

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
COUNTY OF HUMBOLDT
AND
CITY OF EUREKA
FOR FISCAL YEARS 2020-2021 THROUGH 2022-2023**

This Memorandum of Understanding (“MOU”), entered into this 20 day of July, 2021, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as “COUNTY,” and the City of Eureka, a California municipal corporation, hereinafter referred to as “CITY,” is made upon the following considerations:

WHEREAS, in accordance with the applicable Homeless Strategy and Implementation Plan and the Housing First model requirements, COUNTY has identified several goals and objectives pertaining to the reduction of homelessness in Humboldt County, including, without limitation, the provision of rental assistance, housing relocation and stabilization, outreach, coordination, homelessness prevention, shelter diversion, case management and/or supportive services that are designed to allow individuals and families who are, or at risk of, experiencing homelessness to obtain and maintain stable housing; and

WHEREAS, on January 23, 2018, the Humboldt County Board of Supervisors allocated One Hundred Thousand Dollars (\$100,000.00) to CITY for the purpose of partially funding the Betty’s Community Housing Project which provides housing relocation and stabilization services that are consistent with COUNTY’s goals and objectives of reducing homelessness within Humboldt County; and

WHEREAS, the parties desire to enter into an agreement which sets forth each party’s rights and responsibilities regarding the expenditure of homelessness prevention funds allocated to CITY.

NOW THEREFORE, the parties hereto mutually agree as follows:

1. RIGHTS AND RESPONSIBILITIES OF COUNTY:

COUNTY shall provide CITY with an amount not to exceed One Hundred Thousand Dollars (\$100,000.00) for the purpose of paying the costs and expenses associated with purchasing building materials and construction services, including, without limitation, grading, utility extension and connection, trailer placement, fencing, landscaping and paving materials and services, necessary to further develop the CITY-owned site, known as Betty’s Community Housing, located on Hilfiker Lane, APN 019-271-004, in Eureka, California.

2. RIGHTS AND RESPONSIBILITIES OF CITY:

CITY shall purchase building materials and construction services, including, without limitation, grading, utility extension and connection, trailer placement, fencing, landscaping and paving materials and services, necessary to further develop the CITY-owned site, known as Betty’s Community Housing, located on Hilfiker Lane, APN 019-271-004, in Eureka, California. CITY shall submit to COUNTY approved invoices which include the cost of each product and/or service purchased, along with proof that either an appropriate bid process was utilized or that the requirements of sole source purchases were met, for each purchase made pursuant to the terms and conditions of this MOU.

3. TERM:

This MOU shall begin on 7-20, 2021 and shall remain in full force and effect until June 30, 2023, unless sooner terminated as provided herein.

4. TERMINATION:

- A. Termination for Cause. COUNTY may, in its sole discretion, immediately terminate this MOU, if CITY fails to adequately fulfill its obligations hereunder, fails to comply with the terms or conditions set forth herein, or violates any local, state or federal law, regulation or standard applicable to its performance hereunder.
- B. Termination without Cause. COUNTY may terminate this MOU without cause upon thirty (30) days advance written notice which states the effective date of the termination.
- C. Termination due to Insufficient Funding. COUNTY's obligations under this MOU are contingent upon the availability of local, state and/or federal funds. In the event such funding is reduced or eliminated, COUNTY shall, at its sole discretion, determine whether this MOU shall be terminated. COUNTY shall provide CITY seven (7) days advance written notice of its intent to terminate this MOU due to insufficient funding.
- D. Compensation upon Termination. In the event this MOU is terminated, CITY shall be entitled to compensation for uncompensated costs and expenses incurred pursuant to the terms and conditions set forth herein through, and including, the effective date of such termination. However, this provision shall not limit or reduce any damages owed to COUNTY due to a breach of this MOU by CITY.

5. COMPENSATION:

- A. Maximum Amount Payable. The maximum amount payable by COUNTY for any and all costs and expenses incurred pursuant to the terms and conditions of this MOU is One Hundred Thousand Dollars (\$100,000.00). CITY agrees to perform all of its obligations hereunder for an amount not to exceed such maximum dollar amount. However, if local, state or federal funding or allowance rates are reduced or eliminated, COUNTY may, by amendment, reduce the maximum amount payable hereunder or terminate this MOU as provided herein.
- B. Additional Costs and Expenses. Any additional costs and expenses not otherwise set forth herein shall not be provided by CITY, or compensated by COUNTY, without COUNTY's prior written authorization. Any and all unauthorized costs and expenses incurred above the maximum payable amount set forth herein shall be the responsibility of CITY. CITY shall notify COUNTY, in writing, at least six (6) weeks prior to the date upon which CITY estimates that the maximum payable amount will be reached.

6. PAYMENT:

CITY shall submit to COUNTY quarterly invoices itemizing any and all costs and expenses incurred, pursuant to the terms and conditions of this MOU within thirty ten (10) days after the end of each calendar quarter. CITY shall submit a final invoice for payment within thirty (30) days following the expiration or termination of this MOU. Invoices shall be in a format approved, and include any and all backup documentation as specified, by the Humboldt County Administrative Officer and the Humboldt County Auditor-Controller. Payment for the costs and expenses incurred pursuant to the terms and conditions of this MOU shall be made within thirty (30) days after the receipt of approved invoices. Any and all invoices submitted by CITY shall be sent to COUNTY at the following address:

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COUNTY: Humboldt County Administrative Office
Attention: Elishia Hayes, Assistant County Administrative Officer
825 Fifth Street, Room 112
Eureka, California 95501

7. NOTICES:

Any and all notices required to be given pursuant to the terms and conditions of this MOU shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

COUNTY: Humboldt County Administrative Office
Attention: Elishia Hayes, Assistant County Administrative Officer
825 Fifth Street, Room 112
Eureka, California 95501

CITY: City of Eureka
Attention: Miles Slattery, City Manager
531 K Street
Eureka, California 95501

8. REPORTS:

CITY agrees to provide COUNTY with any and all reports that may be required by any local, state and/or federal agencies for compliance with this MOU. CITY shall submit one (1) hard copy and one (1) electronic copy of any and all reports required hereunder in a format that complies with the Americans with Disabilities Act and any other applicable local, state and federal accessibility laws, regulations and standards. Any and all reports required hereunder shall be submitted in accordance with any and all applicable timeframes using the format required by the State of California as appropriate.

9. RECORD RETENTION AND INSPECTION:

- A. Maintenance and Preservation of Records. CITY agrees to timely prepare accurate and complete financial, performance and payroll records, documents and other evidence relating to the costs and expenses incurred pursuant to the terms and conditions of this MOU, and to maintain and preserve said records for at least three (3) years from the date of final payment hereunder, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom. Such records shall be original entry books with a general ledger itemizing all debits and credits for the costs and expenses incurred pursuant to the terms and conditions of this MOU.
- B. Inspection of Records. Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of CITY, and its subcontractors, related to the costs and expenses incurred pursuant to the terms and conditions of this MOU, shall be subject to the examination and audit of the California State Auditor and any other duly authorized agents of the State of California for a period of three (3) years after the date of final payment hereunder. CITY hereby agrees to make all such records available during normal business hours to inspection, audit and reproduction by COUNTY and any other duly authorized local, state and/or federal agencies. CITY further agrees to allow interviews of any of its employees who might reasonably have information related to such records by COUNTY and any other duly authorized

local, state and/or federal agencies. Any and all examinations and audits conducted hereunder shall be strictly confined to those matters connected with the performance of this MOU, including, without limitation, any and all costs associated with the administration of this MOU.

- C. Audit Costs. In the event of an audit exception or exceptions related to the costs and expenses incurred pursuant to the terms and conditions of this MOU, the party responsible for not meeting the requirements set forth herein shall be responsible for the deficiency and for the cost of the audit. If the allowable expenditures cannot be determined because CITY's documentation is nonexistent or inadequate, according to generally accepted accounting practices, the questionable cost shall be disallowed by COUNTY.

10. MONITORING:

CITY agrees that COUNTY has the right to monitor any and all activities related to this MOU, including, without limitation, the right to review and monitor CITY's records, policies, procedures and overall business operations, at any time, in order to ensure compliance with the terms and conditions of this MOU. CITY shall cooperate with a corrective action plan, if deficiencies in CITY's records, policies, procedures or business operations are identified by COUNTY. However, COUNTY is not responsible, and will not be held accountable, for overseeing or evaluating the adequacy of CITY's performance hereunder.

11. CONFIDENTIAL INFORMATION:

- A. Disclosure of Confidential Information. In the performance of this MOU, CITY may receive information that is confidential under local, state or federal law. CITY hereby agrees to protect all confidential information in conformance with any and all applicable local, state and federal laws, regulations, policies, procedures and standards, including, without limitation: Division 19 of the California Department of Social Services Manual of Policies and Procedures – Confidentiality of Information; California Welfare and Institutions Code Sections 827, 5328, 10850 and 14100.2; California Health and Safety Code Sections 1280.15 and 1280.18; the California Information Practices Act of 1977; the California Confidentiality of Medical Information Act ("CMIA"); the United States Health Information Technology for Economic and Clinical Health Act ("HITECH Act"); the United States Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any current and future implementing regulations promulgated thereunder, including, without limitation, the Federal Privacy Regulations contained in Title 45 of the Code of Federal Regulations ("C.F.R.") Parts 160 and 164, the Federal Security Standards contained in 45 C.F.R. Parts 160, 162 and 164 and the Federal Standards for Electronic Transactions contained in 45 C.F.R. Parts 160 and 162, all as may be amended from time to time.
- B. Continuing Compliance with Confidentiality Requirements. Each party hereby acknowledges that local, state and federal laws, regulations and standards pertaining to confidentiality, electronic data security and privacy are rapidly evolving and that amendment of this MOU may be required to ensure compliance with such developments. Each party agrees to promptly enter into negotiations concerning an amendment to this MOU embodying written assurances consistent with the requirements of HIPAA, the HITECH Act, the CMIA and any other applicable local, state and federal laws, regulations or standards.

12. NON-DISCRIMINATION COMPLIANCE:

- A. Nondiscriminatory Delivery of Social Services. In connection with the execution of this MOU, CITY, and its subcontractors, shall not unlawfully discriminate in the administration of public

assistance and social services programs. CITY hereby assures that no person shall be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving local, state or federal financial assistance because of: race; religion or religious creed; color; age, over forty (40) years of age; sex, including, without limitation, gender identity and expression, pregnancy, childbirth and related medical conditions; sexual orientation, including, without limitation, heterosexuality, homosexuality and bisexuality; national origin; ancestry; marital status; medical condition, including, without limitation, cancer and genetic characteristics; mental or physical disability, including, without limitation, HIV status and AIDS; political affiliation; military service; denial of family care leave; or any other classifications protected by any and all applicable local, state or federal laws, regulations or standards, all as may be amended from time to time. COUNTY reserves the right to monitor the activities conducted hereunder in order to ensure compliance with the requirements of this provision.

- B. Professional Services and Employment. In connection with the execution of this MOU, CITY, and its subcontractors, shall not unlawfully discriminate in the provision of professional services or against any employee or applicant for employment because of: race; religion or religious creed; color; age, over forty (40) years of age; sex, including, without limitation, gender identity and expression, pregnancy, childbirth and related medical conditions; sexual orientation, including, without limitation, heterosexuality, homosexuality and bisexuality; national origin; ancestry; marital status; medical condition, including, without limitation, cancer and genetic characteristics; mental or physical disability, including, without limitation, HIV status and AIDS; political affiliation; military service; denial of family care leave; or any other classifications protected by any and all applicable local, state or federal laws, regulations or standards, all as may be amended from time to time. Nothing herein shall be construed to require the employment of unqualified persons.
- C. Compliance with Anti-Discrimination Laws. CITY further assures that it, and its subcontractors, will abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, *et seq.*; California Government Code Sections 4450, *et seq.*; California Welfare and Institutions Code Section 10000; Division 21 of the California Department of Social Services Manual of Policies and Procedures; United States Executive Order 11246, as amended and supplemented by United States Executive Order 11375 and 41 C.F.R. Part 60; and any other applicable local, state or federal laws, regulations or standards, all as may be amended from time to time. The applicable regulations of the California Fair Employment and Housing Commission implementing California Government Code Section 12990, set forth in Sections 8101, *et seq.* of Title 2 of the California Code of Regulations are incorporated into this MOU by reference and made a part hereof as if set forth in full.

13. NUCLEAR-FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

By executing this MOU, CITY certifies that it is not a Nuclear Weapons Contractor, in that CITY is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components as defined by the Nuclear-Free Humboldt County Ordinance. CITY agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor as defined above. COUNTY may immediately terminate this MOU if it determines that the foregoing certification is false or if CITY subsequently becomes a Nuclear Weapons Contractor.

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14. DRUG-FREE WORKPLACE CERTIFICATION:

By executing this MOU, CITY certifies that it will provide a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1990 (California Government Code Sections 8350, *et seq.*), by doing all of the following:

- A. Drug-Free Policy Statement. Publish, as required by California Government Code Section 8355(a)(1), a Drug-Free Policy Statement which notifies employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited, and specifies the actions to be taken against employees for violations.
- B. Drug-Free Awareness Program. Establish, as required by California Government Code Section 8355(a)(2), a Drug-Free Awareness Program which informs employees about:
 - 1. The dangers of drug abuse in the workplace;
 - 2. CITY's policy of maintaining a drug-free workplace;
 - 3. Any available counseling, rehabilitation and employee assistance programs; and
 - 4. Penalties that may be imposed upon employees for drug abuse violations.
- C. Drug-Free Employment MOU. Ensure, as required by California Government Code Section 8355(a)(3), that every employee responsible for fulfilling CITY's obligations hereunder will:
 - 1. Receive a copy of CITY's Drug-Free Policy Statement; and
 - 2. Agree to abide by CITY's Drug-Free Policy as a condition of employment.
- D. Effect of Non-Compliance. Failure to comply with the requirements set forth herein may result in termination of this MOU and/or ineligibility for award of future contracts.

15. INDEMNIFICATION:

- A. Mutual Indemnity. Each party hereto shall hold harmless, defend and indemnify the other party and its agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages, liabilities costs and expenses of any kind or nature, including, without limitation, attorney's fees and other costs of litigation, arising out of, or in connection with, the negligent performance of, or failure to comply with, any of the duties and/or obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of the other party or its agents, officers, officials, employees or volunteers.
- B. Comparative Liability. Notwithstanding anything to the contrary, in the event that both parties are held to be negligently or willfully responsible, each party will bear their proportionate share of liability as determined in any such proceeding. In such cases, each party will bear their own costs and attorneys' fees.
- C. Effect of Insurance. Acceptance of the insurance required by this MOU shall not relieve either party from liability under this provision. This provision shall apply to all claims for damages related to either party's performance hereunder, regardless of whether any insurance is applicable or not. The insurance policy limits set forth herein shall not act as a limitation upon the amount of indemnification or defense to be provided hereunder.

16. INSURANCE REQUIREMENTS:

This MOU shall not be executed by COUNTY, and CITY is not entitled to any rights hereunder, unless certificates of insurance, or other proof that the following provisions have been complied with, are filed with the Clerk of the Humboldt County Board of Supervisors.

A. General Insurance Requirements. Without limiting CITY's indemnification obligations set forth herein, CITY, and its subcontractors hereunder, shall take out and maintain, throughout the entire term of this MOU, and any extensions thereof, the following policies of insurance, placed with insurers authorized to do business in the State of California with a current A.M. Bests rating of no less than A: VII or its equivalent against personal injury, death and property damage which may arise from, or in connection with, the activities of CITY or its agents, officers, directors, employees, licensees, invitees, assignees or subcontractors:

1. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence form CG 0001), in an amount of Two Million Dollars (\$2,000,000.00) per occurrence for any one (1) incident, including, without limitation, personal injury, death and property damage. If a general aggregate limit is used, such limit shall apply separately hereto or shall be twice the required occurrence limit.
2. Automobile/Motor Liability Insurance with a limit of liability not less than One Million Dollars (\$1,000,000.00) combined single limit coverage. Such insurance shall include coverage of all owned, hired and non-owned vehicles, and be at least as broad as Insurance Service Offices Form Code 1 (any auto).
3. Workers' Compensation Insurance, as required by the California Labor Code, with statutory limits, and Employers Liability Insurance with a limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. Said policy shall contain, or be endorsed to contain, a waiver of subrogation against COUNTY and its agents, officers, officials, employees and volunteers.

B. Special Insurance Requirements. Said policies shall, unless otherwise specified herein, be endorsed with the following provisions:

1. The Comprehensive or Commercial General Liability Policy shall provide that COUNTY, and its agents, officers, officials, employees and volunteers, are covered as additional insured for liability arising out of the operations performed by, or on behalf of, CITY. The coverage shall contain no special limitations on the scope of protection afforded to COUNTY or its agents, officers, officials, employees and volunteers. Said policy shall also contain a provision stating that such coverage:
 - a. Includes contractual liability.
 - b. Does not contain exclusions as to property damage caused by explosion or collapse of structures or underground damage, commonly referred to as "XCU Hazards."
 - c. Is the primary insurance with regard to COUNTY.
 - d. Does not contain a pro-rata, excess only and/or escape clause.
 - e. Contains a cross liability, severability of interest or separation of insureds clause.

2. The above-referenced policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to COUNTY in accordance with the notice requirements set forth herein. It is further understood that CITY shall not terminate such coverage until COUNTY receives adequate proof that equal or better insurance has been secured.
 3. The inclusion of more than one (1) insured shall not operate to impair the rights of one (1) 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 (1) insured shall not operate to increase the limits of the insurer's liability.
 4. For claims related to this MOU, CITY's insurance is the primary coverage to COUNTY, and any insurance or self-insurance programs maintained thereby are excess to CITY's insurance and will not be used to contribute therewith.
 5. Any failure to comply with the terms and conditions of this MOU shall not affect the coverage provided to COUNTY or its agents, officers, officials, employees and volunteers.
 6. CITY shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this MOU. The endorsements shall be on forms approved by the Humboldt County Risk Manager. Any deductible or self-insured retention over One Hundred Thousand Dollars (\$100,000.00) shall be disclosed to, and approved by, COUNTY. If CITY does not keep all required policies in full force and effect, COUNTY may, in addition to any other available remedies, take out the necessary insurance and deduct the cost of said insurance from the monies owed to CITY under this MOU.
 7. COUNTY is to be notified immediately if twenty-five percent (25%) or more of any required insurance aggregate limit is encumbered, and CITY shall be required to purchase additional coverage to meet the above-referenced aggregate limits.
- C. Insurance Notices. Any and all insurance notices required to be given pursuant to the terms and conditions of this MOU shall be sent to the addresses set forth below in accordance with the notice requirements contained herein.

COUNTY: County of Humboldt
Attention: Risk Management
825 Fifth Street, Room 131
Eureka, California 95501

CITY: City of Eureka
Attention: Miles Slattery, City Manager
531 K Street
Eureka, California 95501

17. RELATIONSHIP OF PARTIES:

It is understood that this MOU is by and between two (2) independent entities and is not intended to, and shall not be construed to, create the relationship of agents, servant, employee, partnership, joint venture or any other similar association. Both parties further agree that CITY shall not be entitled to any benefits to which COUNTY employees are entitled, including, without limitation, overtime, retirement, leave or workers' compensation benefits. CITY shall be solely responsible for the acts and omissions of its agents, officers, employees, assignees and subcontractors.

18. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS AND STANDARDS:

- A. General Legal Requirements. CITY hereby agrees to comply with any and all local, state and federal laws, regulations, policies, procedures and standards applicable to its performance hereunder.
- B. Licensure Requirements. CITY hereby agrees to comply with any and all local, state and federal licensure, certification and accreditation standards applicable to its performance hereunder.
- C. Accessibility Requirements. CITY hereby agrees to comply with any and all applicable accessibility requirements set forth in the Americans with Disabilities Act, Section 508 of the Rehabilitation Act of 1973, as amended, California Government Code Section 1135 and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, the federal accessibility standards set forth in 36 C.F.R. Section 1194.1, all as may be amended from time to time.
- D. Conflict of Interest Requirements. CITY hereby agrees to comply with any and all applicable conflict of interest requirements set forth in the California Political Reform Act and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, COUNTY's Conflict of Interest Code, all as may be amended from time to time.
- E. Prevailing Wage Requirements. CITY hereby agrees to comply with any and all applicable prevailing wage requirements set forth in California Labor Code Sections 1770, *et seq.* and any current and future implementing regulations, policies, procedures and standards promulgated thereunder.

19. PROVISIONS REQUIRED BY LAW:

This MOU is subject to any additional local, state and federal restrictions, limitations or conditions that may affect the terms, conditions or funding of this MOU. This MOU shall be read and enforced as though all legally required provisions are included herein, and if any such provision is not included, or incorrectly stated, the parties agree to amend this MOU to make such insertion or correction.

20. REFERENCE TO LAWS, REGULATIONS AND STANDARDS:

In the event any law, regulation or standard referred to herein is amended during the term of this MOU, the parties agree to comply with the amended provision as of the effective date of such amendment.

21. SEVERABILITY:

If any provision of this MOU, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this MOU.

22. ASSIGNMENT:

Neither party shall delegate its duties or assign its rights hereunder, either in whole or in part, without the other party's prior written consent. Any assignment by CITY in violation of this provision shall be void, and shall be cause for immediate termination of this MOU. This provision shall not be applicable to service agreements or other arrangements usually or customarily entered into by either party to obtain supplies, technical support or professional services.

23. AGREEMENT SHALL BIND SUCCESSORS:

All provisions of this MOU shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, administrators, successors and permitted assigns.

24. WAIVER OF DEFAULT:

The waiver by either party of any breach of this MOU shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this MOU. In no event shall any payment by COUNTY constitute a waiver of any breach of this MOU which may then exist on the part of CITY. Nor shall such payment impair or prejudice any remedy available to COUNTY with respect to the breach or default. COUNTY shall have the right to demand repayment of, and CITY shall promptly refund, any funds disbursed to CITY which COUNTY determines were not expended in accordance with the terms and conditions of this MOU.

25. NON-LIABILITY OF OFFICIALS AND EMPLOYEES:

No official or employee of either party shall be personally liable for any default or liability under this MOU.

26. AMENDMENT:

This MOU may be amended at any time during the term of this MOU upon the mutual consent of both parties. No addition to, or alteration of, the terms of this MOU shall be valid unless made in writing and signed by the parties hereto.

27. STANDARD OF PRACTICE:

CITY warrants that it has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. CITY's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.

28. TITLE TO INFORMATION AND DOCUMENTS:

It is understood that any and all documents, information and reports concerning the subject matter of this MOU prepared and/or submitted by CITY shall become the property of COUNTY. However, CITY may retain copies of such documents, information and reports for its records. In the event this MOU is terminated, for any reason whatsoever, CITY shall promptly turn over all such documents, information and reports to COUNTY without exception or reservation.

29. JURISDICTION AND VENUE:

This MOU shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder, or relating hereto, shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.

30. ADVERTISING AND MEDIA RELEASE:

Any and all informational material related to this MOU shall receive approval from COUNTY prior to being used as advertising or released to the media, including, without limitation, television, radio,

newspapers and internet. CITY shall inform COUNTY of any and all requests for interviews by the media related to this MOU before such interviews take place; and COUNTY shall be entitled to have a representative present at such interviews. Any and all notices required hereunder shall be given in accordance with the notice requirements set forth herein.

31. SUBCONTRACTS:

CITY shall obtain prior written approval from COUNTY before subcontracting any of the obligations set forth herein. Any and all subcontracts shall be subject to all applicable terms and conditions of this MOU. CITY shall remain legally responsible for the performance of all terms and conditions of this MOU, including, without limitation, any and all obligations performed by third parties under subcontracts, whether approved by COUNTY or not.

32. ATTORNEYS' FEES:

If either party shall commence any legal action, including, without limitation, an action for declaratory relief, against the other by reason of the alleged failure of the other to perform any of its obligations hereunder, the party prevailing in said action shall be entitled to recover court costs and reasonable attorneys' fees, including, but not limited to, the reasonable value of services rendered by the Humboldt County Counsel's Office, to be fixed by the court, and such recovery shall include court costs and attorneys' fees on appeal, if applicable. As used herein, the term "prevailing party" means the party who dismisses an action in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

33. SURVIVAL OF PROVISIONS:

The duties and obligations of the parties set forth in Section 4(D) – Compensation Upon Termination, Section 9 – Record Retention and Inspection, Section 11 – Confidential Information and Section 15 – Indemnification shall survive the expiration or termination of this MOU.

34. CONFLICTING TERMS OR CONDITIONS:

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the parties hereto and the terms and conditions set forth in this MOU, the terms and conditions set forth herein shall have priority.

35. INTERPRETATION:

This MOU, as well as its individual provisions, shall be deemed to have been prepared equally by both of the parties hereto, and shall not be construed or interpreted more favorably for one (1) party on the basis that the other party prepared it.

36. INDEPENDENT CONSTRUCTION:

The titles of the sections and subsections set forth herein are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this MOU.

37. FORCE MAJEURE:

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control, and without the fault or negligence, of such party. Such events

shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

38. ENTIRE AGREEMENT:

This MOU contains all of the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind either of the parties hereto. In addition, this MOU shall supersede in their entirety any and all prior agreements, promises, representations, understandings and negotiations of the parties, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms and conditions of this MOU are hereby ratified.

39. COUNTERPART EXECUTION:

This MOU, and any amendments hereto, may be executed in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one (1) and the same agreement. This MOU, and any amendments hereto, may be signed by manual or electronic signatures in accordance with any and all applicable local, state and federal laws, regulations and standards, and such signatures shall constitute original signatures for all purposes. A signed copy of this MOU, and any amendments hereto, transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this MOU and any amendments hereto.

40. AUTHORITY TO EXECUTE:

Each person executing this MOU represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this MOU. Each party represents and warrants to the other that the execution and delivery of this MOU and the performance of such party's obligations hereunder have been duly authorized.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have entered into this MOU as of the first date written above.

CITY OF EUREKA:

By: DocuSigned by:
Susan Seaman
Susan Seaman
Mayor of the City of Eureka
Date: 6/14/2021

APPROVED AS TO ADMINISTRATION:

By: DocuSigned by:
Miles Slattery
Miles Slattery
City Manager of the City of Eureka
Date: 6/16/2021

APPROVED AS TO FORM:

By: DocuSigned by:
Robert N. Black
Robert Black
City Attorney of the City of Eureka
Date: 6/14/2021

ATTEST:

By: DocuSigned by:
Pamela J. Powell
Pamela J. Powell
City Clerk of the City of Eureka
Date: 6/21/2021

COUNTY OF HUMBOLDT:

By: Virginia Bass
Virginia Bass
Chair of the Humboldt County Board of Supervisors
Date: 7/1/2021

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By: [Signature]
Risk Management
Date: 7/1/2021