelines for Americans*; and

Whereas, the average CalFresh household in Sonoma County receives approximately \$217 per month for groceries; and CalFresh is provided on an electronic benefit card that can be used in grocery stores, supermarkets and Sonoma County farmers markets; and

Whereas, CalFresh spurs the local economy because each CalFresh benefit dollar generates \$1.79 as an economic multiplier, bringing to the County \$7 million in associated economic activity; and

Resolution #

Date:

Page 2

Whereas, approximately 30,000 individuals in Sonoma County receive CalFresh, yet more may be eligible; and

Whereas, a key opportunity for increasing participation is conducting outreach to people who are likely eligible; and

Whereas, community partners, County departments, and local leaders all have a role to play in furthering awareness about CalFresh and promoting this critical program.

Now, Therefore, Be It Resolved that the Sonoma County Board of Supervisors proclaims May 2018 CalFresh Awareness Month and urges all community members to support efforts to increase awareness of and participation in the CalFresh and SNAP-Ed programs.

Supervisors:

Gorin:

Rabbitt:

Zane:

Hopkins:

Gore:

Ayes:

Noes:

Absent:

Abstain:

So Ordered.



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 50
(This Section for use by Clerk of the Board Only.)

To: Board or Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Human Services Department

Staff Name and Phone Number:

Diane Kaljian (707) 565-5932
Paul Dunaway (707) 565-4345
Norine Doherty (707) 565-7321

Supervisorial District(s):

Title: Older Americans Month

Recommended Actions:

Adopt a Resolution declaring May 2018 as Older Americans Month in Sonoma County.

Executive Summary:

Sonoma County is committed to honoring older adults and celebrating the contributions made by older people in our communities. To demonstrate this commitment, the Board of Supervisors annually proclaims May as Older Americans Month in Sonoma County. This year's Older Americans Month theme is *Engage at Every Age*, which emphasizes that people are never too old (or too young) to take part in activities that enrich physical, mental and emotional well-being and celebrate the many ways older adults make a difference.

Discussion:

2018 marks the 53rd anniversary of the Older Americans Act, which was signed by President Lyndon B. Johnson into law in July 1965. Since that time, the Older Americans Act has provided a nationwide aging services network and funding that helps older adults live with dignity in the communities of their choice for as long as possible. These services include home-delivered and congregate meals, caregiver support, community-based assistance, preventive health services, elder abuse prevention, and much more.

AAA Advisory Council members will participate in community events in honor of Older Americans Month including attending the City of Santa Rosa's Senior Expo on May 19th at the Finley Community Center and Senior Rally Day on May 8th at the State Capitol. Additionally, Council members will participate in the "Sonoma County's New Workforce: Older Adults" event at the Vintners Inn in Santa Rosa on May 9th. This event will be hosted by Aging Together Sonoma County incorporating the Older Americans Month theme making the business case for age-friendly hiring highlighting that there is a skilled, experienced, productive population ready to join the workforce of local businesses. The event will be

highlighted by keynote speaker, Richard Adler, a Distinguished Fellow at the Institute for the Future in Palo Alto and include a panel discussion moderated by Cynthia Murry, President/CEO of North Bay Leadership Council.

Prior Board Actions:

May has been recognized by the Sonoma County Board of Supervisors as Older Americans Month in Sonoma County at the following meetings:

- May 16, 2017 proclaimed May 2017 - Older American Month.
- May 24, 2016, proclaimed May 2016 - Older American Month
- May 12, 2015, proclaimed May 2015 - Older American Month.
- May 20, 2014, proclaimed May 2014 - Older American Month.
- May 14, 2013, proclaimed May 2013 - Older American Month.
- May 15, 2012, proclaimed May 2012 - Older American Month.

Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community

Older Americans Month highlights older adults and acknowledges their accomplishments and contributions to their communities, all of which makes Sonoma County a more vibrant place to live.

Fiscal Summary

Expenditures	FY 16-17 Adopted	FY 17-18 Projected	FY 18-19 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures	0	0	0
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources	0	0	0

Narrative Explanation of Fiscal Impacts:

N/A

Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
None.			
Attachments:			
Resolution			
Related Items “On File” with the Clerk of the Board:			
None.			



County of Sonoma
State of California

Date: May 8, 2018

Item Number: _____

Resolution Number: _____



4/5 Vote Required

**Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California,
Declaring May 2018 as Older Americans Month In Sonoma County**

Whereas, Sonoma County includes older adults who deserve recognition for their contributions to our nation; and

Whereas, since 1965, the Older Americans Act has provided services that help older adults remain healthy and independent by complementing existing medical and health care systems, helping prevent hospital readmissions, and supporting people to live independently for as long as possible; and

Whereas, these programs also support family caregivers, address issues of exploitation, neglect, and abuse of older adults; and

Whereas, there are over 125,109 persons over age 60 who represent 25% of Sonoma County's total population; and

Whereas, Sonoma County is committed to raising awareness about issues facing older adults and helping all individuals to thrive in communities of their choice for as long as possible; and

Whereas, the 2018 theme is *Engage at Every Age*. The Board of Supervisors recognizes that residents are never too old (or too young) to take part in activities that can enrich physical, mental and emotional well-being and celebrates the many ways older adults make a difference in our communities.

Now, Therefore, Be It Resolved, , that the Sonoma County Board of Supervisors joins the President and Congress of the United States, and the Governor of California and proclaims May 2018 to be Older Americans Month in Sonoma County. We urge every resident to take time this month to acknowledge older adults as powerful and vital individuals who greatly contribute to our community.

Resolution #

Date:

Page 2

Supervisors:

Gorin:

Rabbitt:

Zane:

Hopkins:

Gore:

Ayes:

Noes:

Absent:

Abstain:

So Ordered.



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 51
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Human Resources

Staff Name and Phone Number:

Sylvia Lemus, 565-1702

Supervisorial District(s):

All

Title: 2018 Public Service Recognition Week

Recommended Actions:

Adopt Gold Resolution proclaiming the week of May 6 to 12, 2018 as Public Service Recognition Week in Sonoma County.

Executive Summary:

Public Service Recognition Week (PSRW) is celebrated annually during the first week of May, and this year the County of Sonoma will celebrate with lunch and entertainment for employees on May 9, 2018 at the County Center and on May 10, 2017 at the Airport Area. Human Resources looks forward to the Board's participation at this annual event honoring the County's approximately 4,000 employees.

Discussion:

Public Service Recognition Week is a national program sponsored by the Public Employee Roundtable, a non-partisan coalition of government organizations representing civil servants and retirees from all levels throughout the country. Public Service Recognition Week is celebrated annually during the first week of May, with this year's week being celebrated May 6 – May 12, 2018. This national recognition week encourages government at all levels to promote government employees and careers, educate the public about the value of public servants and the services they provide, recognize excellence in public service, and promote the spirit of public service.

The County of Sonoma began observing Public Service Recognition Week in 1997, by hosting an onsite recognition event. Traditionally, County employees are encouraged to attend a lunchtime event with their co-workers, during which they receive recognition from the Board of Supervisors and are served their meal by their Department Heads and members of the Board. Departments are encouraged to use their Department Employee Recognition Program funds to purchase tickets for their staff to attend this annual event.

This year, it is especially important to recognize our employee’s contributions, sacrifices, and time given to help our community survive and thrive after the tragic wildfires that severely impacted our services and residents in October 2017. County employees jumped into action, serving as first responders, and first line staffing at the emergency operation centers, point of entry sites, shelters, and the local assistance center. A few examples of the employee’s work and support of the response and recovery to the 2017 wildfires:

- Helped 52,372 callers through the emergency hotline.
- Supported the Local Assistance Center which served 11,204 residents.
- Issued over 4,000 replacement documents at a cost savings of \$250,000 to victims of the wildfires.

We recognize the daily efforts of all staff and the positive impact to the community and organizations derived from employee teamwork. County of Sonoma employees have accomplished much that is worthy of recognition. Employees have individually committed to advance the goals and priorities of the Board to create a safe, healthy and caring community; promote economic and environmental stewardship; invest in the future; and promote civic services and engagement.

The County of Sonoma has a history of providing excellent and responsible public service. This success does not happen without each and every one of our family of County employees doing their part toward achieving the common goal. The path is a constant effort which involves everyone at all levels being actively engaged, committed to public service, and collaborating on the efforts which improve the lives of our citizens and visitors. Public Service Recognition Week is one way to recognize the value of County employees’ service to the community.

In the last several years, employees have enjoyed Hawaiian plates, burritos, pasta, hamburgers and hotdogs. At this year’s Public Service Recognition Week lunch, employees will enjoy a fabulous paella and salad, and enjoy entertainment with the resiliency theme of ‘Viva Sonoma County!’ which can be translated as ‘Long Live Sonoma County!’ Employees will visit booths of interest and have the opportunity to win fabulous prizes. To continue with our Healthy Habit goals, our health partners will offer free biometric screenings to employees. In addition, many County departments will hold department-wide office recognition events for their staff during this week.

Human Resources recommends the Board of Supervisors adopt a Gold Resolution proclaiming the week of May 6 – May 12, 2018 as Public Service Recognition Week in Sonoma County recognizing all the contributions of the County’s more than 4,000 employees.

Prior Board Actions:

The Board has approved a similar resolution in all prior years since Public Service Recognition Week was first recognized in Sonoma County in 1997.

Strategic Plan Alignment Goal 4: Civic Services and Engagement

Public Service Recognition Week recognizes the value of public service and the contributions of County employees in the community.

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses	3,000		
Additional Appropriation Requested			
Total Expenditures	3,000		
Funding Sources			
General Fund/WA GF	3,000		
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources	3,000		
Narrative Explanation of Fiscal Impacts:			
<p>Departments are encouraged to use Department Employee Recognition Program funds for staff lunch tickets and, alternatively, employees can purchase their own lunch ticket. For this reason, the food expense is not included in this summary (typically food costs \$6,300; varies depending on participation.) There are appropriations in the Human Resources budget to cover other expenses including printing, supplies, and logistical needs for the recognition event.</p>			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
No staffing impacts.			
Attachments:			
Resolution for Public Service Recognition Week 2018.			
Related Items “On File” with the Clerk of the Board:			



County of Sonoma

State of California

Date: May 8, 2018

Item Number: _____
Resolution Number: _____

4/5 Vote Required

**Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California,
Recognizing May 6 – 12, 2018, As Public Service Recognition Week 2018, And Honoring Public
Service Employees At All Levels Of Government**

Whereas, County government workers at all levels provide essential public services with all staff engaged and committed to public service, and collaborating on efforts to improve the lives of our citizens and visitors; and

Whereas, the employees work to maintain and improve the County's infrastructure, ensure the physical safety of Sonoma County residents, preserve and enrich the health of all residents, conserve and promote the natural beauty of Sonoma County's environment, and support and encourage the diversity of the County; and

Whereas, County employees work every day to enrich the quality of life through superior public service for all residents of Sonoma County and their contribution reflects the steadfast, dedicated, and focused commitment of skilled and caring professionals; and

Whereas, County employees sacrificed time and energy to help their fellow residents during and after the wildfires, by serving as first responders and emergency line staff at emergency operation centers, point of entry sites, shelters, and the local assistance center; and

Whereas, Sonoma County employees will be recognized during Public Service Recognition Week with lunch and entertainment on Wednesday, May 9th at the County Center, and on Thursday, May 10th at the Airport Area.

Now, Therefore, Be It Resolved, the Board of Supervisors hereby proclaim May 6 – 12, 2018, as Public Service Recognition Week and extend their gratitude on behalf of a thankful and supportive community to all public service workers.

Resolution #

Date:

Page 2

Supervisors:

Gorin:

Rabbitt:

Zane:

Hopkins:

Gore:

Ayes:

Noes:

Absent:

Abstain:

So Ordered.



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 52
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors of Sonoma County

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Department of Health Services

Staff Name and Phone Number:

Barbie Robinson, 565-4777

Supervisorial District(s):

Title: National Nurses Week 2018

Recommended Actions:

Adopt a resolution proclaiming the Week of May 6 through May 12, 2018 as National Nurses Week in Sonoma County.

Executive Summary:

Since 1974, May 6 through May 12 has been recognized in the United States as National Nurses Week, acknowledging all nurses and honoring Florence Nightingale who was born on May 12. When the Sonoma County Board of Supervisors designates this time as National Nurses Week in Sonoma County, it emphasizes the importance of County nursing staff who are integral to assessing the health of communities and leading some of the most vulnerable populations to improved physical and mental health.

Discussion:

The theme for National Nurses Week in 2018 is *Nurses: Inspire, Innovate, Influence*. Nurses within the Department of Health Services provide health assessment, counseling, referral, and medication service to a diverse population of clients with varied health, social and economic strengths and needs. They serve in a variety of community settings including: homes, offices, behavioral health sites, human services facilities, and correctional facilities for youth. Nurses are an integral part of how the County cares for, and gains essential knowledge and insight about, its residents. Nurses care for individuals and families and provide their expertise to numerous community groups and providers to assure breadth and depth to services. In a 2016 Gallup Poll the public rated nurses as the most honorable and ethical of all healthcare professionals with 84 percent rating them as "high" or "very high."

Currently, approximately 70 Nurses are employed by the County of Sonoma within the Department of Health Services. Nurses use their education, professional experience, personal commitment and special skill set to provide assessment, counseling, advocacy and referral to necessary services for the most vulnerable populations, especially pregnant women, infants, children, youth and vulnerable seniors. They serve in homes to improve families' parenting skills, support the practice of healthier behaviors,

provide access and support for continued use of physical and mental health care resources to improve health outcomes in their lives. Nurses help identify, investigate and control communicable diseases; working closely with medical offices, schools, institutions and challenged populations. They monitor and improve access to well care, immunizations and provide case management to children suffering major medical disabilities. Nurses help identify health issues and provide needed mental and physical health care for incarcerated youth, and vulnerable seniors at risk of abuse and neglect.

Each year the nation takes the opportunity to recognize the efforts, dedication and hard work of Nurses. Sonoma County values their contribution and recognizes the exemplary service of the professionally trained Nurses who serve within this community.

Prior Board Actions:

Most recently, on May 8, 2012 the Board recognized May 6 – 12, 2012 as National Nurses Week in Sonoma County.

Strategic Plan Alignment Goal 4: Civic Services and Engagement

This resolution acknowledges the importance of the nursing services being provided by County entities in support of individuals and families in Sonoma County.

Fiscal Summary

Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures	0	0	0

Funding Sources

General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources	0	0	0

Narrative Explanation of Fiscal Impacts:

There are no fiscal impacts associated with this item.

Staffing Impacts

Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)

Narrative Explanation of Staffing Impacts (If Required):
N/A
Attachments:
Resolution
Related Items "On File" with the Clerk of the Board:
None



County of Sonoma

State of California

Date: May 8, 2018

Item Number: _____
Resolution Number: _____

4/5 Vote Required

**Resolution of the Board of Supervisors of the County of Sonoma,
State of California, Declaring May 6 through May 12, 2018 as
National Nurses Week in Sonoma County**

Whereas, the County of Sonoma recognizes the value of professionally educated nurses to further the goals and missions that benefit the residents of the County;

Whereas, the theme for National Nurses Week 2018 is "*Nurses: Inspire, Innovate, Influence*"; and nurses, whether in direct service, case management, administration, or policy development, make a positive impact across Sonoma County;

Whereas, Nurses within the Department of Health Services use their education, professional experience, personal commitment and special skill set to provide assessment, counseling, advocacy, and referral to necessary services for the most vulnerable populations, especially pregnant women, infants, children, youth, and vulnerable seniors. They serve in homes to improve families' parenting skills, support the practice of healthier behaviors, and provide access and support for continued use of physical and mental health care resources to improve health outcomes;

Whereas, nurses help identify, investigate, and control communicable diseases; working closely with medical offices, schools, institutions, and challenged populations. They monitor and improve access to well care, immunizations, and provide case management to children suffering major medical disabilities. Nurses help identify health issues and provide needed mental and physical health care for incarcerated youth and vulnerable seniors at risk of abuse and neglect; and

Whereas, the County of Sonoma, Department of Health Services has 70 Nurses working professionally, diligently, and effectively across a wide variety of communities in homes, offices, homeless and emergency shelters, and clinical settings every day.

Now, Therefore, Be It Resolved that the Board of Supervisors of Sonoma County does hereby proclaim the week of May 6 through May 12, 2018 as National Nurses Week in Sonoma County.

Resolution #
Date: May 8, 2018
Page 2

Supervisors:

Gorin:

Rabbitt:

Zane:

Hopkins:

Gore:

Ayes:

Noes:

Absent:

Abstain:

So Ordered.



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 53
(This Section for use by Clerk of the Board Only.)

To:

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s):

Staff Name and Phone Number:

Brad Sherwood (707) 547-1927

Supervisorial District(s):

Title: Gold resolution: Honoring the life and career of Mr. Carl Morrison

Recommended Actions:

Adopt a Gold Resolution honoring the life and career of Mr. Carl Morrison

Executive Summary:

A Gold Resolution honoring the life and career of Mr. Carl Morrison, a consultant of the Sonoma County Water Agency for nearly two decades.

Discussion:

Mr. Carl Morrison passed away tragically in Petaluma, CA on April 6, 2018 from a plane crash as he was flying his private plane home from the North Bay Watershed Association conference. Mr. Morrison was a consultant with the Sonoma County Water Agency working on a variety of critical projects within the Bay Area Integrated Regional Water Management Program.

Prior Board Actions:

None

Strategic Plan Alignment Not Applicable

Fiscal Summary			
	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Expenditures			
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			
Narrative Explanation of Fiscal Impacts:			
No fiscal impact with this item.			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
Related Items "On File" with the Clerk of the Board:			

Date: May 8, 2018

Item Number: _____
Resolution Number: _____

4/5 Vote Required

Resolution Of The Board Of Directors Of The Sonoma County Water Agency, hereby honors the life and accomplishments of Mr. Carl Morrison.

Whereas, In Memory of Carleton Henry Morrison, JR.

The Sonoma County Water Agency Board of Directors hereby honors the life and accomplishments of Mr. Carl Morrison whom passed away tragically in Petaluma, CA on April 6, 2018 from a plane crash as he was flying his private plane home from the North Bay Watershed Association conference.

On April 30, 2004, the Sonoma County Water Agency entered into an agreement with Morrison & Associates, Inc. to provide technical assistance, coordination, and consulting services related to the development of the San Francisco Bay Area Integrated Regional Water Management Plan. The San Francisco Bay Area Integrated Regional Water Management Plan is a nine-county Bay Area coalition which has generated millions of dollars in state grant funding for projects ranging from water conservation to extreme weather forecasting.

Mr. Morrison led the development and implementation of the governing process for the San Francisco Bay Area Integrated Regional Water Management Coordinating Committee, which oversaw funding recommendations and approvals. The Coordinating Committee has been hailed by the California Department of Water Resources as a model for other regions to follow due to its success in developing stakeholders and projects in support of state funding opportunities.

Most recently, Mr. Morrison helped secure \$19 million in Proposition 84 funds to support the Advanced Quantitative Precipitation Information Program, also known as AQPI. This program will install new radar units throughout the San Francisco Bay Area to better forecast extreme weather conditions, such as atmospheric rivers. Mr. Morrison secured a diverse coalition to support this initiative including local, state and federal agencies.

Resolution #

Date:

Page 2

Mr. Morrison also assisted with the development of the Applied Solutions Coalition, a program in which the Sonoma County Water Agency started as a part of its sustainability program to generate local government support for sustainability public policies. Mr. Morrison drafted the coalition's bylaws and governing system.

Mr. Morrison worked with the Sonoma County Water Agency and National Marine Fisheries Service to bring in other agencies to collaborate on the steelhead portion of the Multispecies Recovery Plan. Mr. Morrison drafted and assisted in working with NMFS, Zone 7 Water Agency, and other agencies to become signatories to Statements of Understandings setting forth the process for the collaboration of the Recovery Plan.

Mr. Morrison retired as a Lt. Colonel serving 20 years in the Marine Corps as a judge advocate, a veteran of the Vietnam War, and a Vice Commander of the Pacific Region in the Civil Air Patrol.

Mr. Morrison graduated from Brigham Young University in 1966 before obtaining a law degree from DePaul University in Chicago in 1976. He earned two master's degrees, from Loyola University and George Washington University.

Mr. Morrison will be remembered for his strategic coalition building skills and ability to build relationships with diverse stakeholders. He was a valued member of the Sonoma County Water Agency team and will be missed by our community.

Directors:

Gorin:

Rabbitt:

Zane:

Hopkins:

Gore:

Ayes:

Noes:

Absent:

Abstain:

So Ordered.



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 54
(This Section for use by Clerk of the Board Only.)

To: Sonoma County Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Human Services Department

Staff Name and Phone Number:

Nick Honey 565-4343

Supervisorial District(s):

All

Title: Foster Parent Recognition Month

Recommended Actions:

Adopt Gold Resolution declaring May 2018 Foster Parent Recognition Month in Sonoma County

Executive Summary:

The month of May has been designated as National Foster Parent Recognition Month. The Board of Supervisors is requested to recognize all Sonoma County caregivers who have taken on the invaluable role of caring for infants, children, and teens that are separated from their families due to abuse or neglect.

Discussion:

Foster Parent Month acknowledges the dedicated caregivers in Sonoma County who provide around the clock love and care to children. Specifically, in January of this year 43 County approved foster homes had 59 children placed in their care. 55 Foster Family Agency homes had 101 children in their care. 128 relatives and non-related extended family members provided 166 children with nurturing homes. An additional 37 children were adopted and 64 children were in a guardianship home in 2017.

In order to thrive, all children and youth need excellent parenting. When parents are unable to care for their children, foster parents or relative caregivers step in to provide loving and committed care to meet a child's needs in partnership with the child welfare system. The most important intervention provided for children and youth during this very difficult and traumatic time in their lives is a stable, caring home. Children become part of the family for as long as they need out-of-home care. When possible, caregivers partner with the biological parents to provide support and mentorship. When children cannot be returned home safely, caregivers may provide permanency, including adoption or guardianship. Foster parenting requires patience, dedication, flexibility, and a sense of humor.

A foster parent's work is difficult and challenging, but their dedication has changed the lives of many in our community. This was especially evident during the wild fires Sonoma County experienced last

October. Sonoma County foster and relative caregivers made the safety and well-being of the children and youth in their homes a priority. This included going to extensive lengths to ensure the health of medically fragile children when the air quality was not good and welcoming additional children into their homes when Valley of the Moon Children’s Center was evacuated. Because foster parents understood this disaster was even more traumatic for children who had already experienced significant trauma, they took special care in addressing the emotional needs and sense of safety of each child.

The Human Services Department values the role of local community partners to help support and develop new caregivers. To that end the Family, Youth & Children’s Division, in partnership with the Family Finding Collaboration, has been leading a dynamic public campaign to raise community awareness of the urgent need for foster and adoptive families, including relative caregivers, and in 2017 recruited 41 new families which is a 40% increase from the year before. The Family Finding Collaboration includes TLC Children’s Services, Alternative Family Services, Seneca, Family, Youth and Children’s Services, Juvenile Probation and Lilliput Children’s Services. The partnership offers a coordinated response to recruiting more families as well as strengthening training and support programs for current families. The Collaboration also understands the important role that relative caregivers play in caring for children and with the expertise of Lilliput, we are building support programs that address their unique needs and circumstances. This has included the development of the Kinship Center and the emergency support program that provides bedding, furniture and other basic needs to assist relatives who take in children on a moment’s notice.

The Board of Supervisors appreciates the generosity of the community members who are willing to take on the very important role of opening their homes to care for Sonoma County children and youth. The Board is grateful for the compassionate care foster parents provide to the community’s most vulnerable children.

Prior Board Actions:

May 2, 2017: Each year the Board of Supervisors has expressed appreciation for the outstanding contributions our caregivers make in caring for our dependent children by declaring the month of May Foster Parent Recognition Month in Sonoma County.

Strategic Plan Alignment Goal 4: Civic Services and Engagement

Foster parents are important members of the child protection community. Recognition of foster parents by the Board of Supervisors honors and expresses appreciation for improving the lives of children who have been abused or neglected.

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures	0	0	0
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources	0	0	0
Narrative Explanation of Fiscal Impacts:			
N/A			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
N/A			
Attachments:			
Resolution			
Related Items “On File” with the Clerk of the Board:			
None			



County of Sonoma
State of California

Date: May 8, 2018

Item Number: _____

Resolution Number: _____



4/5 Vote Required

**Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California,
Declaring May 2018 Foster Parent Recognition Month**

Whereas, each year foster, adoptive and relative caregivers make an outstanding contribution in caring for dependent children, and;

Whereas, over 473 children throughout Sonoma County are provided services through the foster care system, and;

Whereas, many of these caregivers make a commitment to a lifelong relationship through adoptions, and;

Whereas, children who cannot live with their birth families require the skill, nurturing, and commitment of caring family, and;

Whereas, public and private agencies throughout the state of California sponsor Foster Parent Recognition events during the month of May.

Now, Therefore, Be It Resolved that the Sonoma County Board of Supervisors does hereby express their appreciation to the foster, adoptive, and relative caregivers of Sonoma County by proclaiming the month of May 2018 as Foster Parent Recognition Month in Sonoma County.

Be It Further Resolved

Supervisors:

Gorin:

Rabbitt:

Zane:

Hopkins:

Gore:

Ayes:

Noes:

Absent:

Abstain:

So Ordered.



County of Sonoma
Agenda Item
Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 55
(This Section for use by Clerk of the Board Only.)

To:

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s):

Staff Name and Phone Number:

Supervisor James Gore
(707) 565-2241

Supervisorial District(s):

Fourth District

Title: Gold Resolution

Recommended Actions:

Adopt a Gold Resolution in memory of James M. Bouler. (Fourth District)

Executive Summary:

Adopt a Gold Resolution in memory of James M. Bouler. (Fourth District)

Discussion:

Prior Board Actions:

Strategic Plan Alignment Goal 4: Civic Services and Engagement

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			
Narrative Explanation of Fiscal Impacts:			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
Related Items “On File” with the Clerk of the Board:			



County of Sonoma

State of California

Date: May 8, 2018

Item Number: _____
Resolution Number: _____

4/5 Vote Required

Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California, In Recognition Of James M. Boulter Of Sonoma County.

Whereas, Jim Boulter was an Air Force veteran who lived in Sonoma County for the last 55 years; and

Whereas, he was a registered civil engineer and retired from the California Department of Transportation and had primary oversight for major projects in Sonoma County including the Geyserville Bypass and the Bicentennial Way overcrossing; and

Whereas, Jim Boulter served the Rincon Valley Fire Protection District for approximately 40 years; retiring as an assistant chief after 20 years of volunteering and served about another 20 years on the Board of Directors; and

Whereas, Mr. Boulter was dedicated to improving the Mark West (Larkfield-Wikiup-Fulton) area and served on advisory committees for four Fourth District supervisors, including Nick Esposti, Paul Kelley, Mike McGuire, and James Gore; and

Whereas, Mr. Boulter would tirelessly attend Public Utilities Commission hearings in San Francisco and other areas to represent the community;

Now, Therefore, Be It Resolved that James M. Boulter's life of volunteerism, community involvement, advocacy and dedication left an indelible impression on Sonoma County, and he will be sorely missed by all.

Supervisors:

Resolution #

Date:

Page 2

Gorin:

Rabbitt:

Zane:

Hopkins:

Gore:

Ayes:

Noes:

Absent:

Abstain:

So Ordered.



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 56

(This Section for use by Clerk of the Board Only.)

To: Board

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Board of Supervisors

Staff Name and Phone Number:

Supervisor Susan Gorin, 565-2241

Supervisorial District(s):

First

Title: Gold Resolution

Recommended Actions:

Adopt a Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California, Declaring the Week of May 17-May 23, 2018 Sonoma County Home & Ranch Readiness Week

Executive Summary:

Discussion:

Prior Board Actions:

Strategic Plan Alignment Not Applicable

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			
Narrative Explanation of Fiscal Impacts:			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
Gold Resolution			
Related Items "On File" with the Clerk of the Board:			



County of Sonoma
State of California

Date: May 8, 2018

Item Number: _____
Resolution Number: _____

4/5 Vote Required

**Resolution of the Board of Supervisors of the County of Sonoma,
State of California,
Declares the Week of May 17 – May 23, 2018
SONOMA COUNTY HOME & RANCH READINESS WEEK**

WHEREAS, the Home and Ranch Readiness Summit signals the commencement of 2018 Sonoma County Home and Ranch Readiness Week, to promote engagement between government and the community to increase awareness and preparedness for people and animals in emergencies and disasters, and

WHEREAS, the Home and Ranch Readiness Summit emphasizes the critical importance of awareness and preparedness education and action to reduce risk to human lives in emergencies and disasters, and

WHEREAS, the Home and Ranch Readiness Summit provides residents with a local and accessible opportunity to obtain preparedness education and information, and network with experts in the fields of emergency and disaster planning and response, and

WHEREAS, the Home and Ranch Readiness Summit spotlights the importance of protecting agricultural assets, such as equines, livestock, poultry, and feed and forage resources, by ensuring that the County's Disaster Plan provides for integrated disaster planning that prioritizes the protection of agricultural assets and addresses the need for trained volunteer CERT and/or Animal Disaster Service Workers, and

WHEREAS, the Home and Ranch Readiness Summit promotes the importance of planning for the welfare of companion animals to minimize risk to human lives, and

WHEREAS, the Home and Ranch Readiness Summit promotes the welfare and safety of K--9 teams and other working dogs by providing training and awareness education for First Responders assisting K--9 officers and their partners, search dogs, agricultural detection dogs, livestock guardian dogs, and service dogs accompanying residents with physical and/or mental health challenges, and

WHEREAS, the Home and Ranch Readiness Summit highlights the importance of protecting the economy of Sonoma County by reducing the risk of a pandemic affecting livestock, companion animals, and/or people, which could result in devastating effects to the local economy, by assessing and planning for these potential risks, and

Resolution #

Date:

Page 2

WHEREAS, the Home and Ranch Readiness Summit emphasizes the importance of agency planning and cooperation with trained volunteer resources to minimize risk and suffering of humans and animals in the immediate aftermath and extended period of recovery in a disaster, and

WHEREAS, the Home and Ranch Readiness Summit, and its companion recognition event, HALTER HONORS THE HEROES, spotlights and awards individuals, agencies, organizations, and businesses that have had positive impacts on preparedness and awareness in their communities.

NOW, THEREFORE, BE IT RESOLVED, that the Sonoma County Board of Supervisors in the County of Sonoma, State of California, declares the Week of May 17 - May 23, 2018 SONOMA COUNTY HOME & RANCH READINESS WEEK.

Supervisors:

Gorin:

Rabbitt:

Gore:

Hopkins:

Zane:

Ayes:

Noes:

Absent:

Abstain:

So Ordered.



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 57

(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors, County of Sonoma

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Fire and Emergency Services

Staff Name and Phone Number:

James Williams / 565-1152

Supervisorial District(s):

All Districts

Title: 2018 Wildfire Awareness Week

Recommended Actions:

Adopt a Gold Resolution proclaiming the week of May 6-12, 2018 as "Wildfire Awareness Week"

Executive Summary:

May 6-12, 2018, is Wildfire Awareness Week in the State of California. The goal of Wildfire Awareness Week is to expand public awareness of wildfires and promote actions to reduce the risk from wildfire to homes and communities. This year's theme is "Fire Defense is Self Defense, Get Ready, We Are". As evidenced by the Firestorm in Sonoma County in October 2017, awareness of the wildfire risks and taking preventative measures is paramount to reducing future risks. Approximately 95 percent of wildfires in California are human-caused and preventable.

Discussion:

Sonoma County Fire and Emergency Services, CAL FIRE, and local partner fire agencies, join together in requesting the residents of Sonoma County be mindful of actions and activities which may increase the risk of wildfires as we enter into wildfire season. Despite recent rains, moving forward into the long, dry summer months, fuel moisture will decrease, increasing the threat of wildfires.

With public support through heightened community awareness, we can all do our part in preventing and minimizing the impact of damaging wildfires in our county and throughout the state.

State Responsibility Areas are generally the unincorporated, rural, grass, brush and timber covered lands.

In addition to coordination with Fire and Emergency Services, the CAL FIRE, Sonoma-Lake-Napa Unit has taken action in preparation of wildland fire season through the following actions:

1. February 12, 2018 - Defensible Space Inspector (DSI) positions staffed to educate and advise homeowners on creating and maintaining a 100ft. of defensible space around their structures;
2. April 16, 2018 - One engine staffed per battalion (3.0 staffing). Additional 16 firefighters to conduct defensible space inspections (8 to Sonoma County, 4 to Napa County and 4 to Lake County);
3. May 1, 2018 - CAL FIRE burn permit (LE-5) required for any outdoor open burning in the State Responsibility Area (SRA) within the counties of Sonoma, Lake, Napa, Colusa, Yolo and Solano;

4. May 14, 2018 - One engine staffed per station Unit wide (3.0 staffing);
5. No later than June 15, 2018 - Sonoma Air Attack Base opens (one air attack- two tankers);
6. June 18, 2018 - All seasonal personnel hired for peak staffing. Firefighters conducting Defensible Space Inspections will be going back to engines for peak staffing.

Additionally, CAL FIRE launched a campaign aimed to educate homeowners on the steps they should take to prepare themselves, their homes, and families for wildfire with information available at www.ReadyForWildfire.org.

In the upcoming months Sonoma County Fire and Emergency Services will:

1. Continue encouraging and promoting fire safe practices and the distribution of fire safe educational materials to the general public, permit applicants, and local planning agencies.
2. Offer chipping services to county residents to assist them with the creation of their defensible space and fuel reduction.
3. Continue to discuss potential opportunities with fire districts to partner on fuel reduction concepts.
4. Encourage and promote fire safe practices and the distribution of fire safe educational materials to the general public, permit applicants, and local planning agencies.

Prior Board Actions:

This Gold Resolution has been approved by the Board annually in years past.

Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community

Wildfire Awareness Week serves as a reminder to homeowners to adopt fire safety practices and procedures that prevent fires and save lives and property.

Fiscal Summary

Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses	-0-		
Additional Appropriation Requested	-0-		
Total Expenditures	-0-		
Funding Sources			
General Fund/WA GF	-0-		
State/Federal	-0-		
Fees/Other	-0-		
Use of Fund Balance	-0-		
Contingencies	-0-		
Total Sources	-0-		

Narrative Explanation of Fiscal Impacts:

None.

Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
None.			
Attachments:			
Resolution (A1)			
Related Items “On File” with the Clerk of the Board:			
None.			

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County of Sonoma

State of California

Date: May 8, 2018

Santa Rosa, CA 95403

Item Number: _____

Resolution Number: _____



4/5 Vote Required

Gold Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California, Proclaiming The Week Of May 6 – May 12, 2018, As Wildfire Awareness Week.

Whereas, the Sonoma Complex Fires of October 2017 severely affected the County of Sonoma, its residents, and damaged critical infrastructure and dwellings; and

Whereas, California’s dry Mediterranean climate naturally lends the County of Sonoma to be particularly prone to wildfires; and

Whereas, despite recent rains, the lasting effects of the dead and dying trees in the State of California and County of Sonoma will create a significant fuel load; and

Whereas, climate change in California has magnified California’s wildfire problem leading to larger and more damaging wildfires; and

Whereas, wildfires can impact how watersheds provide clean, reliable water supplies that are critical to California’s people, environment and economy; and

Whereas, the men and women of Sonoma County Fire and Emergency Services, alongside CAL FIRE and local fire agencies are poised to respond to wildfires; and

Whereas, living in Sonoma County means residents need to be aware of the serious threat these wildfires can pose and prepare accordingly; and

Whereas, all residents of Sonoma County must do their part to prepare for wildfires by maintaining 100 feet of Defensible Space around their homes as well as implementing strategies to fire-harden homes; and

Whereas, approximately ninety-five percent of wildfires in California are caused by the activity of people, and therefore the public plays a critical role in preventing wildfires; and

Whereas, an overall goal of fire agencies within Sonoma County is to reduce the total costs and losses from wildfire by protecting assets at risk through focused public education efforts such as CAL FIRE’s potentially lifesaving public education campaign “Ready, Set, Go!”; and

WHEREAS, CAL FIRE is conducting 250,000 defensible space inspections due to heightened wildfire risk; and

WHEREAS, each year the State of California declares Wildfire Awareness Week as an important opportunity for California’s communities and fire service agencies to reduce the risk of wildfire and increase public safety and awareness through education on fire safety, preparation, and prevention; and

WHEREAS, this year’s Wildfire Awareness week theme is, “Fire Defense is Self Defense, Get Ready, We Are.”

Now, Therefore, Be It Resolved in an effort to promote fire safe practices within the County of Sonoma, the Sonoma County Board of Supervisor’s hereby declare May 6 through May 12, 2018, as Wildfire Awareness Week throughout this county, and we urge all the people of Sonoma County to take measures to prevent the outbreak and spread of wildfire within our County.

Supervisors:

Gorin: Rabbitt: Zane: Hopkins: Gore:

Ayes: Noes: Absent: Abstain:

So Ordered.



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 58
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: 4/5

Department or Agency Name(s): Transportation and Public Works

Staff Name and Phone Number:

Johannes J. Hoevertsz (707) 565-2231

Supervisorial District(s):

All

Title: Long Term Financing for Airport Parking Lot and Terminal Expansion Projects

Recommended Actions:

Adopt a Resolution authorizing the Director of Transportation and Public Works to submit and approve loan applications to the California Infrastructure and Economic Development Bank for up to \$17,000,000 to finance capital improvement projects at the Charles M. Schulz – Sonoma County Airport. The loan applications are intended to secure long term, fixed rate financing for capital improvements to long term parking and pedestrian walkways (\$5,101,005), as well as the expansion of the commercial passenger terminal (\$11,676,756) for a total of \$16,777,761.

Executive Summary:

On February 9, 2016, Airport staff presented a status report to the Board of Supervisors which included proposed capital improvement projects at the Airport over the next five years. Among the projects identified in the report were the construction of a new long term parking lot and enhancement of the passenger terminal facility. Both of these projects are intended to accommodate increased commercial air service following the completion of a major runway upgrade in 2015. Based on the results of this meeting, Airport staff returned the Board of Supervisors on September 13, 2016 for approval to move forward with the design and construction of both a new long parking lot and terminal expansion. In addition to approving the request to proceed with design, the Board of Supervisors adopted a Reimbursement Resolution allowing the Airport to borrow up to \$20,000,000 to finance these two projects. Based on construction to date and anticipated future capital needs, the Airport is requesting approval to secure two loans totaling approximately \$16,778,000 with the California Infrastructure and Economic Development Bank. The requested loans will provide long term (25-30 years), fixed rate financing at historically low rates (3.625%).

Discussion:

In September 2013 the Charles M. Schulz – Sonoma County Airport began construction on a new primary runway which increased the length of the existing runway by 885 feet and allowed the Airport to accommodate regional jet traffic. After completing runway construction in 2015, Airport staff

recognized the need to initiate additional capital improvement projects in anticipation of serving an extra 250,000 passengers by 2025. The two primary components of the capital improvement plan included construction of a new long term parking lot, and expansion/enhancement of the passenger terminal. On February 9, 2016 as part of a comprehensive update of operations, finances, and future planning Airport staff requested and received Board approval to begin researching design and financing options for these projects.

On September 13, 2016 Airport staff returned to the Board of Supervisors with a request to allow the Airport Enterprise to borrow up to \$20,000,000 to build a new long term parking lot and expand the existing passenger terminal. The \$20,000,000 request was based on initial design and construction estimates provided by the Airport's primary engineering firm, Mead & Hunt. In addition, the County's Debt Advisory Committee and KNN Public Finance assessed the financial viability of the Airport to ensure adequate operating cash flow was available to support the long term debt. As part of the same September 13th meeting, the Board of Supervisors also approved a terminal design contract with Mead & Hunt/C&S Engineers (\$1,426,516), a parking lot design contract with BKF Engineers (\$226,905), and issuance of \$2,200,000 in County Treasury Notes to finance design and bid package preparation activities.

In October 2016, American Airlines announced plans to begin providing service from the Sonoma County Airport to Phoenix, AZ, prompting the need for immediate construction of a 1,400 square foot passenger ticketing facility. Utilizing the General Services Department Job Order Contracting (JOC) program the Airport designed, procured, and installed a ticketing trailer in approximately 120 days in order to accommodate the American Airlines launch on February 16, 2017. The cost to construct this facility on an expedited timeline was \$660,193, including \$67,967 for design and \$592,226 for purchase and configuration.

On February 21, 2017 the Airport received approval from the Board of Supervisors to build a 4,230 square foot temporary passenger hold room utilizing a high strength, tensile structure. The tensile structure was intended to serve two purposes: The first was to accommodate extra passenger traffic related to the addition of American Airlines service to Phoenix and United Airlines service to San Francisco. The second was to create flexible space in order to expedite construction activities associated with the expansion of the existing passenger terminal. In order to meet both goals, the Airport once again utilized the Job Order Contracting (JOC) program to meet the June 8, 2017 launch of United Airlines service. Total cost for construction of the tensile structure was \$1,774,777 including \$115,268 for design, \$318,103 for purchase of the structure, and \$1,341,406 for site work, construction and installation.

On August 22, 2017 the Airport returned to the Board of Supervisors to request approval of design specifications and construction contracts for the 450-stall long term parking lot and pedestrian walkways. Both design proposals were approved and contracts were awarded to Ghilotti Construction (long term parking - \$3,743,814), and California Highway Construction Group (sidewalks -\$332,845). In addition, the Board of Supervisors approved issuance of a \$4,000,000 Treasury Note to finance construction of these two projects. Construction for both projects was initiated in the Fall of 2017 and are nearing completion with a final total construction cost including: design, construction, change orders, contingencies, and construction management of \$5,067,116.

After completion of the first phase of the temporary hold room it was determined that incorporating the tensile structure as a long term feature (12-15 years) of the Airport expansion would be beneficial in

future phases of terminal design and construction. The Airport is in the process of completing the second phase of design requirements with a goal of beginning construction by August 2018. The second phase will consist of expanding the tensile structure by 3,880 square feet, as well as adding permanent bathroom facilities and an automatic fire suppression system for the entire structure. Costs for these improvements include: \$200,000 for design, \$395,000 for purchase of the tensile structure, \$915,000 for tensile structure construction, \$125,000 for water/sewer hookup, \$420,000 for permanent bathroom construction, and \$150,000 for installation of fire sprinklers. In addition, the Airport is budgeting for installation of an Automated Secure Exit Lane (\$175,000), and redesign/reconfiguration of the airline Ground Support Electrical system (\$400,000). Total cost of this phase of construction is estimated to be \$3,058,275.

In conjunction with the second phase of tensile structure construction this summer, the Airport is continuing to move forward with the design and feasibility elements of a major terminal remodel and expansion. However, since the initial Board approval of the new terminal design in September 2016 the Airport has added three additional carriers (American, United, and Sun Country). Based on the rapid acquisition of these carriers, it was determined that increasing the terminal expansion project from 19,000 square feet to 29,000 would better serve the community. As a result the terminal design contracts awarded in September 2016 will need to be increased from \$1,426,516 to \$2,415,000 (Mead and Hunt/C&S Engineers). In addition, the Airport is currently in negotiations with the Federal Aviation Administration to secure up to \$20,000,000 in grant funding for the project. Timing of the grant award is subject to availability of funds but Airport staff believes having a "shovel ready" terminal project creates the most favorable scenario for securing these funds.

In order to complete the capital projects outlined above the Airport has utilized a combination of Treasury Notes (\$6,200,000) and Fund Balance. Treasury Notes are legally intended to provide bridge funding until long term financing can be secured, and the Airport lacks cash reserves (Fund Balance) for projects of this magnitude. Based on these constraints, the Airport and Debt Advisory Committee originally contemplated issuing a General Fund backed Certificate of Participation (COP). However, based on scope, timing, and complexity of the capital projects a COP became a less than ideal financing option. As a result, Airport staff engaged the California Infrastructure and Economic Development Bank (IBank) in January 2018 to secure long term financing. The IBank is part of the California Governor's Office of Business and Economic Development, and specializes in financing public agencies for a wide variety of infrastructure and economic development projects. Projects range in amounts from \$50,000 to \$25,000,000, with loan terms up to a maximum of 30 years.

Based on discussions with the IBank underwriting team as well as consultation with Auditor-Controller Treasurer-Tax Collector (ACTTC) staff, County Counsel, and the county's financial advisor, KNN Public Finance, Airport staff initiated the underwriting process in February 2018. As part of the underwriting and financial review process the Airport wishes to refinance an existing loan with the California Department of Transportation (DOT) in order to improve annual cash flow. The DOT loan was funded as part of the runway extension project in 2012 and has an annual debt service payment of \$422,905. By refinancing the DOT loan into the IBank loan the Airport will improve annual cash flow by approximately \$185,000 per year.

Subject to Board approval, the Airport has submitted two loan applications to the IBank. One loan will finance the long term parking lot/sidewalks, and a second will fund terminal improvements and refinance DOT loan referenced above. The primary reason for two loans is to segregate Passenger Facility Charge (PFC) eligible projects from non-PFC eligible projects. Terminal expansion projects and the

refinancing of the primary runway are PFC eligible, while the parking lot and sidewalk loan will be paid from Airport operating income. The table below provides is an overview of both loans and detailed amortization schedules are attached.

Loan	Amount	Rate	Term	Org Fee (1%)	Annual Fee	Payment
Terminal	11,676,756	3.63	25 yrs.	115,534	.30% of Principal	766,452
Parking Lot	5,101,005	3.63	30 yrs.	50,671	.30% of Principal	300,781

A sample of IBank terms and conditions are attached, however final terms, conditions, and interest rates are being negotiated by County Counsel and will be approved by the IBank Board on May 22, 2018.

The Airport will use proceeds from the IBank loans to consolidate several short and intermediate term debt instruments which will provide long term, stable financing at historically low interest rates. In addition to retiring \$6,200,000 of County issued Treasury Notes (\$124,000 of annual interest payments), the Airport will be refinancing the DOT loan (\$423,000 principal and interest payment), and eliminating a building acquisition loan (\$155,000 principal and interest payment). The net result will be an increase in long term annual debt service payments from \$702,000 in FY 2017-18 to \$1,067,235 in FY 2019-20. Due to the timing of IBank loan payments the Airport will only make one interest payment on each loan in FY 2018-19. The result will be a decrease in annual debt service in FY 2018-19 from \$702,000 to \$406,000 for a savings of \$296,000.

As of this report the Airport Enterprise has approximately \$5,000,000 cash and equivalents on hand as well as an additional \$1,125,000 in cash in the Passenger Facility Charge (PFC) Fund. The PFC Fund has been accumulating an average of \$71,500 per month over the past 12 months and has a loan payable due in May of \$423,000. Based on these projections the PFC fund will end FY 2017-18 with a cash balance of \$988,000. In addition to the \$5,000,000 of cash the Airport Enterprise is scheduled to receive a \$1,500,000 grant reimbursement from the FAA and \$16,600,000 in IBank loan proceeds. Based on these assumptions the table below identifies sources of cash and use of funds with a projected surplus of \$940,000. The combined PFC and Operations surpluses enable the Airport to enter FY 2018-19 with \$1,928,000 in cash reserves.

Available Cash

Current Cash	\$5,000,000
IBank Loan Proceeds	\$16,600,000
FAA AIP 44 Grant Reimbursement	\$1,500,000
Total Cash	\$23,100,000

Liabilities

Treasury Note 2018 – 1 RSA Enhancement	\$3,500,000
Treasury Note 2018 – 2 Term/Parking Lot	\$2,200,000
Treasury Note 2018 – 4 Parking Lot Const	\$4,000,000
Runway Extension Loan L-8	\$3,700,000
Building Acquisition Loan L-7	\$385,000
Tent Phase II	\$3,100,000

Completion of Parking Lot Construction	\$2,400,000
Industrial Park Roof / HVAC	\$450,000
Long Term Terminal Design	\$2,425,000
Total Liabilities	\$22,160,000
Difference	\$940,000

On April 20, 2018 the Airport presented the IBank loan proposal to the Debt Advisory Committee and in addition to the information contained in this Board report the Committee requested a “stress test” contemplating a 20% decline in commercial passenger volume related revenues (see attachment). For FY 2018-19 the Airport is projecting 225,000 enplaned passengers with a 20% decrease equating to approximately 180,000 enplaned passengers per year. The financial impact of this decline would be an estimated decrease in revenue of \$952,000 from \$6,443,348 to \$5,490,950. In the above outlined scenario the Airport believes it could reduce expenditures by approximately \$723,000 by reducing employee headcount by two and decreasing Service and Supply expenditures by 7%. The net result would be a decrease of income available for debt service of \$427,700 to \$825,500. In this scenario the Airport would have to utilize approximately \$250,000 per year in cash reserves outlined in the prior paragraph to meet loan servicing obligations.

Based on a thorough analysis of all the information provided the Debt Advisory Committee approved the proposed transactions with the following conditions:

1. The ability of the Airport to meet an IBank mandated 1.20 Debt Service Coverage Ratio (DSCR) by maintaining a cash reserve acceptable to the IBank. The IBank has tentatively accepted that cash held in the PFC Fund can be used to meet the 1.20 DSCR and Debt Advisory recommends the Airport make a good faith effort to maintain a minimum cash balance of \$750,000 in the Fund.
2. Final review and approval of loan terms and conditions by County Counsel.

Assuming these conditions are met, the Debt Advisory Committee believes the direct financing of Airport Enterprise capital improvements preserves the County’s credit capacity and provides a reasonable margin of safety to the General Fund in the event of an economic downturn.

The requested loans are currently scheduled for review and approval by the IBank Board on May 22, 2018. If approved the loans would fund prior to June 30, 2018 and payments would begin in February 2019.

Prior Board Actions:

- 2/9/2016 Item 42 – Airport Study Session including proposed capital improvements to parking & terminal
- 9/13/2016 Item 41/Resolution 16-0346 – Authorize issuance of a \$2,200,000 Treasury Note to fund parking lot and terminal design
- 9/13/2016 Item 41/Resolution 16-0347 – Adopt a \$20,000,000 Reimbursement Resolution for parking lot and terminal design/construction
- 9/13/2016 Item 42 – Approve contracts for parking lot (BKF) and terminal (Mead & Hunt) design
- 2/21/2017 Item 21/Resolution 17-0090 – Approve Phase I Tent Lease (Sprung Structures)
- 8/22/2017 Item 24/Resolution 17-0310 – Authorize issuance of a \$4,000,000 Treasury Note to fund parking lot and sidewalk construction

8/22/2017 Items 26 & 27 – Approve construction contracts for long term parking lot and sidewalk construction

Strategic Plan Alignment Goal 3: Invest in the Future

Securing long term, fixed rate financing for capital improvement projects at the Airport facilitates economic activity across multiple industries (construction, wine, tourism, and manufacturing) while improving the financial position of the Airport Enterprise.

Fiscal Summary

Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses		\$406,025	\$1,067,235
Additional Appropriation Requested			
Total Expenditures		\$406,025	\$1,067,235
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other		\$406,025	\$1,067,235
Use of Fund Balance			
Contingencies			
Total Sources		\$406,025	\$1,067,235

Narrative Explanation of Fiscal Impacts:

The Airport will use the requested IBank loans to consolidate several short to intermediate term debt instruments which will provide long term, stable financing at historically low interest rates. In addition to retiring \$6,200,000 of County issued Treasury Notes (\$200,000 of annual interest payments), the Airport will be refinancing a \$5,000,000 State Department of Transportation loan (\$423,000 principal and interest payment), and eliminating a building acquisition loan (\$155,000 principal and interest payment) with these loans. The net result will be an increase in annual debt service payments from \$778,000 to \$1,067,235 (\$289,235) which has been reviewed and approved by Transportation and Public Works staff, the County’s Debt Advisory Committee, and IBank Underwriting.

The FY 18-19 Airport budget was submitted prior to finalizing the requested IBank loans, however, the budget includes \$1,079,620 in principal and interest payments including: the DOT loan referenced in the previous paragraph (\$423,000), and placeholder amount for a long term debt instrument of \$656,620. The net result is a decrease in principal and interest payments due next year of \$673,595 from the submitted budget.

Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
None			
Attachments:			
Itemized Spreadsheet, Loan Amortization Schedules, Sample IBank Terms and Conditions			
Related Items “On File” with the Clerk of the Board:			

IBank Loan Itemization

Loan 1 - Long Term Parking Lot and Sidewalk Improvement

Task	Vendor	Use (Public/Private)	Amount	Act/Est
Parking Lot/Sidewalk Design	BKF Engineers	100% Public	226,905	Actual
Parking Lot/Sidewalk Design Amendment	BKF Engineers	100% Public	44,500	Actual
Pre Construction Design Review	C & S Engineers	100% Public	29,551	Actual
Construction Management	C & S Engineers	100% Public	103,080	Actual
Parking Lot Solar Power Design	Kenwood Energy	100% Public	25,000	Actual
Parking Lot Construction Bid	Ghilotti Construction	100% Public	3,743,814	Actual
Parking Lot Changes Orders	Ghilotti Construction	100% Public	300,000	Est
Sidewalk Construction Bid	CA Highway Construction	100% Public	332,845	Actual
Sidewalk Construction Change Orders	CA Highway Construction	100% Public	75,000	Est
Signage	TBD	100% Public	40,000	Est
3% Contingency	TBD	100% Public	146,421	Est
Origination Fee	IBank	100% Public	50,671	Est
Total			5,117,787	

Loan 2 - Terminal Improvements and Refinance of Runway Loan

Task	Vendor	Use (Public/Private)	Amount	Act/Est
Temporary Ticketing Facility Design	Mead and Hunt	52.5% Pub/47.5% Pvt	67,967	Actual
Temporary Ticketing Facility Construction	General Svcs/AE Nelson	52.5% Pub/47.5% Pvt	592,226	Actual
Tent Phase I Design	Mead and Hunt	89.2% Pub/10.8 Pvt	115,268	Actual
Tent Phase I Purchase	Sprung Structures	89.2% Pub/10.8 Pvt	318,103	Actual
Tent Phase I Construction	General Services	89.2% Pub/10.8 Pvt	1,341,406	Actual
Tent Phase II Design & CA	Mead and Hunt	99% Pub/1% Pvt	200,000	Est
Tent Phase II Purchase	Sprung Structures	99% Pub/1% Pvt	395,000	Est
Tent Phase II Construction	TBD	99% Pub/1% Pvt	915,250	Est
Automated Secure Exit Lane (TSA Compliance)	TBD	100% Pub	175,000	Est
Tent Fire Sprinkler System	TBD	94% Pub/6% Pvt	150,000	Est
Water/Sewer Hookup	TBD	100% Pub	125,000	Est
Permanent Bathroom Construction	TBD	95% Pub/5% Pvt	420,000	Est
GSE/GPU Design & CA	Mead and Hunt	100% Pvt	100,000	Est
Ground Support Electric	TBD	100% Pvt	300,000	Est
10% Contingency Tent Phase II/Bathrooms/GSE	TBD		278,025	Est
Permanent Terminal Design	Mead and Hunt		2,155,500	Est
Constructability Review	C & S Engineers		260,000	Est
Runway Loan Payoff	CA DOT		3,644,676	Actual
Origination Fee	IBank	100% Public	115,534	Est
Total			11,668,955	

Sonoma County Airport - Parking Lot

Applicant/Project Name	County of Sonoma -	
Loan Amount	\$5,101,005	
Interest Rate	3.63%	Loan or Lease Loan
Annual Fee	0.30%	
Funding Date	6/1/2018	Fiscal Year Ends June 30
First Interest Only Pmt Date	2/1/2019	
First Principal Pmt Date	8/1/2019	
Loan Years	30	
Amortization Period	29	

Payment Date	Ending Principal Balance	Principal Payment	Interest Payment	Total Principal & Interest	Annual Fee	Total Payment	Total Payment Fiscal Year Ending June 30
1-Jun-2018	\$5,101,005.00						
1-Feb-2019			\$123,444.32	\$123,444.32		\$123,444.32	\$123,444.32
1-Aug-2019	\$4,998,839.41	\$102,165.59	\$92,583.24	\$194,748.83	\$15,303.02	\$210,051.85	
1-Feb-2020			\$90,728.94	\$90,728.94		\$90,728.94	\$300,780.78
1-Aug-2020	\$4,892,965.20	\$105,874.20	\$90,728.94	\$196,603.14	\$14,996.52	\$211,599.66	
1-Feb-2021			\$88,807.32	\$88,807.32		\$88,807.32	\$300,406.98
1-Aug-2021	\$4,783,247.76	\$109,717.44	\$88,807.32	\$198,524.76	\$14,678.90	\$213,203.65	
1-Feb-2022			\$86,815.95	\$86,815.95		\$86,815.95	\$300,019.60
1-Aug-2022	\$4,669,547.58	\$113,700.18	\$86,815.95	\$200,516.13	\$14,349.74	\$214,865.87	
1-Feb-2023			\$84,752.29	\$84,752.29		\$84,752.29	\$299,618.16
1-Aug-2023	\$4,551,720.08	\$117,827.50	\$84,752.29	\$202,579.79	\$14,008.64	\$216,588.43	
1-Feb-2024			\$82,613.72	\$82,613.72		\$82,613.72	\$299,202.15
1-Aug-2024	\$4,429,615.45	\$122,104.64	\$82,613.72	\$204,718.36	\$13,655.16	\$218,373.52	
1-Feb-2025			\$80,397.52	\$80,397.52		\$80,397.52	\$298,771.04
1-Aug-2025	\$4,303,078.41	\$126,537.03	\$80,397.52	\$206,934.55	\$13,288.85	\$220,223.40	
1-Feb-2026			\$78,100.87	\$78,100.87		\$78,100.87	\$298,324.27
1-Aug-2026	\$4,171,948.08	\$131,130.33	\$78,100.87	\$209,231.20	\$12,909.24	\$222,140.44	
1-Feb-2027			\$75,720.86	\$75,720.86		\$75,720.86	\$297,861.29
1-Aug-2027	\$4,036,057.73	\$135,890.36	\$75,720.86	\$211,611.22	\$12,515.84	\$224,127.06	
1-Feb-2028			\$73,254.45	\$73,254.45		\$73,254.45	\$297,381.51
1-Aug-2028	\$3,895,234.55	\$140,823.18	\$73,254.45	\$214,077.63	\$12,108.17	\$226,185.80	
1-Feb-2029			\$70,698.51	\$70,698.51		\$70,698.51	\$296,884.31
1-Aug-2029	\$3,749,299.48	\$145,935.06	\$70,698.51	\$216,633.57	\$11,685.70	\$228,319.27	
1-Feb-2030			\$68,049.79	\$68,049.79		\$68,049.79	\$296,369.06
1-Aug-2030	\$3,598,066.98	\$151,232.50	\$68,049.79	\$219,282.29	\$11,247.90	\$230,530.19	
1-Feb-2031			\$65,304.92	\$65,304.92		\$65,304.92	\$295,835.10
1-Aug-2031	\$3,441,344.74	\$156,722.24	\$65,304.92	\$222,027.16	\$10,794.20	\$232,821.36	
1-Feb-2032			\$62,460.41	\$62,460.41		\$62,460.41	\$295,281.77
1-Aug-2032	\$3,278,933.48	\$162,411.26	\$62,460.41	\$224,871.67	\$10,324.03	\$235,195.70	
1-Feb-2033			\$59,512.64	\$59,512.64		\$59,512.64	\$294,708.34
1-Aug-2033	\$3,110,626.69	\$168,306.79	\$59,512.64	\$227,819.43	\$9,836.80	\$237,656.23	
1-Feb-2034			\$56,457.87	\$56,457.87		\$56,457.87	\$294,114.11
1-Aug-2034	\$2,936,210.36	\$174,416.33	\$56,457.87	\$230,874.20	\$9,331.88	\$240,206.08	
1-Feb-2035			\$53,292.22	\$53,292.22		\$53,292.22	\$293,498.30
1-Aug-2035	\$2,755,462.72	\$180,747.64	\$53,292.22	\$234,039.86	\$8,808.63	\$242,848.49	
1-Feb-2036			\$50,011.65	\$50,011.65		\$50,011.65	\$292,860.14
1-Aug-2036	\$2,568,153.94	\$187,308.78	\$50,011.65	\$237,320.43	\$8,266.39	\$245,586.81	
1-Feb-2037			\$46,611.99	\$46,611.99		\$46,611.99	\$292,198.81
1-Aug-2037	\$2,374,045.85	\$194,108.09	\$46,611.99	\$240,720.08	\$7,704.46	\$248,424.54	
1-Feb-2038			\$43,088.93	\$43,088.93		\$43,088.93	\$291,513.48
1-Aug-2038	\$2,172,891.64	\$201,154.21	\$43,088.93	\$244,243.14	\$7,122.14	\$251,365.28	
1-Feb-2039			\$39,437.98	\$39,437.98		\$39,437.98	\$290,803.26
1-Aug-2039	\$1,964,435.53	\$208,456.11	\$39,437.98	\$247,894.09	\$6,518.67	\$254,412.77	
1-Feb-2040			\$35,654.50	\$35,654.50		\$35,654.50	\$290,067.27
1-Aug-2040	\$1,748,412.47	\$216,023.07	\$35,654.50	\$251,677.57	\$5,893.31	\$257,570.88	
1-Feb-2041			\$31,733.69	\$31,733.69		\$31,733.69	\$289,304.56
1-Aug-2041	\$1,524,547.77	\$223,864.70	\$31,733.69	\$255,598.39	\$5,245.24	\$260,843.63	
1-Feb-2042			\$27,670.54	\$27,670.54		\$27,670.54	\$288,514.17
1-Aug-2042	\$1,292,556.78	\$231,990.99	\$27,670.54	\$259,661.53	\$4,573.64	\$264,235.18	
1-Feb-2043			\$23,459.91	\$23,459.91		\$23,459.91	\$287,695.08
1-Aug-2043	\$1,052,144.51	\$240,412.26	\$23,459.91	\$263,872.17	\$3,877.67	\$267,749.84	
1-Feb-2044			\$19,096.42	\$19,096.42		\$19,096.42	\$286,846.26
1-Aug-2044	\$803,005.28	\$249,139.23	\$19,096.42	\$268,235.65	\$3,156.43	\$271,392.09	
1-Feb-2045			\$14,574.55	\$14,574.55		\$14,574.55	\$285,966.63
1-Aug-2045	\$544,822.30	\$258,182.98	\$14,574.55	\$272,757.53	\$2,409.02	\$275,166.55	
1-Feb-2046			\$9,888.52	\$9,888.52		\$9,888.52	\$285,055.07
1-Aug-2046	\$277,267.27	\$267,555.03	\$9,888.52	\$277,443.55	\$1,634.47	\$279,078.02	
1-Feb-2047			\$5,032.40	\$5,032.40		\$5,032.40	\$284,110.42
1-Aug-2047		\$277,267.27	\$5,032.40	\$282,299.67	\$831.80	\$283,131.48	
							\$283,131.48
Total Payments:		\$5,101,005.00	\$3,262,486.26	\$8,363,491.26	\$267,076.46	\$8,630,567.72	\$8,630,567.72

Sonoma County Airport - Terminal & Runway

Applicant/Project Name							
County of Sonoma -							
Loan Amount		\$11,676,756		Loan or Lease		Loan	
Interest Rate		3.63%					
Annual Fee		0.30%					
Funding Date		6/1/2018		Fiscal Year Ends			
First Interest Only Pmt Date		2/1/2019		June 30			
First Principal Pmt Date		8/1/2019					
Loan Years		25					
Amortization Period		24					
Payment Date	Ending Principal Balance	Principal Payment	Interest Payment	Total Principal & Interest	Annual Fee	Total Payment	Total Payment Fiscal Year Ending June 30
1-Jun-2018	\$11,676,756.00						
1-Feb-2019			\$282,577.50	\$282,577.50		\$282,577.50	\$282,577.50
1-Aug-2019	\$11,363,514.85	\$313,241.15	\$211,933.12	\$525,174.27	\$35,030.27	\$560,204.54	
1-Feb-2020			\$206,247.79	\$206,247.79		\$206,247.79	\$766,452.34
1-Aug-2020	\$11,038,903.04	\$324,611.81	\$206,247.79	\$530,859.60	\$34,090.54	\$564,950.14	
1-Feb-2021			\$200,356.09	\$200,356.09		\$200,356.09	\$765,306.24
1-Aug-2021	\$10,702,507.83	\$336,395.21	\$200,356.09	\$536,751.30	\$33,116.71	\$569,868.01	
1-Feb-2022			\$194,250.52	\$194,250.52		\$194,250.52	\$764,118.53
1-Aug-2022	\$10,353,901.47	\$348,606.36	\$194,250.52	\$542,856.88	\$32,107.52	\$574,964.40	
1-Feb-2023			\$187,923.31	\$187,923.31		\$187,923.31	\$762,887.71
1-Aug-2023	\$9,992,640.70	\$361,260.77	\$187,923.31	\$549,184.08	\$31,061.70	\$580,245.79	
1-Feb-2024			\$181,366.43	\$181,366.43		\$181,366.43	\$761,612.22
1-Aug-2024	\$9,618,266.16	\$374,374.54	\$181,366.43	\$555,740.97	\$29,977.92	\$585,718.89	
1-Feb-2025			\$174,571.53	\$174,571.53		\$174,571.53	\$760,290.42
1-Aug-2025	\$9,230,301.83	\$387,964.33	\$174,571.53	\$562,535.86	\$28,854.80	\$591,390.66	
1-Feb-2026			\$167,529.98	\$167,529.98		\$167,529.98	\$758,920.64
1-Aug-2026	\$8,828,254.39	\$402,047.44	\$167,529.98	\$569,577.42	\$27,690.91	\$597,268.32	
1-Feb-2027			\$160,232.82	\$160,232.82		\$160,232.82	\$757,501.14
1-Aug-2027	\$8,411,612.63	\$416,641.76	\$160,232.82	\$576,874.58	\$26,484.76	\$603,359.34	
1-Feb-2028			\$152,670.77	\$152,670.77		\$152,670.77	\$756,030.11
1-Aug-2028	\$7,979,846.77	\$431,765.86	\$152,670.77	\$584,436.63	\$25,234.84	\$609,671.46	
1-Feb-2029			\$144,834.22	\$144,834.22		\$144,834.22	\$754,505.68
1-Aug-2029	\$7,532,407.81	\$447,438.96	\$144,834.22	\$592,273.18	\$23,939.54	\$616,212.72	
1-Feb-2030			\$136,713.20	\$136,713.20		\$136,713.20	\$752,925.92
1-Aug-2030	\$7,068,726.82	\$463,680.99	\$136,713.20	\$600,394.19	\$22,597.22	\$622,991.42	
1-Feb-2031			\$128,297.39	\$128,297.39		\$128,297.39	\$751,288.81
1-Aug-2031	\$6,588,214.21	\$480,512.61	\$128,297.39	\$608,810.00	\$21,206.18	\$630,016.18	
1-Feb-2032			\$119,576.09	\$119,576.09		\$119,576.09	\$749,592.27
1-Aug-2032	\$6,090,258.99	\$497,955.22	\$119,576.09	\$617,531.31	\$19,764.64	\$637,295.95	
1-Feb-2033			\$110,538.20	\$110,538.20		\$110,538.20	\$747,834.15
1-Aug-2033	\$5,574,228.00	\$516,030.99	\$110,538.20	\$626,569.19	\$18,270.78	\$644,839.97	
1-Feb-2034			\$101,172.24	\$101,172.24		\$101,172.24	\$746,012.21
1-Aug-2034	\$5,039,465.08	\$534,762.92	\$101,172.24	\$635,935.16	\$16,722.68	\$652,657.84	
1-Feb-2035			\$91,466.29	\$91,466.29		\$91,466.29	\$744,124.13
1-Aug-2035	\$4,485,290.27	\$554,174.81	\$91,466.29	\$645,641.10	\$15,118.40	\$660,759.50	
1-Feb-2036			\$81,408.02	\$81,408.02		\$81,408.02	\$742,167.52
1-Aug-2036	\$3,910,998.91	\$574,291.36	\$81,408.02	\$655,699.38	\$13,455.87	\$669,155.25	
1-Feb-2037			\$70,984.63	\$70,984.63		\$70,984.63	\$740,139.88
1-Aug-2037	\$3,315,860.78	\$595,138.13	\$70,984.63	\$666,122.76	\$11,733.00	\$677,855.76	
1-Feb-2038			\$60,182.87	\$60,182.87		\$60,182.87	\$738,038.63
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1-Feb-2039			\$48,989.01	\$48,989.01		\$48,989.01	\$735,861.12
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1-Feb-2040			\$37,388.81	\$37,388.81		\$37,388.81	\$733,604.55
1-Aug-2040	\$1,397,659.99	\$662,329.77	\$37,388.81	\$699,718.58	\$6,179.97	\$705,898.55	
1-Feb-2041			\$25,367.53	\$25,367.53		\$25,367.53	\$731,266.08
1-Aug-2041	\$711,287.65	\$686,372.34	\$25,367.53	\$711,739.87	\$4,192.98	\$715,932.85	
1-Feb-2042			\$12,909.87	\$12,909.87		\$12,909.87	\$728,842.72
1-Aug-2042		\$711,287.65	\$12,909.87	\$724,197.52	\$2,133.86	\$726,331.39	
							\$726,331.39
Total Payments:		\$11,676,756.00	\$6,084,465.85	\$17,761,221.85	\$497,010.04	\$18,258,231.89	\$18,258,231.89

STAFF RECOMMENDATION

Staff recommends approval of Resolution No. 18-02 authorizing a financing not to exceed \$18,500,000 to the 22nd District Agricultural Association for the Project, consisting of the Concert Venue Project and the Environmental Remediation Project, subject to the conditions contained herein:

1. **Applicant/Borrower:** 22nd District Agricultural Association (District)
2. **Project:** Concert Venue Project and Environmental Remediation Project (collectively, the Project)
3. **Amount of ISRF Program Financing:** \$18,500,000
4. **Maturity:** Twenty (20) years
5. **Repayment/Security:** All "IBank Pledged Revenues," consisting of "Pledged Fair Revenues" minus "Fair Operating Expenses". Pledged Fair Revenues are all revenues generated by District operations, except for the first \$4 Million of "Food and Beverage Net Revenues." Fair Operating Expenses are the District's operating expenses, as determined by generally acceptable accounting principles.
6. **Interest Rate:** 3.00%
7. **Fees:** District will finance an origination fee of 1.00%, \$184,982, included in the loan amount, and shall pay annually a fee of 0.30% of the outstanding principal balance.
8. **Not an Unconditional Commitment:** IBank's resolution shall not be construed as unconditional commitment to finance the Project, but rather IBank's approval pursuant to the Resolution is conditioned upon entry by IBank and the District into a Financing Agreement, in form and substance satisfactory to IBank.
9. **Limited Time:** The Board's approval expires 60 days from the date of its adoption. Thus, the District and IBank must enter into the Financing Agreement no later than 60 days from such date. Once the approval has expired, there can be no assurances that IBank would be able to provide the ISRF Program financing to the District or consider extending the approval period.
10. **ISRF Program Financing Agreement Covenants and Conditions:** The Financing Agreement shall include, among other things, the following covenants:
 - a. District shall adjust as necessary its rates, charges, and expenses in an amount sufficient to ensure that the sum of IBank Pledged Revenues produce a minimum 1.30 times aggregate annual debt service coverage ratio for the sum of actual annual debt service on the Financing and any obligations on parity with the Financing.
 - b. The District will be prohibited from issuing future debt payable from IBank Pledged Revenues senior to the Financing.
 - c. Parity debt will be allowed if IBank Pledged Revenues amount to at least 1.30 times the Maximum Annual Debt Service (MADS) taking into consideration the MADS payable in any Fiscal Year on all existing debt payable from IBank Pledged Revenues and the proposed parity debt.
 - d. Subordinate debt will be allowed if IBank Pledged Revenues are at least 1.15 times the sum of the MADS on all outstanding debt, payable from the IBank Pledged Revenues, including the proposed Subordinate Debt.
 - e. District to comply with the requirements of the Criteria and all applicable laws, regulations, and permitting requirements associated with public works projects.
 - f. District to provide to IBank annually within 180 days of the end of each of District's fiscal year a copy of its audited financial statements that report each enterprise fund separately, together with an annual certificate demonstrating compliance with the foregoing covenants, as well as other information as IBank may request from time to time.

- g. Closing will be conditioned on the Department of General Services' (DGS) approval of the District's pledge of revenues.
 - h. District shall notify the Departments of Finance and the Department of Food & Agriculture when seeking final Project approval from DGS.
 - i. Hard cost disbursement will be conditioned on the District obtaining all necessary permits and approvals to commence construction.
11. **Criteria Waiver:** IBank's Criteria provides that ISRF Program Financing applicants must demonstrate project readiness and feasibility to complete construction within 2 years after IBank's financing approval. The District is not able to complete the environmental remediation component of the Project within a two-year time frame. Accordingly, the District seeks a waiver of this aspect of the Criteria and instead requests that it be allowed 51 months from entering into the Financing Agreement, to complete the Project.

SAMPLE

Sonoma County Airport - Parking Lot

Applicant/Project Name	County of Sonoma -	
Loan Amount	\$5,101,005	
Interest Rate	3.63%	Loan or Lease Loan
Annual Fee	0.30%	
Funding Date	6/1/2018	Fiscal Year Ends June 30
First Interest Only Pmt Date	2/1/2019	
First Principal Pmt Date	8/1/2019	
Loan Years	30	
Amortization Period	29	

Payment Date	Ending Principal Balance	Principal Payment	Interest Payment	Total Principal & Interest	Annual Fee	Total Payment	Total Payment Fiscal Year Ending June 30
1-Jun-2018	\$5,101,005.00						
1-Feb-2019			\$123,444.32	\$123,444.32		\$123,444.32	\$123,444.32
1-Aug-2019	\$4,998,839.41	\$102,165.59	\$92,583.24	\$194,748.83	\$15,303.02	\$210,051.85	
1-Feb-2020			\$90,728.94	\$90,728.94		\$90,728.94	\$300,780.78
1-Aug-2020	\$4,892,965.20	\$105,874.20	\$90,728.94	\$196,603.14	\$14,996.52	\$211,599.66	
1-Feb-2021			\$88,807.32	\$88,807.32		\$88,807.32	\$300,406.98
1-Aug-2021	\$4,783,247.76	\$109,717.44	\$88,807.32	\$198,524.76	\$14,678.90	\$213,203.65	
1-Feb-2022			\$86,815.95	\$86,815.95		\$86,815.95	\$300,019.60
1-Aug-2022	\$4,669,547.58	\$113,700.18	\$86,815.95	\$200,516.13	\$14,349.74	\$214,865.87	
1-Feb-2023			\$84,752.29	\$84,752.29		\$84,752.29	\$299,618.16
1-Aug-2023	\$4,551,720.08	\$117,827.50	\$84,752.29	\$202,579.79	\$14,008.64	\$216,588.43	
1-Feb-2024			\$82,613.72	\$82,613.72		\$82,613.72	\$299,202.15
1-Aug-2024	\$4,429,615.45	\$122,104.64	\$82,613.72	\$204,718.36	\$13,655.16	\$218,373.52	
1-Feb-2025			\$80,397.52	\$80,397.52		\$80,397.52	\$298,771.04
1-Aug-2025	\$4,303,078.41	\$126,537.03	\$80,397.52	\$206,934.55	\$13,288.85	\$220,223.40	
1-Feb-2026			\$78,100.87	\$78,100.87		\$78,100.87	\$298,324.27
1-Aug-2026	\$4,171,948.08	\$131,130.33	\$78,100.87	\$209,231.20	\$12,909.24	\$222,140.44	
1-Feb-2027			\$75,720.86	\$75,720.86		\$75,720.86	\$297,861.29
1-Aug-2027	\$4,036,057.73	\$135,890.36	\$75,720.86	\$211,611.22	\$12,515.84	\$224,127.06	
1-Feb-2028			\$73,254.45	\$73,254.45		\$73,254.45	\$297,381.51
1-Aug-2028	\$3,895,234.55	\$140,823.18	\$73,254.45	\$214,077.63	\$12,108.17	\$226,185.80	
1-Feb-2029			\$70,698.51	\$70,698.51		\$70,698.51	\$296,884.31
1-Aug-2029	\$3,749,299.48	\$145,935.06	\$70,698.51	\$216,633.57	\$11,685.70	\$228,319.27	
1-Feb-2030			\$68,049.79	\$68,049.79		\$68,049.79	\$296,369.06
1-Aug-2030	\$3,598,066.98	\$151,232.50	\$68,049.79	\$219,282.29	\$11,247.90	\$230,530.19	
1-Feb-2031			\$65,304.92	\$65,304.92		\$65,304.92	\$295,835.10
1-Aug-2031	\$3,441,344.74	\$156,722.24	\$65,304.92	\$222,027.16	\$10,794.20	\$232,821.36	
1-Feb-2032			\$62,460.41	\$62,460.41		\$62,460.41	\$295,281.77
1-Aug-2032	\$3,278,933.48	\$162,411.26	\$62,460.41	\$224,871.67	\$10,324.03	\$235,195.70	
1-Feb-2033			\$59,512.64	\$59,512.64		\$59,512.64	\$294,708.34
1-Aug-2033	\$3,110,626.69	\$168,306.79	\$59,512.64	\$227,819.43	\$9,836.80	\$237,656.23	
1-Feb-2034			\$56,457.87	\$56,457.87		\$56,457.87	\$294,114.11
1-Aug-2034	\$2,936,210.36	\$174,416.33	\$56,457.87	\$230,874.20	\$9,331.88	\$240,206.08	
1-Feb-2035			\$53,292.22	\$53,292.22		\$53,292.22	\$293,498.30
1-Aug-2035	\$2,755,462.72	\$180,747.64	\$53,292.22	\$234,039.86	\$8,808.63	\$242,848.49	
1-Feb-2036			\$50,011.65	\$50,011.65		\$50,011.65	\$292,860.14
1-Aug-2036	\$2,568,153.94	\$187,308.78	\$50,011.65	\$237,320.43	\$8,266.39	\$245,586.81	
1-Feb-2037			\$46,611.99	\$46,611.99		\$46,611.99	\$292,198.81
1-Aug-2037	\$2,374,045.85	\$194,108.09	\$46,611.99	\$240,720.08	\$7,704.46	\$248,424.54	
1-Feb-2038			\$43,088.93	\$43,088.93		\$43,088.93	\$291,513.48
1-Aug-2038	\$2,172,891.64	\$201,154.21	\$43,088.93	\$244,243.14	\$7,122.14	\$251,365.28	
1-Feb-2039			\$39,437.98	\$39,437.98		\$39,437.98	\$290,803.26
1-Aug-2039	\$1,964,435.53	\$208,456.11	\$39,437.98	\$247,894.09	\$6,518.67	\$254,412.77	
1-Feb-2040			\$35,654.50	\$35,654.50		\$35,654.50	\$290,067.27
1-Aug-2040	\$1,748,412.47	\$216,023.07	\$35,654.50	\$251,677.57	\$5,893.31	\$257,570.88	
1-Feb-2041			\$31,733.69	\$31,733.69		\$31,733.69	\$289,304.56
1-Aug-2041	\$1,524,547.77	\$223,864.70	\$31,733.69	\$255,598.39	\$5,245.24	\$260,843.63	
1-Feb-2042			\$27,670.54	\$27,670.54		\$27,670.54	\$288,514.17
1-Aug-2042	\$1,292,556.78	\$231,990.99	\$27,670.54	\$259,661.53	\$4,573.64	\$264,235.18	
1-Feb-2043			\$23,459.91	\$23,459.91		\$23,459.91	\$287,695.08
1-Aug-2043	\$1,052,144.51	\$240,412.26	\$23,459.91	\$263,872.17	\$3,877.67	\$267,749.84	
1-Feb-2044			\$19,096.42	\$19,096.42		\$19,096.42	\$286,846.26
1-Aug-2044	\$803,005.28	\$249,139.23	\$19,096.42	\$268,235.65	\$3,156.43	\$271,392.09	
1-Feb-2045			\$14,574.55	\$14,574.55		\$14,574.55	\$285,966.63
1-Aug-2045	\$544,822.30	\$258,182.98	\$14,574.55	\$272,757.53	\$2,409.02	\$275,166.55	
1-Feb-2046			\$9,888.52	\$9,888.52		\$9,888.52	\$285,055.07
1-Aug-2046	\$277,267.27	\$267,555.03	\$9,888.52	\$277,443.55	\$1,634.47	\$279,078.02	
1-Feb-2047			\$5,032.40	\$5,032.40		\$5,032.40	\$284,110.42
1-Aug-2047		\$277,267.27	\$5,032.40	\$282,299.67	\$831.80	\$283,131.48	
							\$283,131.48
Total Payments:		\$5,101,005.00	\$3,262,486.26	\$8,363,491.26	\$267,076.46	\$8,630,567.72	\$8,630,567.72

Sonoma County Airport - Terminal & Runway

Applicant/Project Name		County of Sonoma -					
Loan Amount		\$11,676,756					
Interest Rate		3.63%					
Annual Fee		0.30%					
Funding Date		6/1/2018					
First Interest Only Pmt Date		2/1/2019					
First Principal Pmt Date		8/1/2019					
Loan Years		25					
Amortization Period		24					
		Loan or Lease		Loan			
		Fiscal Year Ends		June 30			
Payment Date	Ending Principal Balance	Principal Payment	Interest Payment	Total Principal & Interest	Annual Fee	Total Payment	Total Payment Fiscal Year Ending June 30
1-Jun-2018	\$11,676,756.00						
1-Feb-2019			\$282,577.50	\$282,577.50		\$282,577.50	\$282,577.50
1-Aug-2019	\$11,363,514.85	\$313,241.15	\$211,933.12	\$525,174.27	\$35,030.27	\$560,204.54	
1-Feb-2020			\$206,247.79	\$206,247.79		\$206,247.79	\$766,452.34
1-Aug-2020	\$11,038,903.04	\$324,611.81	\$206,247.79	\$530,859.60	\$34,090.54	\$564,950.14	
1-Feb-2021			\$200,356.09	\$200,356.09		\$200,356.09	\$765,306.24
1-Aug-2021	\$10,702,507.83	\$336,395.21	\$200,356.09	\$536,751.30	\$33,116.71	\$569,868.01	
1-Feb-2022			\$194,250.52	\$194,250.52		\$194,250.52	\$764,118.53
1-Aug-2022	\$10,353,901.47	\$348,606.36	\$194,250.52	\$542,856.88	\$32,107.52	\$574,964.40	
1-Feb-2023			\$187,923.31	\$187,923.31		\$187,923.31	\$762,887.71
1-Aug-2023	\$9,992,640.70	\$361,260.77	\$187,923.31	\$549,184.08	\$31,061.70	\$580,245.79	
1-Feb-2024			\$181,366.43	\$181,366.43		\$181,366.43	\$761,612.22
1-Aug-2024	\$9,618,266.16	\$374,374.54	\$181,366.43	\$555,740.97	\$29,977.92	\$585,718.89	
1-Feb-2025			\$174,571.53	\$174,571.53		\$174,571.53	\$760,290.42
1-Aug-2025	\$9,230,301.83	\$387,964.33	\$174,571.53	\$562,535.86	\$28,854.80	\$591,390.66	
1-Feb-2026			\$167,529.98	\$167,529.98		\$167,529.98	\$758,920.64
1-Aug-2026	\$8,828,254.39	\$402,047.44	\$167,529.98	\$569,577.42	\$27,690.91	\$597,268.32	
1-Feb-2027			\$160,232.82	\$160,232.82		\$160,232.82	\$757,501.14
1-Aug-2027	\$8,411,612.63	\$416,641.76	\$160,232.82	\$576,874.58	\$26,484.76	\$603,359.34	
1-Feb-2028			\$152,670.77	\$152,670.77		\$152,670.77	\$756,030.11
1-Aug-2028	\$7,979,846.77	\$431,765.86	\$152,670.77	\$584,436.63	\$25,234.84	\$609,671.46	
1-Feb-2029			\$144,834.22	\$144,834.22		\$144,834.22	\$754,505.68
1-Aug-2029	\$7,532,407.81	\$447,438.96	\$144,834.22	\$592,273.18	\$23,939.54	\$616,212.72	
1-Feb-2030			\$136,713.20	\$136,713.20		\$136,713.20	\$752,925.92
1-Aug-2030	\$7,068,726.82	\$463,680.99	\$136,713.20	\$600,394.19	\$22,597.22	\$622,991.42	
1-Feb-2031			\$128,297.39	\$128,297.39		\$128,297.39	\$751,288.81
1-Aug-2031	\$6,588,214.21	\$480,512.61	\$128,297.39	\$608,810.00	\$21,206.18	\$630,016.18	
1-Feb-2032			\$119,576.09	\$119,576.09		\$119,576.09	\$749,592.27
1-Aug-2032	\$6,090,258.99	\$497,955.22	\$119,576.09	\$617,531.31	\$19,764.64	\$637,295.95	
1-Feb-2033			\$110,538.20	\$110,538.20		\$110,538.20	\$747,834.15
1-Aug-2033	\$5,574,228.00	\$516,030.99	\$110,538.20	\$626,569.19	\$18,270.78	\$644,839.97	
1-Feb-2034			\$101,172.24	\$101,172.24		\$101,172.24	\$746,012.21
1-Aug-2034	\$5,039,465.08	\$534,762.92	\$101,172.24	\$635,935.16	\$16,722.68	\$652,657.84	
1-Feb-2035			\$91,466.29	\$91,466.29		\$91,466.29	\$744,124.13
1-Aug-2035	\$4,485,290.27	\$554,174.81	\$91,466.29	\$645,641.10	\$15,118.40	\$660,759.50	
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1-Feb-2037			\$70,984.63	\$70,984.63		\$70,984.63	\$740,139.88
1-Aug-2037	\$3,315,860.78	\$595,138.13	\$70,984.63	\$666,122.76	\$11,733.00	\$677,855.76	
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1-Feb-2039			\$48,989.01	\$48,989.01		\$48,989.01	\$735,861.12
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1-Feb-2040			\$37,388.81	\$37,388.81		\$37,388.81	\$733,604.55
1-Aug-2040	\$1,397,659.99	\$662,329.77	\$37,388.81	\$699,718.58	\$6,179.97	\$705,898.55	
1-Feb-2041			\$25,367.53	\$25,367.53		\$25,367.53	\$731,266.08
1-Aug-2041	\$711,287.65	\$686,372.34	\$25,367.53	\$711,739.87	\$4,192.98	\$715,932.85	
1-Feb-2042			\$12,909.87	\$12,909.87		\$12,909.87	\$728,842.72
1-Aug-2042		\$711,287.65	\$12,909.87	\$724,197.52	\$2,133.86	\$726,331.39	
							\$726,331.39
Total Payments:		\$11,676,756.00	\$6,084,465.85	\$17,761,221.85	\$497,010.04	\$18,258,231.89	\$18,258,231.89

STAFF RECOMMENDATION

Staff recommends approval of Resolution No. 18-02 authorizing a financing not to exceed \$18,500,000 to the 22nd District Agricultural Association for the Project, consisting of the Concert Venue Project and the Environmental Remediation Project, subject to the conditions contained herein:

1. **Applicant/Borrower:** 22nd District Agricultural Association (District)
2. **Project:** Concert Venue Project and Environmental Remediation Project (collectively, the Project)
3. **Amount of ISRF Program Financing:** \$18,500,000
4. **Maturity:** Twenty (20) years
5. **Repayment/Security:** All "IBank Pledged Revenues," consisting of "Pledged Fair Revenues" minus "Fair Operating Expenses". Pledged Fair Revenues are all revenues generated by District operations, except for the first \$4 Million of "Food and Beverage Net Revenues." Fair Operating Expenses are the District's operating expenses, as determined by generally acceptable accounting principles.
6. **Interest Rate:** 3.00%
7. **Fees:** District will finance an origination fee of 1.00%, \$184,982, included in the loan amount, and shall pay annually a fee of 0.30% of the outstanding principal balance.
8. **Not an Unconditional Commitment:** IBank's resolution shall not be construed as unconditional commitment to finance the Project, but rather IBank's approval pursuant to the Resolution is conditioned upon entry by IBank and the District into a Financing Agreement, in form and substance satisfactory to IBank.
9. **Limited Time:** The Board's approval expires 60 days from the date of its adoption. Thus, the District and IBank must enter into the Financing Agreement no later than 60 days from such date. Once the approval has expired, there can be no assurances that IBank would be able to provide the ISRF Program financing to the District or consider extending the approval period.
10. **ISRF Program Financing Agreement Covenants and Conditions:** The Financing Agreement shall include, among other things, the following covenants:
 - a. District shall adjust as necessary its rates, charges, and expenses in an amount sufficient to ensure that the sum of IBank Pledged Revenues produce a minimum 1.30 times aggregate annual debt service coverage ratio for the sum of actual annual debt service on the Financing and any obligations on parity with the Financing.
 - b. The District will be prohibited from issuing future debt payable from IBank Pledged Revenues senior to the Financing.
 - c. Parity debt will be allowed if IBank Pledged Revenues amount to at least 1.30 times the Maximum Annual Debt Service (MADS) taking into consideration the MADS payable in any Fiscal Year on all existing debt payable from IBank Pledged Revenues and the proposed parity debt.
 - d. Subordinate debt will be allowed if IBank Pledged Revenues are at least 1.15 times the sum of the MADS on all outstanding debt, payable from the IBank Pledged Revenues, including the proposed Subordinate Debt.
 - e. District to comply with the requirements of the Criteria and all applicable laws, regulations, and permitting requirements associated with public works projects.
 - f. District to provide to IBank annually within 180 days of the end of each of District's fiscal year a copy of its audited financial statements that report each enterprise fund separately, together with an annual certificate demonstrating compliance with the foregoing covenants, as well as other information as IBank may request from time to time.

- g. Closing will be conditioned on the Department of General Services' (DGS) approval of the District's pledge of revenues.
 - h. District shall notify the Departments of Finance and the Department of Food & Agriculture when seeking final Project approval from DGS.
 - i. Hard cost disbursement will be conditioned on the District obtaining all necessary permits and approvals to commence construction.
11. **Criteria Waiver:** IBank's Criteria provides that ISRF Program Financing applicants must demonstrate project readiness and feasibility to complete construction within 2 years after IBank's financing approval. The District is not able to complete the environmental remediation component of the Project within a two-year time frame. Accordingly, the District seeks a waiver of this aspect of the Criteria and instead requests that it be allowed 51 months from entering into the Financing Agreement, to complete the Project.

SAMPLE



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 59
(This Section for use by Clerk of the Board Only.)

To: Sonoma County Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Economic Development Board

Staff Name and Phone Number:

Ben Stone: (707) 565-7170 / EDB

Supervisory District(s):

All

Title: Annual Tourism Assessment Report & Continuation of Tourism Assessment Without Change in Fiscal Year 2017-2018

Recommended Actions:

- (1) Conduct a public hearing to consider the Sonoma County Tourism Bureau's annual tourism assessment report to support the continuation of the tourism assessment in fiscal year 2018-19; and
- (2) Adopt a resolution confirming the Tourism Bureau's Annual Report and continuing without change the levy of the tourism assessment for the Sonoma County Tourism Business Improvement Area for Fiscal Year 2018-19.
- (3) Approve an amendment to the Agreement for Services to extend the term to June 30, 2019 to provide services and programs promoting tourism in Sonoma County funded by assessments from within the Sonoma County Tourism Business Improvement Area.

Executive Summary:

Staff recommends the Board approve a resolution confirming the Annual Report prepared by the Sonoma County Tourism Bureau and continuing the program and assessments as levied without change for fiscal year 2018-19. Staff will work with Sonoma County Tourism to amend the Agreement for Services with the Sonoma County Tourism Bureau to include expenditure policy restrictions to carry out the services, activities and programs promoting tourism funded by the assessments for the special benefit of the lodging establishments within the Sonoma County Tourism Business Improvement Area. The current Agreement for Services will remain in place until the amendments are brought back to the Board of Supervisors for approval within 60 days of this hearing.

Discussion:

Sonoma County Tourism Business Improvement Area Background

On November 2, 2004, the Sonoma County Board of Supervisors adopted the ordinance creating the Sonoma County Tourism Business Improvement Area (Business Improvement Area) in various cities and in the unincorporated areas of the county. Under the ordinance, lodging establishments generating annual room revenue of \$350,000 or more must pay an assessment equal to 2% of such revenue.

Pursuant to Streets and Highways Code section 36535(d), the levy of the assessment and program to promote tourism has continued without change in the Business Improvement Area since 2004.

In January 2005, the Board appointed five members to the Sonoma County Tourism Business Improvement Area Advisory Board which is charged with advising the Board of Supervisors on the amount of the Area's Assessments and on the services, programs and activities to be funded by the Assessments, and in February 2005, appointed eight (8) of the 22-member body to the Sonoma County Tourism Bureau (Tourism Bureau) Board of Directors. The Tourism Bureau is a private, non-profit organization dedicated to increasing overnight stays in Sonoma County.

In June 2005, the Sonoma County Board of Supervisors executed an agreement with the Tourism Bureau to carry out services, activities, and programs promoting tourism to Sonoma County, funded by assessments from within the Business Improvement Area.

In 2011, the Sonoma County Board of Supervisors amended the ordinance that formed the Business Improvement Area, appointing Tourism Bureaus board of directors to also serve as the advisory board for the Business Improvement Area. This decision was based on recommendations of the 2010 County audit of the organization.

As it has done every year since 2004, the Tourism Bureau again has submitted its Annual Report which contains information on the activities and corresponding expenditures to carry out in Fiscal Year 2018-19. The Report also contains a budget showing projected revenue from assessments and all other sources sufficient to carry out the services, programs, and activities set forth in the plan. The Tourism Bureau has also submitted its audited financial statements and independent auditor's report which provides a detailed description of the organization's revenue and expenses and the special benefit provided to the lodging establishments within the Business Improvement Area.

Collection of Tourism Assessment and Transient Occupancy Tax

The Sonoma County Treasurer-Tax Collector collects the BIA assessment from all qualifying entities in the unincorporated areas of the County and also remittances from member cities, which include the Cities of Santa Rosa, Rohnert Park, Petaluma, Cloverdale, Cotati, and Sebastopol, and the Town of Windsor. The City of Sonoma and the City of Healdsburg have not approved consent resolutions to join the BIA.

In addition to BIA funds, the Sonoma County Tourism Bureau receives funding from the County of Sonoma's Transient Occupancy Tax (TOT) through the Advertising Program. TOT is authorized under State Revenue and Taxation Code Section 7280, as an additional source of non-property tax revenue to local government. This tax is levied in Sonoma County at a rate of 12% for accommodations at lodging and camping facilities in the unincorporated areas of the County. TOT funds are discretionary, in that the Board of Supervisors may direct use of these funds for any legitimate county expense and may grant funds that benefit the community in accordance with Government Code section 26100(a)(2) and Government Code section 26227 .

Findings and Recommendations

The Tourism Bureau, in its capacity as the Advisory Board, recommends that the Board accept and confirm this Annual Report and continue the assessments as levied without change for the Business Improvement Area in Fiscal Year 2018-2019 pursuant to the Parking and Business Improvement Area Law of 1989 (California Streets and Highways Code section 36535(d) et seq.), subject to the following findings and recommendations:

- 1) That the boundaries of the Business Improvement Area should remain the same, with the recognition that the cities of Santa Rosa, Petaluma, Rohnert Park, Sebastopol, Cloverdale and Cotati, and the Town of Windsor, have not withdrawn their consent to be included within the boundaries of the Business Improvement Area.
- 2) That Tourism Bureau continue to serve as the Advisory Board for the Business Improvement Area.
- 3) That the method and basis of levying the assessment remain unchanged and continue in Fiscal Year 2018-2019.
- 4) That the revenues generated by the assessment be used in accordance with the requirements of Sonoma County Code section 33-4 to conduct marketing activities including funding of programs, services, and activities outside of the County designed to increase the number of overnight visits to the County.
- 5) That Tourism Bureau has retained the services of Dillwood & Burkle, LLP, an independent certified public accounting firm, to audit the Tourism Bureau's finances and it concluded in its Independent Auditor's Report that there were no material weaknesses or significant audit findings in relation to Business Improvement Area program (Attachment 3).
- 6) The Tourism Bureau will provide an annual audit of travel and meal expenses per their most recent updated travel and meal reimbursement policy.

Activities, Marketing, Advertising, and Public Relations Program Expenditures

The type of activities intended to be funded by the Tourism Bureau's Business Improvement Area assessment and Transient Occupancy Tax revenues include:

- (1) advertising; (2) marketing materials and distribution; (3) tradeshow and sales missions; (4) sales and marketing promotions; (5) destination development; (6) research and development; (7) public relations; (8) sales and marketing tools; (9) labor; and (10) administrative expenses.

Purpose and Specific Benefit

Business Improvement Districts are important to California's economy and provide a number of tourism-related services to California's tourism industry, including marketing of assessed businesses, tourism promotion, and special events to attract tourists. Sonoma County Code section 33-4 requires that revenues from Business Improvement Area assessments must be used to conduct marketing activities designed to increase overnight visits to the area. The term "area" is defined as the territory within the boundaries of the Business Improvement Area, and the term "marketing activities" is defined as activities designed to market the area as a tourist destination, including the expenditure of funds to place advertising in any media, conduct public relations campaigns, perform marketing research, promote conventions and trade shows, and foster improved contacts within the travel industry, for the purpose of promoting tourism within the area. Revenues from assessments may be used for programs, services, and activities outside the area, if such programs, services, and activities are designed to

promote and encourage overnight visits to the area. Revenues from assessments may also be used to pay the ongoing reasonable administrative costs associated with the marketing activities.

The focus on increasing overnight visits to the area constitutes a specific benefit to the lodging establishments that pay the assessments. The fact that others may receive incidental benefits from the expenditure of assessments, such as restaurants serving more patrons, does not change the characterization of assessments as a specific benefit to lodging establishments because no additional cost is imposed on the lodging establishments to provide those incidental benefits.

Written and Oral Protests

In advance of this public hearing, written protests may be submitted to Clerk of the Board, County of Sonoma, 575 Administrative Drive, Room 100A, Santa Rosa, CA 95403 by 5:00 p.m. on May 7, 2018. At the public hearing, the Board will consider all protests, both written and oral, presented to the Board prior to the close of the hearing. Staff has published notice in the newspaper as directed by the Board and as required by Streets and Highways Code section 36535(d).

Staff recommends the Board accept the Annual Assessment Report for Fiscal Year 2018-19, and adopt the resolution supporting the continuation of the tourism assessment without change. In addition, staff will work with Sonoma County Tourism to amend the Agreement for Services with the Sonoma County Tourism Bureau to carry out the services, activities and programs promoting tourism funded by the assessments for the special benefit of the lodging establishments within the Sonoma County Tourism Business Improvement Area. The current Agreement for Services will remain in place until the amendments are brought back to the Board of Supervisors for approval within 60 days of this hearing.

Prior Board Actions:

4/10/18- The Board adopted a resolution declaring its intention of continuing without change the levy of the Tourism Assessment on the lodging businesses located within the Sonoma County Business Improvement Area and accepted the its FY18-19 Annual Assessment Report.

Strategic Plan Alignment Goal 2: Economic and Environmental Stewardship

The Sonoma County Tourism Bureau is a private nonprofit organization that strives to enhance the value of local, domestic, and international demand for Sonoma County produced goods and to promote tourism and growth in Sonoma County.

Fiscal Summary			
Expenditures	FY 16-17 Adopted	FY 17-18 Projected	FY 18-19 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			
Narrative Explanation of Fiscal Impacts:			
<p>For Fiscal Year 2018-2019 (July 1, 2018 through June 30, 2019), BIA assessment revenue for all participating entities is projected to be \$5,200,000. Per ordinance, Sonoma County Treasurer-Tax Collector maintains a special fund designated as the "Sonoma County Tourism Business Improvement Area Fund" to place all collected assessments before remitting to the Sonoma County Tourism Bureau. Sonoma County Treasurer-Tax Collector retains a two percent administrative fee for recovering the reasonable cost of collecting and administering the BIA in the unincorporated area, which totals approximately \$43,000 in annual revenue. Cities who collect BIA also retain a two percent administrative fee for the same purpose to recover their costs to perform this service.</p>			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			
<p>Attachment 1: FY 2018-19 Annual Assessment Report Attachment 2: Resolution Confirming Continuation of Tourism Assessment Attachment 3: Sonoma County Tourism Bureau Financial Statements and Independent Auditor's Report Attachment 4: Amendment to Agreement for Services Attachment 5: Copy of Public Hearing Notice</p>			

Related Items "On File" with the Clerk of the Board:



SONOMA COUNTY TOURISM FISCAL YEAR 2018-2019 ANNUAL REPORT

TO BE FILED WITH THE OFFICE OF THE CLERK OF SONOMA COUNTY
PURSUANT TO STREETS AND HIGHWAYS CODE SECTION 36533

I. **BACKGROUND**

A. Sonoma County Tourism Business Improvement Area

On November 2, 2004, the Sonoma County Board of Supervisors ("Board") adopted Ordinance No. 5525 ("Ordinance") creating the Sonoma County Tourism Business Improvement Area ("SCTBIA"). Under the Ordinance, lodging establishments generating annual room revenue of \$350,000 or more during the preceding fiscal year must pay an assessment equal to 2% of such revenue. Proceeds from assessments are used to pay for activities designed to increase the number of overnight visitors to the area.

In January 2005, the Board appointed five members to the Sonoma County Tourism Business Improvement Area Advisory Board ("Advisory Board"), a body established pursuant to the Parking and Business Improvement Area Law of 1989 (Streets & Highways Code section 36500 et seq., the "Act") which is charged with advising the Board on the amount of the SCTBIA assessments and on the services, programs and activities to be funded by the assessments. In 2011, the Board amended the Ordinance, appointing the board of directors of Sonoma County Tourism Bureau, Inc. ("SCTB") to serve as the Advisory Board for the SCTBIA. This decision was based on recommendations of a 2010 County audit of the organization.

B. Sonoma County Tourism Bureau, Inc.

The Ordinance authorized the County to contract with a contractor to carry out the services, activities, and programs to be funded from the assessments, and designated SCTB to serve as the initial contractor. In June of 2005, the Board executed an agreement with SCTB to carry out services, activities and programs promoting tourism to Sonoma County, with funding from both SCTBIA assessments and from transient occupant tax (TOT) revenue allocated to SCTB by the Board. As noted above, in 2011, the SCTB Board of Directors was also appointed to serve as the Advisory Board.

The Ordinance requires a 22-member Board of Directors for SCTB, the composition of which must comply with a matrix that provides representation from each supervisorial district, and from each size category of lodging establishment. Appointments to the SCTB board are made on a pro rata basis in accordance with the respective contributions made to the SCTB budget by SCTBIA assessments and by County TOT allocations. The Sonoma lodging industry appoints the number of directors resulting from SCTBIA assessments, and the Board appoints the number of directors resulting from TOT allocations.

C. Boundaries

SCTBIA was the first county wide tourism business improvement area formed in California. For assessments to be collected from lodging establishments within the incorporated cities in the County, the councils of each City had to consent to formation of the SCTBIA. Consent was given by the Cities of Santa Rosa,

Petaluma, Rohnert Park, Sebastopol, Cloverdale and Cotati, and the Town of Windsor. Accordingly, the boundaries of the SCTBIA include the territory within the boundaries of those seven cities plus all of the unincorporated territory within the County. These boundaries have remained unchanged since the SCTBIA was formed, and SCTB does not recommend any changes to the boundaries in the upcoming year.

D. Assessment

Lodging establishments within the boundaries of the SCTBIA generating annual room revenue of \$350,000 or more during the preceding fiscal year must pay an assessment equal to 2% of such revenue. Lodging establishments in the unincorporated territory of the County pay the assessment to the County tax collector. Lodging establishments in the municipalities that consented to formation of the SCTBIA pay the assessments to the collecting entities within their respective municipalities. Those collecting entities, in turn, remit the collected assessments to the County in accordance with written agreements between the County and each municipality. This method and basis of levying and collecting the assessment has been unchanged since the SCTBIA was formed, and SCTB does not recommend any changes in the upcoming year.

E. Purpose and Specific Benefit

The Ordinance requires that revenues from assessments must be used to conduct marketing activities designed to increase overnight visits to the area. The term "area" is defined as the territory within the boundaries of the SCTBIA, and the term "marketing activities" is defined as activities designed to market the area as a tourist destination, including the expenditure of funds to place advertising in any media, conduct public relations campaigns, perform marketing research, promote conventions and trade shows, and foster improved contacts within the travel industry, for the purpose of promoting tourism within the area. Revenues from assessments may be used for programs, services, and activities outside the area, if such programs, services, and activities are designed to promote and encourage overnight visits to the area. Revenues from assessments may also be used to pay the ongoing administrative costs associated with the marketing activities.

The focus on increasing overnight visits to the area constitutes a specific benefit to the lodging establishments that pay the assessments. This specific benefit is what distinguishes the assessments from taxes that are subject to voter approval requirements. The fact that others may receive incidental benefits from the expenditure of assessments, such as restaurants serving more patrons, does not change the characterization of assessments as a specific benefit to lodging establishments because no additional cost is imposed on the lodging establishments to provide those incidental benefits.

F. Annual Report

Pursuant to Ordinance, and in accordance with section 36533 of the Act, SCTB must present an Annual Report to the Board for its approval that includes a program of activities intended to be implemented within the SCTBIA during the upcoming fiscal year, together with an estimate of related expenditures. SCTB must also include in the Annual Report an outline of the previous year's revenues and how those revenues were spent. SCTB obtains annual audits from independent auditors each year. The most recent annual audit is submitted as part of this Annual Report, providing a detailed analysis of the sources and uses of funds. Looking forward, the annual budget for the upcoming year submitted herewith describes the anticipated revenues and expenditures. The balance of this Annual Report will provide additional information concerning programs and activities completed in the prior year, as well as those planned for the upcoming year. The Board's consideration and requested approval of this Annual Report is the act which constitutes the levy of the assessment for the upcoming year.

II. **ANTICIPATED USE OF REVENUE**

A. Fiscal Year 2018-2019 BIA Revenue

For Fiscal Year 2018-2019 (July 1, 2018 through June 30, 2019), BIA assessment revenue is projected to be \$5,297,870.

B. Fiscal Year 2018-2019 TOT Revenue

For Fiscal Year 2018-2019 (July 1, 2018 through June 30, 2019), TOT revenue to be allocated to SCTB is projected to be \$2,107,840 based on County estimates as of March 8, 2018.

C. Recommendation

SCTB, in its capacity as the Advisory Board, recommends that the Board confirm this Annual Report and continue to levy the SCTBIA annual assessment for Fiscal Year 2018-2019 pursuant to the Parking and Business Improvement Area Law of 1989 (California Streets and Highways Code section 36500 et seq.), subject to the following findings and recommendations:

- 1) That the boundaries of the SCTBIA should remain the same, with the recognition that the cities of Santa Rosa, Petaluma, Rohnert Park, Sebastopol, Cloverdale and Cotati, and the Town of Windsor, have not withdrawn their consent to be included within the boundaries of the SCTBIA.
- 2) That SCTB continue to serve as the Advisory Board for the SCTBIA.
- 3) That the method and basis of levying the assessment remain unchanged, and in accordance with the terms of the Ordinance in fiscal year 2018 – 2019.
- 4) That the revenues generated by the assessment be used in accordance with the requirements of the Ordinance to conduct marketing activities designed to increase the number of overnight visits to the County.
- 5) That SCTB retained the services of Dillwood Burkel & Millar, LLP, an independent certified public accounting firm, to audit the SCTB financial statements for the periods of January 1, 2016 to December 31, 2016 and January 1, 2017 to June 30, 2017. Their findings were that there were no material weaknesses or significant audit findings in relation to SCTB's books and records. As part of SCTB's three-year auditor rotation policy, a new independent certified public accounting firm will be selected to audit the fiscal year July 1, 2017 to June 30, 2018.

D. Activities, Marketing, Advertising, and Public Relations Program Expenditures

The type of activities intended to be funded by the SCT BIA/TOT revenues include:

(1) advertising; (2) marketing materials and distribution; (3) tradeshow and sales missions; (4) sales and marketing promotions; (5) destination development; (6) research and development; (7) public relations; (8) sales and marketing tools; (9) labor; and (10) administrative expenses to align with SCT's five key initiatives: 1) Drive Overnight Visitation, 2) Create and Convey Value, 3) Engage Partners, 4) Spearhead Long-term Destination Planning, 5) Run an Effective Business.

Because of the October 2017 fires, Sonoma County Tourism's Board of Directors approved up to \$750,000 of funds from the catastrophic reserves to be used in to promote travel to Sonoma County, raise awareness

of Sonoma County as a destination and combat negative perceptions related to the fire. These funds will be used throughout FY17/18 as well as FY18/19.

D. Activities, Marketing, Advertising, and Public Relations Program Expenditures (cont.)

1. Advertising

SCT advertises in markets likely to yield overnight visits, driving consumers to trackable channels to increase marketing opt-ins. Strategy is to place a mix of paid content modules along with traditional ads, increase engagement with social media platforms and increase alignment with key advertising partners. A newly refreshed campaign, aligned with a brand refresh, will showcase the diversity of the area (coast, redwoods and rivers, vineyards and valleys) and experiences to extend visitor stays. Ad messaging will encourage visitors to see more of the total county during their stay.

Ad campaigns will be divided among brand advertising that runs year-round, and concentrated campaigns to yield overnight visitation during Oct-Dec and Jan-April, as well as mid-week.

2. Marketing Materials and Distribution

To promote the diversity of Sonoma County visitor experiences and encourage overnight visitation, SCT uses fresh imagery and advertising customized to the audience to inspire travelers. An online strategy that stresses deep content as well as an offline strategy that includes a combined run of 500,000 annual maps and guides serve to influence potential visitors to choose Sonoma County. Additional materials include sales brochures and collateral for use promoting mid-week, off-season visitation to meeting planners, weddings and travel trade.

3. Tradeshows and Sales Missions

Assessments will assist the DMO with funding tradeshows, sales missions and client events. These events will include attendance by qualified meeting planners from across the United States and Canada. These activities are intended to help generate room nights and qualified meeting and tour and travel leads. It is expected that Travel Industry Sales will generate qualified lodging and service business leads from Tour Operators for those hospitality/tourist related businesses within Sonoma County. Assessments will assist with funding the operation of satellite sales offices in Southern California, Washington DC, Chicago, Sacramento and Texas with the objective of specifically targeting meeting and group business.

4. Sales and Marketing Promotions

The activities to market and sell Sonoma County to our three core segments (leisure travel, meetings and groups, and tourism trade) are funded through these assessments. Funds are used for representation in target markets, education and awareness building among clients, incentives to bring group business in during need periods, marketing partnerships to raise awareness and gather information from future visitors, social media and email marketing, memberships in industry groups for leads and exposure and short-term promotions to take advantage of ad-hoc opportunities.

5. Destination Development

To sustain the tourism economy, which accounts for almost 20,000 local jobs, SCT provides programs that develop the hospitality workforce (like the Certified Tourism Ambassador program) as well as engages in community listening through the community engagement program. This

year SCT goal is to certify the 2,500th Certified Tourism Ambassador, ensuring that all visitor interactions are a positive one.

6. Research and Development

To maintain competitiveness and gauge effectiveness of programs, SCT conducts ongoing research, including contracting with the Sonoma County Economic Development Board for a Tourism Research Fellow as well as purchasing customized reports from tourism researchers. SCT also conducts brand and message audits and modifies marketing and sales activities based on findings. The EDB Research Fellow also manages Sonoma County Restaurant Week with the material assistance of SCT. SCT seeks to grow the research program in the coming year to complement new brand initiatives, maintain competitiveness and report on key performance indicators.

7. Public Relations

SCT assists thousands of journalists from around the world with stories about Sonoma County each year. Activities include visiting media to educate them, hosting qualified journalists in Sonoma County, attending events with partners like Visit California and representation in national and international markets likely to yield visitation.

8. Sales and Marketing Tools

Funds for sales and marketing tools are used to subscribe to programs that produce sales leads as well as to maintain the customer relationship management systems that track clients, partners and leads.

9. Labor

Labor expenses for marketing and group meeting sales activities will be funded by BIA Assessments. Labor costs for administrative personnel will be funded by TOT revenues.

10. Administrative Expenses

Administrative expenses will be funded by TOT revenues. At 10.6% of total expenditures, the administrative expenses are below average for a destination marketing organization according to the Destination Marketing Association International (DMAI) annual study.

11. Capital Expenditures

SCTB will replace outdated computers based on its 4-year replacement schedule.

11. Reserves

SCTB maintains reserves to provide funds for significant future cash demands arising from both planned and unplanned events or circumstances. \$1.3 million of reserves will be used during the fiscal year to forestall the impact of TOT funding reductions.

**SONOMA COUNTY TOURISM
 Sources & Uses of Funds -DRAFT
 July 1, 2018- June 30, 2019**

	Fiscal Year 2018-2019
<u>Revenues</u>	
BIA Assessments	\$ 5,297,870
Transient Occupancy Tax	2,107,840
Interest Income	<u>24,816</u>
Total Revenues	<u>\$ 7,430,526</u>
<u>Expenditures</u>	
Advertising	\$ 1,294,000
Marketing Materials & Distribution	1,042,500
Tradeshows & Sales Missions	611,981
Sales & Marketing Promotions	868,360
Destination Development	279,290
Research & Development	421,800
Public Relations	282,480
Sales & Marketing Tools	102,800
Labor	2,963,356
Administrative Expenses	938,968
Capital Expenditures	17,151
Reserve Funding	<u>-</u>
Total Uses	<u>\$ 8,822,686</u>
TOTAL REVENUES LESS USES	<u>\$(1,392,160)</u>
<u>Reserve Usage</u>	
Catastrophic & Strategic Reserves	\$ 1,392,160
TOTAL SOURCES LESS USES	<u>\$ 0</u>

Expense Details FY 2018-2019

Advertising	Budget
Domestic	\$1,227,000
International	67,000
Total	\$1,294,000

Marketing Materials & Distribution	Budget
Photo, Video, Design & Content	\$ 366,200
Collateral Material Print & Distribution	275,800
Website	319,500
Promotional Products	81,000
Total	\$1,042,500

Tradeshows & Sales Missions	Budget
Event Fees & Expenses	\$ 252,245
Travel	204,636
Client Events	155,100
Total	\$ 611,981

Sales & Marketing Promotions	Budget
Outside Representation	\$ 243,400
Industry Education & Site Tours	118,000
Group Cash Incentives	75,000
Marketing Partnerships	67,800
Email Campaigns	40,000
Memberships	144,160
Event Sponsorships	180,000
Total	\$ 868,360

Expense Details FY 2018-2019 (Cont.)

Destination Development	Budget
Tourism Enhancement Projects	\$ 100,000
CTA Program	130,780
CTA Collected Fees	(24,500)
Community Engagement	73,010
Total	\$ 279,290

Research & Development	Budget
Research Studies	\$ 270,800
County EDB Researcher	51,000
Branding & Strategy	100,000
Total	\$ 421,800

Public Relations	Budget
Media Site Tours	\$ 90,000
Contracted Representation	71,280
Visits to Media & Events	75,000
Media Tools & Content	46,200
Total	\$ 282,480

Sales & Marketing Tools	Budget
Sales Lead Generators	\$ 49,500
CRM System	53,300
Total	\$ 102,800

Expense Details FY 2018-2019 (Cont.)

Labor	Budget
Wages	\$ 2,334,435
Shared Labor	(27,263)
Benefits	364,545
Taxes & Workers Compensation	220,639
Temporary Help	16,000
Training & Development	47,500
Recruiting	7,500
Total	\$ 2,963,356

Administrative Expenses	Budget
Rent, Utilities, Janitorial	\$ 497,581
Sublease	(188,364)
IT, Telephone	199,189
Legal, Audit, HR Fees	169,140
Auto, Local Travel	81,960
Supplies, Equipment, Maintenance	87,608
Meetings & Retreats	35,000
Board Development	37,500
Insurance, Bank Fees, Taxes	19,354
Total	\$ 938,968

III.
SCT BIA / TOT REPORTING MATRIX

A. Fiscal Year July 1, 2017 – February 28, 2018 + Forecast (March – June 2018)
Group/Meeting Sales

Group/Meetings Sales Leads	Results YTD @ 02.28.2018	Forecast March–June 2018	Forecast Full Year FY2017-18	Prior Year Results FY2016-17
Leads Distributed	376	188	564	507
Lead Room Nights	82,626	41,313	123,939	87,812
Lead EIC	\$45,595,000	\$22,797,000	\$68,392,000	\$39,114,000
Definite Leads	75	37	112	112
Definite Room Nights	14,450	7,225	21,675	20,757
Definite EIC	\$6,662,000	\$3,331,000	\$9,993,000	\$10,656,000

B. Marketing Reporting Metrics

12-months trailing, as of Feb 28, 2018:

Sonomacounty.com Website Traffic	Sessions 3,103,638	Users 2,317,155	Pageviews 6,303,182
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Social media total followers: 329,642
(Facebook, Instagram, Twitter)



County of Sonoma
State of California

Date: May 8, 2018

Item Number: _____
Resolution Number: _____

4/5 Vote Required

**Resolution of the Board of Supervisors of the County Of Sonoma, State of California,
Confirming the Sonoma County Tourism Bureau's Annual Report and Continuing Without
Change the Levy of the Tourism Assessment for the Sonoma County Tourism Business
Improvement Area for Fiscal Year 2018-19**

Whereas, on September 14, 2004 and October 12, 2004, the Board of Supervisors adopted Resolution Nos. 04-0850 and 04-0984 establishing the Sonoma County Improvement Area pursuant to the Parking and Business Improvement Area Law of 1989, California Streets and Highway Code Section 36500 et seq. to levy an assessment with the primary purpose to promote tourism activities to benefit the lodging establishments in the Tourism Business Improvement District (Business Improvement District); and

Whereas, in compliance with the California Constitution, Streets and Highway Code section 36535(d) and Sonoma County Code Chapter 33, since the creation of the Business Improvement District and the levy of the tourism assessment in 2004, the nonprofit organization Sonoma County Tourism Bureau (Tourism Bureau) has submitted an annual assessment report to document its marketing, promotional and other activities to promote tourism in the Business Improvement District (Annual Report); and

Whereas, pursuant to Streets and Highways Code section 36535(d), the levy of the assessment and program to promote tourism has continued without change in the Business Improvement District since its establishment in 2004 (Tourism Assessment);

Whereas, in April 10, 2018, the Tourism Bureau submitted its Annual Report for fiscal year 2018-19 which has been available for public review at the Clerk of the Board; and

Whereas, the Annual Report includes an audited financial statement and independent auditors' report for the six month period that ended June 30, 2017 and for the year ended December 31, 2016 prepared by Dillwood, Burkel & Millar, LLP which provides a detailed analysis of the uses of funds; and

Resolution #

Date:

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Whereas, on April 10, 2018, the Board of Supervisors passed a Resolution Declaring Its Intention of Continuing Without Change the Levy of the Tourism Assessment on the Lodging Businesses Located within the Business Improvement District, scheduled the public hearing and published the Resolution of Intent in a newspaper of general circulation seven days prior to the date of the hearing;

Whereas, the Tourism Bureau presented its Annual Report to the Board of Supervisors at the public hearing on May 8, 2018 to demonstrate the marketing, promotion and special services that have been and will continue to be provided for the lodging establishments subject to the Tourism Assessment within the Business Improvement District and support the continuation of the levy of the Tourism Assessment without change in fiscal year 2018-19; and

Whereas, the Tourism Bureau's presentation and the Annual Report establish that the Tourism Assessment complies with Sonoma County Code Chapter 33 and Streets and Highways Code section 36535(d); and

Whereas, the Tourism Bureau's presentation and the Annual Report further establish above and beyond the requirements of Sonoma County Code Chapter 33 and Streets and Highways Code section 36535(d) that the advertising, development of marketing materials and distribution, tradeshow and sales missions, sales and marketing promotions and destination development, research and development, public relations, sales and marketing tools, and labor, technology upgrades and administrative expenses to operate the program have specifically benefitted the lodging establishments that pay the Tourism Assessment by increasing overnight visits to those establishments and the amount of the assessment is no more than necessary to cover the reasonable cost in providing the specific benefits and services in a manner that bears a fair and reasonable relationship to the considerable benefits received by the payors; and

Now, Therefore, Be It Resolved, the Sonoma County Board of Supervisors confirms the Tourism Bureau's Annual Report and hereby continues without change the levy of the Tourism Assessment for fiscal year 2018-19.

Supervisors:

Gorin:

Rabbitt:

Zane:

Hopkins:

Gore:

Ayes:

Noes:

Absent:

Abstain:

So Ordered.

Sonoma County Tourism Bureau
(a California Not-for-Profit Corporation)

**Financial Statements
and Supplementary Information
For the Six-Month Period Ended June 30, 2017 and
the Year Ended December 31, 2016**

Together with Independent Auditors' Report

Sonoma County Tourism Bureau

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Independent Auditors' Report

To the Board of Directors of
Sonoma County Tourism Bureau
Santa Rosa, California

We have audited the accompanying financial statements of Sonoma County Tourism Bureau, which comprise the statements of financial position as of June 30, 2017 and December 31, 2016, and the related statements of activities, functional expenses and cash flows for the six-month period ended June 30, 2017 and the year ended December 31, 2016, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

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

Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Sonoma County Tourism Bureau as of June 30, 2017 and December 31, 2016, and the changes in its net assets and its cash flows for the six-month period and the year then ended in accordance with accounting principles generally accepted in the United States of America.

Report on Supplementary Information

Our audits were conducted for the purpose of forming an opinion on the financial statements as a whole. The Statements of Activities by Source and related notes on pages S1 to S3 are presented for purposes of additional analysis and is not a required part of the financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the financial statements as a whole.

Dillwood Burkel & Millar, LLP

Santa Rosa, California
February 28, 2018

Sonoma County Tourism Bureau

Statements of Financial Position

As of June 30, 2017 and December 31, 2016

	<u>2017</u>	<u>2016</u>
Assets		
Current Assets		
Cash and cash equivalents	\$ 1,179,919	\$ 297,673
Short-term investments	4,119,343	3,964,475
Accounts receivable	29,830	1,189,854
Inventory	27,267	5,094
Prepaid expenses	207,926	149,113
	<u>5,564,285</u>	<u>5,606,209</u>
Noncurrent Assets		
Property and equipment, net	238,801	272,913
Deposits	26,122	26,122
Other assets, net	-	7,756
	<u>264,923</u>	<u>306,791</u>
Total Assets	<u><u>\$ 5,829,208</u></u>	<u><u>\$ 5,913,000</u></u>
Liabilities and Net Assets		
Current Liabilities		
Accounts payable	\$ 227,358	\$ 369,195
Accrued expenses	286,566	311,416
	<u>513,924</u>	<u>680,611</u>
Total Current Liabilities	513,924	680,611
Net Assets		
Unrestricted undesignated	1,188,009	1,265,474
Unrestricted board designated	4,127,275	3,966,915
	<u>5,315,284</u>	<u>5,232,389</u>
Total Unrestricted Net Assets	5,315,284	5,232,389
Total Liabilities and Net Assets	<u><u>\$ 5,829,208</u></u>	<u><u>\$ 5,913,000</u></u>

See accompanying Notes to Financial Statements

Sonoma County Tourism Bureau

Statements of Activities and Changes in Net Assets

For the Six-Month Period Ended June 30, 2017

and the Year Ended December 31, 2016

	<u>2017</u>	<u>2016</u>
Revenue and Support		
Contract revenue:		
BIA Contract	\$ 2,044,637	\$ 4,851,146
TOT Contract	1,617,850	2,881,328
CTA fees	21,104	36,373
Investment income	23,042	13,997
Gain from sale of asset	-	27,927
	<u>3,706,633</u>	<u>7,810,771</u>
Total Revenue and Support		
Expenses		
Program expense	2,885,002	5,862,476
Management and general	738,736	1,417,173
	<u>3,623,738</u>	<u>7,279,649</u>
Total Expenses		
Changes in Net Assets	82,895	531,122
Net Assets, Beginning of Year	<u>5,232,389</u>	<u>4,701,267</u>
Net Assets, End of Year	<u><u>\$ 5,315,284</u></u>	<u><u>\$ 5,232,389</u></u>

See accompanying Notes to Financial Statements

Sonoma County Tourism Bureau

Statement of Functional Expenses

For the Six-Month Period Ended June 30, 2017

	<u>Program Expense</u>	<u>Management and General</u>	<u>Total</u>
Salaries and wages	\$ 1,071,606	\$ 291,625	\$ 1,363,231
Meetings, travel, trade shows and entertainment	346,227	33,761	379,988
Promotion and appreciation	348,172	-	348,172
Advertising and promotion	300,420	-	300,420
Postage, printing and publications	264,984	-	264,984
Web services	251,737	-	251,737
Professional and other outside service	105,029	144,355	249,384
Occupancy	-	141,712	141,712
Research, recruitment and development	63,527	5,800	69,327
Depreciation and amortization	-	50,526	50,526
Sales and marketing tools	49,290	-	49,290
CTA program	45,587	-	45,587
Small equipment, lease and repair	734	27,167	27,901
Materials and supplies	1,033	24,726	25,759
Dues and subscriptions	19,997	4,116	24,113
Telephone	16,659	2,629	19,288
Administrative and bank fees	-	7,194	7,194
Tax, license and insurance	-	5,125	5,125
Total Expenses	<u>\$ 2,885,002</u>	<u>\$ 738,736</u>	<u>\$ 3,623,738</u>

See accompanying Notes to Financial Statements.

Sonoma County Tourism Bureau

Statement of Functional Expenses For the Year Ended December 31, 2016

	<u>Program Expense</u>	<u>Management and General</u>	<u>Total</u>
Salaries and wages	\$ 1,851,908	\$ 639,800	\$ 2,491,708
Advertising and promotion	978,981	-	978,981
Promotion and appreciation	798,009	-	798,009
Meetings, travel, trade shows and entertainment	640,197	46,843	687,040
Web services	505,302	-	505,302
Postage, printing and publications	447,712	36	447,748
Professional and other outside service	193,148	193,652	386,800
Occupancy	-	241,336	241,336
Research, recruitment and development	129,440	25,317	154,757
CTA program	120,775	-	120,775
Depreciation and amortization	-	119,558	119,558
Sales and marketing tools	100,723	-	100,723
Dues and subscriptions	56,591	12,973	69,564
Small equipment, lease and repair	2,656	57,838	60,494
Materials and supplies	4,049	48,330	52,379
Telephone	32,985	4,972	37,957
Administrative and bank fees	-	13,901	13,901
Tax, license and insurance	-	12,617	12,617
Total Expenses	<u>\$ 5,862,476</u>	<u>\$ 1,417,173</u>	<u>\$ 7,279,649</u>

See accompanying Notes to Financial Statements.

Sonoma County Tourism Bureau

Statements of Cash Flows

For the Six-Month Period Ended June 30, 2017
and the Year Ended December 31, 2016

	<u>2017</u>	<u>2016</u>
	<i>Increase (decrease) in cash and cash equivalents</i>	
Cash flows from operating activities		
Increase in net assets	\$ 82,895	\$ 531,122
Adjustments to reconcile changes in net assets to net cash flows from operating activities:		
Depreciation and amortization	50,526	119,558
Net realized and unrealized losses	132	615
Gain on sale of equipment	-	(27,927)
(Increase) decrease in operating assets:		
Accounts receivable	1,160,024	407,614
Inventory	(22,173)	2,312
Prepaid expenses	(58,813)	2,070
Deposits	-	18,829
Increase (decrease) in operating liabilities:		
Accounts payable	(141,837)	89,875
Accrued expenses	(24,850)	(1,114)
	<u>1,045,904</u>	<u>1,142,954</u>
Net cash and cash equivalents provided by operating activities	1,045,904	1,142,954
Cash flows from investing activities		
Purchase of property and equipment	(8,658)	(94,269)
Increase in investments	(155,000)	(1,756,758)
	<u>(163,658)</u>	<u>(1,851,027)</u>
Net cash and cash equivalents used in investing activities	(163,658)	(1,851,027)
Net increase (decrease) in cash and cash equivalents	882,246	(708,073)
Cash and cash equivalents at beginning of year	<u>297,673</u>	<u>1,005,746</u>
Cash and cash equivalents at end of period	<u><u>\$ 1,179,919</u></u>	<u><u>\$ 297,673</u></u>

See accompanying Notes to Financial Statements

Sonoma County Tourism Bureau

Notes To Financial Statements

For the Six-Month Period Ended June 30, 2017
and the Year Ended December 31, 2016

Note 1. Organization

The Sonoma County Tourism Bureau (the "Organization" or the "SCTB"), formed on January 4, 2005, is a Nonprofit Mutual Benefit Corporation formed under the Corporation Laws of the State of California. The Organization's mission is to promote Sonoma County as a premier overnight destination with unique and diverse experiences. SCTB has contracts with the county and receives funding from the Sonoma County Tourism Business Improvement Area (BIA) and the County of Sonoma Transient Occupancy Tax (TOT). Sonoma County Tourism Bureau facilitates the services, activities, and programs funded by BIA revenues, which covers all unincorporated areas of Sonoma County, as well as the cities of Cloverdale, Cotati, Petaluma, Rohnert Park, Santa Rosa, Sebastopol, and Windsor. The Organization's revenues received from TOT must be spent to promote tourism throughout Sonoma County.

During 2017, the Organization elected to change its reporting period from calendar year to fiscal year ended June 30. The accompanying financial statements includes the financial statement information for the calendar year ended December 31, 2016 and the six-month period ended June 30, 2017.

Note 2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying financial statements have been prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America. Net assets, revenues, expenses, gains and losses are classified based on the existence or absence of donor-imposed restrictions.

Classification of Net Assets

Accounting principles generally accepted in the United States of America require that SCTB report information regarding its financial position and activities according to three classes of net assets: unrestricted net assets, temporarily restricted net assets, and permanently restricted net assets. SCTB had no temporarily or permanently restricted net assets as of June 30, 2017 and December 31, 2016. The Organization maintains Board designated funds within unrestricted net assets for various purposes, which are further discussed in Note 6.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires Management to make estimates and assumptions based on Management's knowledge and experience. Those estimates affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and the reported amounts of revenue, support and expenses. The use of Management's estimates primarily relate to the collectability of accounts receivable, valuation reserve on inventory, and depreciable lives of property and equipment. Actual results could differ from these estimates.

Sonoma County Tourism Bureau

Notes To Financial Statements

For the Six-Month Period Ended June 30, 2017
and the Year Ended December 31, 2016

Note 2. Summary of Significant Accounting Policies, *continued*

Cash and Cash Equivalents

SCTB considers all highly liquid investments with an initial maturity of three months or less to be cash equivalents, except when a restriction is imposed, which limits the investment's use to long-term.

Cash is held in demand accounts at banks, and cash balances may exceed the federally insured amounts during the year. The Organization has not experienced any losses in such accounts and believes it is not exposed to any significant credit risk on cash and cash equivalents.

Fair Value Measurements

Fair value of an investment is the amount that would be received to sell the investment in an orderly transaction between market participants at the measurement date. Market price observability is impacted by a number of factors, including the type of investment and the characteristics specific to the investment. Investments with readily available active quoted prices or for which fair value can be measured from actively quoted prices generally will have a higher degree of market price observability and a lesser degree of judgment used in measuring fair value. Investments measured and reported at fair value are classified and disclosed in one of the following categories:

- Level 1: Valuation based on quoted market prices in active markets for identical assets or liabilities that the Organization has the ability to access.
- Level 2: Valuations based on pricing inputs that are other than quoted prices in active markets which are either directly or indirectly observable.
- Level 3: Valuations are derived from other valuation methodologies, including pricing models, discounted cash flow models, and similar techniques.

The categorization of an investment within the hierarchy is based on the pricing transparency of the investment and does not necessarily correspond to the Organization's perceived risk of that investment.

All investments held by the Organization as of June 30, 2017 and December 31, 2016 were measured as Level 1 category.

Investments

Investments are comprised of certified deposits, carried at fair value. Interest income is included as an increase in unrestricted net assets since its use is unrestricted.

Investments are held at various banks with varying degrees of insurance. The Organization has not experienced any losses in such accounts and believes it is not exposed to any significant credit risk on investments.

Sonoma County Tourism Bureau

Notes To Financial Statements

For the Six-Month Period Ended June 30, 2017
and the Year Ended December 31, 2016

Note 2. Summary of Significant Accounting Policies, *continued*

Accounts Receivable

Accounts receivable at June 30, 2017 and December 31, 2016 consist of amounts due in the course of conducting business. Based on historical experience, management considered these receivables fully collectible and therefore, no allowance for doubtful accounts has been established. Receivables are written off when management considers them uncollectible.

Inventory

Inventory consists of promotional items used primarily at trade shows. Inventory is valued on the first-in, first-out method and is stated at the lower of cost or net realizable value.

Prepaid Expenses

Prepaid expenses consist primarily of insurance, rent and trade show fees paid currently for future events.

Property and Equipment

Acquisitions of property and equipment are recorded at cost. Improvements and replacements of property and equipment are capitalized. Maintenance and repairs that do not improve or extend the lives of the property and equipment are charged to expense as incurred. When assets are sold or retired, their costs and related accumulated depreciation are removed from the accounts and any gain or loss is reported in the statements of activities. Depreciation is provided over the estimate useful life of each class, ranging from 2 to 10 years or the life of the lease, when applicable, of depreciable assets and is computed using the straight-line method. SCTB capitalizes all expenditures for property and equipment in excess of \$1,000.

SCTB routinely evaluates the carrying value of its long-lived assets for impairment using standard valuation techniques. When the carrying value of an asset exceeds estimated recoverability, asset impairment is recognized. No asset impairment charges were recorded during the six-month period ended June 30, 2017 and the year ended December 31, 2016, respectively.

Other Assets

Other assets consist primarily of website design costs. Website design costs in the amount of \$186,125 were initially capitalized in 2013. The costs are to be amortized over the estimated useful life of the current website design, or four years. Other assets at December 31, 2016 are reported net of accumulated amortization in the amount of \$7,756. The website design costs were fully amortized as of June 30, 2017. Amortization expense totaled \$7,756 and \$46,531 for the six-month period ended June 30, 2017 and the year ended December 31, 2016, respectively.

Sonoma County Tourism Bureau

Notes To Financial Statements

For the Six-Month Period Ended June 30, 2017
and the Year Ended December 31, 2016

Note 2. Summary of Significant Accounting Policies, *continued*

Advertising Costs

Advertising costs are charged to operations when incurred. Advertising expenses for the six-month period ended June 30, 2017 and the year ended December 31, 2016 totaled \$300,420 and \$978,981, respectively.

Income Taxes

In letters to SCTB, the Internal Revenue Service and California Franchise Tax Board stated that SCTB is exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code (IRC) and from California bank and corporation taxes under Section 23701(e) of the California Revenue and Taxation Code, respectively. However, the Organization is subject to income taxes on any net income that is derived from a trade or business, regularly carried on, and not in furtherance of the purposes for which it was granted exemption, commonly referred to as unrelated business income.

The Organization determines whether its tax positions are "more-likely-than-not" to be sustained upon examination by the applicable taxing authority based on the technical merits of the positions. As of June 30, 2017, the Organization has reviewed its tax positions and has concluded no reserve for uncertain tax positions is required. The Organization's exempt organization information returns are subject to review through three years after the date of filing for federal and four years after the date of filing for California.

Functional Allocation of Expenses

The costs of providing the various programs and other activities have been summarized on a functional basis in the statements of activities and changes in net assets. Accordingly, certain costs have been allocated among the programs and supporting services based on staff time incurred by employees for various activities. The remaining costs are charged directly to the appropriate functional category.

Concentrations of Credit Risk

At various times during the six-month period ended June of 2017 and the year ended December 31, 2016, the Organization had deposit amounts with financial institutions in excess of the \$250,000 Federal Deposit Insurance Corporation ("FDIC") insurance limit. SCTB had approximately \$855,000 and \$208,000 on deposit in excess of the FDIC insured amount as of June 30, 2017 and December 31, 2016, respectively.

Sonoma County Tourism Bureau

Notes To Financial Statements

For the Six-Month Period Ended June 30, 2017
and the Year Ended December 31, 2016

Note 3. Fair Value Measurements and Investments

Investments stated at fair value as of June 30, 2017 and December 31, 2016 consist of the following fixed income securities:

2017		2016	
Cost	Fair Market Value	Cost	Fair Market Value
\$ 4,120,760	\$ 4,119,343	\$ 3,965,760	\$ 3,964,475

Investment income consists of the following for the six-month period ended June 30, 2017 and the year ended December 31, 2016:

	2017	2016
Interest	\$ 23,174	\$ 14,612
Unrealized loss	(132)	(615)
	<u>\$ 23,042</u>	<u>\$ 13,997</u>

Note 4. Property and Equipment

Major classes of property and equipment are as follows at June 30, 2017 and December 31, 2016:

	2017	2016
Furniture and fixtures	\$ 164,168	\$ 164,168
IT hardware	164,650	155,993
Office equipment	64,226	64,226
Vehicles	58,466	58,466
Software	17,216	17,216
Leasehold improvements	45,387	45,387
	514,443	505,456
Less: accumulated depreciation	<u>(275,312)</u>	<u>(232,543)</u>
	<u>\$ 238,801</u>	<u>\$ 272,913</u>

Depreciation expense for the six month period ended June 30, 2017 and the year ended December 31, 2016 totaled \$73,027 and \$42,769, respectively.

Note 5. Accrued Vacation

Paid time off is available to eligible employees of SCTB, and is recognized as a liability as it accrues. The liability is included in Accrued Expenses, and the balances as of June 30, 2017 and December 31, 2016 are \$136,678 and \$119,134, respectively.

Sonoma County Tourism Bureau

Notes To Financial Statements

For the Six-Month Period Ended June 30, 2017
and the Year Ended December 31, 2016

Note 6. Board Designated Unrestricted Net Assets

The Board Designated Funds consist of funds with no donor or legal restrictions but, through Board resolutions, have been set aside for specific purposes. Board Designated Funds consist of the following as of June 30, 2017 and December 31, 2016:

	2017	2016
Catastrophic	\$ 1,537,452	\$ 1,517,922
Strategic	2,189,823	2,048,994
IT and furniture	100,000	100,000
Airline Attraction	300,000	300,000
	<u>\$ 4,127,275</u>	<u>\$ 3,966,915</u>

Note 7. Operating Leases

In March 2015, the Organization entered into a lease agreement for a new office space commencing April 1, 2016 and terminating March 31, 2021, with a 5 year option to extend. Under the agreement monthly rent is \$34,407. SCTB is also responsible for utilities costs which are paid monthly based on estimates and adjusted to actual annually by the landlord. Upon lease termination, SCTB is responsible for disposal costs of all leasehold improvements in the form of cabling, the costs of which are not estimable as of June 30, 2017.

The Organization has two sub-lease agreements with similar not-for-profit organizations, expiring March 31, 2021. The income from sub-lease is included as a reduction to occupancy expense in the statements of functional expenses. Sublease income will account for approximately 38% of total annual rent and utilities under these agreements.

Future minimum rental payments and income are as follows for years ending June 30:

	<u>Rental Payment</u>	<u>Sublease Income</u>	<u>Net Future Rent</u>
2018	\$ 412,881	\$ 156,895	\$ 255,986
2019	412,881	156,895	255,986
2020	412,881	156,895	255,986
2021	<u>309,661</u>	<u>117,671</u>	<u>191,990</u>
	<u>\$ 1,548,304</u>	<u>\$ 588,356</u>	<u>\$ 959,948</u>

Sonoma County Tourism Bureau

Notes To Financial Statements

For the Six-Month Period Ended June 30, 2017
and the Year Ended December 31, 2016

Note 8. Defined Contribution Plan

SCTB has a 401(k) defined contribution plan that covers all employees and includes safe harbor matching contributions and non-elective contributions. Safe Harbor matching contribution eligibility starts after the third month of employment, and equals 100% of the employee's salary deferral up to 3% of the employee's compensation, and 50% of the employee's salary deferral between 3-5% of the employee's compensation. The non-elective contribution eligibility starts after one year of employment, given the employee has reached 21 years in age. The Organization's management, at its sole discretion, determines the amount of non-elective contributions to the plan annually. In the event that a participant terminates his employment with the Organization prior to the completion of the vesting periods, the non-vested amount attributed to non-elective contributions accumulated in the participant's account is forfeited. Retirement plan expenses for the six month period ended June 30, 2017 and for the year ended December 31, 2016 were \$35,391 and \$101,430, respectively.

Note 9. Concentration of Income

SCTB is funded by an ordinance dated November 2, 2004, which created the Business Improvement Area (BIA) of Sonoma County. These revenues are a self-assessment of lodging properties within the BIA area. If the ordinance were discontinued the Organization would be significantly impacted. The risk of loss of support is low, as the ordinance is supported by the lodging industry itself.

The Organization also receives funds from Transient Occupancy Tax (TOT), which is assessed and collected by the County of Sonoma. Each year, the County Board of Supervisors decides how much of the total TOT to allocate to SCTB, to be used specifically to promote tourism within Sonoma County. Should the tax levy cease to exist, the Organization would be significantly impacted.

Note 10. Subsequent Events

Management has evaluated subsequent events through February 28, 2018, the date that the financial statements were available to be issued, and determined that there are no material subsequent events that required recognition or additional disclosure in these financial statements.

Supplementary Information

Sonoma County Tourism Bureau

Statement of Activities by Source

For the Six-Month Period Ended June 30, 2017

	Transient Occupancy Tax	Business Improvement Area and Other Sources	Total
Unrestricted revenue and support			
Contracts:			
BIA Contract	\$ -	\$ 2,044,637	\$ 2,044,637
TOT Contract	1,617,850	-	1,617,850
CTA Fees	-	21,104	21,104
Investment income, net	-	23,042	23,042
	<u>1,617,850</u>	<u>2,088,783</u>	<u>3,706,633</u>
Total revenue and support			
	<u>1,617,850</u>	<u>2,088,783</u>	<u>3,706,633</u>
Expenses			
Salaries and benefits	384,963	978,268	1,363,231
Travel, trade shows and entertainment	152,814	227,174	379,988
Promotion and appreciation	129,435	218,738	348,173
Advertising and promotion	283,383	17,037	300,420
Postage, printing and publications	240,319	24,665	264,984
Web services	239,070	12,668	251,738
Professional and other outside service	100,576	148,807	249,383
Occupancy, utilities and janitorial	-	141,712	141,712
Research, recruitment and development	31,895	37,431	69,326
Depreciation and amortization	-	50,526	50,526
Sales and marketing tools	9,262	40,029	49,291
CTA program	45,527	60	45,587
Small equipment, lease and repair	-	27,902	27,902
Materials and supplies	-	25,758	25,758
Dues and subscriptions	-	24,113	24,113
Telephone	(345)	19,633	19,288
Admin and bank fees	-	7,193	7,193
Tax, license and insurance	-	5,125	5,125
	<u>1,616,899</u>	<u>2,006,839</u>	<u>3,623,738</u>
Total expenses			
	<u>1,616,899</u>	<u>2,006,839</u>	<u>3,623,738</u>
Changes in net assets	<u>\$ 951</u>	<u>\$ 81,944</u>	<u>\$ 82,895</u>

See accompanying Notes to Supplementary Information and Independent Auditors' Report

Sonoma County Tourism Bureau

Statement of Activities by Source

For the Year Ended December 31, 2016

	Transient Occupancy Tax	Business Improvement Area and Other Sources	Total
Unrestricted revenue and support			
Contracts:			
BIA Contract	\$ -	\$ 4,851,146	\$ 4,851,146
TOT Contract	2,881,328	-	2,881,328
CTA Fees	-	36,373	36,373
Investment income, net	-	13,997	13,997
Gain on sale of fixed asset	-	27,927	27,927
	<u>2,881,328</u>	<u>4,929,443</u>	<u>7,810,771</u>
Expenses			
Salaries and benefits	642,628	1,849,080	2,491,708
Advertising and promotion	954,094	24,887	978,981
Promotion and appreciation	282,021	515,989	798,010
Travel, trade shows and entertainment	238,775	448,265	687,040
Web services	481,811	23,491	505,302
Postage, printing and publications	393,151	54,597	447,748
Professional and other outside service	191,094	195,706	386,800
Occupancy, utilities and janitorial	-	241,335	241,335
Research, recruitment and development	76,091	78,666	154,757
CTA program	120,078	696	120,774
Depreciation and amortization	-	119,558	119,558
Sales and marketing tools	31,499	69,223	100,722
Dues and subscriptions	6,160	63,404	69,564
Small equipment, lease and repair	-	60,494	60,494
Materials and supplies	-	52,379	52,379
Telephone	(230)	38,187	37,957
Admin and bank fees	-	13,903	13,903
Tax, license and insurance	-	12,617	12,617
	<u>3,417,172</u>	<u>3,862,477</u>	<u>7,279,649</u>
Changes in net assets	<u>\$ (535,844)</u>	<u>\$ 1,066,966</u>	<u>\$ 531,122</u>

See accompanying Notes to Supplementary Information and Independent Auditors' Report

Sonoma County Tourism Bureau

NOTES TO SUPPLEMENTARY INFORMATION

**For the Six-Month-Period Ended June 30, 2017
and the Year Ended December 31, 2016**

Note 1. Basis of Presentation

The schedules included in Supplementary Information have been prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America.

Note 2. Expenses Reported Under Transient Occupancy Tax

Sonoma County Tourism Bureau receives Transient Occupancy Tax (TOT) revenues from the County of Sonoma. Such contract revenues are used to promote the County of Sonoma. Expenses reported under TOT activities on the Statements of Activities by Source reflect only direct expenses incurred. The excess of these direct expenses over the TOT revenue are funded by other revenue sources received by the Organization. All indirect expenses have been absorbed by the activities funded by Business Improvement Area contract revenue and other supports.

**FIRST AMENDMENT
TO
AGREEMENT FOR SERVICES**

This First Amendment (“Amendment”), dated as of May 9, 2018, is by and between the County of Sonoma, a political subdivision of the State of California (“County”), and the Sonoma County Tourism Bureau, Inc., a California non-profit mutual benefit corporation, hereinafter referred to as “Contractor”.

RECITALS

WHEREAS, County and Contractor entered into that certain Agreement, dated July 11, 2017, for carrying out services, activities and programs promoting tourism in Sonoma County; and

WHEREAS, County and Contractor desire to amend the Agreement to extend the term to carry out said services,

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Paragraph 3, Term of Agreement, shall be amended to read as follows:

The term of this Agreement shall be from the Effective Date to June 30, 2019, unless terminated earlier in accordance with the provisions of Section 4 below. This Agreement will terminate on June 30, 2019 unless the parties approve a written amendment to extend the term.

2. Except to the extent the Agreement is specifically amended or supplemented hereby, the Agreement, together with exhibits is, and shall continue to be, in full force and effect as originally executed, and nothing contained herein shall, or shall be construed to modify, invalidate or otherwise affect any provision of the Agreement or any right of County arising thereunder.

3. This Amendment shall be governed by and construed under the internal laws of the state of California, and any action to enforce the terms of this Amendment or for the breach thereof shall be brought and tried in the County of Sonoma.

COUNTY AND CONTRACTOR HAVE CAREFULLY READ AND REVIEWED THIS AMENDMENT AND EACH TERM AND PROVISION CONTAINED HEREIN AND, BY EXECUTION OF THIS AMENDMENT, SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the effective date.

**CONTRACTOR:
SONOMA COUNTY TOURISM
BUREAU**

By: _____

Name: _____

Title: _____

Date: _____

COUNTY OF SONOMA:

**CERTIFICATES OF INSURANCE ON
FILE WITH AND APPROVED AS TO
SUBSTANCE FOR COUNTY:**

By: _____
Ben Stone, Economic Development Director

Date: _____

**APPROVED AS TO FORM FOR
COUNTY:**

By: _____
Linda Schiltgen, Deputy County Counsel

Date: _____

By: _____
Chair, Board of Supervisors

Date: _____

ATTEST:

Sheryl Bratton,
Clerk of the Board of Supervisors



County of Sonoma
State of California

Date: April 10, 2018

Item Number: _____

Resolution Number: _____



4/5 Vote Required

**Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California,
Declaring Its Intention of Continuing the Levy of a Tourism Assessment on the Lodging
Businesses Located Within the Sonoma County Tourism Business Improvement District in
Fiscal Year 2018-19 and Fixing the Time and Place of a Public Hearing**

Whereas, on September 14, 2004 and October 12, 2004, the Board of Supervisors adopted Resolution Nos. 04-0850 and 04-0984 establishing the Sonoma County Improvement Area pursuant to the Parking and Business Improvement Area Law of 1989, California Streets and Highway Code Section 36500 et seq. to levy an assessment to support tourism activities to benefit the lodging establishments in the Tourism Business Improvement District; and

Whereas, in compliance with the California Constitution and Streets and Highway Code section 36535(d), since the creation of the District and the levy of the tourism assessment in 2004, the nonprofit organization Sonoma County Tourism Bureau has submitted an annual assessment report to document its marketing, promotional and other activities to support tourism in the Sonoma County Tourism Business Improvement District; and

Whereas, pursuant to Streets and Highways Code section 36535(d), the levy of the tourism assessment has continued without change since its establishment in 2004;

Whereas, the Sonoma County Tourism Bureau has submitted its annual assessment report for fiscal year 2018-19 and will make a presentation to the Board of Supervisors at a public hearing on May 8, 2018 to support the continuation of the levy of the assessment to support tourism without change;

Now, Therefore, Be It Resolved, the Board Of Supervisors of the County Of Sonoma, State Of California, is declaring its intention of continuing the levy of a tourism assessment on the lodging businesses located within the Sonoma County Tourism Business Improvement District in Fiscal Year 2018-19, and that the Sonoma County Board of Supervisors has accepted the Sonoma County Tourism Bureau's annual assessment report and it is on file with the Clerk of the Board of Supervisors and

Resolution #

Date:

Page 2

available for review;

Be It Further Resolved the Sonoma County Board of Supervisors will conduct a public hearing on May 8, 2018 at the Board of Supervisors Chambers located at 575 Administration Drive, Room 102A, at 9 a.m. at which time the Tourism Bureau will make a presentation regarding its annual assessment report to support the continuation of the levy of the tourism assessment without change in fiscal year 2018-19.

Be It Further Resolved, in advance of the public hearing, written protests may be submitted to Al Lerma, Sonoma County Economic Development Board Director of Business Development and Innovation, 141 Stony Circle, Suite 110, Santa Rosa, CA 95403 by 5:00 p.m. on May 7, 2018. At the public hearing, the Board will consider all protests, both written and oral, presented to the Board prior to the close of the hearing. Each written protest shall contain a description of the business, property address, and if a person submitting the protest is not shown on the official records as the owner of the business, the protest shall contain or be accompanied by written evidence that the person submitting the protest is the owner of the business. A written protest which does not comply with this section shall not be counted in determining a majority protest. If written protests are received from the owners of businesses in the District which will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than 50 percent, no further proceedings to continue the tourism assessment shall be taken for a period of one year from the date of the finding by the Board of Supervisors that a majority protest exists. If the majority protest is only against the furnishing of a specific type of tourism activity within the District, that type of tourism activity shall be eliminated. If there is not a majority protest as described herein, the tourism assessment shall continue without change pursuant to Streets and Highway Code Section 36535(d).

Be It Further Resolved, the Clerk of the Board shall cause a copy of this Resolution to be published once in a newspaper of general circulation at least seven days prior to the date of the hearing.

Supervisors:

Gorin:

Rabbitt:

Zane:

Hopkins:

Gore:

Ayes:

Noes:

Absent:

Abstain:

So Ordered.



Board of Supervisors Report April 2018



Organization Overview

Sonoma County Tourism is a non-profit 501(c)6 organization and is the official destination marketing organization for promoting Sonoma County as a premier overnight destination for domestic and international visitors.

The organization is staffed by dedicated professionals in the fields of sales, marketing, communications, and administration.

A volunteer board of directors governs it, with input from committees, Sonoma County Supervisors and county administration staff, the Economic Development Board, tourism industry influencers, local stakeholders, and the public.

Sonoma County Tourism Impact By The Numbers*

- Direct Travel Impact (2016):
 - Spending: \$1.93 Billion
 - Employment: 20,410
 - Earnings: \$643 Million
- Tax Revenue
 - Local: \$76 million
 - \$83 Million
- 85% of Sonoma County's visitors are domestic
- 15% international visitors - Canada, Western Europe, Mexico, and Asia (Australia/NZ plus Japan and Korea.)

*New data will be released May 2018, after this presentation has been submitted



91% of Sonoma County's tourism businesses are locally owned

82% have fewer than 25 employees

Types of businesses we represent::

Restaurants

Shopping

Lodging

Wineries

Outdoor Activities

Cultural Arts

Meeting Venues

Weddings

Farms & Farmers

Markets

Sightseeing Tours

Night Life

Transportation

Spa & Wellness

Breweries

Chambers/CVBs

Travel Trade

Golf

Culinary

“Let’s Talk Tourism” May – October 2017



Input by community: Let's Talk Tourism	Jenner	Santa Rosa	Windsor	Cloverdale	Sebastopol	Petaluma	Rohnert Park	Bodega Bay	Guerneville
Traffic	X	X	X	X	X	X		X	X
Car pollution					X			X	
Road conditions	X	X		X	X	X		X	
Parking	X		X		X	X			X
Affordable Housing	X	X	X	X	X	X	X	X	X
Homelessness	X	X				X			X
Trash / Litter	X			X				X	X
Find workers	X		X			X	X		
Emergency services funding / use	X				X			X	
Over-regulation		X				X	X	X	

Fire Recovery



Fire Recovery – three phases

- 1) Short-term (October 2017)
- 2) Mid-term (November 1- June 30, 2018)
- 3) Long-term (July 1, 2018 - onward)

WE ARE

BOLD

WE ARE

BRAVE

WE ARE

COMMITTED

WE ARE

RESILIENT

WE ARE



STRONG



Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
<p>Facts / correct misinformation.</p> <p>Liaise with main customers and partners.</p> <p>Become resource – finding housing</p> <p>Which areas are open to visit</p> <p>Toolkit for partners</p>	<p>Come visit- target drive market because of lodging affected</p> <p>Open for business – meetings incentive</p> <p>Thank you for support – Sonoma Strong</p> <p>“Permission to travel”</p>	<p>Come visit</p> <p>Spotlight on smaller inns/B&Bs</p> <p>Restaurants</p> <p>Attractions</p> <p>Businesses dependent on overnight guests</p>	<p>Come visit</p> <p>Spotlight on smaller inns/B&Bs</p>	<p>Come visit</p>	<p>Come visit</p> <p>Sonoma Explorer Program</p>	<p>Come visit</p> <p>Sonoma Explorer Program</p>	<p>Come visit</p> <p>Sonoma Explorer Program</p>

Content creation – current imagery, video, blogs

Monitor, respond to online comments

Livestreaming shows current conditions

Targeted online / social ads and promotions – deals and positive images

Social media polls and stories

Partner trainings: google business listings and current imagery

Partner with local influencers

Social / digital response



We are SonomaStrong



Sonoma County is Open for Business



Sip with us, dine with us, stay with us. Visit Sonoma



From Dallas to Dry Creek Valley - Sonoma is Open for



From Wisconsin to Dry Creek Valley - Sonoma is open for



From North Carolina to Sonoma Coast - Sonoma is



Sonoma County is Open and Welcomes You



Sneakaway to Sonoma 2017-18: We're Open for Business!



Sonoma County Live: February 2018

Hello from Sonoma County!

Thank you for your previous order of a Sonoma County Visitors Guide and Map.

Though the recent wildfires in Sonoma County have been in the news, we assure you that the wineries, restaurants, redwood forests, and beaches that we're famous for are open and waiting for you.

In fact, now is a good time to book a "Sonoma Sneakaway" at sonomacounty.com.

Dungeness crab is coming in from Bodega Bay, our harvest season is inspiring our local chefs, and the art galleries and shops on our town plazas are welcoming guests.

To get a free visitor guide and map and find great deals, visit sonomacounty.com/vg.

If you have any other questions please ask Devin by emailing visit@sonomacounty.com.

We look forward to seeing you soon.

Sonoma County Tourism

Kristin *Nicole B. Gali* *Christy Gatti*
Sue *Beth Snow* *Tim*
Jina *Dan McConnell*



57,000 postcards to visitors, meeting planners and travel agents

Generate repeat interest / visits

#SonomaStrong T-Shirt

Distributed to:
First Responders
County employees
Anyone who needed one

*Mickey Hart wore
on tour throughout US



Fire Relief Activity: Group Sales



- Open for Business' message & fire relief incentive distributed via:
 - Quarterly Newsletter to 4,700+ clients
 - Personal email from sales managers to client lists
 - HelmsBriscoe Global Referral Site
 - CalSAE 200 members
 - MPI SSN 700 members
 - SITE Texas 120 members
 - 20 x trade shows, client events & networking events



Fire Relief Activity: Travel Trade

‘Open for Business’ message distributed globally via:

Newsletter to 8,000+ clients

Weekly email 500+ contacts

Weekly luxury email 200+ contacts

TourOperatorLand Industry Newsletter

Regular updates to 4 International Rep Offices

3 x November FAM’s hosted (Australia, Mexico, UK)

7 x Trade Shows & Client Events

TOUROPERATORLAND
FORMERLY THETOUROPERATOR.COM



Only a small portion portion of [Sonoma County](#) was damaged by the recent fires - mainly along the eastern county border where most visitors don't go. While two hotels were lost - the Hilton Sonoma Wine Country and Fountain Grove Inn in Santa Rosa - three new properties have opened: Holiday Inn Windsor, Oxford Inn & Suites and the boutique Astro Hotel. The number of hotel rooms available remains the same at about 6,300.

"Come back soon and find that resilient [Sonoma County](#) is back doing what we do best - greeting guests with a world class welcome and unforgettable experiences" says Chyrl Collins, Sonoma County Tourism's tour and travel sales manager.



Tour Operator Land

Published by Jake Steinman [?] · Just now · 🌐

TourOperatorLand.com - The wildfires in Sonoma may be out but the regions hospitality industry is HOT! <http://conta.cc/2reZqFk>



SONOMA WINE COUNTRY

MEET IN SONOMA AND
GIVE BACK

WE ARE
BOLD
WE ARE
BRAVE
WE ARE
COMMITTED
WE ARE
RESILIENT

WE ARE
**SONOMA
COUNTY
STRONG**

For a limited time, support Sonoma County hospitality businesses with a meeting, and local hotels will also donate to fire relief on behalf of your group or meeting.

Meeting planners who plan a meeting in Sonoma County receive a cash payment to the hotel master account of:

- \$4,000 for 301+ actualized rooms – plus \$2,000 to Fire Relief Efforts*
- \$3,000 for 201-300 actualized rooms – plus \$1,500 to Fire Relief Efforts*
- \$2,000 for 101-200 actualized rooms – plus \$1,000 to Fire Relief Efforts*
- \$1,000 for 50-100 actualized rooms - plus \$500 to Fire Relief Efforts*
- \$500 for 25-49 actualized rooms - plus \$250 to Fire Relief Efforts*

Thank you for supporting Sonoma County families and small businesses. You are #SonomaStrong.

*Fire Relief Donation will be made on behalf of your company or meeting.

Contact the sales team at **707-522-5800** or **sales@sonomacounty.com**

Must book and actualize meeting between December 1, 2017 through May 31, 2018. No blackout dates. Incentive eligibility is based upon new BFPs for room nights that will be distributed by Sonoma County Tourism to two or more business improvement area (BIA) properties. Donations will be made within 10 days of the group's arrival. Cash incentives are paid to the master account within 10 days of the group's arrival. SCT reserves the right to end the incentive program at any time.

Fire Relief Incentive

Bring meetings back to Sonoma County

12 meetings to Sonoma County

Economic impact of meetings: \$850,943

Explorer Map

Encourages visitors to use local visitor centers, get out in Sonoma County
Provide exposure for businesses affected by fires

SONOMA COUNTY EXPLORER MAP

Explore Sonoma County, from the vineyards to the beaches. Get a free farmers market bag when you get stamps from two participating visitor centers. Also enter for a chance to win a two-night Sonoma County Getaway.



SONOMA COUNTY CALIFORNIA

Here's How:

- 1 Get your Explorer Map stamped by two participating Visitors Centers listed. Present your Map to the Visitors Center and receive a free farmers market bag (while supplies last, limit one per household) or upload your stamped Map at SonomaCounty.com/Explorer.
- 2 To enter to win the Sonoma County Getaway, go to SonomaCounty.com/Explorer and complete the entry form.
- 3 For deals and offers, visit participating businesses listed on the Explorer Map.

* See official rules at SonomaCounty.com/Explorer. Offers can change at any time and are limited to availability. See SonomaCounty.com/Explorer for updates.

Visitors Centers	Deals
<p>Petaluma Visitors Center 210 Lakeville Street, Petaluma, CA 94952 Hip dining meets the live music scene, with some movie-friendly downtown scenery.</p>	<p>Barber Collets 112 Washington Street, Petaluma, CA Get 50% off a tasting and 10% off a bottle purchase at the tasting room in the restored historic Hotel Petaluma. Open Wed and Sun from noon to 6 pm and Thurs-Sat from noon to 8 pm.</p>
<p>Russian River Visitors Center 16209 First Street, Guerneville, CA 95446 Mellow "West County" vibe among the redwoods and along the Russian River. Quaint shops, bakeries, and bars.</p>	<p>Charlie M. Schulz Museum 2301 Hardies Lane, Santa Rosa, CA Get \$2 off adult admission for up to four people and experience the joy of Snoopy, Charlie Brown, and the Peanuts gang. Mention code #300653</p>
<p>Santa Rosa Visitors Center and California Welcome Center 9 Fourth Street, Santa Rosa, CA 95404 Welcome to Beer City in the middle of Wine Country. Find world-famous breweries, restaurants, art galleries, and a new downtown square.</p>	<p>Rodney Strong Vineyards 11435 Old Redwood Highway, Healdsburg, CA Set among the vineyards of the Russian River Valley, join us for a two-for-one tasting and special Explorer pricing on our year-round Food & Wine Pairing.</p>
<p>Sonoma Coast Visitors Center 913 Highway 1, Bodega Bay, CA 94923 Explore 50 miles of beaches, coves, and trails along the Sonoma Coast. Watch whales from Bodega Head.</p>	<p>Viansa Sonoma 25200 Arnold Drive, Sonoma, CA Come enjoy the stunning views and wines. Get a two-for-one Bar Tasting for Summit or Reserve Tasting (\$15-\$20 value) and a 15% discount on any purchases on the day of your visit.</p>
<p>Sonoma Valley Visitors Bureau at Cornerstone 23570 Arnold Drive, Sonoma, CA 95476 At the entrance to Sonoma Valley, where California Wine Country began. Don't miss the amazing gardens and then head up the Valley.</p>	<p>ZaZu Kitchen and Farm 6770 McKinley Street, Sebastopol, CA Come for "Joyous Fixing" and get Rodeo Jax - bacon caramel popcorn - on us! Available Mon, Wed, Thurs from 5 to 6 pm and Fri-Sun from 3 to 6 pm.</p>
<p>Windsor Visitors Center 9001 Windsor Road, Windsor, CA 95492 Sonoma County's newest town with a large Town Green, young residents, and launching point for hundreds of wineries. Pick up picnic supplies at Oliver's and start your day.</p>	<p style="text-align: center;">Get out and explore the rest of Sonoma County - see the second page for ideas. Tag us on Instagram!</p>

Special offers on lodging, wineries, tours and more at SonomaCounty.com/deals



Don't forget to tag us on Instagram @SonomaCounty and use #SonomaExplorer

Sculpture Trail
Running from Geyserville in the north, south to Crockerdale in the north, the Sculpture Trail includes art from Burning Man and local artists. There's a worthwhile "Excelsior Treectus." Tag @SonomaCounty and use #SonomaExplorer.

Parson Jones tree at Armstrong Woods State Recreation Area
Find the tallest tree in the grove and tag @SonomaCounty and use #SonomaExplorer. How creative can you get?

Spring Lake Regional Park
A wild park hiding in plain sight in the middle of Santa Ines. Take a quick walk around the lake and find the new camping cabins.

Jack London State Park
The famous writer's house (and final resting place) is in the Sonoma Valley. Did you hear about the Pig Palace? Tag @SonomaCounty when you find the ruins.

State Park Beach
- but 17 miles of Kilauea to Jenner. Lead others while Salmon Creek is laying in the sand.

Iron Front Row
Downtown Petaluma's famous stretch of vintage buildings, houses, restaurants, and shops. The Petaluma River Walk includes murals and a good spot for a drink.

Info: Stop by two visitors centers and get your Explorer Map stamped to get a market bag. Then enter to win a two-night getaway in Sonoma County!

The Road Ahead

SONOMA
COUNTY
CALIFORNIA

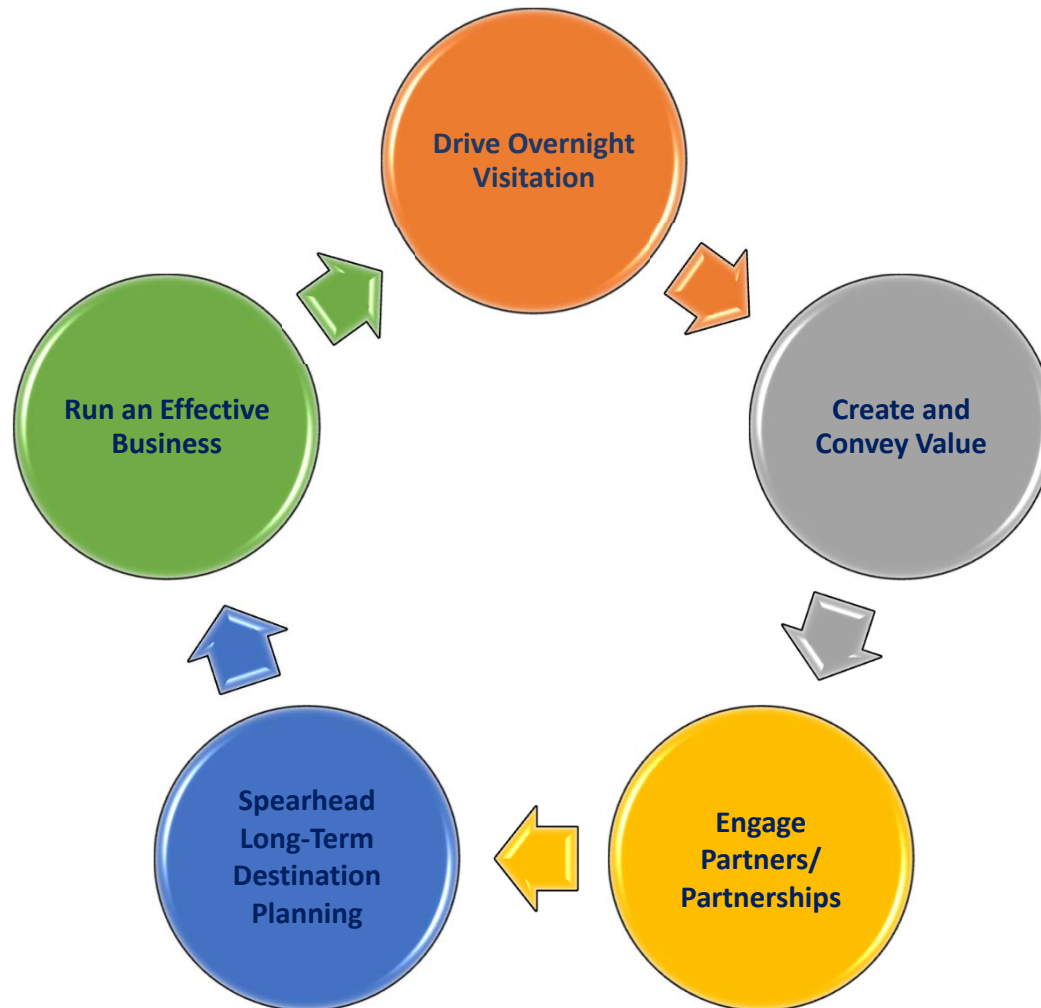
**Sources & Uses of Funds
July 1, 2018- June 30, 2019**

	Fiscal Year 2018-2019
<u>Revenues</u>	
BIA Assessments	\$ 5,297,870
Transient Occupancy Tax	2,107,840
Interest Income	<u>24,816</u>
Total Revenues	<u>\$ 7,430,526</u>
<u>Expenditures</u>	
Advertising	\$ 1,294,000
Marketing Materials & Distribution	1,042,500
Tradeshows & Sales Missions	611,981
Sales & Marketing Promotions	868,360
Destination Development	279,290
Research & Development	421,800
Public Relations	282,480
Sales & Marketing Tools	102,800
Labor	2,963,356
Administrative Expenses	938,968
Capital Expenditures	17,151
Reserve Funding	-
Total Uses	<u>\$ 8,822,686</u>
TOTAL REVENUES LESS USES	<u>\$(1,392,160)</u>
<u>Reserve Usage</u>	
Catastrophic & Strategic Reserves	<u>\$ 1,392,160</u>
TOTAL SOURCES LESS USES	<u>\$ 0</u>

Core Values



Key Initiatives



Overarching Key Performance Indicators (KPIs)

Increase the number of travelers to Sonoma County, most especially overnight visitors by two percent (2 percent) year-over-year.

Create a dynamic research foundation that tracks and communicates industry and organizational performance. .

Initiate a new funding model for Sonoma County Tourism that creates opportunities for growth within both traditional (tourism industry) and non-traditional (consumer brand aligned) partnerships.

Expand partner marketing and business development opportunities.

Boost community outreach to ensure Sonoma County Tourism is perceived as a strong community partner.

Develop a Destination Management Plan designed to identify a responsible long-term approach for creating a destination that addresses key issues and identifies innovative approaches for managing critical issues and bolstering the economy through travel and tourism activities.

Cultivate trust in Sonoma County Tourism through ensuring transparency in budgeting, openness in meetings, and timely, ongoing communications.

FY18 Priorities



Rebuild

Review

Reenergize

NATIONAL TRAVEL & TOURISM WEEK MAY 6-12, 2018

Sonoma County Tourism Cares Volunteer Opportunities



Tourism Cares Volunteers hard at work in the Sonoma County Redwoods

TOURISM SUPPORTS
LOCAL
BUSINESSES
LIKE THIS

NATIONAL TRAVEL
AND TOURISM WEEK



TOURISM PROVIDES
ONE IN TEN
SONOMA COUNTY
JOBS

NATIONAL TRAVEL
AND TOURISM WEEK



TOURISM SUPPORTS
LOCAL
BUSINESSES
LIKE THIS

NATIONAL TRAVEL
AND TOURISM WEEK



NATIONAL
TRAVEL &
TOURISM
WEEK MAY 6-12, 2018



Monday, May 7 - Redwood Empire Food Bank

Wednesday, May 9 - LandPaths - Riddell Preserve

Friday, May 11 - Habitat for Humanity ReStore

County Partnership



EDB: Restaurant Week, Outdoor Month

CA FWD Economic Summit – Nov 2018

Community Investment Projects

Thank you!

SONOMA
COUNTY
CALIFORNIA



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 60
(This Section for use by Clerk of the Board Only.)

To: Sonoma County Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Informational Only

Department or Agency Name(s): County Administrator, General Services

Staff Name and Phone Number:

Sheryl Bratton, County Administrator: 565-2588
Caroline Judy, Director General Services: 565-8058

Supervisorial District(s):

Title: County Government Center Facility Planning

Recommended Actions:

Authorize the Director of General Services to issue a Request for Interest seeking feedback on the feasibility of a public-private partnership to address inadequate County Government Center office buildings that have exceeded their useful life and are costing more to maintain and repair than they are worth.

Executive Summary:

The current 1950's based, sprawling County campus no longer serves the needs of our community nor does it represent the highest and best use of valuable property assets. The County campus property was developed over the last 60 years with 10,000 square feet of building area per acre where less than one quarter of the available land is used for buildings. This inefficient land use prioritizes vehicle parking over the efficient delivery of services, thereby underutilizing land that could be put to a higher purpose such as providing housing, and revenue generating mixed-use office and retail space.

Your Board's 2017 Strategic Plan described the dual priorities of investment to reduce long term operating costs associated with aging County facility infrastructure, and identifying under-utilized County government properties for housing in order to address Sonoma County's housing affordability crisis. The plan presented to your Board today describes in concept how the County Government Center properties could be better utilized to meet these goals. Today's presentation expands upon prior planning efforts and various design concepts presented to the Board in 2007 and 2013. Options are presented to obtain Board approval to explore feasibility through a Request for Interest process. A Request for Interest will help the County assess the level of private sector interest in a public-private partnership, will help us evaluate possible locations for new administrative offices, and will provide important input towards structuring a competitive Request for Qualifications and Proposals. The Request for Interest may assist the Board in considering four possible campus location alternatives; the existing campus, downtown Santa Rosa, airport business park, or an unknown build to suit location. It is

anticipated that the City of Santa Rosa will join the County in the Request for Interest given possible opportunities to co-locate in downtown Santa Rosa. There may also be opportunities to partner with the local Court to address deferred maintenance in the Hall of Justice.

The County's real estate portfolio is diverse with over 2 million square feet of owned and leased facilities and over 170 structures. The County campus represents 470,456 square feet of office space, not including the detention facility and the Sheriff's buildings. The cost of operating the property portfolio has grown as facilities have aged, as deferred maintenance obligations increase, as owned properties have no room for expansion, and therefore as department needs for space are met through commercial office leases.

The need for campus revitalization is driven by the desire to consolidate operations, and to reduce the growing deferred maintenance and leased property expenses. Furthermore there is an opportunity to advance your Board's strategic priority of Housing for All.

Discussion:

Business Case for Campus Replacement

The County campus buildings are aging and in need of a significant investment in deferred maintenance or alternatively complete replacement. The current model of funding capital investments in the County government facilities is not sufficient to meet the rate of facility structural and building systems failure.

Facilities continue to age and the demands for services continue to grow. The resulting insufficient operating budget has created a growing backlog of \$258 million deferred maintenance on the County government center campus alone and the condition of "running to fail" whereby major structural or building systems completely fail and must be replaced at significant cost often on an emergency basis. This is not a facilities operations best management practice. Your Board took steps toward addressing this situation by adopting a Capital Funding Policy during the FY 17-18 budget deliberations. A long term solution must be found that addresses the fiscal implications of deteriorating infrastructure.

Besides the deteriorating state of the County buildings, the facilities are seismically deficient, potentially compromising the ability of the County to effectively respond in the event of a disaster. Buildings built prior to the mid 1970's, particularly concrete and masonry structures, which comprise a significant portion of the Sonoma County portfolio, are considered at a high risk of significant damage.

The County campus property was developed at a time when land use zoning encouraged the separation of office, retail and residential buildings. Office complexes in Sonoma County were designed with the assumption that employees would primarily drive to work from residential communities. Building density was low and floor area ratios prioritized parking availability. As a consequence, the County campus was designed with primarily single story buildings and lots of surface parking. This inefficient land use today compromises the County's ability to achieve the highest and best use of the property asset. An opportunity exists to move administrative functions currently in leased space back to a centralized campus, and simultaneously develop a portion of the campus for housing and mixed use office or retail.

See Attachment 1 – Report on Solutions Options for Addressing the Growing County Government Center Administrative Building Maintenance Costs (Maintenance Costs Report) for more detailed information.

Prior Efforts

Over the past ten years the Board has invested in a number of studies and analysis of options for revitalizing the County government campus. On January 15, 2013, the Board accepted *the Sonoma County Real Estate and Financial Vision – Comprehensive County Facilities Plan*. Interviews were conducted with all departments to determine space needs, growth factors and appropriate adjacencies. Much of this information is still current today.

The FY 13/14 Comprehensive County Facilities Plan determined that three quarters of the County's facilities on the main campus were beyond useful life, that space standards were lacking, and that average workstation sizes were significantly above industry standards. In addition, the Comprehensive County Facilities Plan concluded that 62% of the county's real estate costs were a result of lease expenditures and that these costs were increasing as a result of campus space constraints. The Real Estate Master Plan portion of the Comprehensive County Facilities Plan recommended expanding neighborhood based Health and Human services but consolidating these department's administrative functions. In general, approximately 85% of the lease expenditures for Health and Human Service's programs are reimbursable to State and Federal program fund sources. Space constraints on the County Government Center campus have prevented consolidation of administrative functions.

Since FY 13/14, staff have implemented the Comprehensive County Facilities Plan recommendation to reduce lease costs per square foot through new or renewed leases approved by the Board. In addition, staff obtained Board approval to increase neighborhood based services. As a result of these efforts over the last two years, General Services Department Real Estate staff have saved over \$5 million in annual lease expenses through renegotiating leases to below commercial market rates.

Staff Analysis and Recommendation for Next Steps

In the current report, four options are studied to determine how best to mitigate the growing deferred maintenance obligation:

- Continuing as is with the status quo.
- Catching up on deferred maintenance.
- New construction either on the County property or elsewhere.
- Leasing buildings.

To evaluate the four different options it was necessary to estimate demolition, design and construction costs and financing costs, where applicable. In order to obtain a rough estimate of the costs of demolition, design and construction, staff requested Kitchell Construction Management provide cost estimates. The Kitchell analysis used an estimated cost range of \$826.00 – \$942.00 per square foot for the scenarios studied. In addition, financing options were prepared by the County's financial advisor, KNN Public Finance LLC. The financing options include: issuing bonds, leasing or building to suit, and using a performance based infrastructure approach (also called public-private-partnership). All of this analysis is included in the Maintenance Costs Report.

The Kitchell and KNN analyses have considered the opportunities for property sale proceeds, ground lease revenues and the cost of rental swing space during construction. In addition, staff obtained historical information on lease trends and vacancy rates throughout the County. Staff evaluated the potential for revenues from the sale or ground lease of the 21 – 29 acre property that might result from

a consolidated campus plan. The possible one-time or ongoing revenues could be used to offset the costs of the financing approach selected. The Request for Interest will enable the County to narrow down the financial approaches to best address the deteriorating existing campus building infrastructure.

Finally, staff considered the opportunities for consolidation and partnerships with the City of Santa Rosa, the Superior Court, and others. The City of Santa Rosa is also considering options to replace their aging facilities. The County and Court share the desire to upgrade the Hall of Justice facility. There may be economies of scale advantages to the County, City of Santa Rosa, and the Court collaborating on a Request for Interest, and a Request for Qualifications and Proposals.

Staff is requesting authority to prepare a Request for Interest which would be released later this year to developers in order to competitively assess initial financial viability and the new construction and lease options presented in the Staff Report. The Request for Interest will assist in narrowing down the scope of a Request for Qualifications and Proposals. There are other considerations that can be explored in a Request for Interest including the possibility of collaborating with the City of Santa Rosa and the Superior Court as described above. Staff will return to the Board with a summary of the responses received from the Request for Interest in late 2018. If responses are favorable, next steps would include obtaining consulting and counsel services to assist in preparing a request for qualifications and request for proposals.

Prior Board Actions:

- June 20, 2017: Board approval of Development, Disposition Agreement for Chanate
- February 2, 2016: Board approval of Chanate Request for Proposals
- June 24, 2014: Comprehensive Facilities Condition Assessment Plan Update
- January 15, 2013: Comprehensive County Facilities Plan
- April 7, 2009: County Administration Center Site Evaluation and Opportunities Analysis

Strategic Plan Alignment Goal 3: Invest in the Future

Board action will advance your Board's strategic goals of Infrastructure Investment and Housing for All.

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses	127,000		
Additional Appropriation Requested			
Total Expenditures	127,000		
Funding Sources			
General Fund/WA GF	127,000		
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources	127,000		
Narrative Explanation of Fiscal Impacts:			
<p>Funding for the project was described in the Five Year Capital Improvement Plan and \$127,000 was approved as part of the FY 17/18 Capital Budget. To progress work in FY 18/19 funding to cover General Services staff, and County Counsel expenses is included in the Recommended FY 18-19 Capital Budget. If the Request for Interest responses are favorable and the Board directs staff to move forward with a Request for Qualifications and Proposals, additional funding may be needed to retain outside consultants to assist with the RFQ/RFP.</p>			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
None.			
Attachments:			
Attachment 1: Sonoma County Maintenance Costs Report Attachment 2: Powerpoint presentation			
Related Items "On File" with the Clerk of the Board:			

Report on Solutions for Addressing the Growing County Government Center Administrative Building Maintenance Costs

GENERAL SERVICES DEPARTMENT

May 8, 2018

Caroline Judy, *Director of General Services Department*

Keith Lew, *Deputy Director of General Services Department*

Toni Anthony Holland, *Senior Capital Project Manager, Facilities Development and Management Division General Services Department*

Brianne McClure, *Senior Communications Manager, General Services Department*

EXECUTIVE SUMMARY

The current 1950s-based sprawling County Government Center no longer serves the needs of our community, nor does it represent the highest and best use of valuable property assets. The campus was developed over the last 60 years with 10,000 square feet of building area per acre where less than one quarter of the available land is used for office space. This inefficient land use prioritizes vehicle parking over the efficient delivery of services, thereby underutilizing land that could be put to a higher purpose such as providing housing or generating revenue through mixed-use office and retail space.

The County's real estate portfolio is diverse, with over 2 million square feet of owned and leased facilities and over 170 structures. The County Government Center represents 470,456 square feet of office space, not including the detention facility and the Sheriff's buildings.

The cost of operating the property portfolio has grown as facilities have aged, and deferred maintenance obligations also have increased over time. Owned properties have no room for expansion and department needs for space are therefore met through market-rate commercial office leases. The opportunities for more efficient management of the County's real estate portfolio were studied by HOK Architects in 2007, and Gensler Architects in 2013. VFA was then tasked in 2014 to evaluate the condition of the County's facilities. These prior studies recommended either significant ongoing investment in maintenance or the replacement of the aging County campus buildings.

This report provides updated information on maintenance costs, and options for mitigating the growing financial liability of operating buildings beyond their useful life. This report provides information describing the cost to repair and replace buildings and demonstrates that it is more cost effective to construct new buildings. It also provides options for new construction, and analyzes possible locations and financing methods. This report is a companion document to a Board of Supervisors memo and presentation anticipated for the May 8, 2018 Board meeting.

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BACKGROUND

The General Services Department's annual operating budget funds the maintenance needed to keep all County buildings and facilities in acceptable condition and compliance with State and Federal laws and regulations.¹

There are three types of maintenance that are discussed in this report:

- **Preventative maintenance** is performed while the building, equipment or systems are still operating to lessen the likelihood of failures. Preventative maintenance should be performed regularly on all building components. If preventative maintenance is not done it becomes deferred maintenance.
- **Corrective maintenance** is the task of rectifying failed equipment or building systems such that these can be restored to operational condition. Corrective maintenance can include the complete replacement of equipment or building components.
- **Deferred maintenance** is the postponement of preventative and corrective maintenance. The lack of funding to cover all maintenance on time can cause more severe conditions that require a greater level of investment than the cost of the original maintenance.

COUNTY GOVERNMENT CENTER

The County Government Center makes up a quarter of the County's entire property asset portfolio and is the most expensive asset for the County to maintain. Over 80% of the County Government Center is 50-60 years old and experiences heavy use by the public and county employees – resulting in frequent and costly repairs or replacements. Compounding the age of the buildings, the County's investments in preventative maintenance have fallen behind and create an ever growing deferred maintenance obligation. The County's investment in maintenance has not met industry standard levels for more than ten years, a situation that has resulted in progressive building systems failures. Addressing deferred maintenance by either repairing or replacing the most expensive portion of the property portfolio will reduce the long-term financial risk to the County. Recognizing these trends in 2014 the General Services Department recommended and obtained a Comprehensive Facilities Condition Assessment.

KEY TAKEAWAYS

Over 80% of the County Government Center is 50-60 years old and experiences heavy use by the public and county employees – resulting in frequent and costly repairs or replacements.

The Board of Supervisors appropriated funds in 2014 for a Comprehensive Facilities Condition Assessment to help guide the County's asset management strategy.

The Comprehensive Facilities Condition Assessment conducted by VFA found that on the County Government Center, only the Family Justice Center, Main Adult Detention Facility, and the Sheriff's building warranted further investment based on the condition of the facilities.

¹ Such laws include the Title 24; Americans with Disabilities Act; Cal OSHA Regulations; Labor Codes; various Building and Fire codes, and Health and Safety Codes.

2014 COMPREHENSIVE FACILITIES CONDITION ASSESSMENT

The Board of Supervisors appropriated funds for a Comprehensive Facilities Condition Assessment to help guide the County's asset management strategy. VFA, now Accruent, conducted the study and used an industry standard benchmark known as the Facility Condition Index (FCI) to measure the current condition of the County's facilities. The FCI is calculated as a ratio by dividing the total estimated cost of completing all maintenance projects by a building's estimated replacement value. The higher the FCI, the higher the need for funding relative to the facility's value. A building with a good FCI would have a value under 0.05. A building with an FCI of between 0.05 and 0.10 would be considered in fair condition. And a building with an FCI of over 0.10 would be considered in poor condition. Buildings with an FCI of 0.3 or higher would be considered in critical condition.

An FCI of 0.3 is typically considered the point beyond which the remaining low facility value outweighs further investments. The Comprehensive Facilities Condition Assessment found that the average FCI was 0.34 for all of the buildings analyzed in the report throughout the County property portfolio. The County Government Center buildings had an average FCI of 0.36. The La Plaza B (0.53), La Plaza A (0.47), Law Library (0.47), Human Services (0.46), Child Care Center (0.41) and Administration (0.38) buildings are well beyond their useful life. The FCI values for the buildings described above indicate that continued investment in these buildings will have diminishing returns for the County.

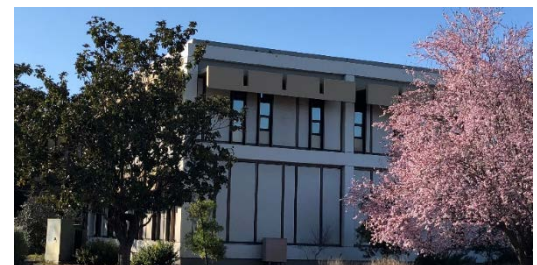
Table 1 summarizes the essential county services and full-time employees that depend on the aging County Government Center buildings along with the FCI and replacement value for each building determined by VFA in the Comprehensive Facilities Condition Assessment. The replacement value is the cost to rebuild the existing structure in the same location, the same size, same quality of original construction, and original code at current costs. Replacement value does not equal the cost of building new construction to today's code, or market price.



LA PLAZA B (FCI 0.53) / LA PLAZA A (0.47)



LAW LIBRARY (FCI 0.47)



HUMAN SERVICES (FCI 0.46)



CHILD CARE CENTER (FCI 0.41)



ADMINISTRATION (FCI 0.38)

TABLE 1 - COUNTY GOVERNMENT CENTER BUILDINGS (FY 17/18)

BUILDING/ LOCATION	AGE	SQ FT	FCI	REPLACEMENT VALUE	SERVICES	FULL-TIME COUNTY EMPLOYEES
Administration Building 575 Administration Drive	60	45,682	0.39	\$19,502,701	Board of Supervisors, County Administration, County Counsel, Human Resources, Auditor	184
Permit and Resource Management 2550 Ventura Avenue	58	31,360	0.30	\$39,523,780	Permit Resource Management	136
Law Library 2604 Ventura Avenue & 445 Fiscal Drive	58	28,160	0.47	\$37,480,974	Law Library, Information Systems, Registrar of Voters, Sheriff	16
Fiscal Building 535 Fiscal Drive	55	40,430	0.31	\$45,108,140	Auditor/Controller/Treasurer /Tax Collector, Clerk/Recorder/Assessor	270
Mechanical Building	53	9,110	0.08	\$68,809,494	Mechanical Plant	0
Human Services 2550 Paulin Drive	52	44,484	0.46	\$51,058,011	Human Services	138
Emergency Operations 600 Administration Drive	51	5,400	0.36	\$13,929,895	Emergency Operations	0
Hall of Justice 600 Administration Drive	51	129,361	0.22	\$180,757,085	Superior Court of California	235
2300 Professional Center Drive	48	13,200	0.36	\$13,563,659	Information Systems	21
Data Processing 2615 Paulin Drive	45	15,524	0.35	\$25,157,907	Information Systems	52
La Plaza A 2300 County Center Drive	41	34,300	0.47	\$35,670,824	General Services, Regional Parks, Congressman, Energy and Sustainability, IOLERO	155
La Plaza B 2300 County Center Drive	41	34,300	0.53	\$34,312,372	Transportation and Public Works, District Attorney, Fire Emergency Services	154
Credit Union 370 Administration Drive	32	14,022	0.39	\$19,502,701	Information Systems, Probation	29
Children's Day Care Center 2614 Paulin Drive	30	2,300	0.41	\$2,841,411	Child Care	0
Family Justice Center 2755 Mendocino Avenue	11	22,823	0.12	\$20,224,751	Civil Legal Service Providers, Community-based Advocates, Law Enforcement and Prosecutors	13
Totals		470,456		\$635,748,266		1403

The FCIs in the table above illustrate that only the Family Justice Center warrants further investment. All the other buildings have FCI where further expenditures in maintenance are considered a poor investment. The table also indicates that the replacement value per square foot is over \$1,351. This cost to replace per square foot is higher than new construction as we

will describe later in this report and does not represent bringing the buildings up to current code. The current practice of repairing systems as they fail is replacement. Systems are fixed, like for like, but these are not wise investments and do not represent industry best practices.

INDUSTRY BENCHMARKS FOR FACILITY MAINTENANCE

The International Facilities Management Association (IFMA) reports industry-wide benchmarks allowing Facility Managers to see how their operation ranks against other organizations. If facilities fall significantly above or below the median, IFMA recommends examining cost or procedures.

IFMA's 2017 Benchmarking Report surveyed Facility Managers throughout the United States and Canada, analyzing more than 2,000 responses and 98,000 buildings about their maintenance costs for external building maintenance and interior systems maintenance. These costs included all repair, preventive, materials, direct-labor and contract costs for the following building components: foundations, structure, exterior closure (including doors, windows, walls, roof, and sealants), interior finishes, heating, ventilation and air conditioning systems, plumbing and building electrical distribution.

Average maintenance costs by region - The report determined that on-average, Facility Managers on the Pacific Coast spend \$4.07 per square foot for building maintenance.

Average maintenance costs by facility age – The report also determined that on-average, Facility Managers nationwide spend \$4.83 per square foot to maintain buildings that are 31-50 years and dedicate 44% of their expenditures to preventative maintenance.

Overall maintenance costs increased by \$1.59 per square foot (72%) from the previous benchmark report completed in 2013.

The next section describes how the County's operation and investment in facility maintenance contrasts with industry benchmarks.

KEY TAKEAWAYS

The IFMA standard for building maintenance on the Pacific Coast is \$4.07 per square foot.

Facility Managers nationwide spend \$4.83 per square foot to maintain buildings that are 31-50 years and dedicate 44% of their expenditures to preventative maintenance.

The County is funding building maintenance below IFMA standards by \$0.71 per square foot and \$2,980,561 annually for the entire asset portfolio.

The County Government Center itself falls short of IFMA benchmarks by \$752,330 a year.

Since 2012, the General Services Department has expended over 80% of its annual operating budget on unplanned building repairs and replacement of parts and systems instead of the preventative maintenance needed to extend the useful life of the County Government buildings.

MAINTENANCE EXPENDITURE TRENDS

The County funds building maintenance through the General Service Department Facility Operation division budget. As described above the IFMA standard is \$4.07 per square foot. If the County funded building maintenance based on IFMA benchmarks at \$4.07 per square foot, its annual maintenance budget would be \$8,108,714. The County is currently budgeting \$5,128,153 annually on building maintenance for all county buildings – a difference of \$2,980,561 annually. As Table 2 illustrates, funding for the County Government Center itself falls short of IFMA benchmarks by \$752,330 a year.

TABLE 2 - IFMA BENCHMARKS VS. COUNTY FUNDING AND MAINTENANCE STAFF

	TOTAL BUILDINGS	TOTAL SQ FT	IFMA FUNDING BM*	BUDGET FY 17/18	GAP BETWEEN IFMA AND COUNTY
ENTIRE COUNTY PORTFOLIO	170	1,992,313	\$8,108,714	\$5,128,153	\$2,980,561
COUNTY GOVERNMENT CENTER	15	470,456	\$1,914,756	\$1,162,426	\$752,330

* Based on IFMA benchmark of annual maintenance budget of \$4.07 per square foot

HOW DID WE GET HERE?

The County's maintenance budget has wavered year to year and resulted in irregular maintenance. Table 3 shows that from the early 2000's to 2007 maintenance budgets and expenditures rose year over year as square footage was increasing. Then from 2007 to 2011, the County's maintenance budget was reduced by 47%, down to \$1.90 per square foot in 2011 even with continued square footage increases. Budget cuts resulted in postponing regular preventative maintenance for several years, increasing the County's deferred maintenance backlog and causing county buildings and systems to deteriorate. Although the annual maintenance budget has gradually increased since 2012, the budget has not kept pace with the increase in square footage and with the backlog of maintenance needed to restore neglected buildings and systems. Table 3 also shows that the General Services Operations division's actual costs for maintenance have exceeded the available budget every year since 2010 as more expensive repairs and system replacements are needed. The General Services Department has used salary savings and revenues from within the department to offset maintenance budget deficits.

TABLE 3 – MAINTENANCE BUDGET AND EXPENSES FOR THE ENTIRE COUNTY PORTFOLIO

	SQUARE FOOTAGE	BUDGET	ACTUAL COSTS	ACTUAL COST PER SQUARE FOOT
FY 00/01	1,530,770	\$ 3,756,443	\$ 3,509,436	\$ 2.29
FY 01/02	1,530,770	\$ 4,289,883	\$ 3,866,813	\$ 2.53
FY 02/03	1,577,999	\$ 4,461,831	\$ 4,121,006	\$ 2.61
FY 03/04	1,577,999	\$ 4,901,991	\$ 4,715,023	\$ 2.99
FY 04/05	1,675,267	\$ 5,288,002	\$ 5,191,612	\$ 3.10
FY 05/06	1,675,267	\$ 5,778,696	\$ 5,490,152	\$ 3.28
FY 07/08	1,754,699	\$ 6,395,788	\$ 6,168,527	\$ 3.52
FY 08/09	1,779,311	\$ 6,454,676	\$ 5,940,227	\$ 3.34
FY 09/10	1,775,111	\$ 5,557,425	\$ 5,451,874	\$ 3.07
FY 10/11	1,796,542	\$ 3,865,458	\$ 4,186,364	\$ 2.33
FY 11/12	1,801,822	\$ 3,036,004	\$ 3,421,176	\$ 1.90
FY 12/13	1,801,822	\$ 3,312,571	\$ 3,602,033	\$ 2.00
FY 13/14	1,806,390	\$ 3,823,666	\$ 3,838,141	\$ 2.12
FY 14/15	1,992,313	\$ 4,087,045	\$ 4,435,896	\$ 2.23
FY 15/16	1,992,313	\$ 4,431,626	\$ 4,820,594	\$ 2.22
FY 16/17	1,992,313	\$ 4,977,613	\$ 5,358,235	\$ 2.69
FY 17/18*	1,992,313	\$ 5,128,153	\$ 6,697,541*	\$ 3.36

*Fiscal year estimate only

Even with the increase in budgeted maintenance in FY 17/18, the County is below IFMA standards by \$0.71 per square foot or \$2,980,561 annually for the entire asset portfolio. Not only is the county below IFMA benchmarks, it is far below the investment needed to address the growing deferred maintenance backlog described below.

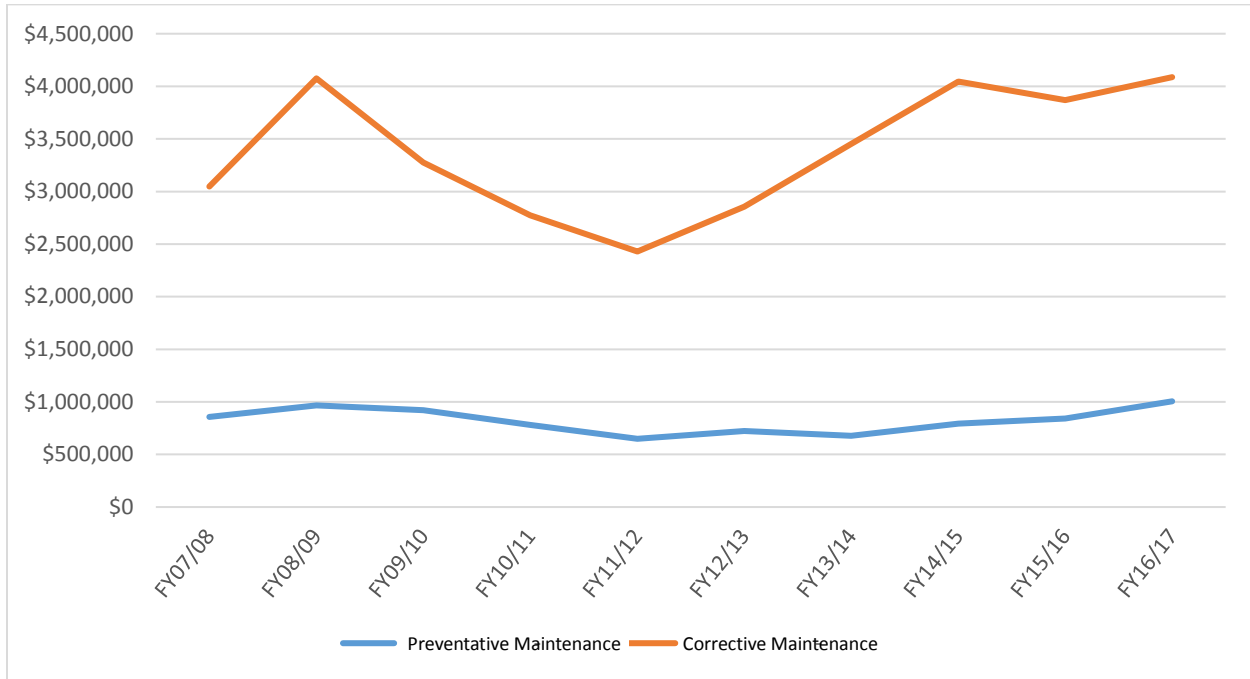
GROWING CORRECTIVE MAINTENANCE

Since 2012, the General Services Department has expended over 80% of its annual maintenance operating budget on unplanned building repairs and replacement of parts and systems instead of the preventative maintenance needed to extend the useful life of the County Government buildings. As systems fail, the County must choose between replacing the system, finding an interim solution, or deferring maintenance. Replacement of systems is often cost-prohibitive, so the County frequently relies on interim solutions to keep facilities operating. Such repairs will restore system functionality but will not last as long as a system replacement or extend the useful life of the system. This type of corrective maintenance does not reduce the County's growing deferred maintenance. In some situations, the County has no option but to replace the entire system.

In the last two years alone, the County spent \$781,000 on emergency system replacements including: the gas line to the Main Adult Detention Facility (\$97,000), heating ventilation and air conditioning systems at the La Plaza A building (\$229,000) and at the Family Justice Center (\$110,000), new roof at Permit Sonoma (\$340,000), structural failures of the Permit Sonoma trailer and the Information Technology department building roof, walls and foundation. Given that over 80% of the County Government Center is 50-60 years old, such failures are likely to

continue and the cost to repair will increase with construction cost escalation. Chart 1 below shows the increasing trend of corrective maintenance expenditures as preventative maintenance expenditures stay low.

CHART 1 –ACTUAL PREVENTATIVE VS. CORRECTIVE MAINTENANCE COSTS



GROWING DEFERRED MAINTENANCE

Postponing both preventative and corrective maintenance results in a backlog of deferred maintenance. Deferred maintenance results in major structural or building systems failure and therefore systems must be replaced at significant cost and often on an emergency basis.

In 2014, the Comprehensive Facilities Condition Assessment conducted by VFA determined that the County Government Center alone had a backlog of \$236 million in deferred maintenance. VFA based this evaluation on the condition of County facilities given their age, construction type, maintenance performed and overall condition of each building’s systems. The assessment evaluated building closures (exterior walls, roofing, doors, windows, and sealants), foundations and structure, heating ventilation and air conditioning, electrical distribution systems, plumbing, interior doors and hardware and fire protection systems. In subsequent years, with escalating construction costs the County Government Center’s deferred maintenance backlog has increased to \$258 million.

ADDRESSING DEFERRED MAINTENANCE THROUGH THE CAPITAL IMPROVEMENT PLAN

In FY 16/17, the General Services Department developed a five-year deferred maintenance plan to address the highest priority deferred maintenance projects in five annual phases. Projects in the five-year plan totaled \$64 million and included air handler replacement and auger grinder maintenance at the Main Adult Detention Facility, ISD switchgear replacement, County complex transformer repair, central mechanical plant generator replacement. The five-year plan was introduced in the 2016/2021 Capital Improvement Plan and was not funded. It has been included in all Capital Improvement Plans since and remains unfunded.

In FY 17/18, the Board authorized capital funding to address failing systems including roof replacements at the Permit Sonoma building (\$340,000) and the Santa Rosa Veterans Memorial Hall (\$1,456,956).

Critical repairs and maintenance costs have increased since the development of the original five-year plan. The updated five-year plan included in the 2018/2023 Capital Improvement Plan identifies over \$70 million in deferred maintenance projects. The updated plan identifies \$14 million “must do” deferred maintenance projects to be completed in FY 18/19 to preserve property assets.

In addition, over \$131 million in capital improvements requested by departments and \$21 million in Americans with Disability barrier removal projects on the County campus are described in the Capital Improvement Plan. These department requests could be met by replacing buildings.

As of FY 17/18, the Capital Improvement Plan identified total deferred maintenance investment needs of \$665 million for all County owned facilities. The County Government Center portion of the total \$665 million is \$258 million, representing over 39% of the total liability. Other properties such as Los Guilicos, the North County Detention facility, Main Adult Detention Facility and Veteran’s Buildings represent the remaining \$407 million. Although the focus of this report is on the County Government Center, a plan is also needed for appropriately funding maintenance on the other County owned properties described above.

KEY TAKEAWAYS

In 2014, the Comprehensive Facilities Condition Assessment conducted by VFA determined that the County Government Center alone had a backlog of \$236 million in deferred maintenance.

Overall \$131 million in capital improvements and \$21 million in Americans with Disability barrier removal projects on the County campus are described in the Capital Improvement Plan. These department requests could be met by replacing buildings.

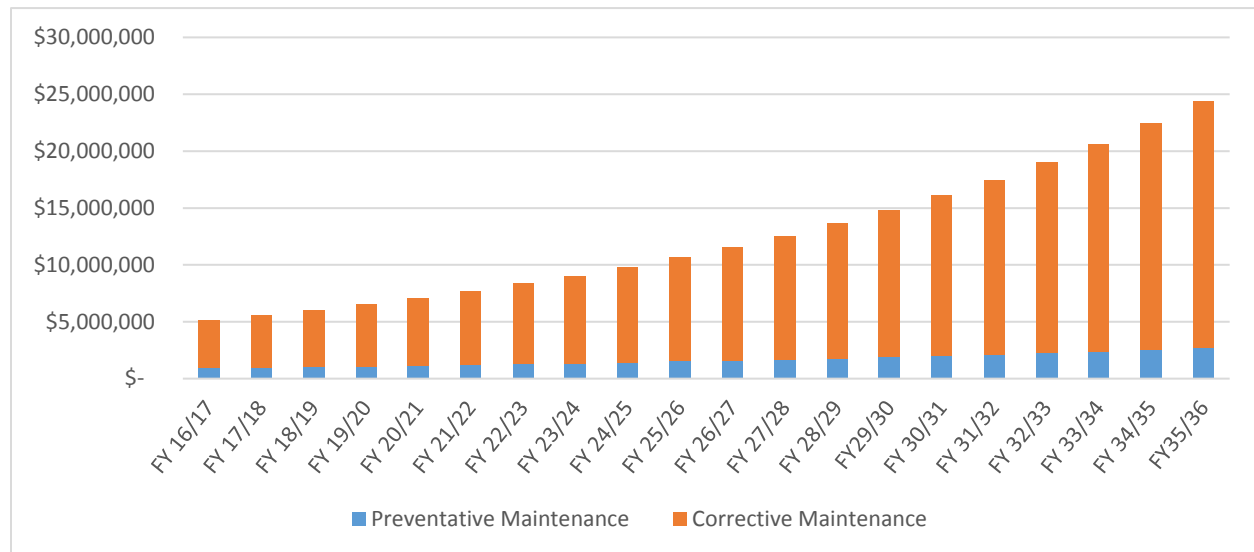
Projected out twenty years, deferred maintenance at the County Government Center grows from \$258 million to over \$650 million assuming a 6% construction cost escalation.

PROJECTED MAINTENANCE COSTS

Corrective maintenance needs are expected to increase significantly over the next twenty years. Currently, cost escalation is at four percent and expected to grow to six percent over the next year due to market conditions including increased labor and material costs. The chart below describes projected corrective maintenance and deferred maintenance costs for the next twenty years, based on current operating and inflation trends.

Based upon actual costs and past practice, Chart 2 below shows the trend of increasing corrective maintenance as preventative maintenance investment remains low. Projecting forward with cost escalation affecting the price of materials and labor, a flat investment means the buying power of a dollar invested decreases.

CHART 2 – PROJECTED INCREASES IN PREVENTATIVE AND CORRECTIVE MAINTENANCE FOR ENTIRE ASSET PORTFOLIO



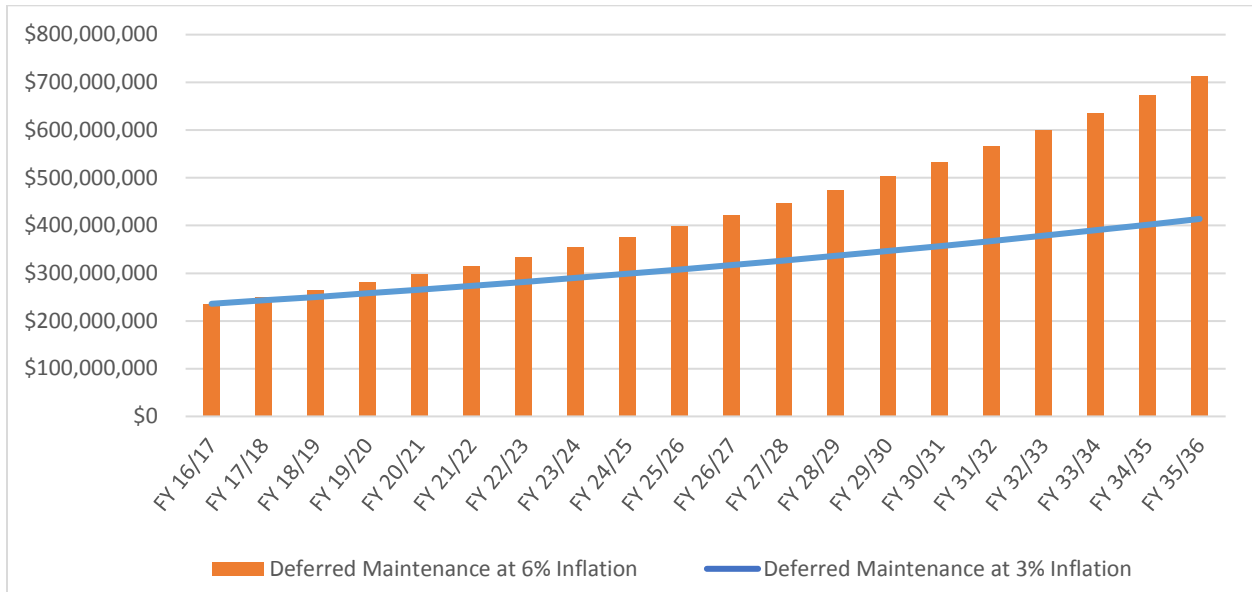
In the absence of significant changes, the long-term financial liability of deferred maintenance backlog will increase with annual cost escalation.

Chart 3 below illustrates how the lack of investment in preventative maintenance contributes to the growth of deferred maintenance. Projected out twenty years, deferred maintenance at the County Government Center grows from \$258 million to over \$650 million assuming a 6% construction cost escalation.² Although the chart illustrates the Consumer Price Index (CPI)

² The State of California requires project cost estimates to apply the California Construction Cost Index (CCCI) to budgets and estimates. The CCCI is based on Building Cost Index (BCI) cost indices produced by Engineering News Record (ENR). The CCCI has been at 0.42% per month. With locality adjustments for specific California markets, the annual construction cost escalation rate is about 6%. The professional construction estimating company RS Means also publishes historical indexes and cost trends, and their data is consistent with the CCCI.

average of 3%, it is not a valid indicator of construction cost escalation. Whereas CPI has increased annually by 3%, construction cost has escalated by 6% in the past year. Construction costs include the price of skilled labor and building materials such as steel, lumber, and concrete and are expected to continue growing.

CHART 3 – PROJECTED DEFERRED MAINTENANCE WITH CPI VS CONSTRUCTION COST ESCALATION



As illustrated, the deferred maintenance costs will continue to increase over time as shown unless buildings are replaced or significant investments are made to address deferred maintenance.

The remainder of this report describes possible solutions and financing methods to address these issues.

SOLUTIONS

Staff studied four options and developed cost estimates to determine how best to mitigate the growing deferred maintenance obligation; 1) continuing as-is with the status quo, 2) catching up on deferred maintenance, 3) new construction either on the county owned property or elsewhere, and 4) leasing existing buildings. Staff examined various factors during the development of these solutions including reports and analysis provided by subject matter experts on construction costs, bond financing, and real estate market conditions.

In order to obtain a rough estimate of the costs of demolition, design and construction, staff requested a master service agreement vendor, Kitchell Construction Management, provide cost estimates. Summaries of these cost estimates are attached to this report.

Also, the County’s financial advisor, KNN Public Finance LLC. prepared financing options that included issuing bonds to finance deferred maintenance and new construction. The analysis studied opportunities for potential revenues from the sale or ground lease of the 21 – 29 acre County property that might result from a consolidated campus. The possible one-time or ongoing revenues could be used to offset the costs of the financing approach selected. See attachments at the end of this report.

The feasibility of constructing on land not owned by the County requires additional market research and input from the development community through market soundings and request for information. Further study will examine other variables such as potential mitigations mandated by CEQA as a result of a site’s location and the equitability of site exchanges.

1) STATUS QUO

If the County continues the status quo of investing approximately \$5 million a year in total maintenance, it will never catch up given the rate of structural and building systems failure. As previously described the \$5 million budget includes preventative maintenance, corrective maintenance, and interim solutions that may not extend the useful life of County assets or reduce its deferred maintenance.

Even if the County directed \$5 million a year to deferred maintenance, it would address less than 2% of the \$258 million backlog each year. Since the annual CPI inflation rate is 3% and the construction cost inflation rate is 6%, the County would continue to spend millions a year and still face unplanned repairs and emergency system replacements.

Additionally, the status quo results in continued seismic and other code deficiencies, additional costs and liabilities associated with accessibility requirements under the American Disabilities Act, the loss of workspace functionality, higher utility costs due to poor energy efficiency, and higher insurance costs. As Department functions change, space needs cannot be accommodated within existing buildings without expensive interior redesign projects. To address additional space needs, the County is forced to lease space. The cost of County leased facilities have increased from annual rents of \$7.9 million for 328,667 square feet in

KEY TAKEAWAYS

If the County continues the status quo of investing \$5 million a year in total maintenance costs, it will never catch up given the rate of structural and building systems failure.

An annual investment of \$15 million per year, starting in 2019 will never pay off because the rate of escalation exceeds the amount of investment and would not be able to eliminate the deferred maintenance.

An aggressive investment of \$20 million a year starting in 2019, would eventually pay off in 2056.

By consolidating County department administrative functions on the County Government Center campus, land utilization would improve to where approximately 29 acres could be made available for mixed use office, retail and housing development.

General Services’ staff surveyed the Sonoma county market to identify potential opportunities to lease up to 500,000 square feet of office space in existing properties and did not identify a single property in the market that could accommodate this requirement.

FY12/13 to an annual rent of \$9.7 million for 438,691 square feet in FY17/18.

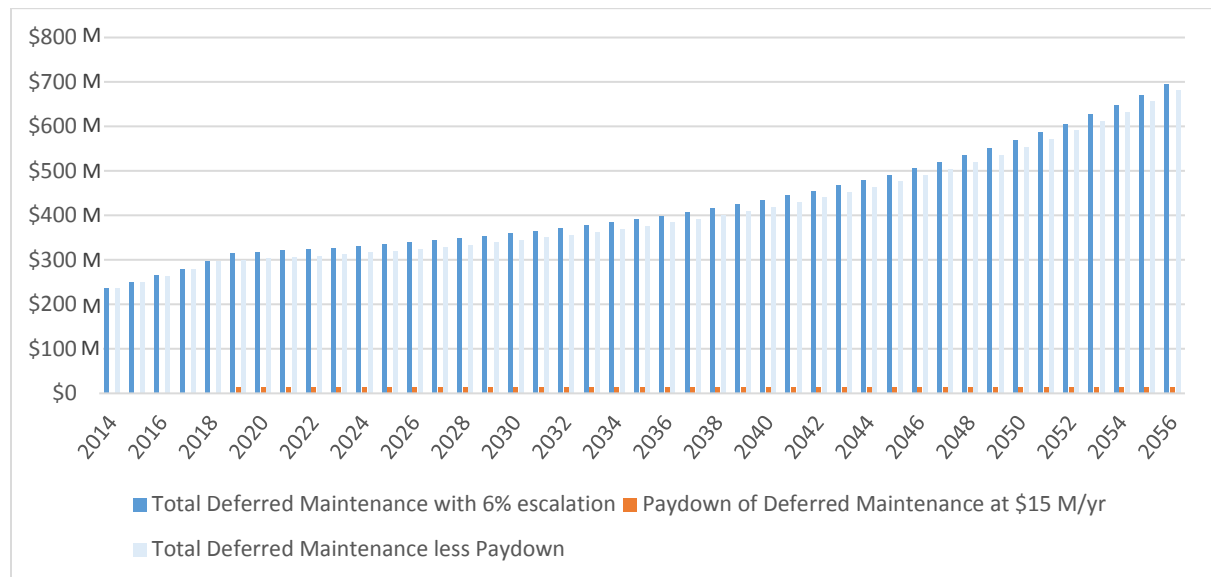
Continuing with the status quo means spending more money on costly corrective maintenance and systems replacements each year without extending the useful life of the County Government Center buildings.

2) CATCH UP ON DEFERRED MAINTENANCE

To effectively extend the useful life of all County buildings, the County would need to adequately address its growing deferred maintenance across the entire asset portfolio. This approach would require the County to dedicate a fixed annual amount of funding that outpaces the rate(s) of inflation and should include sufficient funding for preventative maintenance to protect newly replaced systems.

\$15 Million Per Year - Chart 4 below shows that an annual investment of \$15 million per year, starting in 2019 will never pay off because the rate of escalation exceeds the amount of investment and would not be able to eliminate the deferred maintenance. Deferred maintenance would continue to increase. An annual investment of \$15 million per year is similar to making minimum payments on a credit card balance.

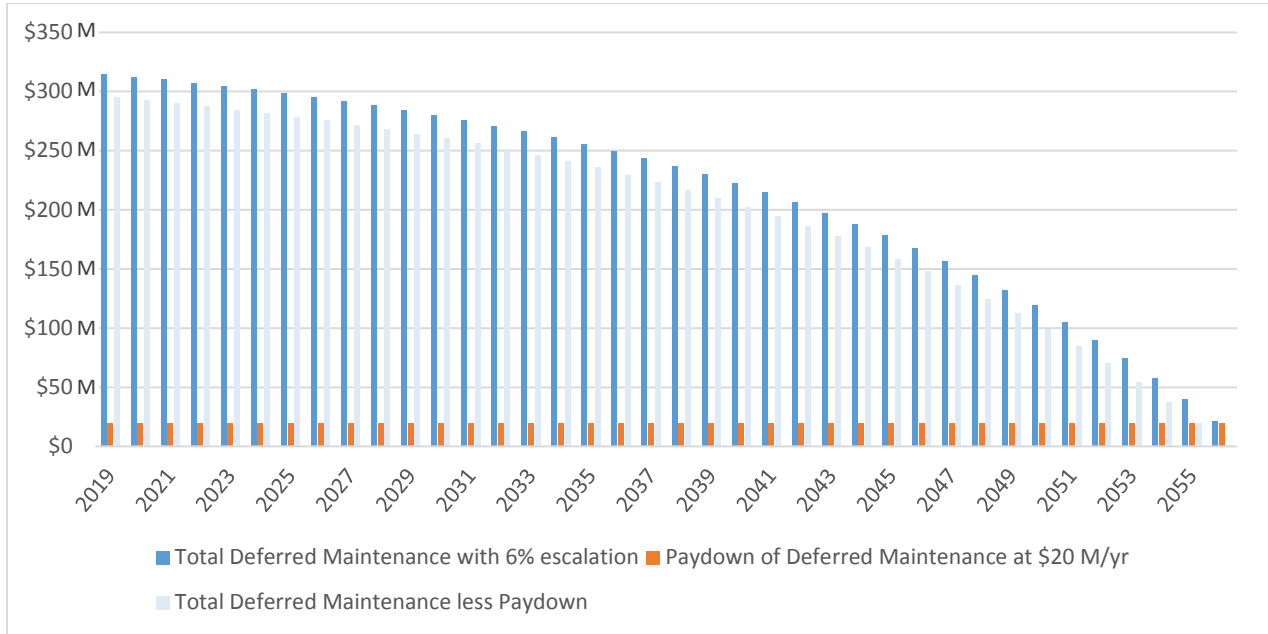
CHART 4 – DEFERRED MAINTENANCE PROGRAM AT \$15M ANNUALLY



\$20 Million Per Year - Chart 5 below shows that a more aggressive investment of \$20 million per year starting in 2019. Investing \$20 million a year addresses work at a rate that is not overcome by escalation and would eventually pay off in 2056. However, this would be a

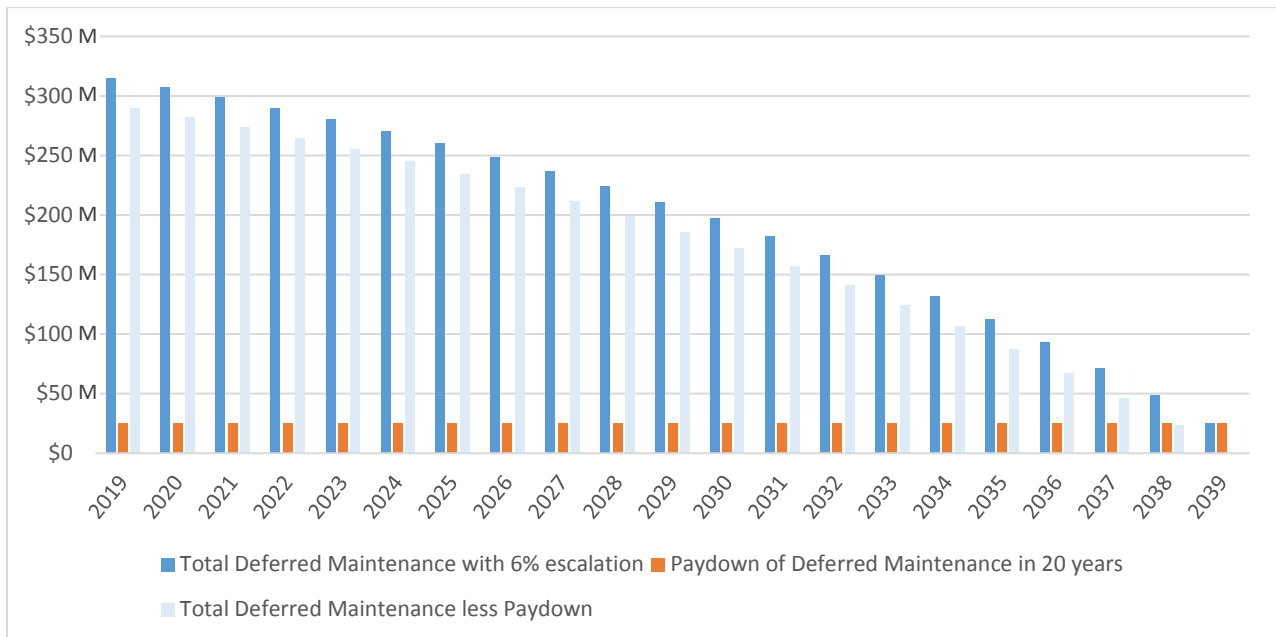
continuous program because system replacements have a 50 year lifecycle. So starting in 2069, all systems would need to be replaced again.

CHART 5 – DEFERRED MAINTENANCE PROGRAM AT \$20M ANNUALLY



Twenty Year Plan - Chart 6 below shows that to address the County's backlog of deferred maintenance within the next 20 years, it would need to invest \$25.3 million annually just to catch up with deferred maintenance.

CHART 6 – 20 YEAR DEFERRED MAINTENANCE PROGRAM



Staff do not consider the option of catching up on deferred maintenance via a \$25 million annual investment as viable.

3) NEW CONSTRUCTION

Another option would be to demolish the County Government Center's oldest buildings and replace them with a new 500,000 square foot building(s) and a parking garage. While the Main Adult Detention Facility, Hall of Justice, Sheriff Buildings, new Fleet building, and Family Justice Center would remain, the rest of the land would be reimagined.

Consolidating County department administrative functions on the County Government Center campus would improve land utilization allowing approximately 29 acres to be made available for mixed-use office, retail, and housing development. Consolidation would also enable the sale of the La Plaza and County Government Center Information Technology building properties as these functions would be able to move back onto campus.

A 500,000 square foot building(s) would accommodate current County Government Center staffing levels plus the additional staff returning from leased space to the administration center. As of 2016, the County has 2,004 full-time employees who would occupy the new building(s) with an expected 3% increase in staff totaling 2,064 by 2021. The new building(s) would provide full-time employees 170 square feet of workspace, which is the Federal Government workspace standard. Additionally, fifteen percent of the new building space would be used for common use areas, and 10% would be for future expansion.

Building new could accommodate a long-term ground lease for Human Service and Health Services and a separate structure for the Public Health and the Morgue, which would be relocated from the Chanate Campus. Replacing the Hall of Justice is not factored in costs estimate as needs and plans for continued use by the Superior Court have not been finalized with the Judicial Council. If the need for the Hall of Justice continues, seismic deficiencies should be addressed by demolishing and building new.

The replacement option considers the State of California's plans to proceed with the new courthouse and related parking improvements. Plans also include the construction of smaller mechanical plants to replace the central mechanical plant. The central mechanical plant currently serves the MADF and Sheriffs Building. Finally, the new construction option considers the need to replace the Public Health Laboratory and County Morgue that must be relocated due to the sale and disposition of the property on Chanate Road.

NEW CONSTRUCTION ON OTHER SITES

Other possible locations for the new County Campus could be in the Sonoma County Airport area or a co-located facility with the City of Santa Rosa in the downtown area.

- **Sonoma Airport** - The Sonoma County Airport could provide opportunities for development of new County Administrative offices. Although county owned property is limited, property may be available in an exchange with other property owners. The benefit of the airport location would be the ability to construct new facilities without disruption to current operations or the need to find swing space. However, height limitations required of the Federal Aviation Administration in the vicinity of flight operations could restrict building heights.
- **Downtown Santa Rosa** - The City of Santa Rosa has also expressed an interest in building a new civic building and investigating possibilities for new development. In addition to the City Hall property the City owns two parcels in the downtown area of approximately two acres each. The City and County could potentially share a building, or build two separate buildings in the downtown area. The benefits of co-locating could include maximizing shared facilities including public meeting rooms, conference facilities and transactional spaces with the public.

COST ESTIMATE AND METHODOLOGY

As previously mentioned Kitchell, Inc. was contracted to perform a rough order of magnitude cost estimate of the various new construction options. The cost estimates consider site improvements, building type, structure, HVAC, plumbing, electrical distribution, California Building Code provisions including seismic, accessibility, energy and sustainability to a “Net Zero Standard” for waste, water and energy needs.

The Kitchell estimate utilized historical databases from recognized estimating standards for similar construction and projected escalation factors. Escalation, as an industry practice, was calculated to the midpoint of construction which was projected to occur in 2023. Associated soft costs were included for architects design fees, construction management, permitting and County staff. Kitchell was tasked to provide estimates for two models:

- **Single Building Concept** – All County Administrative functions could be consolidated into a single building. The benefit of a single building is that it supports a more efficient service delivery model by locating all administrative functions under one roof with appropriate adjacencies. Site development is more efficient as well with a smaller footprint. A single building of mid to high rise construction would be of similar scale to the new proposed 120 foot State Court house. The Cost estimate assumed construction would be of steel and concrete with glass and solid panel cladding. The cost for the single building concept was estimated to be \$349.9 million.

- **Multi-Building Concept** – Consolidation of all County Administrative functions was also studied in a phased approach with new construction of multiple buildings. Phasing construction minimizes the amount of temporary space (referred to as swing space) required to house departments as the sites are demolished and cleared for new construction. For the purpose of cost estimating, assumptions were made about the design, which included steel and concrete construction with a glass and solid panel cladding. The cost of designing and constructing multiple buildings was estimated at \$375.5 million. See Attachment 2 for more details.

4) LEASE EXISTING BUILDINGS

Another option for consideration is to lease an existing building. In cooperation with the local brokerage community General Services' staff surveyed the Sonoma County market to identify potential opportunities to lease up to 500,000 square feet of office space in existing properties. The survey did not identify a single property in the market that could accommodate this requirement. While square footage in larger office complexes in the Sonoma county market can range up to 300,000 square feet, increased commercial office activity has reduced the county's office vacancy rate from 20.1 % in 2017 to a current vacancy rate of 17.5%. Local brokers attribute some of the increased activity in the Sonoma market to spillover from the San Francisco market. While an assemblage strategy to lease proximate space as current tenants' leases expire in a targeted Sonoma county submarket may be possible, execution of the this strategy would require planning and cooperative relationships with a number of landlords over a period of years.

SUMMARY OF SOLUTIONS

Staff have considered various options for constructing and financing new facilities or catching up on deferred maintenance. As table 4 illustrates, new construction would be the most effective way to address the County's growing backlog of deferred maintenance and provide long-term value to the public.

TABLE 4 – SUMMARY OF SOLUTIONS

	STATUS QUO	CATCH-UP ON DEFERRED MAINTENANCE	NEW CONSTRUCTION	LEASE EXISTING BUILDINGS
PROS	<ul style="list-style-type: none"> • Maintains current funding levels 	<ul style="list-style-type: none"> • Addresses deferred maintenance 	<ul style="list-style-type: none"> • Completely new, code-compliant, buildings with a 50 year life span • Enhanced public convenience with one-door service model • Streamlined operations of administrative services • Energy conservation • Improved security • Efficient workspace standards • Use lands to generate revenue and property tax 	<ul style="list-style-type: none"> • Move in directly into existing buildings • Saves on move costs
CONS	<ul style="list-style-type: none"> • Does not address deferred maintenance, code deficiencies, safety, security or lack of space • Prone to systems failure which impacts service delivery 	<ul style="list-style-type: none"> • Does not address safety, security, code deficiencies or lack of space 	<ul style="list-style-type: none"> • Exceeds current funding level • Exceeds current funding levels 	<ul style="list-style-type: none"> • No large Class “A” Office space is available in the County
DESIGN CONSTRAINTS AND OPPORTUNITIES	<ul style="list-style-type: none"> • Constrained by existing footprint and one story construction • Inefficient land use • Currently 318,272 square feet of existing administration buildings: need is 500,000 square feet 	<ul style="list-style-type: none"> • Constrained by existing footprint and one story construction • Inefficient land use • Currently 318,272 square feet of existing administration buildings: need is 500,000 square feet 	<ul style="list-style-type: none"> • Opportunity for more efficient land use • Opportunity for housing and commercial development • Opportunity for more efficient service delivery • 500,000 square feet of new office space 	<ul style="list-style-type: none"> • Need to work within existing supply

CONCLUSION

The current 1950s-based sprawling County Government Center no longer serves the needs of our community, nor does it represent the highest and best use of valuable property assets. This inefficient land use prioritizes vehicle parking over the efficient delivery of services, thereby underutilizing land that could be put to a higher purpose such as providing housing or generating revenue through mixed-use office and retail space. Over 80% of the County

Government Center is 50-60 years old and experiences heavy use by the public and county employees – resulting in frequent and costly repairs or replacements. The County Government Center buildings had an average FCI of 0.36. The La Plaza B (0.53), La Plaza A (0.47), Law Library (0.47), Human Services (0.46), Child Care Center (0.41) and Administration (0.38) buildings are well beyond their useful life. The FCI values for the buildings described above indicate that continued investment in these buildings will have diminishing returns for the County.

The cost of operating the property portfolio has grown as facilities have aged, and deferred maintenance obligations also have increased over time. Corrective maintenance needs are expected to increase significantly over the next twenty years. In the absence of significant changes, the long-term financial liability of deferred maintenance backlog will increase with annual cost escalation. To address the County's backlog of deferred maintenance within the next 20 years, it would need to invest \$25.3 million annually just to catch up with deferred maintenance.

The County has an opportunity and responsibility to invest taxpayer dollars in solutions that provide long-term value. Spending millions of dollars a year on short-term repairs that do not extend the life of the County Government Center's buildings, address seismic safety, or reduce the County's financial liability is ineffective. A new approach is needed to reduce risks to the County that result from over \$258 million in deferred maintenance.

APPENDIX A – FINANCING OPTIONS

In 2014, when the Comprehensive Facilities Master Plan was presented to the Board, staff were directed to further analyze financing options. This Appendix expands upon financing options that were described in the 2014 Board Report. In order to understand the feasibility of replacing buildings, staff reviewed debt financing, Performance Based Infrastructure and build-to-suit options.

DEBT FINANCING BONDING

With the assistance of the Auditor Controller Treasurer Tax Collector (ACTTC), finance options for debt financing were studied. Using the estimates for the Single Building Concept and the Multi-Building Concept, ACTTC obtained the services of KNN Public Finance LLC to perform debt financing scenarios. Financing of deferred maintenance was studied in addition to the new construction scenarios. The analysis assumed that bonds would be issued as Certificates of Participation or Lease Revenue Bonds backed by the General Fund. Currently the County's credit ratings is Standard & Poor's AA (stable). The credit structure requires the pledge of a County asset for bondholder security approximately equal to the par amount of the bonds. The justice related County Center buildings could possibly serve as the pledge assets for the bonds, which also requires the use of capitalized interest through the point of beneficial use and occupancy of the new buildings. KNN also assumed a "net funding" of the project cost requirements where the project fund would earn interest at 1.21% (the 2-year U.S. treasury rate at the time of the analysis) during the estimated term of construction.

Although the County has sufficient debt capacity, bonding may not be considered a favorable option as pledged assets may not be sufficient to back the bonds, and capitalized interest drives the overall cost of the option out of the likely range of feasibility.

PERFORMANCE BASED INFRASTRUCTURE

Performance Based Infrastructure (PBI) is an approach to capital projects in which the investment, risk, responsibility, and rewards of the project are shared between government and private-sector participants. PBI's origins are from Public Private Partnerships (P3) that were well suited to transportation and water infrastructure projects. In recent years the need for performance based requirements for vertical construction led to the development of PBI. Under the PBI model, design, construction, financing, operations, and maintenance are bundled together into a single program with a contracted entity. The development team is the single point of contact for procurement and delivery of all services under the contract. Shifting both the financial risk and responsibility for long-term maintenance to the private partner creates a compelling incentive to ensure high levels of performance: both high-quality construction and the proactive upkeep of the finished building. The government entity continues to own the land

through the duration of the term.

PBI benefits taxpayers by bringing additional discipline to the costs and timeline of a project. The cost to the government entity can be distributed over a longer period of time than with bonding – typically 35-40 years vs 25 years, and payments can be linked to operational performance. At the same time, PBI arrangements can streamline and shorten the design and construction phases of the project compared with those of typical public building projects. Shortening the timeline of design and construction saves money because of avoided construction cost escalation. Taxpayers also benefit from the competitive solicitation of bundled design, construction, and facility operation services, which gives the government entity more economic advantage than it might have with traditional procurement.

A PBI on County land would entail a lease-leaseback contractual arrangement where the PBI contracted entity would lease the property from the County for a specified period and the newly constructed building would then be leased back to the County (leased to own) at a rate that recovers the PBI entity's development financing, operating and maintenance costs. At the end of the term, the building would revert to the County's ownership and the maintenance provisions of the PBI would specify the condition of the building when it is returned. There is an opportunity with development on the County campus, where lease costs could be reduced through revenue generating housing or commercial uses on the balance of the campus. For example, in the City of Long Beach's PBI contract, annual lease payments were capped at a set amount and the developer was able to recoup costs through revenue generated from the sale of land for a new hotel, residential, and commercial real estate development.

Alternatively, a PBI executed on non-county property would have to consider the cost of acquiring land and either performing tenant improvements to an existing building or building new. In this scenario, a PBI would likely take the form of a lease with an operating agreement and a potential option for acquisition.

Other jurisdictions have embarked upon similar development programs. The California State Courts and the City of Long Beach has used the Performance Based Infrastructure method to revitalize public buildings and build housing. The City of Napa is also proceeding under this model to replace their City Hall. Santa Clara County has been working on a Civic Center Campus master plan of approximately 1.15 million square feet of government offices. The City of Santa Rosa is also considering a Performance Based Infrastructure model for redevelopment of several city properties downtown. A number of other jurisdictions nationwide are using the Performance Infrastructure model to revitalize their downtowns, expand educational facilities, or create centers of innovation and entrepreneurship, whereas others have used the Build-to-Suit or debt financing model as described in Attachment 3 Project Delivery Comparisons.

The annual debt service for the bond financing of the single building concept is projected by the KNN financial analysis to be \$28.2 million. The annual debt service for the bond financing of the multi building concept is projected by the KNN financial analysis to be \$30.5 million. Based on our analysis of other jurisdictions, using the PBI financing option could result in an annual debt service in the range of \$10 to \$15 million. Refer to Attachment 3 for more information.

BUILD-TO-SUIT

Another strategic option would be establishing a contractual relationship with a real estate development firm to construct a new facility or campus to County specifications. The completed facility would be leased to the County for County use. Similar to the Performance Based Infrastructure alternative described earlier, construction costs incurred by the Performance Based Infrastructure builder would likely be similar to construction costs that would be incurred by the County. Annual lessor debt service costs would be similar to County financed bond finance costs. However, there is potential that builder costs would also include administration and overhead costs in addition to financing costs.

Sonoma County Center Facilities Plan Financial Analysis

March 7, 2017



1300 Clay Street, Suite 1000, Oakland, CA 94612
phone 510 839 8200 fax 510 208 8282

Overview of Financial Analysis

- Based on information and guidance provided by the County, KNN prepared preliminary bond sizing analyses for the alternatives under consideration.
 - Single Building Concept: \$349.9 million.
 - Multiple Building Concept: \$375.5 million.
 - Deferred Maintenance Needs: \$312.6 million.
 - Amounts represent escalated figures from 2017 value.

- Our analysis assumes that the bonds will be issued as Certificates of Participation or Lease Revenue Bonds backed by the General Fund.
 - Current credit ratings: Standard & Poor's AA (stable).
 - Credit structure requires the pledge of a County asset for bondholder security approximately equal to the par amount of the bonds.
 - County Center buildings will serve as the pledge assets for the bonds, which requires the use of capitalized interest through establishing beneficial use and occupancy of the new buildings.
 - No voter approval required.



Financial Analysis Assumptions

- **Debt Repayment Structure**

- Level debt service (principal and interest) payment structure.
- Final term of bonds is 30 years from issuance date for new building construction and 20 years from issuance date for deferred maintenance capital.

- **Bondholder Security Features**

- Capitalized interest fund sized through the estimated construction period (County does not make net debt service payments during construction).
- Debt service reserve fund sized at 50% of maximum annual debt service (provides additional bondholder security and supports strong credit ratings).

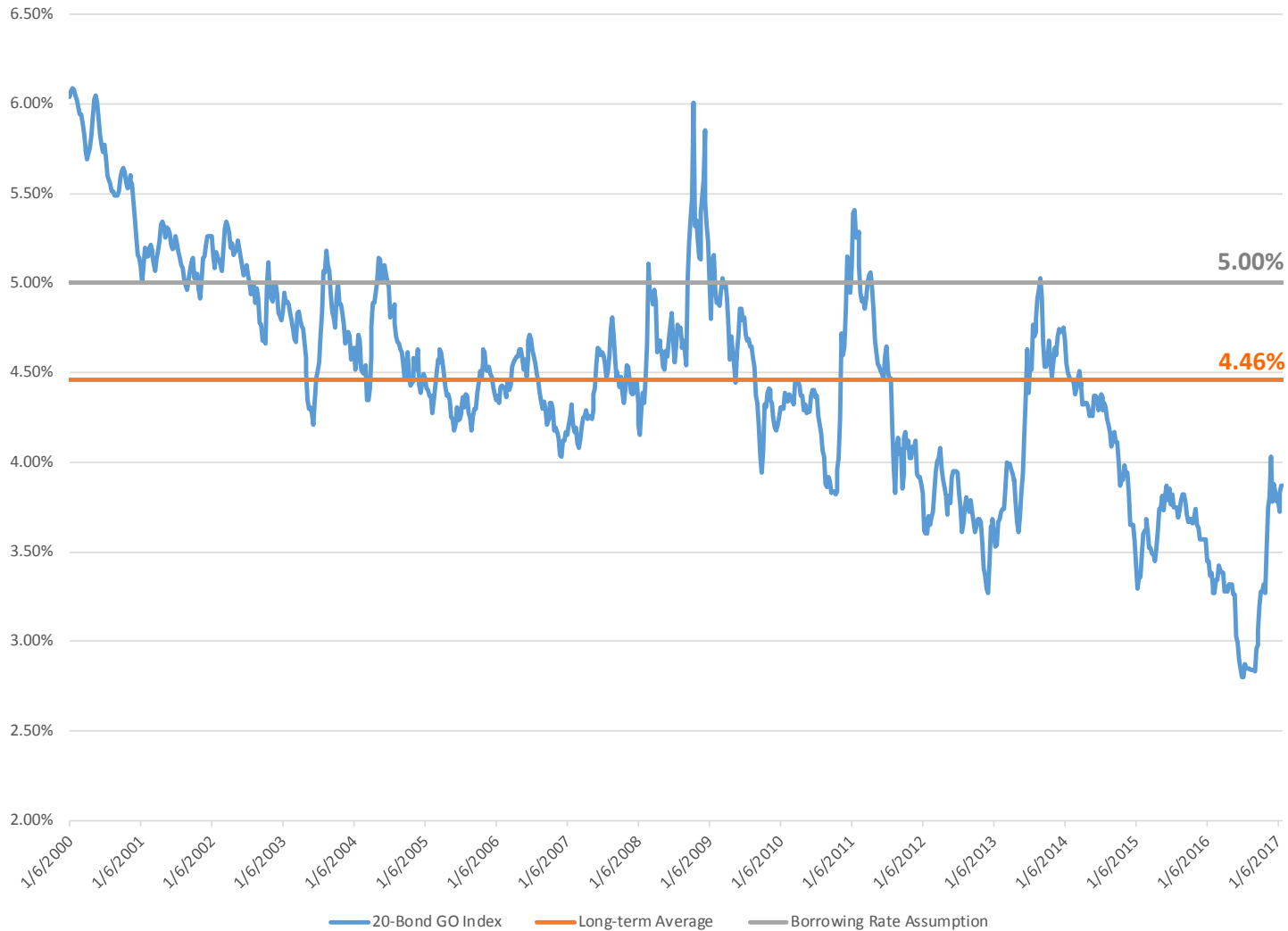
- **Project Tax Status**

- Bonds are issued on a tax-exempt basis (subject to bond counsel review) and buildings are assumed to be for 100% governmental use.
- Projects that have predominantly private use are assumed to be financed through vehicles other than tax-exempt bonds.

- **Borrowing Costs**

- Interest cost is assumed at 5% for planning/budgeting purposes (current market rates are lower but subject to increases and volatility between now and Q1 2019).
- Proceeds from the sale of County properties are applied to FY 2019 financings to reduce borrowed amounts.

Historical Interest Rates: Bond Buyer 20-Bond Index



Source: *The Bond Buyer*. The Bond Buyer 20-Bond Index consists of 20 General Obligation bonds that mature in 20 years with an average rating of “Aa2 / AA”.



Single Building Concept: Bond Sizing Overview

- **Single Bond Issuance to Finance Single Building Construction**
 - Buildings 1 and 2: \$343,145,919.
 - Parking Lot: \$6,719,463.

- **Timing**
 - Bond Issuance: Q1 2019 (based on project schedules).
 - Final Bond Term: FY 2049 (30-year final maturity).

- **Financing Components**
 - Property Sale Proceeds: Approximately \$19 million from the sale of County properties are assumed to be available by Q1 2019 and are contributed to the financing to reduce bond issuance needs.
 - Ground Lease Revenues: Assumed to begin in FY 2025 and extend through FY 2052 and are estimated to generate an average of \$2.6 million annually – partially offsetting annual debt service requirements.
 - Rental Payments: Swing space during construction is assumed to be needed in FY 2020 through FY 2024 and would represent additional cost to the project.



Single Building Concept: Bond Sizing Results

	FY 2019 Issuance
Sources	
Par Amount	\$413,645,000
County Contribution from Sale of Property	19,320,000
Total Sources:	<u>\$432,965,000</u>
Uses	
Phase 1: Building 1 and 2 ¹	\$337,181,099
Phase 2: Parking Lot ¹	6,700,744
Debt Service Reserve Fund ²	14,125,750
Capitalized Interest Fund ³	72,387,875
Cost of Issuance ⁴	2,568,225
Rounding Amount:	1,307
Total Uses:	<u>\$432,965,000</u>
Financing Cost:	5.00%
Total Debt Service:	\$824,762,250
Maximum Annual Debt Service:	\$28,251,500
Average Annual Debt Service:	\$27,492,075

¹ Construction cost estimates provided by the County. Project fund net of assumed earnings at 1.21%.

² Sized at 50% of Maximum Annual Debt Service.

³ Sized based on bond interest through 8/1/2022, gross funded.

⁴ Estimated costs associated with bond and disclosure counsel, underwriting (\$5/bond), municipal advisor, and bond credit rating fees.

⁵ Estimated net payments including net debt service, swing space lease payments, and ground lease revenues.



Single Building Concept: Annual Net Costs

- The highest annual net cost occurs prior to the commencement of ground lease revenues when debt service payments and swing space lease payments are both due.
- Overtime, annual net payments decline as swing space costs end in FY 2024 and ground lease revenues are projected to increase through FY 2054.
- The term of the debt repayment is FY 2049 and ground lease revenues are estimated through FY 2054.

Fiscal Year	Total	(A)	(B)	(C)	(D) = A+B-C
<u>Ending</u>	<u>Debt Service</u>	<u>Net¹</u>	<u>Swing Space</u>	<u>Ground Lease</u>	<u>Net³</u>
		<u>Debt Service</u>	<u>Lease Payments²</u>	<u>Revenues²</u>	<u>Total Costs</u>
6/30/2024	28,249,000	27,977,786	\$243,527		28,221,313
6/30/2034	28,247,750	27,976,536		1,976,786	25,999,749
6/30/2044	28,249,250	27,978,036		2,926,127	25,051,909
6/30/2054				4,331,382	(4,331,382)

¹ Net of capitalized interest and debt service reserve fund interest earnings at 2% over the term of the bonds.

² Cost and Revenue estimates provided by the County.

³ Net cost to County after making bond debt service and swing space lease payments and receiving ground lease revenues.



Multiple Building Concept: Bond Sizing Overview

- **Multiple Bond Issuances to Finance Multiple Building Construction**

- Issuance 1
 - Building 1a: \$158,614,523
 - Building 1b: \$160,389,443
- Issuance 2
 - Building 3: \$56,493,037

- **Timing**

- Issuance 1: Bond transaction in Q1 2019 and bond maturity in FY 2049 (30-year term).
- Issuance 2: Bond transaction in Q1 2021 and bond maturity in FY 2051 (30-year term).

- **Financing Components**

- Property Sale Proceeds: Approximately \$19 million from the sale of County properties are assumed to be available by Q1 2019 and are contributed to the financing to reduce bond issuance needs.
- Ground Lease Revenues: Expected revenues to be generated from various ground leases – partially offsetting annual debt service requirements.
 - Site 1 lease revenues begin in FY 2020 and extend through FY 2049, estimated to generate an average of \$1.0 million annually.
 - Site 2 lease revenues begin in FY 2023 and extend through FY 2052, estimated to generate an average of \$1.0 million annually.
- Rental Payments: Swing space during construction is assumed to be needed beginning in FY 2020 and extend through FY 2022 and would represent additional cost to the project.

Multiple Building Concept: Bond Sizing Results

	FY 2019 Issuance	FY 2021 Issuance	Total
Sources			
Par Amount	\$374,930,000	\$71,280,000	\$446,210,000
County Contribution from Sale of Property	\$19,320,000		\$19,320,000
Total Sources:	\$394,250,000	\$71,280,000	\$465,530,000
Uses			
Phase 2: Building 1a ¹	\$155,857,366	-	\$155,857,366
Phase 3: Building 1b ¹	157,601,433	-	157,601,433
Phase 4: Building 3 ¹	-	55,511,032	55,511,032
Debt Service Reserve Fund ²	12,803,500	2,435,125	15,238,625
Capitalized Interest Fund ³	65,612,750	12,474,000	78,086,750
Cost of Issuance ⁴	2,374,650	856,400	3,231,050
Rounding Amount	301	3,443	3,744
Total Uses:	\$394,250,000	\$71,280,000	\$465,530,000
Financing Cost:	5.00%	5.00%	5.00%
Total Debt Service:	\$747,564,000	\$142,121,250	\$889,685,250
Maximum Annual Debt Service:	\$25,607,000	\$4,870,250	\$30,477,250
Average Annual Debt Service:	\$24,918,800	\$4,737,375	\$29,656,175

¹ Construction cost estimates provided by the County. Project fund net of assumed earnings at 1.21%.

² Sized at 50% of Maximum Annual Debt Service.

³ Sized based on bond interest through 10/1/2022 for FY2019 Issuance and 10/1/2024 for FY2021 Issuance.

⁴ Estimated costs associated with bond and disclosure counsel, underwriting (\$5/bond), municipal advisor, and bond credit ratings.

⁵ Estimated net payments including net debt service, swing space lease payments, and ground lease revenues.

Multiple Building Concept: Annual Net Costs

- Swing space lease payments and Site 1 ground lease revenues commence prior to the initial net debt service payment requirement.
- Both Site 1 and Site 2 ground lease revenues are available to offset net debt service payments at the start of the debt repayment schedule – swing space costs terminate prior.
- The term of the debt repayment occurs in FY 2051 and the term of ground lease revenues occurs in FY 2052.

Fiscal Year Ending	FY 2019 Issuance		FY 2021 Issuance		(C) Swing Space Lease Payments ²	(D) Site 1 Ground Lease Revenues ²	(E) Site 2 Ground Lease Revenues ²	(F) = A+B+C-(D+E) Net ³ Total Costs
	Total Debt Service	(A) Net ¹ Debt Service	Total Debt Service	(B) Net ¹ Debt Service				
	6/30/2022	18,746,500		\$3,564,000				
6/30/2024	25,603,500	25,357,673	3,564,000			627,408	557,763	24,172,502
6/30/2034	25,604,750	25,358,923	4,865,000	4,818,246		928,717	825,626	28,422,826
6/30/2044	25,603,000	25,357,173	4,868,000	4,821,246		1,374,728	1,222,128	27,581,563
6/30/2051			4,866,750	2,384,871			1,608,237	776,634
6/30/2052							1,672,566	(1,672,566)

¹ Net of capitalized interest and debt service reserve fund interest earnings at 2% over the term of the bonds.

² Cost and Revenue estimates provided by the County.

³ Net cost to County after making bond debt service and swing space lease payments and receiving ground lease revenues.



Deferred Maintenance: Bond Sizing Results

- **Multiple Bond Issuances to Deferred Maintenance Needs Overtime**

- Current deferred maintenance needs of \$236 million.
- Assumes three bond issuances of equal amounts to address needs.
- Deferred maintenance amounts step up from annual cost inflation of 6% and step down following bond issuance.

<u>Fiscal Year</u>	<u>Maintenance Cost</u>	<u>Bonding Amount</u>
2017	236,000,000	
2018	250,160,000	
2019	265,169,600	104,200,000
2020	170,627,776	
2021	180,865,443	
2022	191,717,369	104,200,000
2023	92,768,411	
2024	98,334,516	
2025	104,234,587	104,234,587

- **Financing Components**

- Proceeds from the sale of County properties, ground lease revenues, and swing space costs do not factor into the deferred maintenance analysis.
- Assumes leased asset for the financing to be the deferred maintenance projects – it is not certain that existing assets are sufficient to serve as pledge on the financing.

Deferred Maintenance: Bond Sizing Results

	FY 2019 Issuance	FY 2022 Issuance	FY 2025 Issuance	Total
Sources				
Par Amount	\$134,665,000	\$134,665,000	\$134,710,000	\$404,040,000
Total Sources:	\$134,665,000	\$134,665,000	\$134,710,000	\$404,040,000
Uses				
2017-2019 Deferred Maintenance	\$104,200,000			\$104,200,000
2020-2022 Deferred Maintenance		104,200,000		\$104,200,000
2023-2025 Deferred Maintenance			104,234,587	\$104,234,587
Debt Service Reserve Fund ²	5,973,500	5,973,500	5,975,625	17,922,625
Capitalized Interest Fund ³	23,566,375	23,566,375	23,574,250	70,707,000
Cost of Issuance ⁴	923,325	923,325	923,550	2,770,200
Rounding Amount	1,800	1,800	1,988	5,588
Total Uses:	\$134,665,000	\$134,665,000	\$134,710,000	\$404,040,000
Financing Cost:	5.00%	5.00%	5.00%	5.00%
Total Debt Service:	\$223,260,750	\$223,260,750	\$223,331,500	\$669,853,000
Maximum Annual Debt Service:	\$11,947,000	\$11,947,000	\$11,951,250	\$35,845,250
Average Annual Debt Service:	\$11,163,038	\$11,163,038	\$11,166,575	\$33,492,651

¹ Deferred maintenance costs estimates provided by the County. Project fund gross funded.

² Sized at 50% of Maximum Annual Debt Service.

³ Sized based on bond interest through 8/1/2022 for FY2019 Issuance, 8/1/2025 for FY2022 Issuance, and 8/1/2028 for FY2025 Issuance.

⁴ Estimated costs associated with bond and disclosure counsel, underwriting (\$5/bond), municipal advisor, and bond credit rating fees.

Deferred Maintenance: Annual Net Costs

- Annual costs step up as additional debt is issued and then step down overtime as prior debt is retired.

Fiscal Year Ending	FY 2019 Issuance		FY 2022 Issuance		FY 2025 Issuance		(D) = A+B+C Net Total Costs
	Total Debt Service	(A) Net ¹ Debt Service	Total Debt Service	(B) Net ¹ Debt Service	Total Debt Service	(C) Net ¹ Debt Service	
6/30/2024	11,942,750	11,823,280	6,733,250				11,823,280
6/30/2028	11,943,500	11,824,030	11,944,250	11,824,780	6,735,500		23,648,810
6/30/2034	11,946,500	11,827,030	11,945,250	11,825,780	11,950,000	11,830,488	35,483,298
6/30/2040			11,946,500	11,827,030	11,947,250	11,827,738	23,654,768
6/30/2044					11,951,000	11,831,488	11,831,488

¹ Net of capitalized interest and debt service reserve fund interest earnings at 2% over the term of the bonds.

Financing Considerations

- The pledge of the new buildings and use of capitalized interest during construction is costly.
 - Approximately 25% of the County's average annual debt service payment is attributable to the cost of capitalized interest.
 - Thus, without capitalized interest, the County's annual debt payments would be reduced by approximately 25% - under the Single Building Concept average annual debt service is \$27.5 million, a 25% reduction equates to approximately \$20.6 million.
- Explore strategies to help minimize amount of capitalized interest.
 - Research availability of existing County facilities for asset pledge, reducing or eliminating the need for capitalized interest.
 - Explore interim financing solutions to help minimize capitalize interest (ie. Bond Anticipation Notes, Commercial Paper program, etc.) during construction period.
- Explore other forms of non-General Fund financing.
 - General Obligation Bonds backed by ad-valorem property taxes (requires 2/3 vote) or sales tax measures to raise additional available revenues.
- Evaluate impact of additional debt upon County's existing debt ratios.
 - Evaluate impact to credit rating(s) and future access to financing.

Detailed Cashflow Schedules



Single Building Concept: Estimated Annual Debt Service and Lease Cost and Revenues Schedule

Fiscal Year Ending	Total Debt Service	(A)	(B)	(C)	(D) = A+B-C
		Net ¹ Debt Service	Swing Space Lease Payments ²	Ground Lease Revenues ²	Net ³ Total Costs
6/30/2018					-
6/30/2019					-
6/30/2020	\$20,682,250		\$891,447		\$891,447
6/30/2021	20,682,250		1,363,913		1,363,913
6/30/2022	20,682,250		1,404,831		1,404,831
6/30/2023	28,247,250	\$15,069,481	1,446,976		16,516,457
6/30/2024	28,249,000	27,977,786	\$243,527		28,221,313
6/30/2025	28,246,750	27,975,536		\$1,388,864	26,586,672
6/30/2026	28,249,750	27,978,536		1,444,418	26,534,117
6/30/2027	28,246,750	27,975,536		1,502,195	26,473,341
6/30/2028	28,247,000	27,975,786		1,562,283	26,413,503
6/30/2029	28,249,250	27,978,036		1,624,774	26,353,261
6/30/2030	28,247,250	27,976,036		1,689,765	26,286,270
6/30/2031	28,250,000	27,978,786		1,757,356	26,221,430
6/30/2032	28,251,000	27,979,786		1,827,650	26,152,136
6/30/2033	28,249,000	27,977,786		1,900,756	26,077,030
6/30/2034	28,247,750	27,976,536		1,976,786	25,999,749
6/30/2035	28,250,750	27,979,536		2,055,858	25,923,678
6/30/2036	28,251,250	27,980,036		2,138,092	25,841,944
6/30/2037	28,247,750	27,976,536		2,223,616	25,752,920
6/30/2038	28,248,750	27,977,536		2,312,560	25,664,975
6/30/2039	28,247,250	27,976,036		2,405,063	25,570,973
6/30/2040	28,246,500	27,975,286		2,501,265	25,474,020
6/30/2041	28,249,500	27,978,286		2,601,316	25,376,970
6/30/2042	28,249,000	27,977,786		2,705,368	25,272,417
6/30/2043	28,248,000	27,976,786		2,813,583	25,163,202
6/30/2044	28,249,250	27,978,036		2,926,127	25,051,909
6/30/2045	28,250,250	27,979,036		3,043,172	24,935,864
6/30/2046	28,248,500	27,977,286		3,164,898	24,812,387
6/30/2047	28,251,500	27,980,286		3,291,494	24,688,791
6/30/2048	28,246,250	27,975,036		3,423,154	24,551,881
6/30/2049	28,250,250	13,853,286		3,560,080	10,293,205
6/30/2050				3,702,484	(3,702,484)
6/30/2051				3,850,583	(3,850,583)
6/30/2052				4,004,606	(4,004,606)
6/30/2053				4,164,790	(4,164,790)
6/30/2054				4,331,382	(4,331,382)
6/30/2055					
TOTAL:	\$824,762,250	\$728,360,406	\$5,350,694	\$77,894,340	\$655,816,760

² Cost and Revenue estimates provided by the County.

³ Net cost to County after making bond debt service and swingspace lease payments and receiving ground lease revenues.



Multiple Building Concept: Estimated Annual Debt Service and Lease Cost and Revenues Schedule

Fiscal Year Ending	FY 2019 Issuance		FY 2021 Issuance		(C)	(D)	(E)	(F) = A+B+C-(D+E)
	Total	(A)	Total	(B)	(C)	(D)	(E)	(F)
	Debt Service	Net ¹ Debt Service	Debt Service	Net ¹ Debt Service	Swing Space Lease Payments ²	Site 1 Ground Lease Revenues ²	Site 2 Ground Lease Revenues ²	Net ³ Total Costs
6/30/2018								-
6/30/2019								-
6/30/2020	\$18,746,500				\$678,976	\$536,311		\$142,665
6/30/2021	18,746,500				1,038,833	557,763		481,070
6/30/2022	18,746,500		\$3,564,000		1,069,998	580,074		489,925
6/30/2023	25,606,500	\$13,662,113	3,564,000			603,277	\$536,311	12,522,525
6/30/2024	25,603,500	25,357,673	3,564,000			627,408	557,763	24,172,502
6/30/2025	25,603,500	25,357,673	4,869,000	\$2,598,112		652,504	580,074	26,723,207
6/30/2026	25,605,500	25,359,673	4,868,750	4,821,996		678,604	603,277	28,899,788
6/30/2027	25,603,500	25,357,673	4,870,250	4,823,496		705,748	627,408	28,848,012
6/30/2028	25,606,750	25,360,923	4,868,250	4,821,496		733,978	652,504	28,795,936
6/30/2029	25,604,000	25,358,173	4,867,750	4,820,996		763,337	678,604	28,737,227
6/30/2030	25,604,500	25,358,673	4,868,500	4,821,746		793,871	705,748	28,680,799
6/30/2031	25,607,000	25,361,173	4,865,250	4,818,496		825,626	733,978	28,620,064
6/30/2032	25,605,250	25,359,423	4,868,000	4,821,246		858,651	763,337	28,558,680
6/30/2033	25,603,250	25,357,423	4,866,250	4,819,496		892,997	793,871	28,490,051
6/30/2034	25,604,750	25,358,923	4,865,000	4,818,246		928,717	825,626	28,422,826
6/30/2035	25,603,250	25,357,423	4,869,000	4,822,246		965,865	858,651	28,355,152
6/30/2036	25,602,500	25,356,673	4,867,750	4,820,996		1,004,500	892,997	28,280,172
6/30/2037	25,606,000	25,360,173	4,866,250	4,819,496		1,044,680	928,717	28,206,272
6/30/2038	25,607,000	25,361,173	4,869,250	4,822,496		1,086,467	965,865	28,131,336
6/30/2039	25,604,000	25,358,173	4,866,250	4,819,496		1,129,926	1,004,500	28,043,243
6/30/2040	25,605,500	25,359,673	4,867,250	4,820,496		1,175,123	1,044,680	27,960,366
6/30/2041	25,604,500	25,358,673	4,866,750	4,819,996		1,222,128	1,086,467	27,870,074
6/30/2042	25,604,250	25,358,423	4,869,500	4,822,746		1,271,013	1,129,926	27,780,230
6/30/2043	25,602,750	25,356,923	4,870,000	4,823,246		1,321,853	1,175,123	27,683,192
6/30/2044	25,603,000	25,357,173	4,868,000	4,821,246		1,374,728	1,222,128	27,581,563
6/30/2045	25,602,750	25,356,923	4,868,250	4,821,496		1,429,717	1,271,013	27,477,689
6/30/2046	25,604,750	25,358,923	4,865,250	4,818,496		1,486,905	1,321,853	27,368,660
6/30/2047	25,606,500	25,360,673	4,868,750	4,821,996		1,546,381	1,374,728	27,261,559
6/30/2048	25,605,500	25,359,673	4,868,000	4,821,246		1,608,237	1,429,717	27,142,965
6/30/2049	25,604,250	12,554,923	4,867,750	4,820,996		1,672,566	1,486,905	14,216,447
6/30/2050			4,867,500	4,820,746			1,546,381	3,274,364
6/30/2051			4,866,750	2,384,871			1,608,237	776,634
6/30/2052							1,672,566	(1,672,566)
6/30/2053								-
6/30/2054								-
6/30/2055								-
TOTAL:	\$747,564,000	\$660,185,105	\$142,121,250	\$125,507,622	\$2,787,808	\$30,078,953	\$30,078,953	\$728,322,629

¹ Net of capitalized interest and debt service reserve fund interest earnings at 2% over the term of the bonds.

² Cost and Revenue estimates provided by the County.

³ Net cost to County after making bond debt service and swing space lease payments and receiving ground lease revenues.



Deferred Maintenance: Estimated Annual Debt Service

Fiscal Year Ending	FY 2019 Issuance		FY 2022 Issuance		FY 2025 Issuance		(D) = A+B+C Net Total Costs
	Total Debt Service	(A) Net ¹ Debt Service	Total Debt Service	(B) Net ¹ Debt Service	Total Debt Service	(C) Net ¹ Debt Service	
6/30/2018							-
6/30/2019							-
6/30/2020	\$6,733,250						-
6/30/2021	6,733,250						-
6/30/2022	6,733,250						-
6/30/2023	11,943,250	\$7,156,090	\$6,733,250				7,156,090
6/30/2024	11,942,750	11,823,280	6,733,250				11,823,280
6/30/2025	11,944,250	11,824,780	6,733,250				11,824,780
6/30/2026	11,947,000	11,827,530	11,943,250	\$7,156,090	\$6,735,500		18,983,620
6/30/2027	11,945,250	11,825,780	11,942,750	11,823,280	6,735,500		23,649,060
6/30/2028	11,943,500	11,824,030	11,944,250	11,824,780	6,735,500		23,648,810
6/30/2029	11,946,000	11,826,530	11,947,000	11,827,530	11,950,500	\$7,161,730	30,815,790
6/30/2030	11,941,750	11,822,280	11,945,250	11,825,780	11,949,750	11,830,238	35,478,298
6/30/2031	11,945,250	11,825,780	11,943,500	11,824,030	11,951,000	11,831,488	35,481,298
6/30/2032	11,945,250	11,825,780	11,946,000	11,826,530	11,948,500	11,828,988	35,481,298
6/30/2033	11,946,000	11,826,530	11,941,750	11,822,280	11,946,750	11,827,238	35,476,048
6/30/2034	11,946,500	11,827,030	11,945,250	11,825,780	11,950,000	11,830,488	35,483,298
6/30/2035	11,945,750	11,826,280	11,945,250	11,825,780	11,947,250	11,827,738	35,479,798
6/30/2036	11,942,750	11,823,280	11,946,000	11,826,530	11,948,000	11,828,488	35,478,298
6/30/2037	11,946,500	11,827,030	11,946,500	11,827,030	11,951,250	11,831,738	35,485,798
6/30/2038	11,945,500	11,826,030	11,945,750	11,826,280	11,946,000	11,826,488	35,478,798
6/30/2039	11,943,750	5,850,780	11,942,750	11,823,280	11,946,750	11,827,238	29,501,298
6/30/2040			11,946,500	11,827,030	11,947,250	11,827,738	23,654,768
6/30/2041			11,945,500	11,826,030	11,946,500	11,826,988	23,653,018
6/30/2042			11,943,750	5,850,780	11,948,500	11,828,988	17,679,768
6/30/2043					11,947,000	11,827,488	11,827,488
6/30/2044					11,951,000	11,831,488	11,831,488
6/30/2045					11,949,000	5,853,863	5,853,863
6/30/2046							
6/30/2047							
6/30/2048							
6/30/2049							
6/30/2050							
6/30/2051							
TOTAL:	\$223,260,750	\$190,388,820	\$223,260,750	\$190,388,820	\$223,331,500	\$190,448,405	\$571,226,045

¹ Net of capitalized interest and debt service reserve fund interest earnings at 2% over the term of the bonds.



Attachment 2 Preliminary Costs Estimates

Preliminary Costs Concept 1

	Preliminary Costs
Construction costs included in KNN Bond Financing Analysis: Administration Building: 5 stories 64,710 s.f. each, Morgue & Public Health Lab Building: 2 stories 13,225 s.f. each, Site Clearing & Demolition, Subsurface Improvements, Parking Lots and Central Mechanical Plant at MADF & Sheriff. Includes costs for, Design, Construction, Furniture and Move Costs	\$349,865,382
Construction costs not included in KNN Bond Financing Analysis: Health & Human Services Building: 5 stories 30,000 s.f. each and Swing space costs	\$142,778,074
Total	\$492,643,456

Preliminary Costs Concept 2

	Preliminary Costs
Building Construction includes: Administration Building 1a & 1b: 5 stories 33,000 s.f. each, Morgue & Public Health Lab Building: 2 stories 13,225 s.f. each, Site Clearing & Demolition, Subsurface Improvements, Parking Lots and Central Mechanical Plant at MADF & Sheriff. Includes costs for Swing Space, Design, Construction, Furniture and Move Costs	\$375,497,004
Construction costs not included in KNN Bond Financing Analysis: Health & Human Services Building: 5 stories 28,000 s.f. each and Swing space costs	\$145,882,681
Total	\$521,379,684

Concept 1 Capital Costs: Swing Space

DESCRIPTION	COSTS				Notes
	Size	Unit	\$/Unit	Amount	

SWING SPACE CONSTRUCTION COSTS (GOVERNMENTAL)					
Leased space for 3 years					
Swing Space for Ag & PRMD: Lease & TI Costs	40,790	s.f.	\$90	\$3,671,100	1 & 3
Move costs for Ag & PRMD	143	FTE	\$12,000	\$1,716,000	2
Subtotal Building Construction				\$5,387,100	
SUBTOTAL CONSTRUCTION COST				\$5,387,100	
CONTINGENCIES					
Soft Costs 30%				\$1,616,130	
Design Fees 8%				\$560,258	
Construction Contingency 7%				\$529,444	
Subtotal contingencies				\$2,705,833	
Subtotal Construction Costs & Contigencies				\$8,092,933	
ESCALATION					
11.25% to mid point of construction				\$910,455	
TOTAL PROJECT COSTS				\$9,003,388	

Notes

1. Includes min TI improvements
2. Move costs x2
3. Leased space assumptions: 3 year full service lease at \$2.50 per s.f. per month = 2.50 x 12 x 3= 90 s.f.

Concept 1 Capital Costs: Administration, Morgue & Public Health Lab Buildings

DESCRIPTION	COSTS				Notes
	Size	Unit	\$/Unit	Amount	
<u>CONSTRUCTION COSTS</u>					
Building Construction (Governmental)					1
Administration Building: 5 stories 64,710 s.f. each (ZNE Core + TI)	323,550	s.f.	\$482	\$155,951,100	
Morgue & Public Health Lab Building: 2 stories 13,225 s.f. each (ZNE Core + TI)	26,450	s.f.	\$682	\$18,038,900	
Subtotal Building Construction				\$173,990,000	
Site Clearing & Demolition	1	l.s.	\$977,608	\$977,608	
Subsurface Improvements	1	l.s.	\$680,383	\$680,383	
Surface Improvements: includes Central Mechanical Plant at MADF & Sheriff	1	l.s.	\$13,318,222	\$13,318,222	
SUBTOTAL CONSTRUCTION COST				\$188,966,213	
<u>CONTINGENCIES</u>					
Soft Costs 30%				\$56,689,864	
Design Fees 8%				\$19,652,486	
Construction Contingency 7%				\$18,571,599	
Furnishing & Relocation Costs 6%				\$11,337,973	
Project Labor Agreement Costs 7%				\$13,227,635	
Subtotal contingencies				\$119,479,557	
Subtotal Construction Costs & Contingencies				\$308,445,770	
<u>ESCALATION</u>					
11.25% to mid point of construction				\$34,700,149	
TOTAL PROJECT COSTS				\$343,145,919	

Notes

1. 323,550 s.f Governmental, 150,000 Leased Governmental

Concept 1 Capital Costs: Human & Health Services Building

DESCRIPTION	COSTS				Notes
	Size	Unit	\$/Unit	Amount	
<u>CONSTRUCTION COSTS</u>					
Building Construction (Leased Governmental) Health & Human Services Building: 5 stories 30,000 s.f. each (ZNE Core + TI)	150,000	s.f.	\$482	\$72,300,000	1
Subtotal Building Construction				\$72,300,000	
Site Clearing & Demolition	1	I.s.	\$418,975	\$418,975	
Subsurface Improvements	1	I.s.	\$291,592	\$291,592	
Surface Improvements	1	I.s.	\$657,498	\$657,498	
SUBTOTAL CONSTRUCTION COST				\$73,668,065	
<u>CONTINGENCIES</u>					
Soft Costs 30%				\$22,100,420	
Design Fees 8%				\$7,661,479	
Construction Contingency 7%				\$7,240,097	
Furnishing & Relocation Costs 6%				\$4,420,084	
Project Labor Agreement Costs 7%				\$5,156,765	
Subtotal contingencies				\$46,578,844	
Subtotal Construction Costs & Contingencies				\$120,246,909	
<u>ESCALATION</u>					
11.25% to mid point of construction				\$13,527,777	
TOTAL PROJECT COSTS				\$133,774,686	

Notes

1. 323,550 s.f Governmental, 150,000 Leased Governmental

Concept 1 Capital Costs: Parking Lot

DESCRIPTION	COSTS			
	Size	Unit	\$/Unit	Amount
<u>CONSTRUCTION COSTS</u>				
Site Clearing & Demolition	1	I.s.	\$946,534	\$946,534
Subsurface Improvements	1	I.s.	\$180,000	\$180,000
Surface Improvements	1	I.s.	\$2,715,000	\$2,715,000
SUBTOTAL CONSTRUCTION COST				\$3,841,534
<u>CONTINGENCIES</u>				
Soft Costs 30%				\$1,152,460
Design Fees 8%				\$399,520
Construction Contingency 7%				\$377,546
Project Labor Agreement Costs 7%				\$268,907
Subtotal contingencies				\$2,198,433
Subtotal Construction Costs & Contigencies				\$6,039,967
<u>ESCALATION</u>				
11.25% to mid point of construction				\$679,496
TOTAL PROJECT COSTS				\$6,719,463

Concept 2 Capital Costs: Swing Space Costs

DESCRIPTION	COSTS				Notes
	Size	Unit	\$/Unit	Amount	

SWING SPACE CONSTRUCTION COSTS (GOVERNMENTAL)					
Option 2: Leased space for 3 years					
Swing Space for PRMD: Lease & TI Costs	32,000	s.f.	\$90	\$2,880,000	1 & 3
Move costs for PRMD	120	FTE	\$12,000	\$1,440,000	2
Subtotal Building Construction				\$4,320,000	
SUBTOTAL CONSTRUCTION COST				\$4,320,000	
CONTINGENCIES					
Soft Costs 30%				\$1,296,000	
Design Fees 8%				\$449,280	
Construction Contingency 7%				\$424,570	
Subtotal contingencies				\$2,169,850	
Subtotal Construction Costs & Contigencies				\$6,489,850	
ESCALATION					
11.25% to mid point of construction				\$730,108	
TOTAL PROJECT COSTS				\$7,219,958	

Notes

1. Includes min TI improvements
2. Move costs x2
3. Leased space assumptions: 3 year full service lease at \$2.50 per s.f. per month = 2.50 x 12 x 3= 90 s.f.

Concept 2 Capital Costs: Administration Building 1a

DESCRIPTION	COSTS			
	Size	Unit	\$/Unit	Amount
<u>CONSTRUCTION COSTS</u>				
Building Construction (Governmental) Admin Building 1a: 5 stories 33,000 s.f. each (ZNE Core + TI)	165,000	s.f.	\$482	\$79,530,000
Subtotal Building Construction				\$79,530,000
Site Clearing & Demolition	1	I.s.	\$1,043,311	\$1,043,311
Subsurface Improvements	1	I.s.	\$653,295	\$653,295
Surface Improvements	1	I.s.	\$6,120,450	\$6,120,450
SUBTOTAL CONSTRUCTION COST				\$87,347,056
<u>CONTINGENCIES</u>				
Soft Costs 30%				\$26,204,117
Design Fees 8%				\$9,084,094
Construction Contingency 7%				\$8,584,469
Furnishing & Relocation Costs 6%				\$5,240,823
Project Labor Agreement Costs 7%				\$6,114,294
Subtotal contingencies				\$55,227,797
Subtotal Construction Costs & Contingencies				\$142,574,853
<u>ESCALATION</u>				
11.25% to mid point of construction				\$16,039,671
TOTAL PROJECT COSTS				\$158,614,523

Note

See ROM Estimate Worksheet for Site Clearing & Demolition, Subsurface Improvements and Surface Improvements detail

Concept 2 Capital Costs: Administration Building 1b

DESCRIPTION	COSTS			
	Size	Unit	\$/Unit	Amount
<u>CONSTRUCTION COSTS</u>				
Building Construction (Governmental) Admin Building 1b: 5 stories 33,000 s.f. each (ZNE Core + TI)	165,000	s.f.	\$482	\$79,530,000
Subtotal Building Construction				\$79,530,000
Site Clearing & Demolition	1	I.s.	\$1,178,220	\$1,178,220
Subsurface Improvements	1	I.s.	\$483,690	\$483,690
Surface Improvements	1	I.s.	\$3,333,670	\$3,333,670
SUBTOTAL CONSTRUCTION COST				\$84,525,580
<u>CONTINGENCIES</u>				
Soft Costs 30%				\$25,357,674
Design Fees 8%				\$8,790,660
Construction Contingency 7%				\$8,307,174
Furnishing & Relocation Costs 6%				\$5,071,535
Project Labor Agreement Costs 7%				\$5,916,791
Subtotal contingencies				\$53,443,834
Subtotal Construction Costs & Contingencies				\$137,969,414
<u>ESCALATION</u>				
16.25% to mid point of construction				\$22,420,030
TOTAL PROJECT COSTS				\$160,389,443

Note

See ROM Estimate Worksheet for Site Clearing & Demolition, Subsurface Improvements and Surface Improvements detail

Concept 2 Capital Costs: Health & Human Services Building

DESCRIPTION	COSTS			
	Size	Unit	\$/Unit	Amount
<u>CONSTRUCTION COSTS</u>				
Building Construction Health & Human Services Building: 5 stories 28,000 s.f. each (ZNE Core + TI) (Leased Governmental)	140,000	s.f.	\$482	\$67,480,000
Subtotal Building Construction				\$67,480,000
Site Clearing & Demolition	1	I.s.	\$789,127	\$789,127
Subsurface Improvements	1	I.s.	\$229,000	\$229,000
Surface Improvements	1	I.s.	\$1,564,000	\$1,564,000
SUBTOTAL CONSTRUCTION COST				\$70,062,127
<u>CONTINGENCIES</u>				
Soft Costs 30%				\$21,018,638
Design Fees 8%				\$7,286,461
Construction Contingency 7%				\$6,885,706
Furnishing & Relocation Costs 6%				\$4,203,728
Project Labor Agreement Costs 7%				\$4,904,349
Subtotal contingencies				\$44,298,882
Subtotal Construction Costs & Contigencies				\$114,361,009
ESCALATION				
21.25% to mid point of construction				\$24,301,714
TOTAL PROJECT COSTS				\$138,662,723

Note

See ROM Estimate Worksheet for Site Clearing & Demolition, Subsurface Improvements and Surface Improvements detail

Concept 2 Capital Costs: Morgue & Public Health Lab Building

DESCRIPTION	COSTS			
	Size	Unit	\$/Unit	Amount
<u>CONSTRUCTION COSTS</u>				
Building Construction Morgue & Public Health Lab Building: 2 stories 13,225 s.f. each (ZNE Core + TI) (Governmental)	26,450	s.f.	\$682	\$18,038,900
Subtotal Building Construction				\$18,038,900
Site Clearing & Demolition	1	I.s.	\$197,282	\$197,282
Subsurface Improvements	1	I.s.	\$229,000	\$229,000
Surface Improvements: includes New Central Plant for MADF & Sheriff	1	I.s.	\$10,079,060	\$10,079,060
SUBTOTAL CONSTRUCTION COST				\$28,544,242
<u>CONTINGENCIES</u>				
Soft Costs 30%				\$8,563,273
Design Fees 8%				\$2,968,601
Construction Contingency 7%				\$2,805,328
Furnishing & Relocation Costs 6%				\$1,712,655
Project Labor Agreement Costs 7%				\$1,998,097
Subtotal contingencies				\$18,047,953
Subtotal Construction Costs & Contingencies				\$46,592,195
<u>ESCALATION</u>				
21.25% to mid point of construction				\$9,900,842
TOTAL PROJECT COSTS				\$56,493,037

Note

See ROM Estimate Worksheet for Site Clearing & Demolition, Subsurface Improvements and Surface Improvements detail

Attachment 3: Project Delivery Comparisons

Updated 4/16/18

Performance Based Infrastructure Projects				
	City of Long Beach New Civic Center	Napa	Santa Clara County	Contra Costa County
General Project Description	New Main Downtown Library, City Hall and Port Building to replace existing seismically unsafe facilities. New parking facility and revitalization of Lincoln Park. <ul style="list-style-type: none"> An 11 story 254,000 sq.ft. City Hall An 11 story 237,000 sq.ft. Port Headquarters Building A two story 92,500 sq.ft. Main Library A 73,000 sq.ft. Civic Plaza New underground parking with 469 spaces Central utility plant A three rooftop solar array system to provide up to 25% of the Civic Center energy needs Revitalized City Lincoln Park. Total Civic sq.ft. = 583,500 	New Public Safety and City Administration Building <ul style="list-style-type: none"> Civic Center: new 112,193 sq.ft., three floor building housing City Administration includes City Council Chambers, City Council, City Manager, City Clerk, City Attorney, Human Resources, Finance, Community Development, Public Works, Fire Prevention, and Parks & Recreation City of Napa Fire Station #1: new 13,167 sq.ft. , two story building Clay Street Garage Expansion: additional 114,200 garage addition. Adds 271 parking spaces Total Civic sq.ft. = 239,560 	New Civic Campus <ul style="list-style-type: none"> 1.15 million square feet rehabilitated, replacement or new facilities Site A (Richey Site): 500,000 sq.ft office space for public safety and justice services, 2,400 parking space multi-level garage, Central Plant, Logistics Hub, street and onsite improvements. Demolition of existing buildings. 8.9 acres Site B County Campus: Office space and structured parking. 4.5 acres Site C County Campus: Office space and structured parking. 10.3 acres Site D Development & Urban Village: Mixed Use Development and structured parking. 16.3 acres Total Civic sq.ft. = 1.15 million 	Rodeo Downtown <ul style="list-style-type: none"> Development plans for two locations including new town plaza. Site A - 1.5 acre vacant County owned property with three parcels. Residential mixed use, commercial and artist live-work development. (former RDA site) Site B - 189/199 Parker Avenue, 12,500 sq. ft. parcel with existing 5,063 sq. ft. building located west of the Town Plaza site. Relocate senior center. Requirement for 15% affordable, subject to negotiation. Total Civic sq ft. = TBD
Site Acreage	15.8 acres Civic: City Hall 2.82 acres, Port 0.61 acres, Library 4.91 acres (includes Lincoln Park) Private Development: 7.46 acres	4.71 acres Civic: 1.23 acres (doesn't include Fire Station or Parking acreage) Private Development: 3.48 acres (Superblock)	55 acres Civic Development 23 acres Site A: 8.9 acres Site B: 4.5 acres Site C: 10.3 acres Private Development Sites D & E: 6.5 + 9.8 acres = 16.3 acres	1.6 acres Site A: 1.5 acres Site B; 12,500 sq. ft.
Agreement	DBFOM Design/Bid/Build/Finance/Operate & Maintain	DBFOM Design/Bid/Build/Finance/Operate & Maintain	Design Build	Lease Revenue Bonds
Entities	Plenary Edgemoor Civic Partners (PECP)	Plenary Properties Napa (PPN) ownership entity consisting of Plenary, Stanford Hotels Corp., Cresleigh Homes Inc	Lowe Enterprises Real Estate Group	In RFQ/RFP process. Issued December 2016. Did not receive acceptable responses and are now reviewing project with developers
Commercial Development Components	3 rd & Pacific: multi-family residential with up to 200 units with 250 parking spaces. Center Block: 2 building mixed use. Up to 580 residential units, 32,000 s.f. retail, 200 room hotel, 725 parking spaces. 10% units affordable to moderate income residents	Hotel Development in partnership with Stanford Hotels Corp: 200 minimum rooms 4 star hotel on 2.2 acres 60 minimum Residential Units on 1.25 acres Developed and owned by Cresleigh Homes Inc. Retail on Superblock site Hotel total s.f. = 222,000 Residential s.f. =102,235 Total = 324,235	Mixed use development on North First Street. Approximately 2 to 2.2 million GSF Private Development or Future Growth	Mixed use development in unincorporated Rodeo downtown.
Project Costs: Construction, Permitting, Management and Relocation	\$300.7 million	\$110.2 million	\$150 million	Not yet defined.
Total Debt Service Cost	\$531 million	Not public information.	To be determined in Phase D - Financing & Preconstruction.	Not yet defined.
Annual Debt Service & Term	\$12.6 million for City Hall and Library only 43 year	\$5.8 million 40 year	County intends to debt finance	Not yet defined.
Cost per Square Foot	\$21	\$24	Not yet defined.	Not yet defined.

	City of Long Beach New Civic Center	Napa	Santa Clara County	Contra Costa County
Cost for Leasing Class A Office Space in Area	Range of \$27 to \$36			
Government Finance Sources	City Cash: \$18.78 million Land Sales: \$21.7 million	Transient Occupancy Tax: \$2,730,155 Land Sales \$14.35m	Not planning on selling land.	Lease Revenue Bonds
Build-to-Suit Projects				
	County of Alameda Social Services Building	City of Alameda Landing and Bayport		
General Project Description	Mixed use commercial and residential development.	700,000 square foot retail and office on former naval base. Includes 889 units of residential (22% affordable) and elementary school		
Site Acreage	2000 San Pablo Ave. Oakland CA 94612	218 acres, includes 72 acres for residential and 11 acres for public park		
Commercial Development Components	88 residential units and 150 stall parking structure	300,000 square feet of Retail space, 400,000 square feet of Office space,		
Project Costs: Construction, Permitting, Management and Relocation	\$80 million Cost was \$44.35 per square foot	\$90 million of new infrastructure Total project costs not available		
Debt Service & Term (if applicable)	County paying 30 years of rent totaling \$136 million with a buyout option for \$19 million	Not available		
Developer Finance Sources	\$51.7 million in tax free public bond financing along with private loans	Not available		
Government Finance Sources				
Deferred Maintenance Programs				
	State of California General Services –K-12 School Deferred Maintenance program	City of San Jose Facility Management Division of Public Works Deferred Maintenance Program		
General Project Description	Program identified 11 categories described in the Education Code Section 17582. Included building systems without which the building could not function including: asbestos abatement, lighting, electrical, floor coverings, HVAC, lead paint abatement, painting, paving, plumbing, roofing, UST remediation, and wall systems. Program is inactive now	Deferred maintenance on 400 buildings with 5 million square feet. Program increased to improve 90% of Preventative Maintenance activities from the 38% Preventative Maintenance program in FY 2011-12. (not bond funded)		
Project Costs: Construction, Permitting, Management and Relocation	\$254,430,098	Deferred maintenance backlog of \$147 million		
Government Finance Sources	Bond financing to school districts and County offices of education for 5 year program from FY 2008-09 – FY 2012-13.	Funding through General Fund and Construction and Conveyance Taxes		

Enhanced Infrastructure Financing District				
	West Sacramento County	City of Los Angeles	Santa Clara Valley Transportation Authority & Bay Area Rapid Transit	City of San Diego Otay Mesa Public Infrastructure
General Project Description	<p>The city of West Sacramento is working with the city of Sacramento to construct the Broadway Bridge connecting West Sacramento with Sacramento. The cities have created an EIFD authorized to issue bonds secured by tax increment revenues to pay for the construction.</p> <p>Enhanced Infrastructure Financing District is a means of capturing tax increments for the purpose of infrastructure investments.</p> <p>The bridge is part of a 2009 Bridge District Specific Plan, covering a 188-acre former industrial and rail yard site. The plan includes 4,000 housing units and 5,000,000 square feet of commercial and retail space by 2035. The new Sacramento River crossing will accommodate motor vehicles; transit, including buses and a proposed light rail system; bikes; and pedestrians.</p> <p>The EIFD will implement Measure G, an advisory measure approved by voters that allows West Sacramento to use revenue received from the dissolution of its Redevelopment Agency to "continue funding community investment projects such as streets, bridges, transportation, parks, and public infrastructure.</p>	<p>Los Angeles River Revitalization EIFD is in the planning stage.</p> <p>The project area is an 11-mile segment of the 48-mile L.A. River, which includes Elysian Park Bridge, Broadway Arterial Green Street, the eastern end of the Los Angeles State Historic Park and the Cornfields site.</p> <p>The overall objective is to make the river a community amenity by investing in housing, commercial, and recreational developments.</p>	<p>The Santa Clara Valley Transportation Authority (VTA) and Bay Area Rapid Transit (BART) are working to create an EIFD as part of the funding strategy for Phase II of the BART to Silicon Valley Extension plan.</p> <p>Phase II will build the four stations and five-mile tunnel through downtown San Jose that completes the 16-mile extension to San Jose.</p>	<p>The Otay Mesa EIFD will encompass the entire Community Plan Area, which is comprised of residential, industrial, commercial, office, and other land uses, as well as vacant land. Proposed project types include Transportation, Park, Police, Fire, Library, Water & Sewer.</p> <p>The Otay Mesa EIFD is located in the City of San Diego bounded by the Otay River Valley and the City of Chula Vista on the north, an unincorporated area of San Diego (County) to the east, the international border with Mexico and the City of Tijuana on the south, and Interstate 805 (I-805) on the west.</p>
District Acreage or Area	4,144 acres	Boundary of District: one mile on either side of 32 miles of the Los Angeles River as it flows through the City of Los Angeles	To be determined	9,285 acres approximately
Agreement	Infrastructure Financing Plan	Infrastructure Financing Plan	Creating a Community Facilities District and forming an EIFD will begin in 2017. This EIFD, with the ability to issue TIF bonds, will use some of the growth in tax revenue resulting from increased business activity and property value along the BART system to fund its expansion.	Infrastructure Financing Plan
Entities	Public Finance Authority	Public Finance Authority	Public Finance Authority	Public Finance Authority
Project Costs: Construction, Permitting, Management and Relocation	\$1.8 billion	First 11 mile segment: \$40 million \$5.78 billion total project costs	\$4.7 billion	\$1.1 billion
Financing District Members	City of West Sacramento	City and County of Los Angeles, Universal City, Cities of Burbank, Glendale and Vernon	To be determined	three (3) City of San Diego Council members and two (2) public members
Financing District Potential Yield over 45 year term	\$2 billion	\$2.3 billion	\$70 million	\$1.192 billion

Our Resilient Future – Investment in Critical Infrastructure



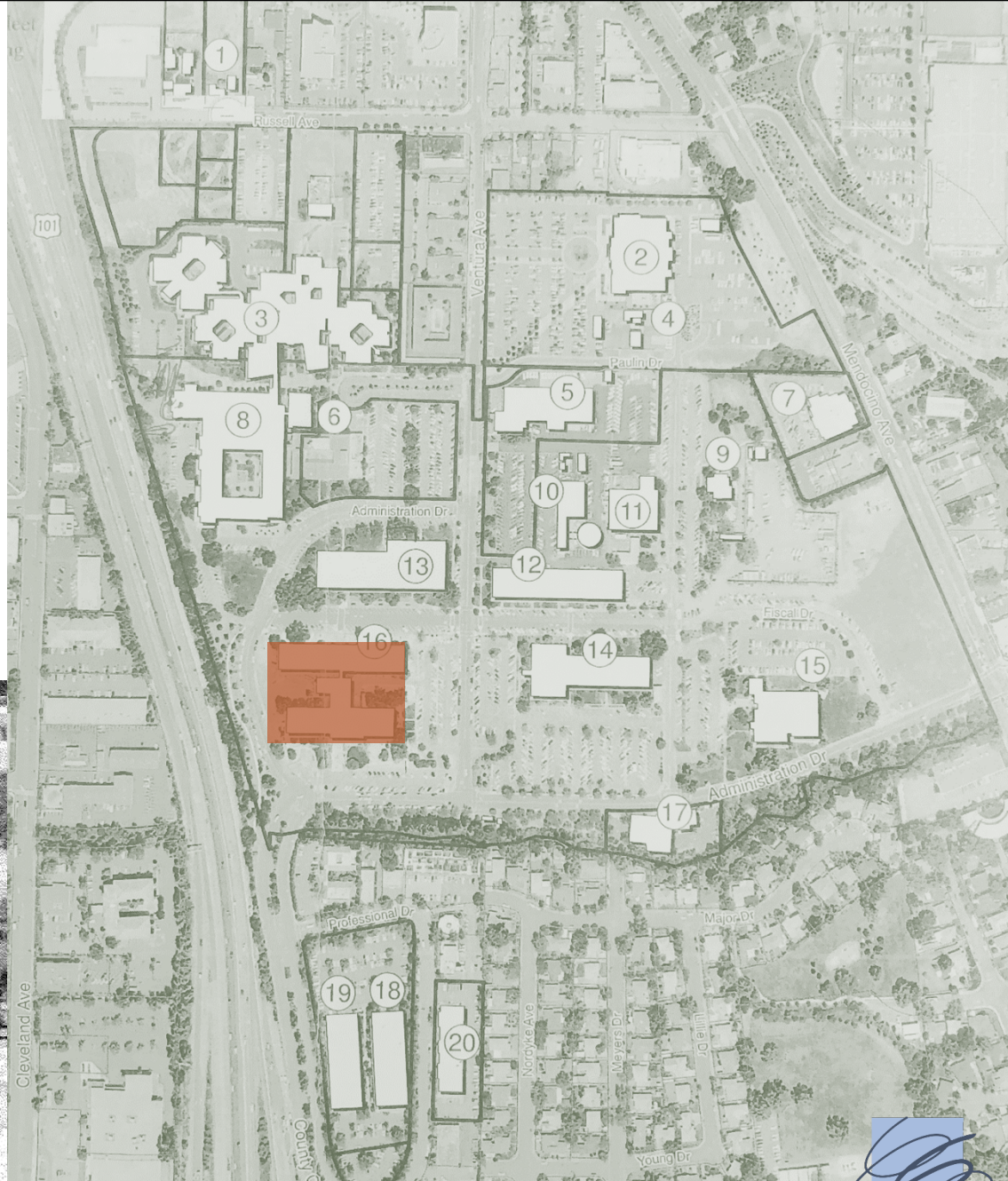
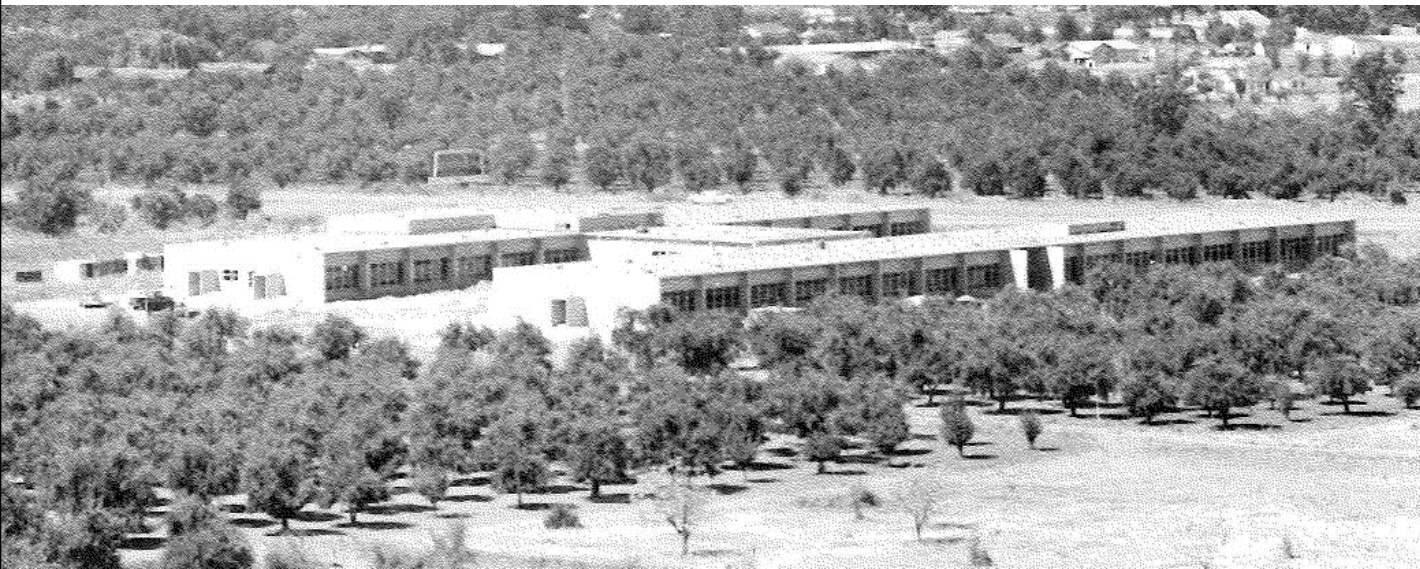
CAROLINE JUDY, DIRECTOR
GENERAL SERVICES DEPARTMENT

MAY 8, 2018



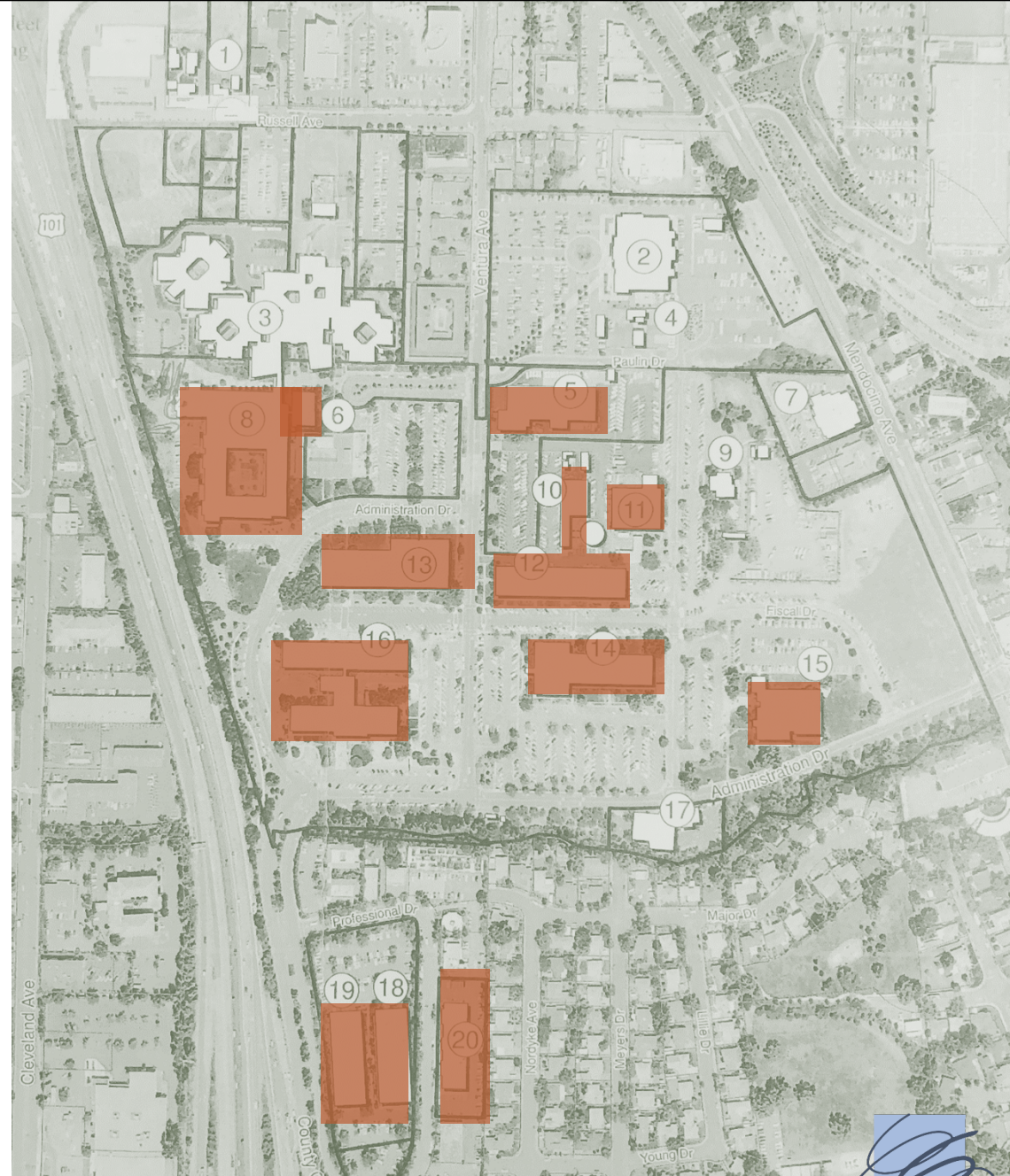
The County Administration building was built in 1958 for a county community of 103,405 people.

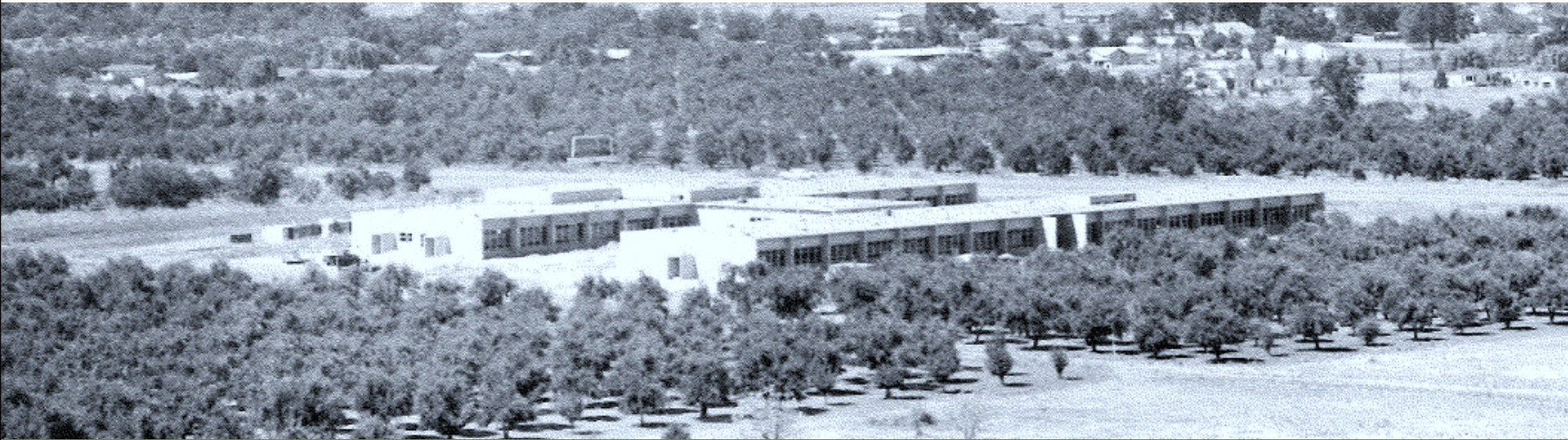
Source: United States Census Bureau



By 1977, 12 more buildings were built to support a booming county community of 299,681 people.

Source: United States Census Bureau





80%

of County Government Center
(Sq. Ft.) is 50-60 years old.
(470,000 total square feet)

20%

Built between
1980-2010



Today, Health and Human Services' Administration programs lease 150,000+ Sq. Ft. off-campus providing services to our community.



What does our county community of **502,146** people need today and are we delivering?

Source: United States Census Bureau



Smart Spending

Access to Services

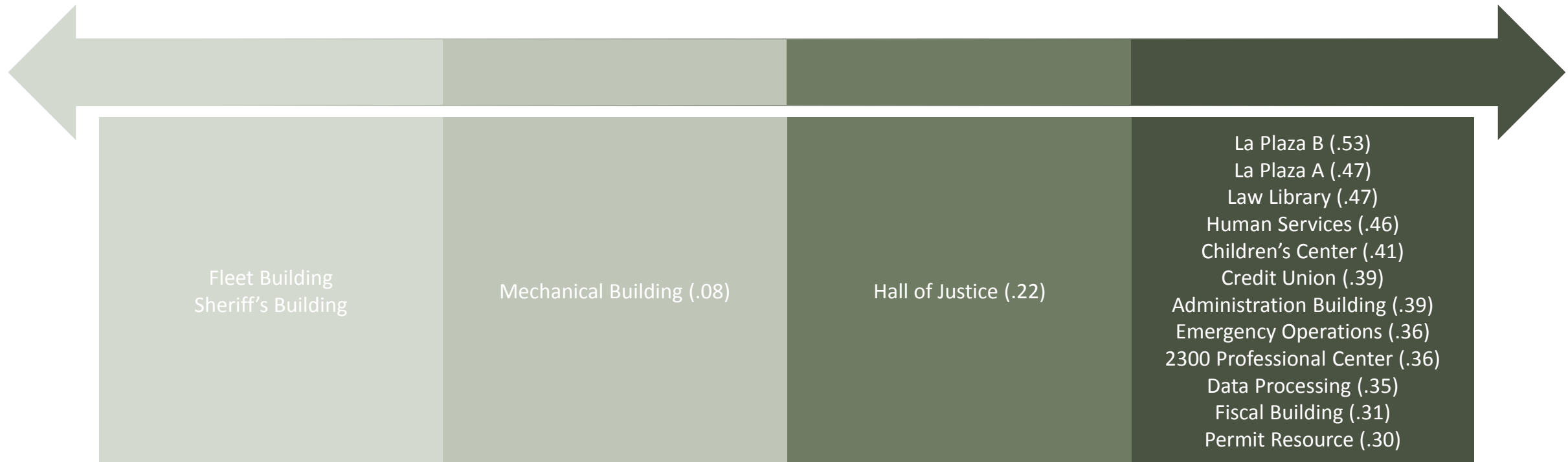


Housing for All





Smart Spending: Facilities Condition Assessment



Facility Condition Index (FCI) measures the current condition of the County's facilities.





Smart Spending: Facilities Condition Assessment

COST TO REPAIR BUILDING DEFICIENCIES – ENSURING EFFICIENT AND COMFORTABLE WORKPLACES



Permit Sonoma

~\$14M



Fiscal

~\$16M



Law Library

~\$18.5M

(ESTIMATES BASED ON REQUIREMENT INDEX (RI) VALUE)





Smart Spending: Facilities Condition Assessment

COST TO REPAIR BUILDING DEFICIENCIES – ENSURING EFFICIENT AND COMFORTABLE WORKPLACES



Administration

~\$26M



Human Services Paulin

~\$33M



La Plaza

~\$39M

(ESTIMATES BASED ON REQUIREMENT INDEX (RI) VALUE)





Smart Spending: Facilities Condition Assessment





Smart Spending: Types of Maintenance



Preventative Maintenance



Corrective Maintenance

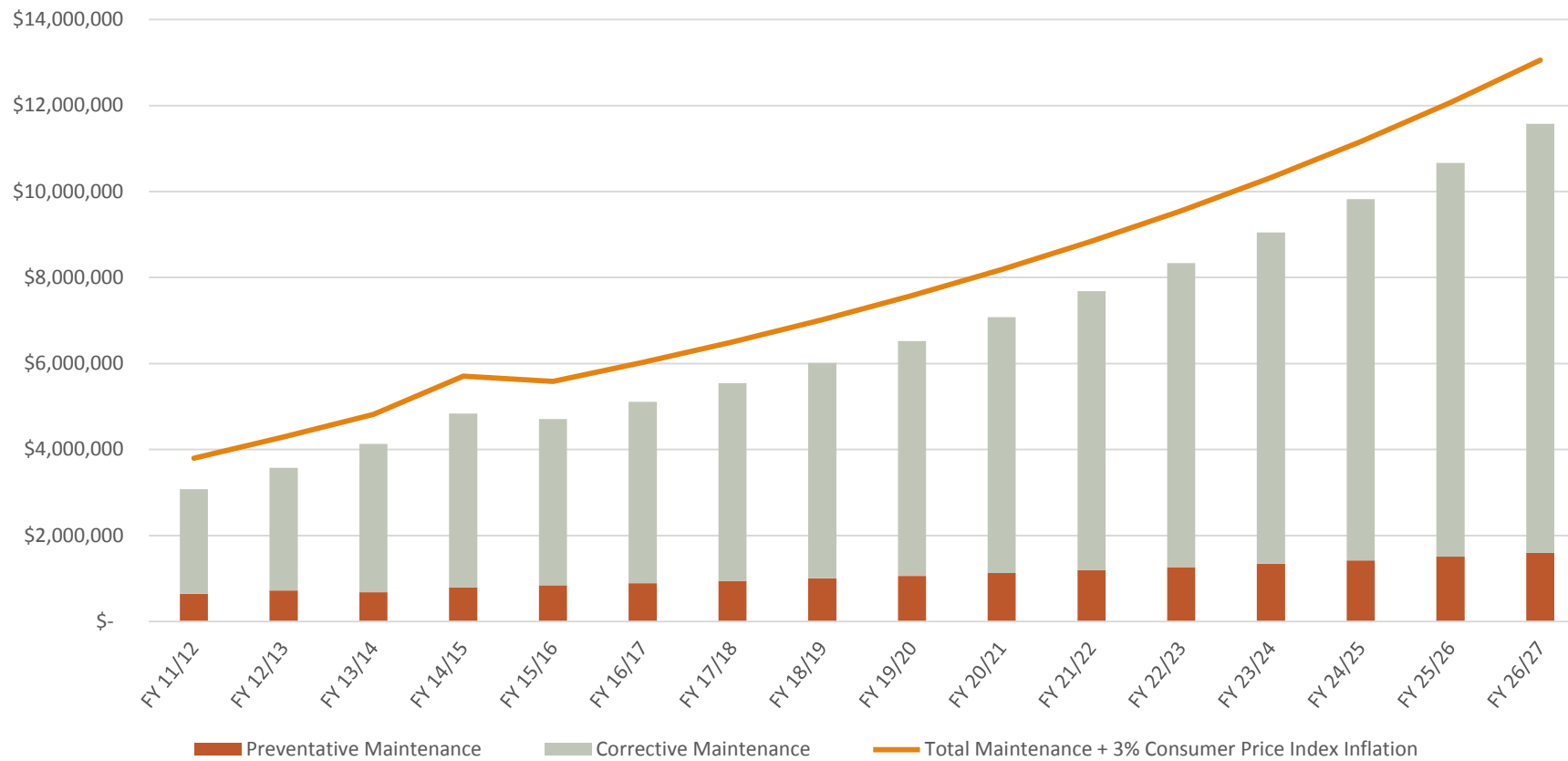


Deferred Maintenance



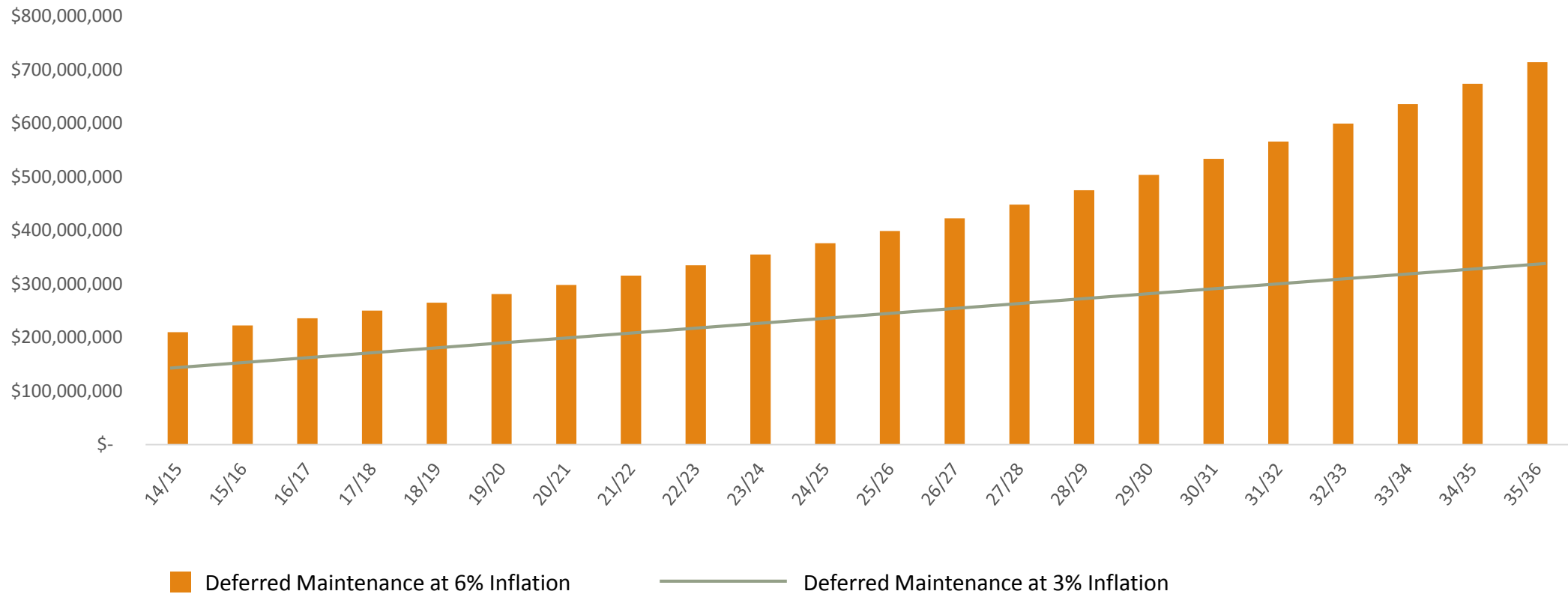


Smart Spending: Preventative vs. Corrective Maintenance





Smart Spending: Deferred Maintenance Expenses

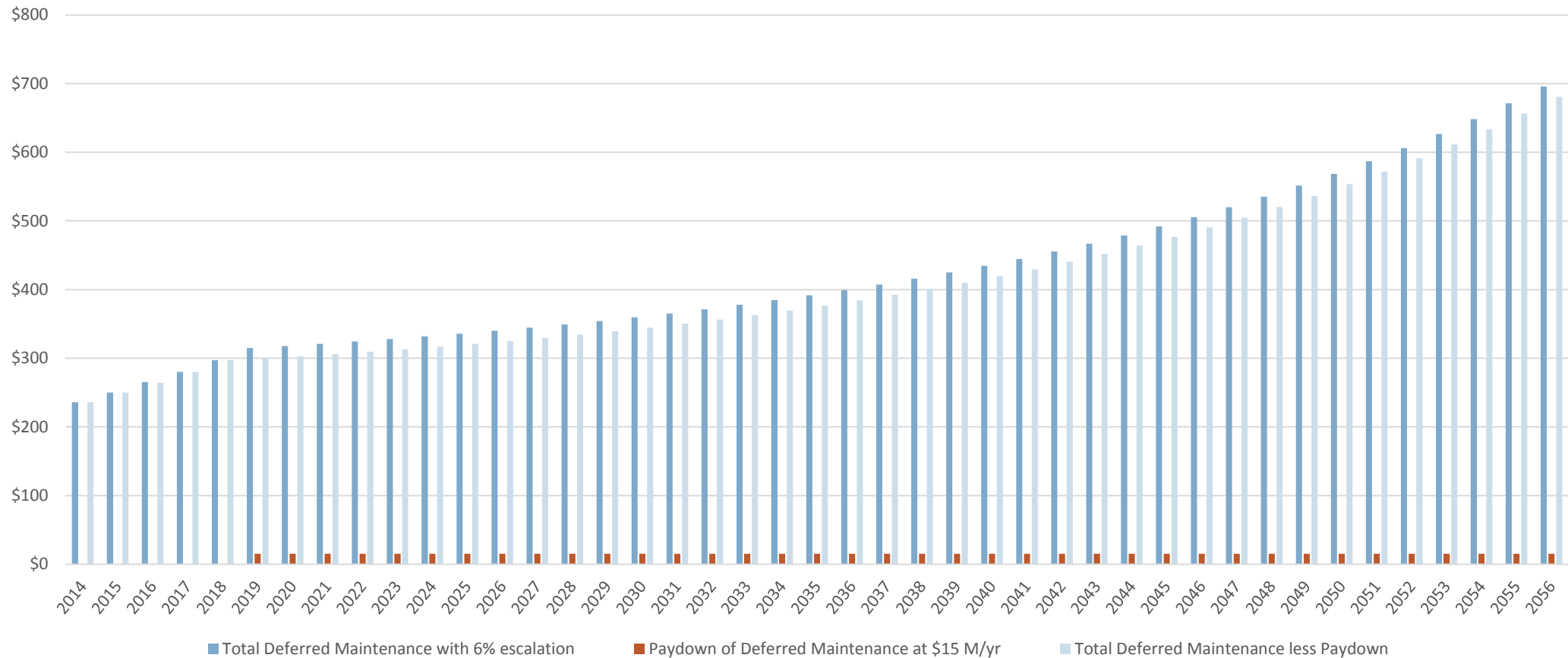


Source: Facilities Condition Assessment, VFA Associates, 2014. Using construction cost escalation of 6% per year. Total \$258 million today.





Smart Spending: \$15 Million Annual Investment



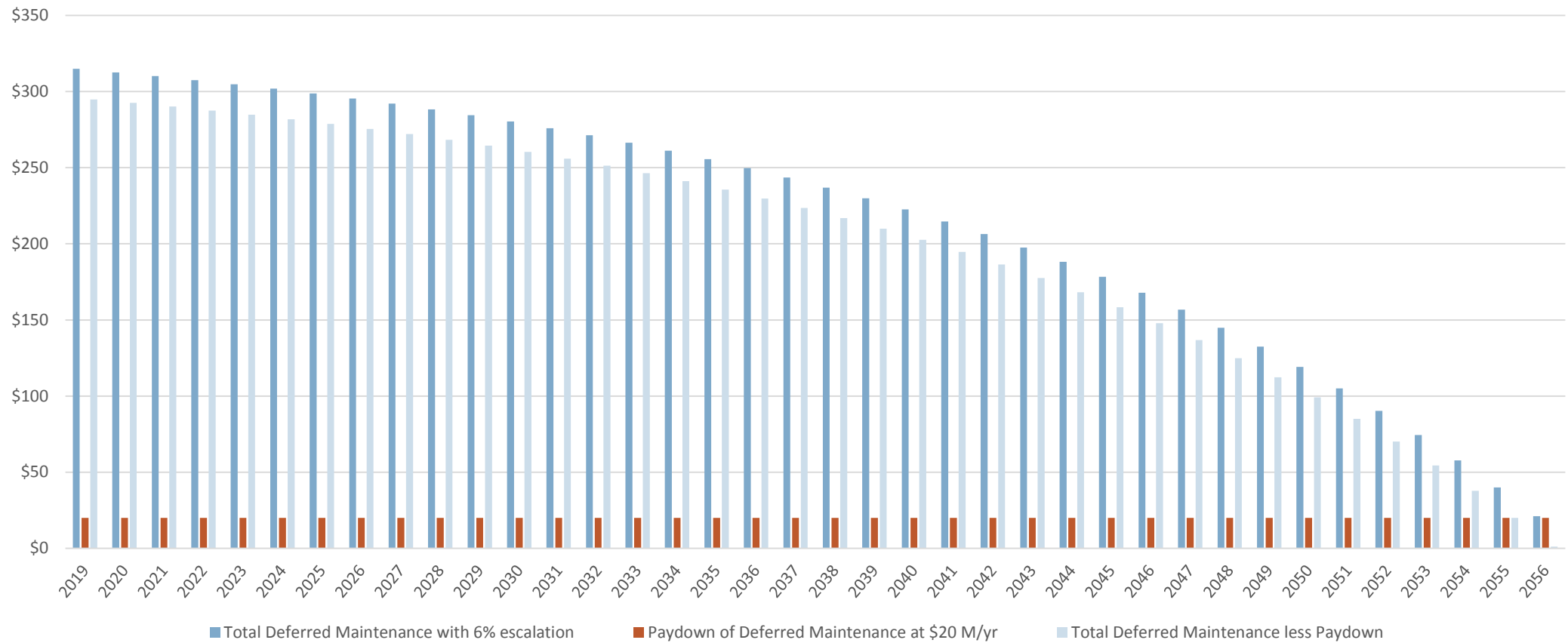


Smart Spending: Minimum Investment



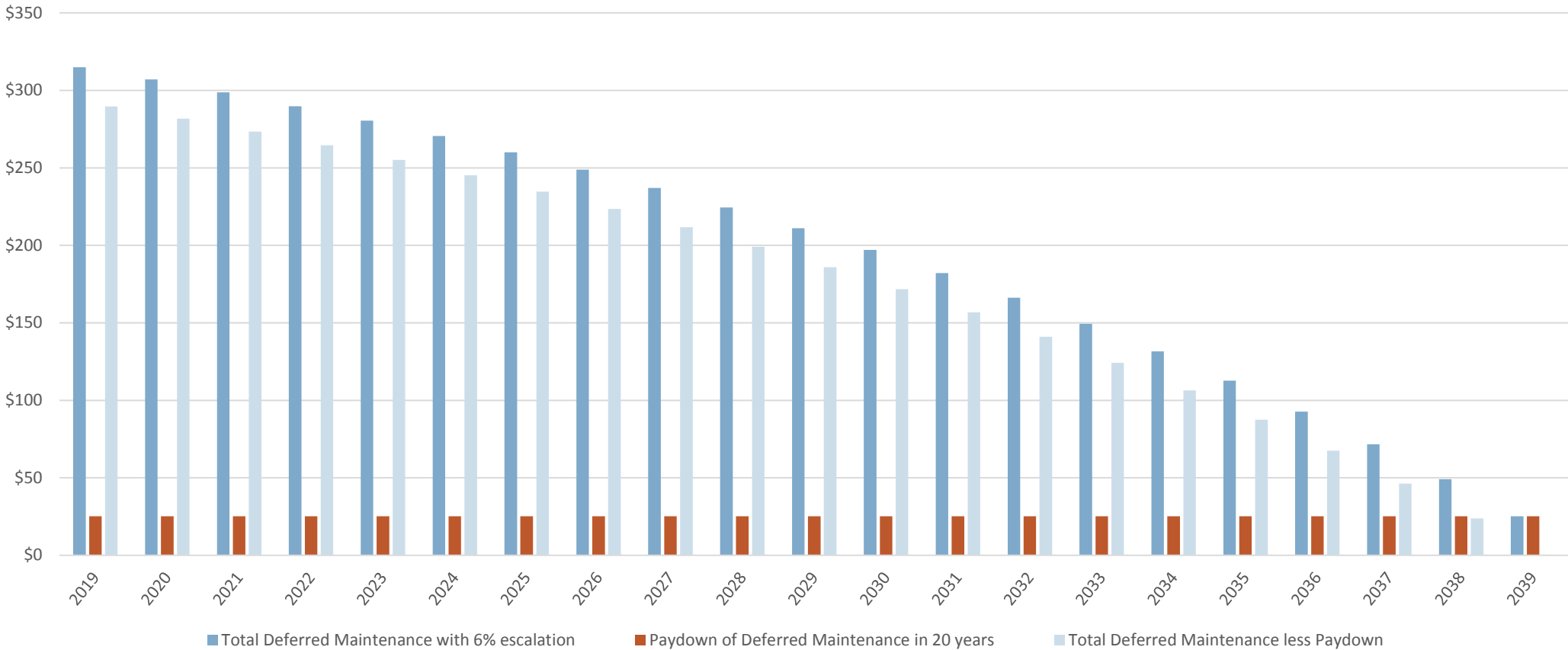


Smart Spending: \$20 Million Annual Investment



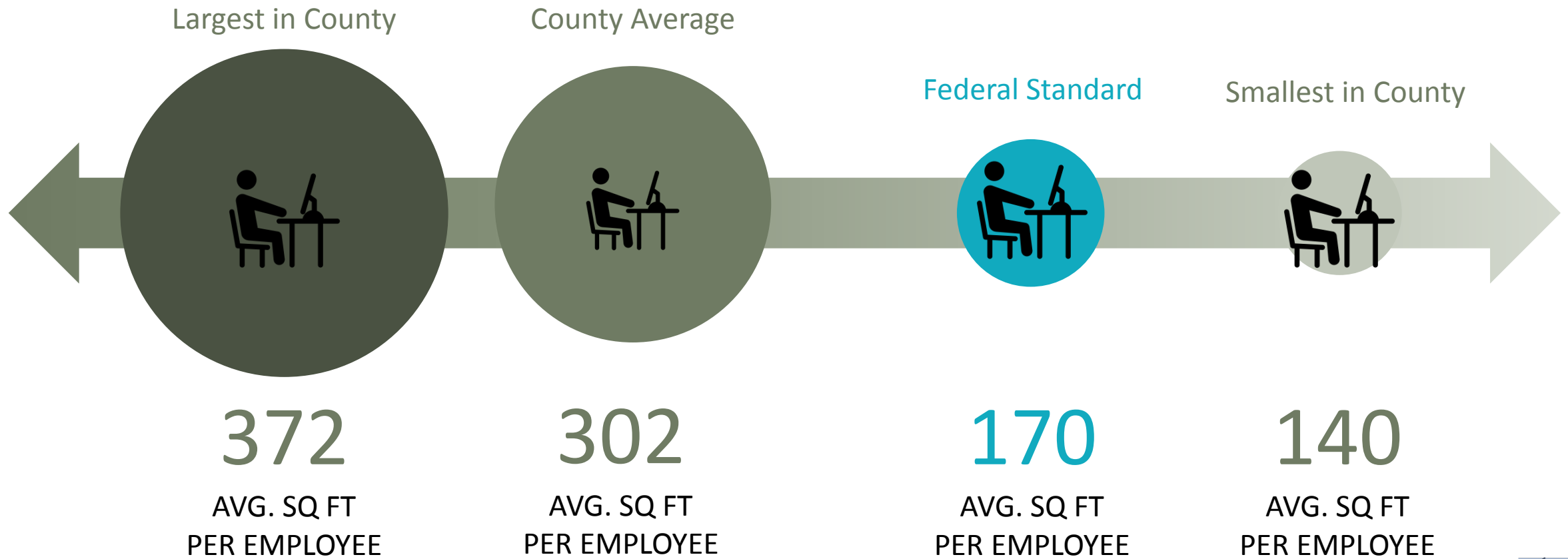


Smart Spending: Twenty Year Plan Investing \$25.3 Million Annually





Smart Spending: Workspaces





Smart Spending: Energy Efficiency

Original administration building built

80% of campus built

California Energy Code Implemented

2012

Before 1978

Prevailing practice for commercial buildings included metal framed, single pane windows, minimum or no insulation and minimum HVAC equipment.

1980-2012

Energy use intensity (kBtu/sq ft) for commercial buildings has decreased by approximately 45%

Source: American Council for an Energy Efficient Economy





Access to Services: One-door Model





Access to Services: Current Model



A family dealing with securing aid for their aging parents



Adult and Aging Division
Set up in-home support services



Public Health Department:
Obtain any Public Health records need to apply for benefits

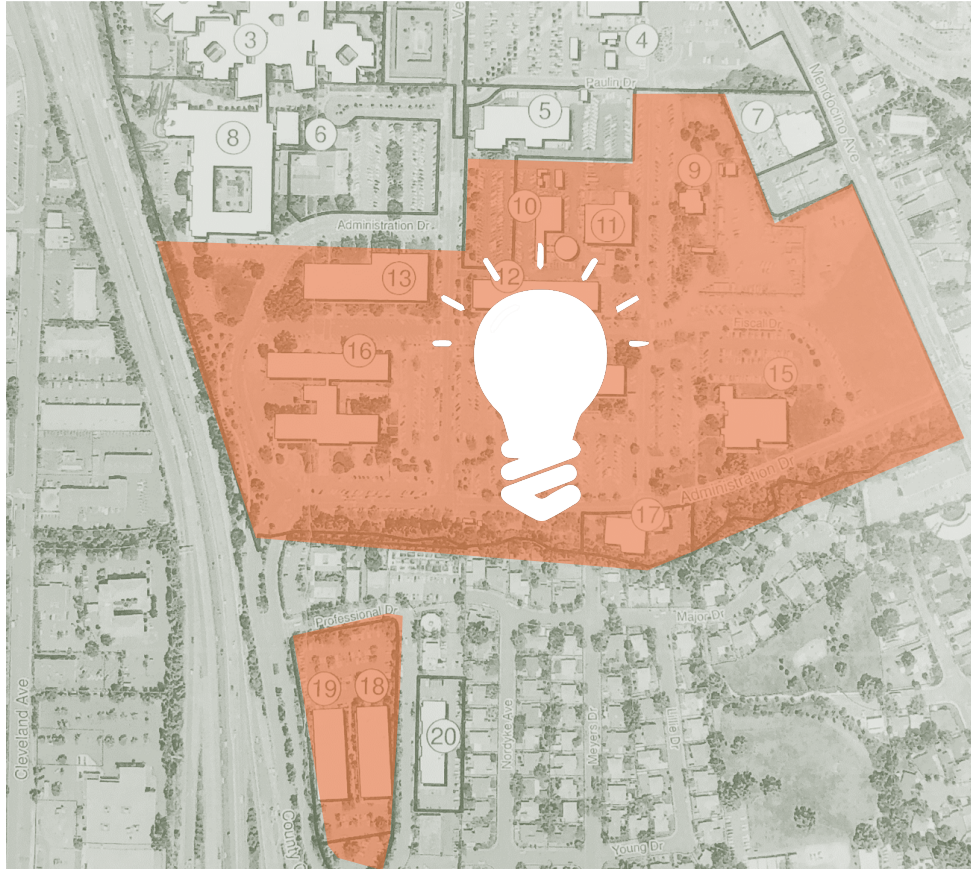


Human Services Economic Assistance Division:
Apply for government benefits





Housing for All: County Campus Property





Housing for All: One County Parking Lot

PRMD PARKING LOT - 2.78 ACRES (121,000 Sq. Ft.)



139 DU

50 dwelling units
per acre



183 DU

66 dwelling units
per acre



384 DU

138 dwelling units
per acre





Housing for All: Sixty Percent of County Campus Property

COUNTY CAMPUS PROPERTY IS ABOUT 47 ACRES, SIXTY PERCENT IS 28.2 ACRES



1410 DU

50 dwelling units per acre
***Current Neighborhood zoning**



1,861 DU

66 dwelling units per acre



3,892 DU

138 dwelling units per acre



Bold Ideas



- ❖ Effectively address \$258 million in deferred facilities maintenance
- ❖ Improve access to services
- ❖ Dedicate county property to housing for all
- ❖ Standardize employee workspaces
- ❖ Build administration facilities to triple net zero 2020 code





Next Steps: Request for Information (RFI)

YOU
ARE
HERE

Request for Information (Summer 2018)

- Need Board direction on feasible locations and desired housing density or determine feasibility through RFI

Request for Qualifications/Proposal (Winter 2018)

- Board determines community engagement process
- RFQ/RFP contains financing terms, scope of development, housing options
- Civic Building Location Options

Award & Negotiate (Fall 2019)

- CEQA
- Review Proposals
- Board approval of Award of project
- Negotiate terms of agreement
- Board approval of agreement





Next Steps: Request for Information (RFI)

- ❖ Questionnaire to receive market input on:
 - ❖ Preferred development size
 - ❖ Preferred financing structure
 - ❖ Preferred development locations
 - ❖ Colocation best practices
 - ❖ Procurement process
- ❖ Confirm or refine assumptions regarding delivery
- ❖ Not a commitment to issue RFQ or RFP
- ❖ Does not create an advantage or disadvantage to proposers
- ❖ Information needed for RFQ/RFP





Next Steps: Partnership Opportunities

- ❖ Potential partnerships with City of Santa Rosa, Superior Court, Santa Rosa Junior College, others?
- ❖ Collaborate on Request for Information (RFI)
- ❖ Determine if market supports opportunities
- ❖ Consider possible co-location
- ❖ Consider joint RFQ/RFP



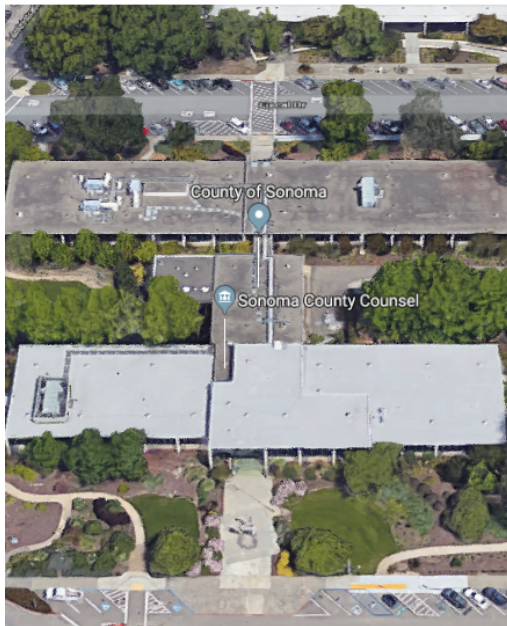
THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA





Next Steps: Location Options

REQUEST FOR INFORMATION WILL INCLUDE BOARD OF SUPERVISORS AND MARKET RECOMMENDATIONS



County Campus



Santa Rosa Airport Area



Downtown SR



Others





Next Steps: Housing Density Options

REQUEST FOR INFORMATION WILL INCLUDE BOARD OF SUPERVISORS AND MARKET RECOMMENDATIONS ON HOUSING DENSITY OPTIONS



34_{DU}



50_{DU}



66_{DU}



89_{DU}



138_{DU}





Next Steps: Financing Options

REQUEST FOR INFORMATION WILL INCLUDE BOARD OF SUPERVISORS AND MARKET RECOMMENDATIONS ON FINANCING OPTIONS



Debt Finance



Build to Suit



Performance Based
Infrastructure





Next Steps: Board Request

- ❖ Accept report
- ❖ Direct County Administrator and General Services to:
 - ❖ Coordinate with the City of Santa Rosa
 - ❖ Proceed with issuance of a Request for Information (RFI)
 - ❖ Return to Board with results from the Request for Information (RFI)





County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 61
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors and Board of Commissioners

Board Agenda Date: May 8, 2018

Vote Requirement: 4/5

Department or Agency Name(s): Sonoma County Community Development Commission; Sonoma County Board of Supervisors

Staff Name and Phone Number:

Benjamin Wickham, Affordable Housing Director
(707) 565-7542

Supervisory District(s):

3rd District – Supervisor Zane

Title: Consideration of revisions to County Fund for Housing loan terms for Community Housing Sonoma County's development of Veterans Village.

Recommended Actions:

Consider Community Housing Sonoma County (CHSC)'s request to the Executive Director of the Sonoma County Community Development Commission (Commission) to revise the terms of the County Fund for Housing (CFH) loan of \$1,868,851 to expend all awarded funds for the first phase of the multi-phase project

Executive Summary:

This Board item requests consideration of CHSC's request to modify the terms of the County Fund for Housing award made in November 2016 to allow for the entire award of \$1,868,851 to be used on Phase I of the project. The original funding award contemplated creating twelve "tiny homes" for veterans in the first phase on a parcel within the County Administration Center at a cost of \$1 million, with phase 2 involving site preparation (at a cost of \$839,000) of a parcel owned by the developer on West Hearn Avenue. Phase 3 of this project was – and still is – anticipated to encompass more units and additional outside funding. Changes to the scope of the project since initial award, including the addition of two more units to the project, have increased costs.

Discussion:

In 2016, the Sonoma County Department of General Services conducted a solicitation to offer a parcel of land within the County Administration Center to a developer or housing provider for the provision of "tiny homes" as a pilot project. The concept assumed that the County would lease the land to a developer for two years, and that the homes would be easily moved to an alternate site after lease expiration. The winning proposer was Community Housing Sonoma County (CHSC), which proposed to serve formerly homeless veterans, and already owned a site to which the homes could be relocated.

This solicitation was followed closely by the Commission’s County Fund for Housing competitive process, in which CHSC was awarded \$1.8 million in funds to pay for the initial siting of twelve homes on the identified parcel, plus site work and predevelopment expenses associated with the eventual move to the permanent site on West Hearn Avenue. This was identified as a three phase project, with CFH funding covering the full costs of the first two phases, and the third phase being funded through other state resources.

In the intervening months, several modifications to the project have happened. First was the recognition that the costs to connect to utilities as originally estimated at the original site were unrealistically low. Second was a renegotiation of the lease between the developer and General Services, aided by the Commission, to site the project on land still within the Administration Center but on Russell Avenue, near other single family homes being rented to veterans and managed by the Commission. The term of the lease was also extended from two years to three. The most recent changes requested by the developer involve using the entire loan amount for the first phase.

Multiple other approaches have been analyzed for this project to keep costs within the original budget while staying true to the original intent of this important pilot project. Leadership staff from General Services, the Commission, and Permit Sonoma have worked together and with the developer to conduct due diligence and test alternative approaches that might place this badly needed housing in service quickly.

Prior Board Actions:

11/15/2016 – Agenda Item 56: Board of Supervisors and Board of Commissioners approved a CFH award to CHSC in the amount of \$1,868,851 for Veterans Village Phases I & II.

Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community

Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses	261,975	1,491,963	0
Additional Appropriation Requested	0		
Total Expenditures	261,975	1,491,963	0
Funding Sources			
General Fund/WA GF	130,987	745,981	
State/Federal			
Fees/Other	130,988	745,982	
Use of Fund Balance			
Contingencies			
Total Sources	261,975	1,491,963	0
Narrative Explanation of Fiscal Impacts:			
<p>In 2016, Community Housing Sonoma County (CHSC) applied for and was awarded \$1,868,851 from County Fund for Housing for development of the Veterans Village project. As of March 31, 2018 \$114,913 have been disbursed leaving \$1,753,938 remaining to be disbursed. \$261,975 will be disbursed in FY 17-18 and \$1,491,963 will be disbursed in FY 18-19. These expenditures are already budgeted and do not require additional expenditure authorization.</p> <p>County Fund for Housing awards are funded from two primary sources: Affordable Housing Permit "In Lieu" Fees and Reinvestment and Revitalization Funds (R&R). The amount of Affordable Housing Permit "In Lieu" Fees fluctuates over time depending on development permit activity but is expected to fund 50% of County Fund for Housing activity in both FY 17-18 and FY 18-19.</p>			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Attachments:			

Related Items "On File" with the Clerk of the Board:



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 68

(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Permit Sonoma

Staff Name and Phone Number:

Jane Riley, x7388
Jennifer Barrett, x 2336

Supervisorial District(s):

All

Title: Amendments to Chapter 26 of the Sonoma County Code (Zoning Code) to Reduce Constraints and Expand Housing Opportunities

Recommended Actions:

- A. Hold a public hearing and adopt the attached ordinance (a) determining exemption from CEQA, and (b) amending the zoning code to:
- 1) Increase the maximum size of accessory dwelling units to 1,200 square feet;
 - 2) Reduce the minimum rural parcel size for 1-bedroom accessory dwelling units to 1.0 acre when on public water or a community well;
 - 3) Reduce development fees for accessory dwelling units on a graduated scale;
 - 4) Delay the collection of affordable housing fees until occupancy;
 - 5) Allow the Permit Sonoma Director to approve Alternative Equivalent Affordable Housing plans that meet the criteria;
 - 6) Allow a larger percentage of residential floor space in mixed use projects;
 - 7) Allow transitional and supportive housing in all zones that allow single family dwellings;
 - 8) Provide a density bonus for units for foster youth, veterans and homeless residents; and
 - 9) Allow small Single Room Occupancy projects as a permitted use in two commercial zones and larger SRO facilities with a use permit; and,
 - 10) Make miscellaneous other housing-related changes.
- B. Authorize as-needed budget adjustments via quarterly budget adjustments to cover the costs of waived fees

Executive Summary:

The fire disaster exacerbated an already severe shortage of housing in Sonoma County. The fires destroyed 5,283 houses countywide, including over 2,200 residences in the unincorporated County. The fires affected thousands of community members, leaving many homeless, struggling to recover and rebuild. Given the state of the countywide post-fire housing landscape, the Board of Supervisors is

considering adopting a sub-regional housing production goal of 30,000 units countywide by 2023 as part of an emerging collaboration with the nine cities. The goal will encompass 3,375 new units on County-owned land within the city limits, rebuilding 2,000 units destroyed by the fires, and building 1,000 new accessory dwelling units in the unincorporated area within the next five years.

Your Board has been working closely with elected officials from the nine cities and other community leaders on ways to address the housing problem, and has directed staff toward new and more effective approaches to facilitate the development of substantially greater numbers of homes at all income levels over the next five years.

As a part of these efforts, Permit Sonoma will be introducing a number of housing initiatives this year to further the housing objectives. The current package of recommended Zoning Code amendments is designed to reduce constraints to housing production, and to provide broader options for permanent housing solutions. An additional ordinance to rezone qualified parcels countywide to remove the Z (Accessory Dwelling Unit Exclusion) Zone is scheduled for consideration by the Planning Commission next month. Additional housing initiatives as directed by your Board will come forward this year to further expand housing opportunities and encourage new types of housing in appropriate areas. Finally, two Specific Plans currently underway-- in the Airport SMART station area and the Sonoma Springs area-- are anticipated to increase allowable residential uses and densities near employment and transit.

On 12 April 2018, the Sonoma County Planning Commission held a public hearing to review and consider changes to the Zoning Code to reduce constraints and provide additional opportunities for housing. The Commission's recommendations are summarized in Table 1 below, followed by a summary of the issues discussed at the Planning Commission hearing. Changes recommended by the Planning Commission include: increasing the maximum size of accessory dwelling units from 1,000 square feet to 1,200 square feet; reducing the minimum parcel size for 1-bedroom accessory dwelling units served by public water or a community well from 1.5 acres to 1.0 acre; and, reducing development fees for accessory dwelling units on a graduated size-based scale. Other recommended changes include delaying the collection of development fees until near occupancy; allowing a larger percentage of residential floor space in mixed use projects; and providing density bonuses for projects that include units for foster youth, veterans and homeless residents. A more detailed analysis of the policy options is provided in the Planning Commission staff report, attached.

Discussion:

Like many other counties in California, Sonoma County is known for its high cost of living and lack of affordable, available housing. Home prices in the county have doubled in the last six years, with a median cost of a single-family home reaching \$670,000 in January 2018.¹ Rents have increased 9.5 percent in 2017, to an average of \$1,980 per month for a two-bedroom apartment. To afford this average apartment, a family of three must have an income of \$90,204, significantly more than the county median income of \$75,500.

Housing affordability affects the entire community—residents, businesses, the environment, and the economy:

- A lack of affordable or available housing increases homelessness;
- Extremely cost-burdened households (those spending more than 50 percent of income on housing) have little left over to pay for other necessary expenses—food, transportation, health care, education and retirement—and suffer lower health outcomes as a result;
- A lack of affordable housing in urban centers forces people to commute long distances and move outside of the County, resulting in increased traffic and wear-and-tear on aging roads, lower quality of life, and lost economic output;²
- Slow housing growth results in slower job growth and reduced economic prosperity.³

The Sonoma County Board of Supervisors adopted the Building HOMES Toolbox in 2016, focusing on ending homelessness by providing more permanent housing, including set-asides in affordable housing developments, housing for homeless youth, rental subsidies, and use of the Housing First approach. All of these solutions require the development of a significant number of rental housing units in areas like cities and urban unincorporated communities where services are available.

In 2017, the Board of Supervisors adopted a strategic priority of “Housing for All”⁴—an effort to facilitate the development of housing for households of all income levels, focused in urban centers. Under this strategic priority, the Board of Supervisors set a goal of creating 675 new housing units per year until 2022, and included strategies such as updating and simplifying regulations for land use entitlements, deferring the collection of impact fees, and enacting housing code amendments for workforce housing.

The Sonoma Complex Fires had a devastating impact on the sub-region’s housing crisis. On 9 October 2017, the most destructive wildfires in California history began in Napa County and quickly spread to Sonoma County and into the City of Santa Rosa. The fires ultimately destroyed 5,283 homes countywide, including over 2,200 homes in the unincorporated County. The fires impacted thousands of community

¹ Press Democrat, February 24, 2018

² McKinsey Global Institute, Closing California’s Housing Gap, 2016 (<https://www.mckinsey.com/global-themes/urbanization/closing-californias-housing-gap>)

³ Beacon Economics, Sonoma County Complex Fires: Housing and Fiscal Impact Report

⁴ Sonoma County Board of Supervisors, 2017 County Strategic Priority: Housing for All (http://sonomacounty.ca.gov/templates_portal/Project.aspx?id=2147540161)

members, leaving many homeless, struggling to recover and rebuild.

Before the fire, the rental vacancy rate in Sonoma County hovered below 1.5 percent⁵ (considered full occupancy) and has only decreased further after the fire. The vacancy rate for homeownership (the percent of houses for sale) is around 1.5 percent, compared to about two percent nationwide.⁶

As noted above, the Board of Supervisors is considering adopting a sub-regional housing production goal of 30,000 units countywide by 2023, including 3,375 new units on County-owned land. The Board's sub-regional goal was informed by research by Beacon Economics, and accounts for historic unmet housing needs countywide, housing units lost in the fires, and anticipated employment growth and economic forecasts. In the unincorporated County, the Board has a goal of rebuilding 2,000 destroyed units and building 1,000 new accessory dwelling units within the next five years.

The County permitted approximately 716 new units in the five-year period between 2013-2017, including approximately 50 accessory dwelling units per year. Meeting your Board's ambitious housing goal will require innovative new funding and policy mechanisms. According to Beacon Economics, *"the local economy has become severely constrained by little or no growth in the County labor force, partly because of the high cost of living."* Failure to meet housing goals will impact the County's ability to grow its economy and recovery fully from the disaster, according to the Beacon study.

Permit Sonoma, together with its partners, is introducing several initiatives designed to provide increased opportunity and certainty for housing developers. This current package of recommended code amendments to reduce constraints to housing production (summarized in Table 1, above) is the first in a series of three Permit Sonoma initiatives designed to provide broader options for permanent housing solutions. A second ordinance that would rezone qualifying parcels countywide to remove the Z (Accessory Dwelling Unit Exclusion) Combining Zone will be considered by the Planning Commission next month. Together, these proposed changes for accessory dwelling units will assist the county in achieving the goal of building 1,000 accessory units within the next 5 years. Accelerating and encouraging ADU's will also be aided by new financing tools currently under development by the Community Development Commission and others, and by an "ADU Calculator" tool being created by MTC/ABAG for the region.

Additional initiatives for housing coming forward later this year will include possible rezoning of sites near employment and transit for housing, and a package of code amendments to allow and encourage new types of housing in appropriate locations. Finally, two Specific Plans currently underway-- in the Airport SMART station area and the Sonoma Springs area—have the potential to increase allowable residential uses and densities near employment and transit.

⁵ *Building HOMES: A Policy Maker's Toolbox for Ending Homelessness*, 2015 (http://www.sonoma-county.org/cdc/pdf/housing_toolbox_20150901.pdf)

⁶ Sonoma County Economic Development Board Winter 2018 Local Economic Report

Table 1: Summary of Planning Commission’s Recommended Code Changes

Description of Recommended Code Changes	Applicability	Code Sections (all references to Ch. 26)
Increase maximum size of accessory dwelling units to 1,200 sf; allow 1 bedroom/640 sf ADUs on rural 1 acre parcels served by public water or community well; and reduce development fees on graduated scale	Residential and Agricultural	26-88-060 Accessory Dwellings
Increase allowable residential floor area in Mixed Use projects to 80% residential and 20% commercial; and allow Mixed Use projects that provide affordable units on-site as a permitted use	LC, C2, C1	26-88-123 Mixed Use
Delay collection of affordable housing fees until near occupancy	All residential uses	Article 89 Affordable Housing Programs
Authorize Permit Sonoma Director to approve alternative equivalent affordable housing plans	All residential uses	26-89-040 Affordable Housing Requirements
Allow transitional and supportive housing in all zones that allow a single family dwelling	All residential uses	Multiple
Provide density bonus for projects providing housing units for foster youth, veterans & homeless	All residential uses	Article 89 Affordable Housing Programs
Allow small Single Room Occupancy (SRO) projects as a permitted use; allow larger SROs with a use permit; and eliminate the existing 30 room cap	LC, C2, R2, R3, PC	26-88-125 Single Room Occupancy

ISSUES DISCUSSED AT PLANNING COMMISSION

I. Reducing the minimum parcel size for an accessory dwelling unit from 1.5 acres to 1.0 acre for properties served by public or community water.

The County has required historically a minimum parcel size for rural accessory dwelling units served by septic to protect groundwater quality. The Well and Septic Division of Permit Sonoma determined that 2 acres was the minimum size that is large enough to accommodate the development of a single family home, an accessory unit, a standard or nonstandard septic system with the required expansion area and other site improvements such as driveways, while also maintaining the minimum required setbacks from wells, streams, property lines, roads, and other homes. Where parcel sizes are small and multiple properties develop housing units served by wells and septic systems, there is potential for groundwater contamination to occur, as happened in the Canon Manor neighborhood.

Your Board recently reduced the minimum lot size to 1.5 acres for small accessory dwelling units if a well test confirms a potable water supply or if the parcel is connected to community or public water. The current parcel size requirements and accessory dwelling unit size limitations are shown in *Table 2*, below.

Table 2: Current Minimum Parcel Size and Unit Size for Accessory Dwellings

Water and Sanitation Facilities	Minimum Parcel Size	Maximum Unit Size (sq. ft.)
Well and Septic	2.0 acres	1,000
Septic and Public or Community Water or Potable Well Test	1.5 acres	640 +1-bdrm
Public Sewer (in Urban Service Areas)	5,000 square feet	1,000

For parcels served by a community water system or public water, the concern about well water contamination from septic fields is significantly reduced because private water wells are generally not present in these areas. Limiting the size of accessory dwelling units in these situations reduces the septic system size and increases the potential to meet septic requirements. At the hearing, staff will present a graphic representation of the land area necessary to develop a home and accessory unit on a rural parcel with septic.

Planning Commission Discussion & Recommendation: The Commission was split on the minimum rural parcel size, with one Commissioner opining that minimum parcel sizes should not be further reduced and another opining that there should not be a minimum parcel size because septic regulations would determine capacity. The Commission was also concerned that lowering the minimum parcel size would create an expectation for landowners that may not be feasible. The Commission majority noted that cumulative impacts could not be known if the minimum parcel size is further reduced. The Commission majority was only comfortable with a reduced parcel size of one acre if the parcel is served by public water or a community well to avoid the potential impacts to groundwater. The Commission voted 3-2 to recommend a reduction of the current minimum parcel size for rural parcels to 1.0 acres for a small (up to 640 square feet) one-bedroom accessory unit when the parcel is served with public or community water.

II. Increasing the Maximum Unit Size for Accessory Dwelling Units from 1,000 to 1,200 square feet.

During the public process for the Board’s 2017 accessory dwelling unit ordinance, some members of the public, members of the Planning Commission, and members of your Board expressed a desire to increase the size limit for accessory dwelling units to 1,200 square feet (the maximum allowed in state law). This increase would be consistent with the City of Santa Rosa’s recently increased size limit for accessory dwelling units.

Since the fires, a number of displaced families have indicated a need for larger accessory dwelling

units. An accessory unit of 1,200 square feet is large enough to accommodate three or four bedrooms. On the other hand, it is important to encourage smaller rental dwelling units that have lower rents.

Planning Commission Discussion & Recommendation: The Commission voted 5-0 to recommend an increase in the maximum accessory dwelling unit size from 1,000 square feet to 1,200 square feet, but also recommended that the development fees be graduated in order to incentivize the construction of units of smaller units of 1,000 square feet or less (see Section III, following).

Table 3: Planning Commission Recommended Parcel Sizes Minimums and Unit Size Maximums

Water and Sanitation Facilities	Minimum Parcel Size	Maximum Unit Size (sq. ft.)
Well and Septic	2.0 acres	1,200
Septic and Public or Community Water, or on-site well ¹	1.5-1.99 acres	640/1-bdrm
Septic and Public or Community Water	1.0-1.49 acres ²	640/1-bdrm
Public Sewer (in Urban Service Area)	5,000 square feet	1,200

¹On-site well must meet current potable water supply standards as defined in Sonoma County Code Chapter 25B-3

²Not in Waiver Prohibition Areas

III. Countywide Development Impact Fees for ADUs and Previously Approved ADU Waivers

Local governments charge development fees (also known as impact fees) to mitigate the impacts of new development on capital facilities and infrastructure, such as roads and parks. Sonoma County imposes development fees on new residential and commercial uses. Currently, Parks and Traffic Development Fees combined amount to about \$7,400 per accessory dwelling unit. The Planning Commission recommended that a graduated fee schedule be adopted countywide to encourage construction of accessory dwellings and to incentivize property owners to build smaller, more affordable accessory dwelling units. The Board recognized the value of these type of incentives when it approved the waiver of ADU development impact fees as well as permit fees in the fire areas as part of the slate of emergency measures approved on October 24, 2017.

Attachment A, Summary of Accessory Dwelling Unit Fee Waivers, summarizes the estimated number of fee waivers and their associated costs for both the existing ADU fee waivers in the fire areas, as well as the proposed countywide development fee waivers. County Counsel confirmed that an alternative source of funds must be identified to protect those who are charged development fees from subsidizing fee reductions, and that delaying any mitigations would not adequately prevent fee payers from subsidizing fee waivers. Therefore, the County must backfill any waived and reduced fees with other funding sources. In total, staff estimates \$280,000 would be needed to backfill the proposed countywide ADU development fee waiver, which is in addition to the \$680,000 estimate to backfill the development and permit fee waivers for ADUs in the fire area through December 2019. Thus far, staff have processed **four applications eligible for ADU waivers** totaling approximately

\$60,000. Staff estimates there are sufficient appropriations to cover any waived costs for FY 2017-18.

However, it should be noted these are estimates and the actual number of waiver requests to be received is unknown for FY 2018-19, therefore, staff is recommending that we seek necessary appropriations authority via quarterly consolidated budget hearings based on the actual number of waivers requested during each quarter for both waiver programs.

Both Regional Parks and Transportation and Public Works have reviewed the Planning Commission recommendation and note that a park and traffic mitigation fee study is about to begin, and therefore it's possible that additional code changes may be required as a result of the study. Your Board may review and modify the fee reductions when the fee study is completed and a new fee schedule is proposed.

Planning Commission Recommendation: The Commission voted 5-0 to recommend the reduced and graduated fee structure shown in Table 4 below for accessory dwelling units countywide. The Planning Commission agreed that units less than 1,000 square feet would be more affordable due to their smaller size and should be incentivized by the fee reductions.

Table 4: Planning Commission Recommended Fee Reductions for Accessory Dwelling Units Countywide

Size of Unit	% of applicable development fees
<750 sq. ft.	0
751-1,000 sq. ft.	50%
1001-1200 sq. ft.	100%

IV. Other Planning Commission Recommended Changes for Housing. The Planning Commission voted 5-0 to recommend the following additional changes to the Zoning Code for housing:

Mixed Use Projects. Increase the allowable residential floor area in mixed use projects from 50% to 80%; make mixed use projects that meet the affordable housing requirements on site permitted uses (not subject to use permit) with design review. These allowances are for urban areas only where public services and sewer are available. The vast majority of urban sites zoned for mixed uses are less than 1 acre in size, so the resulting mixed use development would consist of small retail or neighborhood commercial uses with a few residential units. Design review approval would still be required.

Single Room Occupancy Facilities. The Commission voted to allow small SRO facilities (10 or less rooms) as a permitted use (without need for a use permit) in the commercial zones (LC, C2), and medium and high density residential zones (R2, R3, and PC); and, to remove the cap on larger SRO projects that require a use permit.

Timing of Collection of Affordable Housing Fees. The Commission recommended a Code change to change the timing of collection of affordable housing development fees (“affordable housing fees”) until closer to the final inspection, near project occupancy. This practice lowers housing costs by reducing out-of-pocket expenses during most of the construction phase that can amount to millions of dollars.

Approval of Alternative Equivalents. Article 89 (Affordable Housing Program) of the Zoning Code requires that all development participate in the County’s Affordable Housing Program in some way, and includes a provision allowing innovative proposals that provide an alternative that is equivalent to the statutory requirement (an “Alternative Equivalent Proposal”). While the Code includes the criteria by which Alternative Equivalent Proposals must be approved, it provides that only the Board of Supervisors may approve Alternative Equivalent Proposals. This requirement can result in significant delays and additional expense, particularly for smaller projects that would not otherwise require Board action. The Planning Commission recommended that the Code be amended to authorize the Director to approve Alternative Equivalent Proposals that meet Code criteria.

Transitional and Supportive Housing. The Planning Commission also recommends that the Zoning Code be amended to clarify that transitional and supportive housing is permitted in any zone district where residential uses are allowed, and is not subject to any additional standards other than those applied to other residential uses. These changes are consistent with recent changes in state law and with the General Plan Housing Element.

Density Bonus for Foster Youth, Disabled Veterans, and Homeless. The Planning Commission also recommended changes to allow density bonuses for housing for foster youth, disabled veterans, and homeless persons to be consistent with new state mandated requirements (codified as Government Code section 65915). The proposed new density bonus program allows a 20% density bonus for affordable housing projects that provide at least 10% of the project units for foster youth, disabled veterans, or homeless persons.

Please see the attached Planning Commission staff report for additional information and a discussion of policy options.

Prior Board Actions:

In October, November and December of 2017, the Board adopted numerous temporary provisions for housing, including a fee waiver for building and zoning permit fees in the burn areas and a reduced fee schedule for development impact fees for Parks and Traffic.

Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community			
The provision of adequate, safe housing for all residents fulfills the Board's Housing for All Strategic Priority.			
Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses	\$,75,000	\$900,000	\$300,000
Additional Appropriation Requested			
Total Expenditures	\$75,000	\$900,000	
Funding Sources			
General Fund GF	\$75,000	\$900,000	\$300,000
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources	\$75,000	\$900,000	\$300,000
Narrative Explanation of Fiscal Impacts:			
<p>Only the recommendations noted in Section III, related to ADU fee waivers, has an associated fiscal impact. Since the true number of waiver requests for both the proposed Countywide ADU development fee waivers and the previously approved fee waivers in the fire areas is unknown, staff are seeking approval to authorize appropriations for both waiver programs, as needed via quarterly budget adjustments for FY 2018-19 and FY 2019-20, based on the actual number of waiver requests received. FY 2018-19 costs are projected to be higher since the ADU waiver for the fire areas sunsets on December 19, 2019.</p>			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
Not applicable			
Attachments:			
Ordinance with Exhibits A-D			

Planning Commission Resolution
Planning Commission Staff Report dated 12 April 2018
Draft Planning Commission minutes from meeting of 12 April 2018

Related Items “On File” with the Clerk of the Board:

Not applicable

ORDINANCE NO

AN ORDINANCE OF THE BOARD OF SUPERVISORS, COUNTY OF SONOMA, STATE OF CALIFORNIA, AMENDING CHAPTER 26 OF THE SONOMA COUNTY CODE TO REDUCE CONSTRAINTS ON HOUSING BY ALLOWING A HIGHER PERCENTAGE OF RESIDENTIAL USE WITHIN MIXED USE DEVELOPMENTS, PROVIDING THAT MIXED USE DEVELOPMENTS THAT MEET AFFORDABILITY REQUIREMENTS ON-SITE ARE PERMITTED USES IN CERTAIN ZONES, REMOVING THE LIMITATION ON MAXIMUM NUMBER OF ROOMS IN SINGLE ROOM OCCUPANCY (SINGLE ROOM OCCUPANCY) PROJECTS, EXPANDING THE DENSITY BONUS PROGRAM, ALLOWING TRANSITIONAL AND SUPPORTIVE HOUSING UNITS IN ALL ZONES WHERE RESIDENTIAL USES ARE ALLOWED, DECREASING THE MINIMUM PARCEL SIZE FOR ACCESSORY DWELLING UNITS WHEN ON PUBLIC OR COMMUNITY WATER, INCREASING THE MAXIMUM SIZE OF ACCESSORY DWELLING UNITS FROM 1,000 SQUARE FEET TO 1,200 SQUARE FEET, AND MAKING OTHER MINOR CHANGES

The Board of Supervisors of the County of Sonoma, State of California, ordains as follows:

SECTION I. The Board finds and declares that the adoption of this Ordinance is necessary to expand opportunities for development of additional housing in unincorporated areas of Sonoma County. The Board finds that the following facts support the adoption of this ordinance:

1. The proposed amendments to Chapter 26 (Zoning Code) are consistent with the Sonoma County General Plan and all applicable specific plans and further the goals, objectives, and policies of the General Plan; and
2. There is a continuing and demonstrated need for the County's Affordable Housing Program;; and
3. Sonoma County's current rental vacancy rate is less than 1.5%, further exacerbating the difficulty of providing safe and secure housing that is affordable for lower-income families and for people who are homeless; and,
4. Sonoma County as a whole needs more than 17,144 homes that are affordable to low-income individuals and families. Median rents have increased over 16% since 2000, while median renter household incomes have decreased 6%. Sonoma County's lowest-income renters spend an average of 68% of their income on rent and utilities.
5. Government Code section 65852.2 authorizes local governments, including the County, to adopt zoning ordinances that provide for accessory dwelling units up to 1,200 square feet in size, and further

provides that an ADU that conforms to section 65852.2 shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot.

SECTION II. Section 26-88-060 (Accessory Dwelling Units) is replaced to read as set forth in the attached Exhibit A.

SECTION III. Section 26-88-123 (Mixed use developments) is replaced to read as set forth in the attached Exhibit B.

SECTION IV. Section 26-88-125 (Single room occupancy [SRO] facilities) is replaced to read as set forth in the attached Exhibit C.

SECTION V. Sonoma County Code Chapter 26, Article 89 (Affordable Housing Program Requirements and Incentives) is replaced as set forth in the attached Exhibit D.

SECTION VI. Sonoma County Code Section 26-04-010 (LIA Land Intensive Agriculture—Permitted Uses) is amended to add the following subsections to read as follows:

- (p) Transitional housing, subject to density limitations;
- (q) Permanent supportive housing, subject to density limitations.

SECTION VII. Sonoma County Code Section 26-06-010 (LEA Land Extensive Agriculture—Permitted Uses) is amended to add the following subsections to read as follows:

- (t) Transitional housing, subject to density limitations;
- (u) Permanent supportive housing, subject to density limitations.

SECTION VIII. Sonoma County Code Section 26-08-010 (DA Diverse Agriculture—Permitted Uses) is amended to add the following subsections to read as follows:

- (s) Transitional housing, subject to density limitations;
- (t) Permanent supportive housing, subject to density limitations.

SECTION IX. Sonoma County Code Section 26-10-010 (RRD Resources and Rural Development—Permitted Uses) is amended to add the following subsections to read as follows:

- (mm) Transitional housing, subject to density limitations.
- (nn) Permanent supportive housing, subject to density limitations.

SECTION X. Sonoma County Code Section 26-16-010 (AR Agriculture and Residential District—Permitted Uses) is amended to add the following subsections to read as follows:

- (hh) Transitional housing, subject to density limitations;
- (ii) Permanent supportive housing, subject to density limitations.

SECTION XI. Sonoma County Code Section 26-38-010 (CR Commercial Rural District—Permitted Uses) is amended to add the following subsections to read as follows:

- (m) Transitional housing, subject to density limitations;
- (n) Permanent supportive housing, subject to density limitations.

SECTION XII. Sonoma County Code Section 26-40-010 (AS Agricultural Services District—Permitted Uses) is amended to add the following subsections to read as follows:

- (u) Transitional housing, subject to density limitations;
- (v) Permanent supportive housing, subject to density limitations.

SECTION XIII. Sonoma County Code Section 26-28-010 (CO Administrative and Professional Office District—Permitted Uses) is amended to add the following subsections to read as follows:

- (o) Transitional housing, subject to density or building intensity limitations, when located within an existing, legal residential unit;
- (p) Permanent supportive housing, subject to density or building intensity limitations, when located within an existing, legal residential unit.

SECTION XIV. Sonoma County Code Section 26-30-010 (C1 Neighborhood Commercial District—Permitted Uses) is amended to add the following subsections to read as follows:

- (r) Transitional housing, subject to density or building intensity limitations, when located within an existing, legal residential unit;
- (s) Permanent supportive housing, subject to density or building intensity limitations, when located within an existing, legal residential unit.
- (t) Mixed Use development, in compliance with Section 26-88-123 (Mixed Use Developments) that provide affordable housing on-site meeting the inclusionary requirements of Article 89 (Affordable Housing).

SECTION XV. Sonoma County Code Section 26-32-010 (C2 Retail and Business Services District—Permitted Uses) is amended to add the following subsections to read as follows:

- (t) Transitional housing, subject to density or building intensity limitations, when located within an existing, legal residential unit;
- (u) Permanent supportive housing, subject to density or building intensity limitations, when located within an existing, legal residential unit.
- (v) Mixed Use development, in compliance with Section 26-88-123 (Mixed Use Developments) that provide affordable housing on-site meeting the inclusionary requirements of Article 89 (Affordable Housing Program).

SECTION XVI. Sonoma County Code Section 26-34-010 (C3 General Commercial District—Permitted Uses) is amended to add the following subsections to read as follows:

- (gg) Transitional housing, subject to density or building intensity limitations, when located within an existing, legal residential unit;
- (hh) Permanent supportive housing, subject to density or building intensity limitations, when located within an existing, legal residential unit.

SECTION XVII. Sonoma County Code Section 26-36-010 (LC Limited Commercial District—Permitted Uses) is amended to add the following subsections to read as follows:

- (bb) Transitional housing, subject to density or building intensity limitations, when located within an existing, legal residential unit;
- (cc) Permanent supportive housing, subject to density or building intensity limitations, when located within an existing, legal residential unit.
- (dd) Small Single Room Occupancy facilities subject to design review and in compliance with Section 26-88-125 (Single Room Occupancy Facilities).
- (ee) Mixed Use development, in compliance with Section 26-88-123 (Mixed Use Developments) that provide affordable housing on-site meeting the inclusionary requirements of Article 89 (Affordable Housing Program).

SECTION XVIII. Sonoma County Code Section 26-22-010 (R2 Medium Density Residential – Permitted Uses) is amended to add the following subsection:

- (w) Small Single Room Occupancy facilities subject to design review and in compliance with Section 26-88-125 (Single Room Occupancy Facilities).

SECTION XIX. Sonoma County Code Section 26-24-010 (R3 High Density Residential District– Permitted Uses) is amended to add the following subsection:

- (v) Small Single Room Occupancy facilities subject to design review and in compliance with Section 26-88-125 (Single Room Occupancy Facilities).

SECTION XX. Sonoma County Code Section 26-26-040 (PC Planned Community District– Permitted Uses) is amended to add the following subsection:

- (l) Small Single Room Occupancy facilities subject to design review and in compliance with Section 26-88-125 (Single Room Occupancy Facilities).

SECTION XXI. Sonoma County Code Section 26-30-020 (C1 Neighborhood Commercial District – Uses Permitted with a Use Permit) is amended to replace and add the following subsections to read as follows:

- (c) Mixed Use development, in compliance with Section 26-88-123 (Mixed Use Developments).
- (bb) In designated urban service areas, large single room occupancy (Single Room Occupancy) facilities in compliance with Section 26-88-125 (Single Room Occupancy Facilities).

SECTION XXII. Sonoma County Code Section 26-32-020 (C2 Retail Business and Service District – Uses Permitted with a Use Permit) is amended to replace and add the following subsections to read as follows:

- (b) Mixed Use development, in compliance with Section 26-88-123 (Mixed Use Developments).
- (bb) In designated urban service areas, large single room occupancy (Single Room Occupancy) facilities in compliance with Section 26-88-125 (Single Room Occupancy Facilities).

SECTION XXIII. Sonoma County Code Section 26-36-020 (LC Limited Commercial District – Uses Permitted with Use Permit) is amended to replace and add the following subsection:

- (c) Mixed Use development, in compliance with Section 26-88-123 (Mixed Use Developments).
- (cc) In designated urban service areas, large single room occupancy (Single Room Occupancy) facilities in compliance with Section 26-88-125 (Single Room Occupancy Facilities).

SECTION XXIV. The Board of Supervisors hereby finds and declares that project is exempt from the California Environmental Quality Act pursuant to Public Resources Code § 21080.17 (statutory exemption for ordinances implementing Gov. Code § 65852.2 regarding accessory dwelling units) and Cal. Code Regulations, title 14, §§ 15305 (minor alterations in land use limitations not resulting in changes in land use or density), 15303 (categorical exemption for construction of limited numbers of new, small facilities or structures), and 15061(b)(3) (exempting activities where it can be seen with certainty that there is no possibility that the activity may have an adverse effect on the environment).

SECTION XXV. If any part of this Ordinance is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity, unlawfulness or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any other part of this Ordinance.

SECTION XXVI. This Ordinance shall be and the same is hereby declared to be in full force and effect on and after 30 days following its passage, and shall be published once before the expiration of fifteen (15) days after passage, with the names of the Supervisors voting for or against the same, in a newspaper of general circulation, published in the County of Sonoma, State of California.

In regular session of the Board of Supervisors of the County of Sonoma, passed and adopted on the ___ day of ___, 2018, on regular roll call of the members of said Board by the following vote:

SUPERVISORS:

Gorin: ___ Rabbitt: ___ Zane: ___ Hopkins: ___ Gore: ___

Ayes: _____ Noes: _____ Absent: _____ Abstain: _____

WHEREUPON, the Chair declared the above and foregoing Ordinance duly adopted and

SO ORDERED.

Chair, Board of Supervisors
County of Sonoma

ATTEST:

Sheryl Bratton,
Clerk of the Board of Supervisors

Article 88. - General Exceptions and Special Use Standards.

Sec. 26-88-060. - Accessory dwelling units.

- (a) Purpose. This section implements the requirements of Government Code Section 65852.2 and the provisions of the general plan housing element that encourage the production of affordable housing by means of accessory dwelling units.
- (b) Applicability. Except as otherwise provided by this section, accessory dwelling units shall be ministerially permitted only in compliance with the requirements of this section, and all other requirements of the applicable zoning district in the following agricultural and residential zoning districts: LIA (Land Intensive Agriculture), LEA (Land Extensive Agriculture), DA (Diverse Agriculture), RRD (Rural Resources and Development), AR (Agricultural Residential), RR (Rural Residential), R1 (Low Density Residential), R2 (Medium Density Residential), and R3 (High Density Residential). Accessory dwelling units are prohibited in the Z (accessory dwelling unit exclusion) combining district.
- (c) Permit Requirements. A ministerial zoning permit (Section 26-92-170) shall be required for an accessory dwelling unit. Additionally, accessory dwelling units must comply with all other applicable building codes, fire codes, and requirements, including evidence of adequate septic capacity and water yield.
- (d) Appeals. Notwithstanding the provisions of Article 92 or any other provision of this Chapter, decisions to approve an application for an accessory dwelling unit that meets all applicable standards set forth in this article, and decisions to deny an application for failure to meet all applicable standards, are final and not subject to appeal.
- (e) Time Limits. Unless a longer timeframe is voluntarily requested by the applicant, the required zoning and building permits for an accessory dwelling unit shall be approved or denied within 120 days from submittal of an application that includes all materials required to process the permits.
- (f) Use. Accessory dwelling units may not be sold separately from the main unit or separated by subdivision, but may be rented separately. Occupant(s) need not be related to the property owner. Accessory dwelling units may not be rented on a transient occupancy basis (periods less than thirty (30) days). These requirements shall be included in a recorded deed restriction.
- (g) Unit Type. An accessory dwelling unit may be attached or detached from the primary dwelling on the site. A detached accessory dwelling unit may also be a manufactured home on a permanent foundation, in compliance with Section 26-02-140.
- (h) Timing. An accessory dwelling unit allowed by this section may be constructed prior to, concurrently with, or after construction of the primary dwelling.
- (i) Density. As provided by Government Code Section 65852.2(a)(1)(C), accessory dwelling units are exempt from the density limitations of the general plan, provided that no more than one (1) accessory dwelling unit may be located on any parcel. An accessory dwelling unit may not be located on any parcel already containing a dwelling unit that is non-conforming with respect to land use or density, or developed with a duplex, triplex, apartment or condominium.
- (j) Site Requirements.
 - (1) Water Availability.
 - (i) Except as provided in subsection (b) of this section, an accessory dwelling unit shall be permitted only in designated groundwater availability classification areas 1 or 2, or where public water is available.
 - (ii) An accessory dwelling unit in a Class 3 groundwater availability area shall be permitted only if:
 - (A) The domestic water source is located on the subject parcel, or a mutual water source is available; and

- (B) Groundwater yield is sufficient for the existing and proposed use, pursuant to Section 7-12 of this code.
- (iii) Accessory dwelling units shall not be established within designated Class 4 groundwater availability classification areas except where both requirements for Class 3 areas, above, are met and a groundwater report prepared by a qualified professional ~~determines-certifies~~ that the accessory dwelling unit would not result in a net increase in water use. On site water reduction may occur through implementation of water conservation measures, rainwater catchment or recycled water reuse system, water recharge project, or participation in a local groundwater management project.

(2) Minimum Parcel Size.

- (i) An accessory dwelling unit shall be permitted only on parcels with a minimum ~~gross~~-lot area as follows:

Accessory Dwelling Minimum Parcel and Unit Size

<u>WATER AND SANITATION</u>	<u>MINIMUM PARCEL SIZE</u>	<u>MAXIMUM UNIT SIZE (SQ. FT.)</u>
<u>Well and Septic</u>	<u>2.0 acres</u>	<u>1,200</u>
<u>Public or Community Water, or on-site well¹</u>	<u>1.5-1.99 acres</u>	<u>640/1-bdrm</u>
<u>Public or Community Water</u>	<u>1.0-1.49 acres²</u>	<u>640/1-bdrm</u>
<u>Public Water and Sewer within urban service areas</u>	<u>5,000 square feet</u>	<u>1,200</u>

¹ On-site well must meet current potable water supply standards as defined in Sonoma County Code Chapter 25B-3

² Not in Waiver Prohibition Area

~~(-of at least two (2) acres, except as provided for below:~~

~~(A) — An accessory dwelling unit shall be permitted on a parcel with a minimum of one and one-half (1.5) acres gross lot area if both of the following standards are satisfied:~~

- ~~(i) — The property is served by public water service, or a community water system, or an on-site well that has been demonstrated to meet current potable water supply standards as defined in Sonoma County Code Chapter 25B-3; and~~
- ~~— The accessory unit does not exceed 640 square feet and contains a maximum of one bedroom.~~

~~(B) — In designated urban service areas, where the parcel is served by public sewer, accessory dwelling units shall be permitted only on parcels with a minimum gross lot area of at least five thousand (5,000) square feet.~~

(k) Design and Development Standards.

- (1) Height. In designated urban service areas, an accessory dwelling unit shall not exceed sixteen feet (16") in height except that where the unit is attached to the primary unit, or where the accessory dwelling unit is proposed to be located above a garage, carport or barn, the maximum height shall be that established for the primary dwelling in the underlying zoning district. In no case shall the provision of an accessory dwelling unit result in a substantial reduction in solar access to surrounding properties.

- (2) Design. The accessory dwelling unit shall be similar or compatible in character to the primary residence on the site and to the surrounding residences in terms of roof pitch, eaves, building materials, colors and landscaping. Accessory units located within the SR (Scenic Resources) combining district shall be designed to meet the requirements in 26-24-020 (Community Separators and Scenic Landscape Units) or 26-24-030 (Scenic Corridors). Accessory units within the HD (Historic District) combining district shall meet the requirements of Section 26-68-025 (Standards Governing Decisions of County Landmarks Commission). However, review of accessory units within the HD combining district shall be completed administratively by the Director or his/her designee without public hearing. Accessory units located within the LG (Local Guidelines) Combining District shall meet the standards of Article 63 (LG Local Guidelines Combining District). Otherwise, no other design standards shall apply. Accessory dwelling units shall also meet all other standards set forth in any applicable combining district, specific plan or area plan, or local area development guidelines. Nothing in this subsection shall be construed to require discretionary review or permits for an accessory unit.
- (3) Size. An accessory unit shall not exceed one thousand ~~two hundred (1,200) 000~~ square feet in floor area ~~and shall not be larger than the single-family dwelling.~~
- (i) Calculating the Size of Accessory Dwelling Units. Floor area shall be calculated by measuring the exterior perimeter of the accessory dwelling unit and the length of any common walls. In the case of straw bale or similar construction, floor area may be calculated using interior dimensions. Any storage space or other enclosed areas attached to the accessory dwelling unit shall be included in the size calculation, except: a) an attached garage, as described in subsection (i)(3)(ii) of this section; or b) where the accessory dwelling unit is constructed over or attached to an unconditioned accessory structure, as described in subsection (i)(3)(iii) of this section.
- Accessory dwelling units located above garages of greater than 400 square feet shall be accessed through an exterior staircase only. Wherever an accessory dwelling unit is located above a garage, the total enclosed floor area of the second floor may not exceed ~~one thousand (1,000) square feet~~ the allowable floor area for the parcel.
- (ii) Allowable Garage Area. An attached garage up to four hundred (400) square feet in unconditioned floor area shall be permitted for an accessory dwelling unit provided that all required setbacks are met. No conditioned space shall be allowed within the garage area. An access door between the attached garage and the accessory dwelling unit may be provided. A deed restriction shall be recorded limiting the floor area of the accessory dwelling unit to the allowable floor area of the accessory unit for the parcel ~~one thousand (1,000) square feet~~, and declaring that no portion of the attached garage is to be utilized as a part of the conditioned residential space.
- (iii) Units Attached to Accessory Structures. Notwithstanding subsection (i)(3)(ii) above, an accessory dwelling unit may be located above or attached to a garage of more than four hundred (400) square feet, or a barn or other unconditioned accessory structure only where the garage or accessory structure clearly serves the primary residential or agricultural use of the property. In such cases, access to the accessory dwelling unit from the garage or accessory structure shall be provided by an exterior entrance only. Access doors between the attached structure and the accessory dwelling unit are prohibited. ~~Accessory dwelling units located above unconditioned accessory structures and garages of greater than four hundred (400) square feet shall be accessed through an exterior staircase only. Wherever an accessory dwelling unit is located above an unconditioned accessory structure or garage of greater than four hundred (400) square feet, the total enclosed floor area of the second floor may not exceed one thousand~~

~~(1,000) square feet. A deed restriction shall be recorded limiting the floor area of the accessory dwelling unit to one thousand (1,000) square feet, and declaring that no additional portion of the structure may be enclosed, converted, or utilized as conditioned or habitable space.~~

- (4) Lot Coverage Limitation. The total lot coverage for parcels developed with an accessory dwelling unit shall not exceed that allowed within the applicable zoning district in which the parcel is located.
- (5) Setback and Location Requirements.
 - (i) An accessory dwelling unit and any attached or detached garage must comply with the setback requirements of the applicable zoning district and combining districts in which the accessory dwelling unit is located, with the following exceptions:
 - (A) The rear yard setback for accessory dwelling units located in urban service areas within zone districts RR, R1, R2, and R3 shall be reduced to five feet (5').
 - (B) Setbacks for an accessory dwelling unit converted from a legal, permitted garage shall be reduced to zero feet (0'). Side and rear yard setbacks for an accessory dwelling unit constructed above a garage shall be reduced to five feet (5').
- (6) Access and Parking Requirements.
 - (i) Driveway Access. Both the primary unit and the accessory dwelling unit are strongly encouraged to be served by one common, all-weather surface access driveway with a minimum width of twelve feet (12'), connecting the accessory dwelling unit to a public or private road. Parking Required. One (1) off-street parking space with an all-weather surface shall be provided for the exclusive use of the accessory dwelling unit, in addition to the parking that is required for the primary dwelling. The parking space for the accessory dwelling unit may be allowed in the driveway and in tandem. Required parking shall be waived if:
 - (A) The parcel containing the accessory dwelling unit is within ½ mile of a public transit stop; or
 - (B) The accessory dwelling unit is located within the HD (Historic District) combining zone; or
 - (C) The accessory dwelling unit is part of the existing single-family dwelling or an existing accessory structure; or
 - (D) On-street parking permits are required but not offered to the occupant of the accessory dwelling unit; or
 - (E) A car share vehicle is located within one block of the property in which the accessory dwelling unit is located.
 - (ii) Replacing Required Parking. If a garage or carport that provides required parking space(s) for the primary unit is demolished or converted in conjunction with construction of an accessory dwelling unit, the required replacement spaces may be provided as covered or uncovered spaces.
 - (iii) Surfaces. Wherever feasible, the use of permeable surfaces for parking, driveway and walkway areas is strongly encouraged.
- (7) Public Water and Sewer Connections. Accessory dwelling units approved under section 26-88-060(k) (Conversion of an Existing Structure_) shall not be required to connect separately and directly to water or sewer systems and shall not be considered new

residential uses for the purpose of calculating water and sewer connection fees or capacity charges. An accessory dwelling unit that is not approved under 26-88-060(k) may be required to connect separately and directly to water or sewer systems and may be subject to connection fees or capacity charges proportionate to the burden placed by the accessory dwelling unit on the utilities. Nothing in this subsection shall be construed to transfer responsibility for water and sewer services to the County from any utility district or zone or supersede the regulatory authority of any utility district or zone.

(8) Standards for Accessory Dwelling Units Used to Meet the Affordable Housing Program Requirement. In addition to the standards set forth above, an accessory dwelling unit that is proposed to be made available for rent to another household in compliance with Article 89 requirements shall meet the following additional standards:

- (i) Separate Parking and Pathway. A designated parking space and a path of travel into the accessory dwelling unit that does not cross the private yard space of the main home.
- (ii) Doorways. No connecting doorways between the accessory dwelling unit and the main unit, except for a shared laundry room or vestibule; and
- (iii) Yard. Provision of a separate yard or open space area from that of the main dwelling. For accessory dwelling units located above other structures, this requirement may be met through the provision of a deck with no dimension of less than six (6) feet.

(l) Conversion of an Existing Structure in the R1 District. Notwithstanding the requirements of this section, a building permit for an accessory dwelling unit shall be approved if all the following circumstances are satisfied.

- (1) The parcel is located within the R1 (Low Density Residential) zoning district and is not within the Z (Accessory Dwelling Unit Exclusion) combining district; and
- (2) The accessory dwelling unit is located within the existing space of a single-family dwelling or a legal, permitted accessory structure in existence as of January 1, 2017; and
- (3) The accessory dwelling unit has exterior access independent from the single-family residence; and
- (4) The converted structure has side and rear setbacks sufficient for fire safety; and
- (5) The property owner records a deed restriction prohibiting transient occupancy (less than thirty (30) days) and separate sale, including subdivision.

Accessory dwelling units approved under this subsection shall not be required to provide new or separate water and sewer connections and shall not be charged a related connection fee or capacity charge.

(m) ~~Impact~~Development Fees. Notwithstanding any other provision of the Sonoma County Code, Traffic and Park Development ~~Impact~~Fees otherwise assessed for on new accessory dwelling units shall be waived or reduced as follows. These fee reductions may be modified at such time as a new fee study or fee schedule is adopted.:

Development Impact Fees for Accessory Dwelling Units

<u>Size of Unit</u>	<u>% of Development Impact Fees Assessed</u>
<u>Up to 750 sq. ft.</u>	<u>0%</u>
<u>751-1000 sq. ft.</u>	<u>50%</u>
<u>1001-1200 sq. ft.</u>	<u>100%</u>

Sec. 26-88-123. - Mixed use developments.

(a) Purpose. This section provides standards for mixed use developments and implements the general plan provisions related to mixed use.

(b) Limitations on Use.

- (1) A mixed use development may combine compatible residential units with commercial or other non-residential land uses allowed in the applicable zoning district, provided that not more than eighty percent (~~85~~0%) of the total gross project floor space is in residential floor area. ~~including residential garages, hallways, entries and similar areas.~~
- (i) In cases where at least twenty percent (20%) of the residential floor area is provided as housing affordable to lower-income households pursuant to Article 89 (Affordable Housing Program Requirements and Incentives), a fifteen percent (15%) increase in maximum lot coverage and a fifteen foot (15') increase in maximum building height shall be granted over that otherwise allowed in the underlying zone district. ~~the gross residential floor area may be increased up to seventy percent (70%) of the total project floor area pursuant to Section 26-89-050(D) (Mixed Use Project Density Bonuses and Incentives).~~
- (2) Mixed use developments shall comply with the building intensity limitations of the applicable zoning district.
- (3) A mixed use shall not be established or used in conjunction with any of the following activities:
 - (i) Adult entertainment activities/businesses;
 - (ii) Automotive and other vehicle repair, services, painting, storage, or upholstery, or the repair of engines, including automobiles, boats, motorcycles, trucks, or recreational vehicles;
 - (iii) Welding, machining, or open flame work;
 - (iv) Storage or shipping of flammable liquids or hazardous materials beyond that normally associated with a residential use; or
 - (v) Any other activity or use determined by the director to be incompatible with residential activities and/or to have the possibility of adversely affecting the health or safety of residents within, or adjacent to, a mixed use project because of the potential for the use to create excessive dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or to be unreasonably hazardous because of materials, processes, products or wastes.

(c) Location of Residential Units. Residential units may be located on any floor, provided that the first fifty feet (50') of the ground floor area measured perpendicular to each building face adjacent to any primary street frontage shall be reserved for commercial uses. The restriction against the residential use of this fifty foot (50') area does not apply to entryways, access corridors or stairs. This restriction may be waived or reduced where the applicant can demonstrate that all of the following criteria are met:

- (1) The provision of residential uses on the ground floor is necessary in order to provide compatibility with adjacent uses;
- (2) The site has an unusual lot configuration, access, or other unique circumstance such that the provision of ground floor residential results in a superior integration of residential and commercial uses on the site; and

- (3) The ground floor residential component provides a superior integration of the commercial uses into the surrounding commercial area.

(d) Design and Development Standards.

- (1) Residential Open Space. A minimum of ~~eighty-sixty~~ (860) square feet of private usable open space shall be provided for each residential unit within the project. The open space requirement may be met through provision of patios, decks, or enclosed yard areas, but no private space with a dimension of less than ~~eight-six~~ feet (86') shall be counted toward this requirement.
- (2) Parking. Projects shall comply with the parking standards set forth in [Section 26-86-010](#) (Parking) for each residential and nonresidential use included in the project, except that the residential parking need not be covered.
- (3) Loading and Refuse/Recycling Areas. Commercial loading areas, recycling areas, and refuse storage facilities for the commercial and other nonresidential uses shall be located away from residential units and shall be substantially screened from view from the residential portion of the project. Where appropriate, the project may provide for the shared use of recycling and refuse storage facilities.
- (4) Noise. Noise generated by mixed use projects shall be consistent with the general plan noise element. ~~No new projects, additions to existing projects, or new nonresidential uses within existing projects shall be approved until an acoustical analysis report, prepared by an acoustical engineer, is provided describing the acoustical design features of the project required to mitigate noise impacts.~~

(e) Maintenance of Common Facilities. Where there is more than one (1) property owner with shared interest in maintaining common facilities related to lighting, fencing, signs, landscaping, shared parking, etc., a joint owner's association shall be formed, a landscape assessment district shall be established, or a maintenance agreement recorded. If a joint owner's association or a landscape assessment district is established, the association or district shall be obligated and responsible for maintaining common facilities in accordance with the standards and requirements of this chapter and the conditions of any applicable use permit. If a maintenance agreement is recorded, the agreement shall clearly identify those individuals or entities obligated and responsible for maintaining the common facilities in accordance with the standards and requirements of this chapter and the conditions of any applicable use permit. Each agreement, resolution or other document establishing a joint owner's association, a landscape assessment district or a maintenance agreement shall include the county as a third party beneficiary with the right, but not the obligation, to enforce said agreement, resolution or other document. The agreement, resolution or other document shall be subject to review and approval by the county.

(f) Design Review Approval Required. All new mixed use projects, additions to existing projects, or new nonresidential uses in existing projects, shall be subject to design review approval in accordance with the standards of [Article 82](#) (Design Review). The design of mixed use projects shall demonstrate compatibility between the different uses and shall take into consideration compatibility with adjacent properties and land uses, and shall include specific design features and screening to properly mitigate any potential impacts, including light impacts, or other compatibility issues. Design review of site plan and layout shall include consideration of proximity and access to transit facilities. Project design shall ensure that privacy between residential units and other uses on the site is maximized.

(g) Findings-Criteria for Approval. A ~~use permit~~ mixed use development shall meet the criteria set forth below: may be approved for a mixed use development only if the decision maker makes all of the findings below, in addition to the findings required for use permit approval by [Section 26-92-080](#) (Use permit—Findings):

Exhibit B
Mixed Use Developments

- (1) The site ~~is shall be~~ located within an existing urban service area and adequate sewer and water to serve the intended use;
- ~~(2) Public services and infrastructure are adequate to serve the intended uses;~~
- (~~23~~3) The development must comply~~ies~~ with the standards and development criteria set forth in this section, Article 82 (Design Review), and the underlying ~~zoning district~~base zone;
- (~~34~~3) Residential and commercial uses ~~are shall be~~ integrated in such ~~as~~ manner as to address noise, hazardous materials, and other land use compatibility issues on site as well as off-site;
- (~~45~~4) The mixed use development ~~, as conditioned, is shall be~~ compatible with surrounding land uses and will not serve to inhibit commercial development on adjacent or nearby commercial parcels.

Sec. 26-88-125. - Single room occupancy (SRO) facilities.

(a) Criteria in General. The following are the minimum criteria applicable to all new single room occupancy (SRO) facilities:

- (1) All SRO facilities are subject to design review ~~and the granting of a use permit.~~
- (2) Transient occupancy of the SRO rooms shall not be allowed. SRO tenants shall not have an additional residential address other than the address of the SRO facility in which the residential unit is located.
- (3) SRO rooms within SRO facilities shall be provided at rents affordable to ~~persons households~~ with ~~very low or extremely low incomes~~ lower incomes.
- (4) Proximity to transit and alternative transportation modality shall be considered and encouraged in the siting of all SRO facilities.

(b) Small SRO Facilities. The following additional criteria shall apply to SRO facilities containing less than ten (10) SRO rooms:

- (1) Occupancy. SRO rooms shall be occupied by no more than two (2) persons. No transient occupancy is allowed; SRO rooms shall be occupied as the primary residence of the tenant.
- (2) Maximum Unit Size. No SRO room may exceed four hundred (400) square feet.
- (3) Common Facilities. Small SRO facilities shall provide individual or shared (common) bathing facilities, and may provide individual kitchen facilities. Any and all common facilities shall be provided as fully accessible to the satisfaction of the building official.
- (4) Laundry Facilities. Common laundry facilities shall be provided at a rate of not less than one (1) washer and one (1) dryer per facility, in addition to a laundry sink and folding area. The requirement for common on-site laundry facilities may be waived where it can be shown that a laundry facility open to the public is located within one-eighth of a mile from the project site.
- (5) Manager's Office or Unit. An on-site management office or manager's unit shall be provided. "House rules" shall be submitted as a part of the use permit application.
- (6) Parking. Off-street parking shall be provided as set forth in [Section 26-86-010](#) (Required parking). Secure bicycle parking is required.
- (7) Storage for Residents. Private, secured storage space of not less than fifty (50) cubic feet per resident shall be provided. Storage space may be provided in private closet(s) accessible from individual SRO rooms; and/or as individually locked areas accessible from a common room; and/or within a separate on-site storage structure. Where storage space is provided within a separate structure, such structure shall provide for separate, locking storage spaces for each SRO room, and shall be of sufficient construction to protect stored items from weather.

(c) Large SRO Facilities. The following additional criteria apply to all SRO facilities containing ten (10) or more SRO rooms:

- (1) Occupancy. SRO rooms shall be occupied by no more than two (2) persons. No transient occupancy is allowed; SRO rooms shall be occupied as the primary residence of the tenant.
- ~~(2) Maximum Facility Size. No SRO facility shall contain more than thirty (30) SRO rooms unless approved as a planned community (PC) in accordance with Section 26-26-040(e)(10) (PC Planned community), a larger number of rooms is approved by use permit. Additional shared facilities may be required by the use permit for SRO facilities with more than 30 rooms.~~
- ~~(23)~~ (23) Maximum Unit Size. No SRO room may exceed three hundred (300) square feet.
- ~~(34)~~ (34) Common Facilities.
 - (i) Kitchen. Within a large single room occupancy (SRO) facility, no more than fifty percent (50%) of individual rooms may be provided with kitchens or kitchenettes. At least one (1) common (shared) kitchen/dining area shall be provided within a large SRO facility.
 - (ii) Bathrooms. Private bathroom facilities shall be provided within each unit to include, at a minimum, a toilet and wash basin. Bathtubs and/or shower facilities may be provided within individual rooms, or may be shared.

(iii) Accessibility. Any and all common facilities shall be provided as fully accessible, to the satisfaction of the building official.

| ~~(45)~~ Laundry Facilities. Common laundry areas shall be provided at a rate of not less than one (1) washer and one (1) dryer for the first ten (10) rooms, with one (1) additional washer and one (1) additional dryer provided for every five (5) additional rooms or fraction thereof.

| ~~(56)~~ Manager's Unit. An on-site, live-in manager's unit shall be provided. A management plan, including the proposed "house rules," shall be submitted as a part of the use permit application.

| ~~(67)~~ Parking. Parking for SRO facilities shall be provided as set forth in Section 26.86.010, Required parking. Secure bicycle parking is required.

| ~~(78)~~ Storage for Residents. Private, secured storage space of not less than fifty (50) cubic feet per resident shall be provided. Storage space may be provided in private closet(s) accessible from individual SRO rooms; and/or as individually locked areas accessible from a common room; and/or within a separate on-site storage structure. Where storage space is provided within a separate structure, such structure shall provide for separate, locking storage spaces for each SRO room, and shall be of sufficient construction to protect stored items from weather.

Article 89 –Affordable Housing Program **Requirements and Incentives**

Sec. 26-89-040 Affordable Housing Requirements for Residential Development

A. Applicability and requirements. Unless otherwise exempt under Subsection 26-89-040.B., any person who constructs or develops one or more residential units, whether a single-family home, units in multi-family dwellings, or by condominium conversions or otherwise, shall provide affordable housing through one or more of the following three methods:

1. **On-site construction of the required affordable units.** Provide the required affordable unit(s) on-site, in compliance with the Section 26-89-040.C.;
2. **Payment of affordable housing fee.** Pay an affordable housing fee in compliance with Subsection 26-89-040.F.; or
3. **Alternative equivalent actions.** Perform an alternative equivalent action in compliance with Subsection 26-89-040.G.; which may be allowed to fulfill the affordable housing requirements of this Section if approved by the [Board/Director](#), at [its-his or her](#) sole discretion.

B. Exempt projects. The affordable housing requirements of this Section shall not apply to the following exempt projects and unit types:

1. **Project with vested rights.** A project that demonstrates a vested right to proceed without complying with this Section.
2. **Affordable units.** Affordable units which are subject to an Affordable Housing Agreement.
3. **Small Accessory dwellings.** ~~Accessory dwelling units and junior accessory dwelling units. Small housing units of no more than 1,000 square feet in gross living area, second dwelling units, and single room occupancy units.~~
4. **Agricultural related housing.** Farm family units of up to 1,200 square feet, agricultural employee units of up to 1,200 square feet, and seasonal, year-round, and extended seasonal farmworker housing.
5. **Alternative housing.** Homeless shelters, transitional housing, [supportive housing, single room occupancy facilities](#), community care facilities, group homes, and similar State licensed care facilities.
6. **Dwelling unit destroyed by fire or natural catastrophe.** Repair, reconstruction, or replacement of a legal dwelling unit that is destroyed by fire or natural catastrophe, provided that a Building Permit for repair, reconstruction, or replacement has been issued and construction begun within 10 years of destruction.
7. **Residential remodels and minor additions that add no more than 1,000 square feet.** Remodels and additions that add no more than 1,000 square feet to existing, legal dwelling units that do not result in the creation of an additional unit.
8. **Replacements.** Replacement of an existing, legal dwelling unit where the total living area within the replacement unit is no more than 1,000 square feet greater than the living area within the unit being replaced.
9. **Parcels with existing affordable units.** The construction or establishment of one new home on one single parcel, when the subject parcel contains an existing second dwelling unit, or a farm family unit or an employee unit of 1,000 square feet or less.
10. **General exemption.** Residential projects that can demonstrate that they will not contribute to the demand for affordable housing in the County or adversely impact the County's ability to meet its affordable housing needs.

C. Minimum Requirements for Construction of Affordable Units On-Site. To satisfy the requirements of this Article through the construction of affordable units on-site, the following minimum standards must be met:

1. **Number of Units: Ownership projects.** To meet the requirements of this Article through construction of affordable units on-site within an ownership housing project, at least 20

percent of all new dwelling units shall be affordable, and shall be constructed and completed at the same time as the market rate units in the same project.

a. Level of affordability required. At least one-half of the total number of required affordable units shall be provided as affordable to low-income households.

b. Remaining affordable units. The remaining affordable units may be provided as affordable to households with moderate or low incomes.

c. When number of units is an odd number. If the number of required affordable units is an odd number, the number of units affordable to moderate income households may be one greater than the number affordable to low-income households, so long as at least one low-income unit is provided.

2. Number of Units: Condominium or timeshare conversion projects. To meet the requirements of this Article through the provision of affordable units on-site within a project converting existing rental units or airspace parcels to condominium ownership, including common interest or timeshare projects, at least 30 percent of the converted units shall be offered for sale as affordable to low and very-low income households, as required by Housing Element Policy HE-1e or its subsequent equivalent.

3. Number of Units: Rental projects. To meet the requirements of this Article through construction of affordable units on-site within a rental housing project at least 15 percent of all new rental units shall be affordable to low- and very low-income households; or, at least 10 percent of all new rental units shall be affordable to very low- and extremely low-income households, as follows:

a. Allocation of Units - 15 percent option. If the person constructing or developing a rental housing project proposes to satisfy the requirements of this Article by providing 15% of the units as affordable rental units, at least one-half of the total number of required affordable units shall be provided as affordable to very low-income households. The remaining affordable units may be provided as affordable to low- or very low-income households. If the number of required affordable units is an odd number, the number of units affordable to low-income households may be one greater than the number affordable to very low-income households.

b. Allocation of Units - 10 percent option. If the person constructing or developing a rental housing project proposes to satisfy the requirements of this Article by providing 10% of the units as affordable rental units, at least one-half of the total number of affordable units shall be provided as affordable to extremely low-income households. The remaining affordable units may be provided as affordable to very low-income or extremely low-income households. If the number of required affordable units is an odd number, the number of units affordable to very low-income households may be one greater than the number affordable to extremely low-income households.

c. Timing. All affordable units provided pursuant to this subsection shall be constructed and made available for rent at the same time as the market-rate units within the remainder of the residential development.

4. Affordable Housing Agreement. Upon approval of any project proposing to provide affordable units on-site in compliance with this Section, and before any further action by the County concerning the project, including the recording of a final map, or the issuance of a Building Permit, the property owner shall execute an affordable housing agreement in compliance with [Section 26-89-100](#) (Affordable Housing Agreements). The affordable housing agreement shall be recorded concurrently with the final map, or before the issuance of a Building Permit, whichever occurs first.

5. Fractional calculations. If calculating the number of units required by Subsection C. results in a fractional unit requirement, the applicant may satisfy that fractional requirement by:

a. Construction of an additional affordable unit;

b. On qualifying agricultural parcels, construction or conversion of a unit to a farm family or agricultural employee unit containing not more than 1,000 square feet of living area, or a farmworker bunkhouse containing at least two bunks for unaccompanied workers in compliance with Subparagraphs ~~26-88-060-010~~ (I) (Seasonal Farmworker Housing) or ~~(or)~~ Year-Round or Extended Farmworker Housing. Farm family and agricultural employee units may be constructed to satisfy a fractional requirement under this Subparagraph only, and shall not otherwise be considered an affordable unit for the purposes of meeting the affordable unit requirements of this article; or,

c. On parcels eligible for a ~~second~~ accessory dwelling unit, construction or conversion of an existing unit to a ~~second~~ accessory dwelling unit pursuant to ~~26-88-060~~ (Accessory Dwelling Units). ~~Second-Accessory~~ Second-Accessory dwelling units may be constructed to defer payment of the affordable housing fee that would otherwise be due for the construction of one new single-family home on one single parcel only, provided that an Affordable Housing Fee Deferral Agreement, in a form acceptable to County Counsel, is signed by the property owner and recorded to ensure that the unit will remain available for rent to a qualified low-income household at an affordable rent. The fee will be automatically deferred in each year that the second dwelling unit continues to be made available for rent under the terms of the Affordable Housing Fee Deferral Agreement. Should the property owner cease renting the unit, or otherwise fail to comply with the terms of the Fee Deferral Agreement, then the affordable housing fee in effect at the time will be immediately due and payable to County and a Notice of Cancellation of the Affordable Housing Fee Deferral Agreement shall be recorded. In this case, credit shall be given for each year that the unit has been rented to a low income household at an affordable rent in compliance with the Agreement, with the term for being 30 years. Any remaining portion of the term may be met through payment of the remaining pro-rated affordable housing fee, using the fee amount in effect at the time that the owner ceases renting the unit. Provision of a ~~second~~ accessory dwelling unit shall not otherwise be considered as meeting the affordable unit requirements of this Article. In cases involving the subdivision of property, provision of a separate ~~second-accessory~~ second-accessory dwelling unit on each parcel may meet the affordable unit requirement of this article only for each parcel upon which a ~~second~~ accessory dwelling unit is placed and a covenant recorded to ensure that the unit will remain available for rent.

D. Affordable housing fee. When the requirements of this Article are met through the payment of an affordable housing fee, payment shall be made in accordance with the following:

1. Determination of fee. The amount and calculation of affordable housing fees shall be established by resolution of the Board. Thereafter, the affordable housing fees shall be increased or decreased annually by the percentage change in the Construction Cost Index for the San Francisco Bay Area for the prior year, as reflected in the third quarter Engineering News Record. The affordable housing fee shall be automatically adjusted, and a new schedule published by the Director effective on January 1st of each year. This adjustment will offset the effects of inflation related to construction cost increases or deflation-related cost decreases. If the Construction Cost index is discontinued, the Director shall use a comparable index for determining the changes in the median home costs for the County. The fee shall be periodically reviewed and updated at least every five years.

2. Timing of payment. The affordable housing fees shall be calculated at the time of Building Permit application. The fee shall be paid at the time of the wallboard inspection issuance of the Building Permit for each non-exempt residential unit, unless proof is provided that the required affordable housing units will be constructed on site; ~~or~~ that an alternative equivalent action was previously approved in compliance with Subsection 26-89-040.G; or that a fee deferral agreement in compliance with Section 26-89-040 (C) (5) pursuant to Sonoma County Code Section 26-8-800 has been granted.

3. Affordable Housing Fee Trust Fund Guidelines. There shall be established a separate account for affordable housing fees within the County Fund for Housing (CFH) as may be necessary to avoid commingling as required by law, or as deemed appropriate to further the purposes of the affordable housing fees. The County's use of the affordable housing fees, along with any interest earnings, shall comply with all of the following requirements.

a. Affordable housing fees deposited in the CFH, along with any interest earnings, shall be allocated for uses that increase and improve the supply of housing affordable to households of extremely low-, very low-, low-, and moderate incomes, including:

- (1) The acquisition of property and property rights; and
- (2) The cost of construction including costs associated with planning, administration, and design, building or installation, development fees, on- and off-site improvements, and any other costs associated with the planning, predevelopment, permitting, construction and financing of affordable housing.

b. Monies may also be used to cover administrative expenses incurred by the Department or the CDC in connection with affordable housing and not otherwise reimbursed through processing and other fees, including:

- (1) Reasonable consultant and legal expenses related to the establishment and/or administration of the affordable housing fee account;
- (2) Reasonable expenses for administering the process of calculating, collecting, and accounting for affordable housing fees authorized by this Section; and
- (3) County and CDC administrative costs for project development, permitting, post Development Code compliance, and the ongoing monitoring of affordable housing projects constructed with affordable housing fee trust funds.

c. Adequate cost accounting procedures shall be utilized and documented for all of the expenditures.

d. No portion of the collected affordable housing fees shall be diverted to other purposes by way of loan or otherwise.

G. Alternative equivalent actions. The ~~Board-Director~~ may, at ~~its~~-his or her sole discretion, approve an alternative equivalent action to the provision of the affordable units on-site or payment of the affordable housing fee, as follows.

1. Scope of alternative proposals. Proposals for an alternative equivalent action may include:

- a. The dedication of vacant land (see Subparagraph G.5., below, Standards for land dedications);
- b. The construction of affordable rental or ownership units on another site within the unincorporated area of the County; or
- c. The acquisition and enforcement of rental or sales price restrictions on existing market rate dwelling units in compliance with this Article.

2. Content of proposal. A proposal for an equivalent alternative action shall show how the requested alternative action will further affordable housing opportunities in the County to an equal or greater extent than the provision of the affordable housing units on-site in compliance with Subsection C. (Number of affordable units required), or payment of the affordable housing fee in compliance with Subsection F. (Affordable housing fee).

3. Review and approval. Only the ~~Board-Director~~ can approve an alternative equivalent action under this Section. A proposal for an alternative equivalent action may be approved by the ~~Board-Director~~ only if the ~~Board-Director~~ finds that the alternative action will further affordable housing opportunities in the County to an equal or greater extent than the construction of the required affordable units as part of the project or payment of the affordable housing fee, as applicable.

4. Performance of alternative action. After approval by the ~~Board~~ Director of a proposal for an alternative action, entitlements for that alternative action shall be processed concurrent with the market-rate project. If the alternative action includes construction of affordable units on another site or the acquisition and enforcement of rental/sales price restrictions on existing market rate units, an Affordable Housing Agreement in compliance with Section 26.89.100 shall be recorded for each of those units before recordation of any final map for, or issuance of any Building Permit within, the market-rate project, and the affordable units shall be constructed or acquired concurrent with, or before, the construction of the market rate units.

5. Standards for land dedications.

a. Offers of dedication. An applicant who proposes to dedicate land located within the unincorporated area of the County as a means of satisfying the requirements of this Article shall offer the land dedication as a part of the initial application for project approval. The applicant's offer shall describe the site, shall offer it for dedication at no cost to the County, and shall include a site plan illustrating the feasibility of locating and constructing the number of affordable units for which the applicant is requesting credit.

b. Site suitability and appraisal.

(1) The applicant shall provide a site suitability analysis which demonstrates that the land proposed for dedication is suitable for the development of affordable housing in terms of size, location, General Plan land use designation, availability of services, proximity to public transit, adjacent land uses, access, physical characteristics and configuration, and other relevant planning criteria. Department staff shall evaluate the site suitability analysis, identify the site's projected unit capacity, and recommend to the review authority whether the site should be accepted or conditionally accepted. An environmental evaluation may be required as a part of the site suitability analysis.

(2) The applicant shall provide an appraisal of the land proposed for dedication. The appraisal shall be prepared by a qualified land appraiser and shall conform to the Uniform Standards of Professional Appraisal Practice as adopted by the Appraisal Standards Board of the Appraisal Foundation.

(3) All County staff costs associated with the determination of site suitability, and all expenses incurred to determine legal status of the site, to perform environmental assessments and to obtain an appraisal, shall be borne by the applicant.

c. Calculation of credit for dedication of land. Following review of the appraisal and site suitability analysis, the County shall determine the extent to which the dedication shall satisfy the requirements of this Article as follows:

(1) The County shall offer to credit the applicant for the land dedication only to the extent that the appraised value of the land to be dedicated equals the full development cost of providing the required affordable units under Subsection 26-89-040.C.1 (Ownership projects) or Subsection 26-89-040.C.2 (Rental projects) , including both land costs and construction costs.

(2) If the appraised value of the land is less than the total projected development cost for the number of affordable units required under Subsection 26-89-040.C.1 (Ownership projects) or Subsection 26-89-040.C.2 (Rental projects), the applicant will be credited with only the number of affordable units for which development costs are covered by the value of the land.

(3) The applicant shall agree to satisfy any remaining obligations under this Article by providing additional affordable units on the project site, or paying applicable affordable housing fees.

d. Procedure for acceptance of site. The County shall not accept an offer of dedication nor approve the proposed residential project until all of the conditions of acceptance of the land, if any, have been completed by the applicant. The County's formal acceptance of the offer of dedication shall take place concurrently with its approval of the residential project. The grant deed dedicating the site to the County, or to a developer of affordable housing approved by the County, shall be recorded before issuance of any Building Permit within the market rate project.

Sec. 26-89-045 - Workforce Housing Program Requirements

A. Applicability and requirements. Unless otherwise exempt under Subsection 26-89-045.B., any person who constructs new or expanded nonresidential development, shall contribute to the County's affordable housing program through one or more of the following three methods:

1. **On-site construction of the required affordable units.** Provide the required affordable unit(s) on-site, in compliance with Subsection 26-89-045.C. as allowed by the underlying zone district (i.e., mixed use, work/live);
2. **Payment of workforce housing fee.** Pay the workforce housing fee in compliance with Subsection 26-89-045.E; or
3. **Alternative equivalent actions.** Perform an alternative equivalent action in compliance with Subsection 26-89-045.F; which may be allowed to fulfill the affordable housing requirements of this Section if approved by the **Board/Director**, at its sole discretion.

B. Exempt projects. The affordable housing requirements of this Section shall not apply to the following exempt projects:

1. **Project with vested rights.** A project that demonstrates a vested right to proceed without complying with this Section.
2. **Public and nonprofit projects.** Public projects and nonprofit projects which provide a public benefit to the community.
3. **Small projects and additions.** Projects and additions of less than 2,000 square feet in total gross floor area.
4. **Floor area discount.** The requirements of this Section shall not apply to the first 2,000 square feet of nonresidential floor area in all new developments.
5. **Structures destroyed by fire or natural catastrophe.** Repair, reconstruction, or replacement of a legal nonresidential structure that is destroyed by fire or natural catastrophe, provided that a Building Permit for repair, reconstruction, or replacement has been issued and construction begun within 10 years of destruction.
6. **Nonresidential replacements or remodels.** Remodels or replacements to existing, legal structures that do not result in the creation of additional floor area.
7. **Do not contribute to the demand for affordable housing.** Projects that clearly do not contribute to the demand for affordable housing (e.g., unmanned utility structures, parking garages, and agricultural exempt structures).

C. On-Site Construction of Units. To satisfy the requirements of this Section through the construction of affordable units on-site, the following minimum standards must be met:

1. **Number of affordable units required.** To satisfy the requirements of this Section through on-site construction, affordable housing units must be constructed on-site in compliance with the Table 1 (Number of affordable units required), below:
2. **Level of affordability required.** At least one-half of the total number of required affordable units shall be provided as affordable to very low-income households. The remaining affordable units may be provided as affordable to households with low incomes. If the number of required affordable units is an odd number, the number of units affordable

to low-income households may be one greater than the number affordable to very low-income households, so long as at least one very low-income unit is provided.

TABLE 1
NUMBER OF AFFORDABLE UNITS REQUIRED

Type of Nonresidential Development	Number of New Units to be provided for extremely Low-, Very Low-, and Low-income Households (per 1,000 square feet of floor area) ^{1,2}
Commercial, Office, Medical, and Hotels	.05
Light Industry, Warehousing, Manufacturing, Research and Development, Food and Agricultural Processing	.06
Retail, restaurants and commercial services	.09

Notes:

1. For purposes of this table, the floor area excludes all garage areas permanently allocated for employee or customer vehicle parking.
2. All fractional units shall be rounded up to the nearest whole number.
3. **Affordable Housing Agreement.** Upon approval of any nonresidential project proposing to provide affordable units on-site in compliance with this Section, and before any further action by the County concerning the project, including the recording of a final map, or the issuance of a Building Permit, the property owner shall execute an affordable housing agreement in compliance with Section 26-89-100 (Affordable Housing Agreements). The affordable housing agreement shall be recorded concurrently with the final map, or before the issuance of a Building Permit within the project, whichever occurs first.
4. **Timing of Construction of Units.** Proposed affordable units shall be constructed on site concurrent with, or before, the construction of the nonresidential project. No occupancy of any portion of the nonresidential project shall be granted until occupancy of the affordable residential units is granted.
5. **Fractional units.** If calculating the number of units required by this Section results in a fractional unit requirement, the applicant may satisfy that fractional unit requirement by:
 - a. Constructing an additional affordable unit;
 - b. Paying an fee in compliance with Subsection E. (Workforce Housing Fee); or,
 - c. Performing an alternative equivalent action approved by the Board-Director in compliance with Subsection G. (Alternative Equivalent Actions).
- E. **Workforce housing fee.** To satisfy the requirements of this Section through the payment of a fee, payment shall be made in accordance with the following:
 1. **Determination of fee.** The amount of the workforce housing fee shall be established by resolution of the Board. Thereafter, the workforce housing fee shall be increased or decreased annually by the percentage change in the Construction Cost Index for the San Francisco Bay Area for the prior year, as reflected in the third quarter Engineering News Record. The workforce housing fee shall be automatically adjusted, and a new schedule published by the Director, effective on January 1st of each year. This adjustment will offset the effects of inflation related to construction cost increases or deflation-related cost decreases. If the Construction Cost index is discontinued, the Director shall use a comparable index for determining the changes in the median home costs for the County. The fee shall be periodically reviewed and updated at least every five years to reflect any changes in the need for affordable housing resulting from new nonresidential development.

2. **Timing of payment.** The workforce housing fee shall be calculated at the time of Building Permit application. The fee shall be paid at the time of issuance of the Building Permit for each nonresidential project, unless proof is provided that the required affordable housing units will be constructed on-site or that an alternative equivalent action was previously approved in compliance with Subsection 26-89-040(G).
3. **Workforce Housing Fee Trust Fund Guidelines.** There shall be established a separate account for workforce housing fees within the County Fund for Housing (CFH) as may be necessary to avoid commingling as required by law, or as deemed appropriate to further the purposes of the workforce housing fees. The County's use of the workforce housing fees, along with any interest earnings, shall comply with all of the following requirements.
 - a. Workforce housing fees deposited in the CFH, along with any interest earnings, shall be allocated for uses that increase and improve the supply of housing affordable to households of extremely low-, very low-, low-, and moderate incomes, including:
 - (1) The acquisition of property and property rights for the construction of affordable housing; and
 - (2) The cost of construction including costs associated with planning, administration, and design, building or installation, development fees, on- and off-site improvements, and any other costs associated with the planning, predevelopment, permitting, construction and financing of affordable housing.
 - b. Monies may also be used to cover administrative expenses incurred by the Department or the CDC in connection with affordable housing and not otherwise reimbursed through processing and other fees, including:
 - (1) Reasonable consultant and legal expenses related to the establishment and/or administration of the workforce housing fee account;
 - (2) Reasonable expenses for administering the process of calculating, collecting, and accounting for workforce housing fees authorized by this Section; and
 - (3) County and CDC administrative costs for project development, permitting, post-development code compliance, and the ongoing monitoring of affordable housing projects constructed with workforce housing fee trust funds.
 - c. Adequate cost accounting procedures shall be utilized and documented for all of the expenditures.
 - d. No portion of the collected workforce housing fees shall be diverted to other purposes by way of loan or otherwise.

F. **Alternative equivalent actions.** The ~~Board-Director~~ may, ~~in his or her~~ at its sole discretion, approve an alternative equivalent action to the provision of the affordable units on site or payment of the workforce housing fee, as follows.

1. **Scope of alternative proposals.** Proposals for an alternative equivalent action may include:
 - a. The dedication of vacant land (see Subparagraph G. 5, Standards for land dedications); or,
 - b. The construction of affordable rental or ownership units on another site within the unincorporated area of the County;
 - c. The acquisition and enforcement of rental/sales price restrictions on existing market rate dwelling units in compliance with this Article; or
 - d. Employer based programs providing direct subsidy to qualified employees, including mortgage buy-downs or rental assistance that provides long-term affordability.
2. **Content of proposal.** A proposal for an equivalent alternative action shall show how the requested alternative action will further affordable housing opportunities in the County to an equal or greater extent than the provision of the affordable housing units on site in

compliance with Subsection C. (Number of affordable units required), or payment of the workforce housing fee in compliance with Subsection E. (Workforce housing fee).

3. **Review and approval.** Only the **Board-Director** can approve an equivalent alternative action under this Section. A proposal for an alternative equivalent action may be approved by the **Board-Director** only if the **Board-Director** finds that the alternative action will further affordable housing opportunities in the County to an equal or greater extent than the construction of the required affordable units as part of the project or payment of the workforce housing fee.
4. **Performance of alternative action.** After approval by the **Board-Director** of a proposal for an alternative action, entitlements for that alternative action shall be processed concurrent with the nonresidential projects. If the alternative action includes construction of affordable units on another site or the acquisition and enforcement of rental/sales price restrictions on existing market rate units, an Affordable Housing Agreement in compliance with Subsection 26.89.100 shall be recorded for each of those units before recordation of any final map for, or issuance of any Building Permit within, the nonresidential project, and the affordable units shall be constructed or acquired concurrent with, or before, the construction of the nonresidential project.
5. **Standards for land dedications.**
 - a. **Offers of dedication.** An applicant who proposes to dedicate land located within the unincorporated area of the County in lieu of constructing the affordable units required by this Section shall offer the land dedication as a part of the initial application for project approval. The applicant's offer shall describe the site, shall offer it for dedication at no cost to the County, and shall include a site plan illustrating the feasibility of locating and constructing the number of required affordable units for which the applicant is requesting housing fee credit.
 - b. **Site suitability and appraisal.**
 - (1) The applicant shall provide a site suitability analysis which demonstrates that the land proposed for dedication is suitable for the development of affordable housing in terms of size, location, General Plan land use designation, availability of services, proximity to public transit, adjacent land uses, access to streets and walkways, physical characteristics and configuration, and other relevant planning criteria. Department staff shall evaluate the site suitability analysis, identify the site's projected unit capacity, and recommend to the review authority whether the site should be accepted or conditionally accepted. An environmental evaluation may be required as a part of the site suitability analysis.
 - (2) The applicant shall provide an appraisal of the land proposed for dedication. The appraisal shall be prepared by a qualified land appraiser and shall conform to the Uniform Standards of Professional Appraisal Practice as adopted by the Appraisal Standards Board of the Appraisal Foundation.
 - (3) All County staff costs associated with the determination of site suitability, and all expenses incurred to determine legal status of site, to perform environmental assessments and to obtain an appraisal, shall be borne by the applicant.
 - c. **Number of units credited to dedication of land.** Following review of the appraisal and site suitability analysis, the County shall determine the number of required affordable housing units for which the applicant will receive credit upon dedication of the site.
 - (1) The County will offer to credit the applicant for the land dedication only to the extent that the appraised value of the land to be dedicated equals the full development cost of providing the required affordable units including both land costs and construction costs.
 - (2) If the appraised value of the land is less than the total projected development cost for the number of affordable units required, the applicant will be credited with only the

number of affordable units for which development costs are covered by the value of the land.

- (3) The applicant shall agree to provide any remaining affordable units required by this Section on the project site, or to pay the applicable workforce housing fee for the remaining number of required units.

d. Procedure for acceptance of site. The County shall not accept an offer of dedication or approve the proposed nonresidential project until all of the conditions of acceptance of the land, if any, have been completed by the applicant. The County's formal acceptance of the offer of dedication shall take place concurrently with its approval of the nonresidential project. The grant deed dedicating the site to the County, or to a developer of affordable housing approved by the County, shall be recorded before issuance of any Building Permit within the nonresidential project.

Sec. 26-89-050 Density Bonus Program

A. Applicability.

1. A project that is proposed to provide affordable housing units or to provide land for the affordable housing units, and which meets or exceeds the minimum thresholds of affordability specified below, may request a density bonus in compliance with one of the applicable density bonus programs provided by this Section.

2. Only one density bonus program may be applied to each project.

3. Density bonus programs shall not be applied to General Plan and Zoning Database amendments, but rather may be approved only in conjunction with a development permit (i.e., tentative map, parcel map, Conditional Use Permit, or Design Review).

B. Application requirements. The density bonuses provided by this Section shall be granted by the County only after the filing and approval of an application, as follows.

1. Application filing. The applicant shall file with the Department an application for a density bonus and other incentives in compliance with this Section either before, or concurrent with, the submittal of an application for discretionary project approval (for example, a tentative map, parcel map, conditional use permit or design review). Modifications to an existing application for a density bonus shall be considered a new application.

2. Application requirements. An application shall include all of the following information:

a. A detailed development plan and description of the proposed project, including a Housing Proposal in compliance with Subsection 26-89-030.G. (Housing Proposal Required) outlining the number, type, size, tenure, number of bedrooms and proposed affordability level for each and every unit within the development;

b. The density bonus program under which the application is filed (e.g., State density bonus program, Supplemental density bonus program, Mixed use project density bonus, ~~Type A~~Rental Housing Opportunity Area Program, or ~~Type C~~Ownership Housing Opportunity Program);

c. The type of density bonus incentive requested, of those listed in Section 26-89-060 (Affordable Housing Incentives);

d. If more than one incentive is requested in compliance with Subsection 26-89-060.B. (Affordable Housing Incentives: Additional Incentives), a statement of why the project is eligible for the additional

incentives. Eligibility for the additional incentive may be shown by establishing that the project will provide affordable housing in the percentages specified in Subsection 26-89-060.B.1., that the project meets other Housing Element goals (e.g., provision of housing for seniors, special housing needs individuals, and/or other goals), and/or that the additional incentive is necessary to improve the financial feasibility of the development and to allow the applicant to provide additional affordability or affordability for a longer term;

e. Any alternative incentive being requested in compliance with Subsection 26-89-060.D. (Request for Alternative Incentive), together with a statement as to why, due to the particular characteristics of the project site, the alternative incentive is necessary to provide for affordable housing costs; and

f. Any other information deemed necessary by the Director to allow a complete evaluation of the application.

3. Consideration of application. An application for a density bonus shall be considered and approved only as an integral part of the County's approval of a discretionary development permit for the project (i.e., at the time of approval of a subdivision, Conditional Use Permit, Design Review, or other required land use permit). The project approval shall identify the density bonus and other incentive(s) that the County has granted the applicant, and any waiver or modification of standards that may have been approved for the project.

C. State density bonus program. In addition to the incentives provided by Section 26-89-060 (Affordable Housing Incentives), a residential project of five or more base units that provides affordable or senior housing, or that provides land for construction of affordable housing, or that provides affordable housing along with child care facilities, or that provides ten percent (10%) of total housing units for transitional foster youth as defined in Section 66025.9 of the Education Code, disabled veterans as defined in Government Code Section 18542, or homeless persons as defined in the federal McKinney-Vento Homeless Assistance Act all as specified below, shall be eligible for a density bonus to allow more dwelling units than otherwise allowed on the site by the applicable General Plan Land Use Map and zone district, in compliance with the following:

1. Density bonus for on-site construction of very low-income housing.

a. A 20 percent density bonus shall be granted to any housing project of five or more base units that is constructed to provide at least five percent of the base units for very low-income households.

b. For each one percent increase in the number of base units provided as affordable to very low-income households above the five percent specified in Subparagraph C.1.a., above, the density bonus shall be increased by two and one-half percent, up to a maximum of 35 percent above the maximum density allowed by the General Plan and zone district, as shown in Table 2.

2. Density bonus for on-site construction of low-income housing.

a. A 20 percent density bonus shall be granted to any housing project of five or more base units that is constructed to provide at least ~~10~~ten percent ~~(10%)~~ of the base units for low-income households.

STATE DENSITY BONUS PROGRAM
AFFORDABILITY AND INCENTIVE SCHEDULE

Table 2: Density Bonus Calculations Single- and Multi-Family Developments		
% Affordable*	% DB**	# Incentives
Low-Income Units		
10	20.0	1
11	21.5	1
12	23.0	1
13	24.5	1
14	26.0	1
15	27.5	1
16	29.0	1
17	30.5	1
18	32.0	1
19	33.5	1
20	35.0	2
30	35.0	3
Very Low-Income Units		
5	20	1
6	22.5	1
7	25	1
8	27.5	1
9	30	1
10	32.5	2
11	35	2
15	35	3

Table 3: Density Bonus Calculations Condos and Planned Developments		
% Affordable*	% DB**	# Incentives
Moderate-Income		
10	5	1
11	6	1
12	7	1
13	8	1
14	9	1
15	10	1
16	11	1
17	12	1
18	13	1
19	14	1
20	15	2
21	16	2
22	17	2
23	18	2
24	19	2
25	20	2
26	21	2
27	22	2
28	23	2
29	24	2
30	25	3
31	26	3

Table 3: Density Bonus Calculations Condos and Planned Developments		
% Affordable*	% DB**	# Incentives
32	27	3
33	28	3
34	29	3
35	30	3
36	31	3
37	32	3
38	33	3
39	34	3
40	35	3

* The density bonus units shall not be included when determining the number of affordable units required.

** All density calculations resulting in fractional units shall be rounded up to the next whole number.

b. For each one percent increase in the number of base units provided as affordable for low-income households above the 10 percent specified in Subparagraph C.2.a., above, the density bonus shall be increased by one and one-half percent, up to a maximum of 35 percent above the maximum density allowed by the General Plan and zone district, as shown in Table 2, above.

3. Density bonus for on-site construction of senior housing. A 20 percent density bonus shall be granted to any housing project that is constructed to provide at least 35 dwelling units for senior households.

4. Density bonus for construction of moderate income housing in condominium and planned development construction projects.

a. A five percent density bonus shall be granted to any condominium project or planned development of five or more base units that is constructed to provide at least 10 percent of the base units for moderate-income households.

b. For each one percent increase in the number of base units provided as affordable to moderate income households above the 10 percent specified in Subparagraph C. 4. a., above, the density bonus shall be increased by one percent up to a maximum of 35 percent above the maximum density allowed by the General Plan and zone district, as shown in Table 3, above.

c. Modifications or waivers of development standards that are approved as part of the condominium or planned development project shall be considered additional incentives in compliance with Subsection 26-89-060.B.

5. Density bonus for provision of affordable housing in condominium conversion projects.

a. In the case of a condominium conversion, a 25 percent density bonus shall be granted, or other incentives of equivalent financial value shall be offered, if the project is constructed to provide at least: (1) 33 percent of the base units to low- or moderate-income households; or

(2) 15 percent of the base units to lower-income households.

b. An applicant shall be ineligible for a density bonus or other incentives in compliance with this Subparagraph if the apartments proposed for conversion constitute a housing development for which a density bonus or other financial incentives were previously provided.

6. Density bonus for donation of land for affordable housing.

a. A 15 percent density bonus shall be granted to a residential project of five or more base units if the project applicant donates land to the County for development of affordable housing in compliance with all of the following:

(1) The applicant shall donate and transfer the land no later than the date of approval of the final map, parcel map, or other residential project application, whichever comes first;

(2) The developable acreage and zoning classification of the land shall be sufficient to allow construction of units affordable to very low-income households in an amount not less than 10 percent of the number of residential units of the proposed project;

(3) The transferred land shall:

(a) Be at least one acre in size or of sufficient size to allow development of at least 40 units;

(b) Have appropriate General Plan and zone district designation for development of affordable housing;

(c) Be served by adequate public facilities and infrastructure; and

(d) Have appropriate zoning and development standards to make the development of the affordable units feasible.

(4) Before transfer of the land, the applicant shall obtain all permits and approvals, except Building Permits, necessary for development of very low-income housing units in compliance with this Subparagraph. At the County's discretion, Design Review may be delayed until after transfer of the land;

(5) The transferred land and the affordable units constructed upon it shall be subject to a deed restriction ensuring continued affordability in compliance with Section 26-89-090;

(6) The land shall be transferred to the County or to a developer of affordable housing approved by the County. The County may, at its discretion, require the applicant to identify and transfer the land to an approved developer; and

(7) The transferred land shall be within the boundary of the proposed project or, with the approval of the County, within one-quarter mile of the boundary of the proposed development.

(8) A proposed source of funding for the very-low income units shall be identified no later than the date of approval of final subdivision map, parcel map or residential development application.

b. For each one percent increase above the 10 percent land donation described in Subparagraph C.6.a., above, the density bonus shall be increased by one percent up to a maximum of 35 percent above the maximum density allowed by the General Plan and zone district.

7. Childcare facilities.

a. If a residential project that meets the minimum State density bonus requirements specified in Subparagraphs C.1 through C.4., above, includes a child care facility on the premises of or adjacent to the project, then the County shall grant either of the following:

(1) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility; or

(2) An additional incentive that contributes significantly to the economic feasibility of the construction of the childcare facility.

b. If a density bonus or additional incentive is granted in compliance with this Subparagraph, the child care facility shall be required:

(1) To remain in operation for a period of time that is equal to or longer than the period of time during which the density bonus units are required to remain affordable under this Section; and

(2) To ensure that, of the children who attend the child care facility, the percentage of children of very low-income households, low-income households, or moderate-income households equals the percentage of dwelling units required for each of those income categories in compliance with Subparagraphs C.1, C.2, or C.4., above, as applicable.

c. For purposes of this Subparagraph, a "child care facility" means a child care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and school age child care centers.

8. Combining density bonuses. The density bonuses specified in Subparagraphs C.1 through C.7., above, may be combined, but shall in no case, except as otherwise provided in this Section, result in an increase in density for the residential project above 35 percent above the maximum density allowed by the General Plan and zone district.

D. County supplemental density bonus program.

1. In addition to the incentives provided by Section 26-89-060 (Affordable Housing Incentives), a residential project of five or more base units shall be eligible for a density bonus of up to 50 percent above the maximum density allowed by the General Plan and zone district, if the project provides a total of:

a. 10 percent or more of the base units for extremely low-income households;

b. 20 percent or more of the base units for very low-income households;

c. 30 percent or more of the base units for low-income senior households;

d. 30 percent or more of the base units for low-income households, with 10 percent or more of those base units provided as fully accessible units for low-income disabled households;

e. 30 percent or more of the base units for low-income households, with 10 percent or more of those base units provided as large rental units with three or more bedrooms for low-income large family (5 or more persons) households; or

f. 40 percent or more of the base units for low-income households, or

g. A state density bonus program-qualifying project for very-low or low-income households that also provides 33 percent or more of the total project units as powered by on-site renewable energy systems capable of generating at least 70 percent of the projected electrical energy demand of the units or results in an equivalent reduction in utility costs; or

h. 30 percent or more of the base units for low-income households, with 100 percent of the total project units providing at least the 3 basic tenants of universal design (stepless entry and thresholds, complete single floor living area with 32-inch doorways, and environmental controls at accessible heights).

~~E. Mixed use project density bonuses. A mixed use project in compliance with Section 26-88-123 (Mixed Use Developments) in which at least 20 percent of the residential floor area is provided as housing affordable to extremely low-, very low- or low-income households, shall be eligible for an increase in the residential floor area to allow the gross residential floor area to be up to a maximum of 70 percent of the total project floor area, provided that the overall residential density does not exceed 24 dwelling units per acre.~~

~~EF.~~ Housing Opportunity ~~Area~~-Program bonuses.

1. ~~Type A-Rental~~ Housing Opportunity ~~Area~~-Program requirements ~~(formerly Type A)~~. ~~Only r~~Rental housing projects consisting of two or more base dwelling units may ~~participate in the Type A~~ qualify for the ~~Rental~~ Housing Opportunity program.

a. ~~Type A-Rental Housing Opportunity~~ areas established. ~~Type A h~~Housing opportunity areas ~~for rental housing~~ may be established in locations designated by the General Plan Land Use Maps as:

(1) Urban Residential, six to 12 dwelling units per acre, that are zoned R-2 (Medium Density Residential); and

(2) Urban Residential 12 to 20 dwelling units per acre, that are zoned R-3 (High Density Residential).

b. ~~Type A-Rental housing~~ project density increase. A ~~Type A-rental~~ project that is allowed two or more dwelling units by the applicable zone district may be constructed at up to twice the base density, provided that a minimum of ~~forty 40~~ percent ~~(40%)~~ of the total units within the project will be provided as affordable for rent to very low- or low-income households, and further provided that in no case may the total density exceed that shown in Table 4, below.

c. ~~Type-Rental A~~Housing Opportunity development standards. A ~~Type A-rental housing opportunity~~ development ~~shall consist of rental housing, and~~ shall comply with all of the development standards established by this Development Code for the R3 (High Density Residential) zone district.

Table 4
MAXIMUM ALLOWABLE DENSITY

Density as Shown on Zoning Database Map	Maximum Allowable Density (Type A-Rental Housing Opportunity)
6 units per acre	12 units per acre
7 units per acre	14 units per acre
8 units per acre	16 units per acre
9 units per acre	18 units per acre
10 units per acre	20 units per acre

Density as Shown on Zoning Database Map	Maximum Allowable Density (Type A Rental Housing Opportunity)
11 units per acre	22 units per acre
12 units per acre	24 units per acre
13 units per acre	26 units per acre
14 units per acre	28 units per acre
15 units per acre	30 units per acre
16 units per acre	30-32 units per acre
17 units per acre	30-34 units per acre
18 units per acre	30-36 units per acre
19 units per acre	30-38 units per acre
20 units per acre	30-40 units per acre

2. ~~Ownership Type C~~ Housing Opportunity Area Program requirements (~~formerly Type C~~). Only residential projects consisting of four or more base dwelling units may ~~participate-qualify for in~~ the ~~Type C~~ ~~Ownership~~ Housing Opportunity program.

a. ~~Type C~~ ~~Ownership Housing Opportunity~~ areas established. ~~Type C~~ ~~Ownership~~ Housing Opportunity areas may be established in locations identified by the General Plan as Urban Residential with a density of two to six dwelling units per acre, and that are zoned R-1 or R-2.

b. ~~Type C~~ ~~Ownership housing~~ project density increase. An ~~Ownership Housing Opportunity~~ ~~Type C~~ project that is allowed four or more dwelling units by the applicable zone district may be approved for development as a small-lot subdivision at a density of up to ~~eleven (11)~~ dwelling units per acre if:

(1) The site is designated by the General Plan Land Use Map with a density of two ~~(2)~~ to six ~~(6)~~ dwelling units per acre;

(2) A minimum of ~~twenty 20~~-percent ~~(20%)~~ of the units are reserved for sale to very low- or low-income households; and

(3) The remainder of the units are reserved for sale to low- and moderate-income households.

c. ~~Type C~~ ~~Ownership housing~~ development standards. An ~~ownership housing~~ ~~Type C~~ development shall comply with all of the following standards.

(1) Parcel configurations and sizes. The parcel configurations within a ~~Type C~~ ~~an ownership housing opportunity~~ ~~Ownership Housing Opportunity~~ development may include zero lot-line parcels, angled Z lots, zipper lots, flag lots, alternate width parcels, quad lots, and motor court lots. Parcel sizes may range from 2,000 to 6,000 square feet or more. A variety of parcel configurations and parcel sizes shall be provided in a development on any site larger than three acres.

(2) Allowable floor area ratio. Allowable dwelling size shall be based on parcel area. Actual house sizes, as well as parcel sizes, in a proposed development plan may vary so long as the averages shown in

Table 5, below, are maintained. "Dwelling size" refers to the gross living area of the primary dwelling only; storage sheds, garages, carports, covered patios, and decks are not included in the gross living area.

Table 5
DWELLING SIZE

Average Parcel Size	2,000	2,500	3,000	3,500	4,000	4,500	5,000	5,500	6,000
Average House Size	1,000	1,100	1,200	1,300	1,400	1,500	1,600	1,700	1,800

Note: All quantities are in square feet of floor area (can be interpolated).

How to Use the Table. First, determine the average parcel size of the single-family parcels in the proposed development. Next, determine the allowable average dwelling size of the single-family dwellings in the proposed development. The average dwelling size shall not be greater than shown in the table.

(3) Subsequent expansions or additions. Subsequent expansions or additions to dwelling units, if not shown on the development plan, may be allowed in the future only where the proposed expansion is within a designated building envelope shown on the development plan.

(4) Setback/yard requirements. Setbacks and yards shall be provided in compliance with the standards of the R-3 zone district.

(a) Setbacks for all proposed and possible future structures or additions shall be designated on the development plan.

(b) Front yard setbacks shall be varied.

(c) A garage or carport with a vehicle entrance facing the street shall be set back a minimum of 20 feet from the rear of the public sidewalk, or 20 feet from the property or adopted street plan line, whichever is greater.

(5) Private open space requirement. Each dwelling unit or parcel shall be designed to provide a minimum of 400 square feet of usable private open space.

(6) Maximum structure height. The maximum height of structures is 35 feet.

(7) Maximum coverage. Maximum allowable structure coverage is 65 percent. The use of alternative permeable surfaces is strongly encouraged for driveways, walkways, and patios wherever feasible in order to maintain or enhance groundwater absorption and recharge.

d. Alternatives to development standards. An applicant for an Ownership Housing Opportunity ~~Type-C~~ project may propose alternatives to the development standards in Subparagraph F.2., above, provided that in no case shall the residential density exceed eleven (11) units per acre. ~~C~~conditional use permit approval shall be required to authorize alternative development standards. A conditional use permit application for alternative standards shall be processed concurrently with the required design review and subdivision applications. (Ord. No. 6085, § IV(Exh. C), 10-7-2014)



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number: 69
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors of Sonoma County

Board Agenda Date: May 8, 2018

Vote Requirement: Majority

Department or Agency Name(s): Department of Health Services

Staff Name and Phone Number:

Barbie Robinson, 565-4774

Supervisorial District(s):

Title: Authorization to Implement Layoff Procedures within the Department of Health Services

Recommended Actions:

Authorize the Department of Health Services, in coordination with and oversight by the Human Resources Department, to administer layoff proceedings and to mitigate layoffs to the extent possible in accordance with Civil Service Rule 11: Layoffs.

Executive Summary:

Reduced revenue projections for fiscal year 2018-2019 combined with an anticipated reduction in state and federal funding have made it necessary for the Department of Health Services to develop a fiscal year 2018-2019 budget that includes a reduction of 107.32 allocated positions, resulting in up to 30 layoffs. The Department of Health Services is requesting Board approval to implement the Layoff Provisions of the Rules of the Sonoma County Civil Service Commission, specifically Rule 11: Layoffs. This agenda item does not request authority to delete position allocations. The Department will return to the Board in June 2018, during scheduled budget hearings, to request authority to delete specific position allocations with the fiscal year 2018-2019 budget.

Discussion:

The Department of Health Services fiscal year 2017-2018 mid-year projections indicated a budget deficit of \$8.6 million in the Department's Behavioral Health Division. This deficit was primarily the result of an over-projection of funding from the Federal Financial Participation program, the federal program that enables the Department to claim reimbursement for Medi-Cal services. Through a number of mitigation strategies, primarily the use of one-time funds, the Department was able to avoid staff reductions during fiscal year 2017-2018.

The fiscal year 2018-2019 projection for Federal Financial Participation is approximately \$10 million less than the projection included in the fiscal year 2017-2018 budget. This reduced projection requires the Department to reduce expenditures to achieve a balanced budget. In addition, 1991 Realignment funding, a significant source of funding for the Department, including Administration, the Public Health

Division, and the Behavioral Health Division, is anticipated to remain at fiscal year 2017-2018 levels for several years.

To align expenditures to available revenues, Health Services expects to recommend to the Board at the June budget hearings a reduction to salaries and benefits of nearly \$8.4 million for fiscal year 2018-2019. This includes the elimination of 107.32 full-time equivalent positions, including approximately 78 vacant positions and up to 30 filled positions subject to layoff. This will result in a reduction of the Department's permanent full-time equivalent positions from 650.70 to 543.38. In addition, the Department plans to reduce the total amount of funding for community services contracts in fiscal year 2018-2019 by approximately \$7.3 million, impacting approximately 50 providers.

The Department is also implementing a number of revenue enhancement strategies in the Behavioral Health Division, including the implementation of the behavioral health electronic health record that will support improved documentation and reimbursement. The Department will also be implementing a number of enhanced internal controls to provide a check and balance on revenue projections that includes continuous monitoring of the revenues and expenditures for all cost centers with monthly benchmarks and mid-course adjustments as necessary. These controls include improved staff reporting structures and role delineation; the development of key reports and other tools for staff and leadership to better inform fiscal operations; and the creation of staff and management partnerships that are designed to promote high performance, high productivity, and a high quality system of care.

With respect to the provision of behavioral health services, planned budget reductions require a redesign of the entire system of care to focus on core services including state mandates for operating a county mental health managed care plan. The redesigned model maintains compliance with these state requirements by focusing on the most vulnerable, chronically mentally ill individuals, as this population is at the core of the mandates for the county mental health plan. Services outside the core will be provided within available resources.

If approved, the Board's action today will authorize the Department, in coordination with the Human Resources Department, to develop a timeline, create and audit seniority lists and layoff notices, and engage employee organizations in the meet and confer process. Timely action is critical to ensure the Department meets the requirement to provide formal notice of 21 calendar days to affected employees in conjunction with the adoption of the fiscal year 2018-2019 budget. If the Board does not authorize the Department to implement the administration of layoff proceedings, it will delay the effective date of position deletions which may require deeper cuts to maintain a balanced budget.

Due to anticipated attrition through retirements, resignations, and promotions, the Department expects fewer than 30 employees will be laid off from County service. With the Board's action today, over the next several weeks and until adoption of the fiscal year 2018-2019 budget, the Department, in coordination with Human Resources, plans to continue monitoring vacancies closely for opportunities to mitigate layoffs to the maximum extent possible. On April 17th the Board approved layoff mitigation strategies put forth by the Human Resources Department. These strategies provide enhanced opportunities for employees affected by the layoffs. Strategies include the Human Resources Department maintaining a county-wide list of position reductions and impacted employees which will be used to match eligible candidates with position requisitions prior to opening a recruitment.

Should nothing change between now and when the Board adopts the budget in June, and the Board takes the recommended actions to approve the proposed reduction of 107.32 full-time equivalent positions, the following positions will be deleted from the fiscal year 2018-2019 budget:

Job Classification	FTE (Vacant)	FTE (Filled/Layoff)	FTE Total
Account Clerk II	1.00	0.50	1.50
Administrative Aide	1.00		1.00
Administrative Services Officer I	1.00		1.00
Animal Control Officer II	1.00		1.00
AODS Assistant II		1.00	1.00
AODS Assistant III		1.00	1.00
AODS Counselor I/II	3.49	5.43	8.92
AODS Specialist		1.50	1.50
Behavioral Health Clinical Specialist	1.00	1.00	2.00
Behavioral Health Clinician/Intern	23.60		23.60
Client Care Manager		1.00	1.00
Client Support Specialist	6.00	0.50	6.50
Community Health Worker II	0.15		0.15
Dept. Information Systems Manager		1.00	1.00
Dept. Information Systems Specialist II		8.00	8.00
Director of HPPE		1.00	1.00
Health Information Specialist II	2.00		2.00
Health Program Manager	2.20	2.00	4.20
Health Services Section Manager		2.00	2.00
Licensed Vocational Nurse I/II	4.50	0.50	5.00
Nurse Practitioner/Physician Assistant	2.25		2.25
Nutritionist	0.40		0.40
Office Assistant II	1.00		1.00
Program Planning & Evaluation Analyst	2.00		2.00
Psychiatric Nurse	2.90		2.90
Psychiatric Technician	4.00	1.00	5.00
Public Health Nurse II	2.75		2.75
Senior Office Assistant	9.20		9.20
Social Service Supervisor I	1.00		1.00
Social Service Worker II	2.00	1.00	3.00
Staff Nurse II	0.65		0.65
Staff Psychiatrist	0.80		0.80
Supervising Public Health Nurse	2.00	1.00	3.00
TOTAL	77.89	29.43	107.32

Prior Board Actions:			
N/A			
Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community			
The Department of Health Services will continue to care for its most vulnerable populations despite budget reductions.			
Fiscal Summary			
Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures	0		
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources	0		
Narrative Explanation of Fiscal Impacts:			
There are no costs directly associated with this action. The action authorizes the initiation of layoff procedures in preparation for adoption of the FY 18-19 budget. Actual reductions to appropriations and positions will be made in the FY 18-19 budget hearings with the Board in June 2018.			
Staffing Impacts			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
Narrative Explanation of Staffing Impacts (If Required):			
N/A			
Attachments:			
None			
Related Items "On File" with the Clerk of the Board:			
None			



Sonoma County Project Review and Advisory Committee
ACTIONS

Sonoma County Permit and Resource Management Department
2550 Ventura Avenue, Santa Rosa, CA 95403
(707) 565-1900 FAX (707) 565-1103

Date: May 3, 2018

COMMITTEE MEMBERS

Keith Hanna, Sanitation - Vice Chair
Scott Orr for Blake Hillegas, Planning - Secretary
Shelley Janek, Agricultural Commissioner's Office
Laurel Putnam, Department of Transportation and Public Works
Yoash Tilles, Grading and Storm Water
Becky Ver Meer, Health Specialist
Leonard Gabrielson, Surveyor - Chair

REGULAR CALENDAR

Item No: 1
Time: 9:05 a.m.
File No.: CMO17-0007
Staff: Gary Helfrich
Applicant: James Dickey
Owner: Ursus Development Group, Inc.
Con't from: n/a
Env. Doc: Categorical Exemption
Proposal: Request for a Certificate of Modification to remove a 25 foot wide easement on a 2.75 acre parcel.
Location: 3330 Laughlin Road, Santa Rosa
APN: 059-370-016
District: 4
Zoning: Industrial Park (MP) 2 acre average, Valley Oak Habitat (VOH)

Action: Laurel Putnam moved to find the project Categorical Exempt from CEQA and approve the Certificate of Modification subject to attached Findings and Conditions. Seconded by Keith Hanna and passed with a 6-0-1 vote.
Appeal Deadline: 10 calendar days

Sonoma County Project Review and Advisory Committee Actions
May 3, 2018

Vote:

Keith Hanna:	Aye
Scott Orr:	Aye
Shelley Janek:	Absent
Laurel Putnam:	Aye
Yoash Tilles:	Aye
Becky Ver Meer:	Aye
Leonard Gabrielson:	Aye

Ayes:	6
Noes:	0
Absent:	1
Abstain:	0