

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
COUNTY OF HUMBOLDT
AND
CITY OF FORTUNA
FOR FISCAL YEAR 2020-2021**

This Memorandum of Understanding ("MOU"), entered into this 7 day of December 2020, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and the City of Fortuna, a California municipal corporation, hereinafter referred to as "FORTUNA," is made upon the following considerations:

WHEREAS, a novel coronavirus, COVID-19, causes infectious disease and was first detected in Wuhan City, Hubei Province, China in December 2019, and symptoms of COVID-19 include fever, cough and shortness of breath and outcomes have ranged from mild to severe illness, and in some cases death; and

WHEREAS, on January 31, 2020, U.S. Department of Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the United States to aid the nation's health care community in responding to COVID-19; and

WHEREAS, the Centers for Disease Control and Prevention has determined that the virus presents a serious public health threat; and

WHEREAS, Humboldt County had its first confirmed case of COVID-19 on February 20, 2020, and the potential of more COVID-19 cases in Humboldt County is an imminent threat; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency to exist in California; and

WHEREAS, on March 11, 2020, Humboldt County Health Officer declared a Local Health Emergency pursuant to Humboldt County Code section 2210-8 for a up to seven (7) days in the county or any area thereof, including but not limited to an imminent and proximate public health threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, noncommunicable biologic agent, toxin, or radioactive agent; and

WHEREAS, on March 13, 2020, President Donald J. Trump declared a federal state of emergency regarding the global pandemic caused by COVID-19; and

WHEREAS, on March 17, 2020, Humboldt County Board of Supervisors ratified the Humboldt County Health Officer's March 11, 2020 Local Health Emergency Declaration; and

WHEREAS, COUNTY, by and through its Department of Health and Human Services – Public Health ("DHHS – Public Health"), desires to work collaboratively with FORTUNA to deploy and operate COVID-19 testing operations; and

WHEREAS, COUNTY and FORTUNA desire to enter into an agreement which sets forth each party's rights and responsibilities regarding the operation thereof.

NOW THEREFORE, in consideration of the foregoing and the mutual promises contained herein, the parties hereto mutually agree as follows:

1. RIGHTS AND RESPONSIBILITIES OF THE PARTIES:

Each party hereto agrees to cooperate, coordinate and work collaboratively with the other party to deploy and operate COVID-19 testing operations, utilizing FORTUNA's facilities located at 1800 Riverwalk Drive, Fortuna, California, hereinafter referred to as "Facility," in accordance with the requirements set forth herein and Exhibit A – Shared Responsibilities, which is attached hereto and incorporated herein by reference.

2. TERM:

This MOU shall begin on December 2, 2020 and shall remain in full force and effect until June 30, 2021, unless sooner terminated as provided herein.

3. TERMINATION:

- A. Breach of Contract. Either party may immediately terminate this MOU, upon written notice, in the event that the other party materially defaults in performing any obligation under this MOU, or violates any laws, regulations or standards applicable to its performance hereunder.
- B. Without Cause. Either party may terminate this MOU without cause upon thirty (30) days advance written notice which states the effective date of the termination.
- C. 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 FORTUNA seven (7) days advance written notice of its intent to terminate this MOU due to insufficient funding.

4. COMPENSATION:

- A. Maximum Amount Payable. The maximum amount payable by COUNTY for services rendered, and costs and expenses incurred, pursuant to the terms and conditions of this MOU is Three Thousand Four Hundred Dollars (\$3,400.00). FORTUNA agrees to perform all services required by this MOU 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. Schedule of Rates. COUNTY shall reimburse FORTUNA for the use of its Facility at a rate of One Hundred Dollars (\$100.00) per day.
- C. Additional Services. Any additional services not otherwise provided for herein shall not be provided by FORTUNA, or compensated by COUNTY, without written authorization by COUNTY. Any and all unauthorized costs and expenses incurred above the maximum dollar amount set forth herein shall be the responsibility of FORTUNA. FORTUNA shall notify COUNTY, in writing, at least six (6) weeks prior to the date upon which FORTUNA estimates that the maximum dollar amount will be reached.

5. PAYMENT:

FORTUNA shall submit to COUNTY monthly invoices itemizing all services rendered, and costs and expenses incurred, pursuant to the terms and conditions of this MOU by the tenth (10th) day of each

month. FORTUNA shall submit a final invoice for payment within thirty (30) days following the expiration or termination date of this MOU. Invoices shall be in a format approved, and include any and all appropriate backup documentation as specified, by Director and the Humboldt County Auditor-Controller. Payment for services rendered, and 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 pursuant to the terms and conditions of this MOU shall be sent to COUNTY at the following address:

COUNTY: Humboldt County DHHS – Public Health
Attention: Financial Services
507 F Street
Eureka, California 95501

6. 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: DHHS – Public Health
Attention: Kathryn O'Malley, Supervising Public Health Nurse
529 I Street
Eureka, California 95501
Email: komalley@co.humboldt.ca.us

FORTUNA: City of Fortuna – Department of Parks & Recreation
Attention: Cameron Mull, Director
5 Park Street
Fortuna, California 95540
Email: cmull@ci.fortuna.ca.us

7. REPORTING REQUIREMENTS:

Each party hereto agrees to prepare and submit any and all reports that may be required by local, state and/or federal agencies for compliance with this MOU. Any and all reports required hereunder shall be prepared in a format that complies with the Americans with Disabilities Act, and any other applicable local, state and federal accessibility laws, regulations and standards, and submitted in accordance with any and all applicable timeframes.

8. RECORD RETENTION AND INSPECTION:

A. Maintenance and Preservation of Records. Each party hereby agrees to timely prepare accurate and complete records, documents and other evidence relating to its performance hereunder, and to maintain and preserve said records for a period of three (3) years after expiration or termination of this MOU, or as otherwise required by any and all applicable local, state and federal laws, regulations and standards, except that if any litigation, claim, negotiation, audit or other action is pending, such records shall be retained until completion and resolution of all issues arising therefrom.

B. Inspection of Records. Each party hereby agrees to make all records, documents and other evidence relating to its performance hereunder available during normal business hours to

inspection, audit and reproduction by any duly authorized local, state and/or federal agencies for a period of three (3) years after expiration or termination of this MOU, or as otherwise required by any and all local, state and federal laws, regulations or standards. Each party further agrees to allow interviews of any of its employees who might reasonably have information related to such records by any duly authorized local, state and/or federal agencies. All examinations and audits conducted pursuant to the terms and conditions of this MOU shall be strictly confined to those matters connected with its performance hereunder, including, without limitation, the costs of administering this MOU.

- C. Audit Costs. In the event of an audit exception or exceptions related to the performance of this MOU, the party responsible for not meeting the requirements set forth herein shall be responsible for the cost of the audit.

9. CONFIDENTIAL INFORMATION:

- A. Disclosure of Confidential Information. In the performance of this MOU, each party may receive information that is confidential under local, state or federal law. Each party 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 Laws. 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.

10. NON-DISCRIMINATION COMPLIANCE:

- A. Professional Services and Employment. In connection with the execution of this MOU, neither party shall 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 applicable local, state or federal laws, regulations or standards. Nothing herein shall be

construed to require employment of unqualified persons.

- B. Compliance with Anti-Discrimination Laws. Each party further assures that it 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 and/or federal laws and regulations, 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 as if set forth in full.

11. NUCLEAR-FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

By executing this MOU, FORTUNA certifies that it is not a Nuclear Weapons Contractor, in that FORTUNA 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. FORTUNA 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 FORTUNA subsequently becomes a Nuclear Weapons Contractor.

12. 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, expenses and costs 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 attorney's 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.

13. INSURANCE REQUIREMENTS:

- A. General Insurance Requirements. Without limiting the parties' indemnification obligations set forth herein, each party shall maintain in full force and effect, at its own expense, any and all appropriate comprehensive general liability, comprehensive automobile, workers' compensation and professional liability insurance policies.

- B. 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

FORTUNA: City of Fortuna – Department of Parks & Recreation
Attention: Cameron Mull, Director
5 Park Street
Fortuna, California 95540
Email: cmull@co.fortuna.ca.us

14. 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 agent, servant, employee, partnership, joint venture or any other similar association. Each party shall be solely responsible for the acts or omissions of its agents, officers, employees, assignees and subcontractors.

15. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS AND STANDARDS:

- A. General Legal Requirements. Each party hereto agrees to comply with any and all local, state and federal laws, regulations, policies, procedures and standards, including, without limitation, any and all local, state and federal licensure, certification and accreditation requirements, applicable to its performance hereunder.
- B. Accessibility Requirements. Each party hereto 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.
- C. Conflict of Interest Requirements. Each party hereto 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.

16. 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 for any reason any such provision is not included, or is not correctly stated, the parties agree to amend the pertinent section to make such insertion or correction.

17. 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 thereof.

18. PROTOCOLS:

Both parties agree that the inclusion of additional protocols may be required to make this MOU specific. All such protocols shall be negotiated, determined and agreed upon by both parties hereto.

19. 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.

20. ASSIGNMENT:

Neither party shall delegate its duties nor assign its rights hereunder, either in whole or in part, without the other party's prior written consent. Any assignment 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.

21. AGREEMENT SHALL BIND SUCCESSORS:

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

22. NO 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.

23. 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.

24. AMENDMENT:

This MOU may be amended at any time during the term hereof 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 an authorized representative of each party hereto.

25. STANDARD OF PRACTICE:

Each party 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. Each party's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.

26. 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.

27. ADVERTISING AND MEDIA RELEASE:

Each party shall obtain the written approval of the other party before any informational material related to this MOU may be used as advertising or released to the media, including, without limitation, television, radio, newspapers and internet. Each party shall inform the other party of any and all requests for interviews by media related to this MOU before such interviews take place; and the other party shall be entitled to have a representative present at such interviews. All notices required by this provision shall be given to the Director in accordance with the notice requirements set forth herein.

28. SUBCONTRACTS:

Each party shall obtain prior written approval from the other party, which shall not be unreasonably withheld, before subcontracting any of its duties or obligations hereunder. Any and all subcontracts shall be subject to all applicable terms and conditions of this MOU, including, without limitation, the confidentiality, licensing and certification requirements set forth herein. Each party shall remain legally responsible for the performance of all terms and conditions of this MOU, including, without limitation, any and all duties performed by third parties under subcontracts, whether approved by the other party or not.

29. SURVIVAL OF PROVISIONS:

The duties and obligations of the parties set forth in Section 8 – Record Retention and Inspection, Section 9 – Confidential Information and Section 12 – Indemnification shall survive the expiration or termination of this MOU.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. FEDERAL PROVISIONS:


- A. FORTUNA acknowledges that Federal Emergency Management Agency (FEMA) financial assistance will be used to fund this MOU. FORTUNA will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- B. FORTUNA 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. FORTUNA's failure to so comply shall constitute a material breach of this contract.
- C. FORTUNA agrees to include the above clause in each third-party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.
- D. Whether or not expressly set forth herein, all contractual provisions required by FEMA are hereby incorporated by reference. In the event of any conflict between any provision of this MOU or any FEMA term, condition, or requirement, the stricter standard shall apply.

FORTUNA shall not perform any act, fail to perform any act, or refuse to comply with any requests that would cause COUNTY to be in violation of any FEMA term, condition, or requirement.

- E. FORTUNA agrees that the Federal provisions described in Exhibit B – Federal Provisions, which is attached hereto and incorporated herein by reference as if set forth in full applies to FORTUNA's acts or omissions in its performance under this MOU.


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

CITY OF FORTUNA:

By: 
Name: Merritt Perry
Title: City Manager

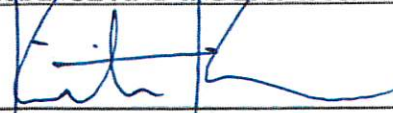
Date: 12/3/2020

COUNTY OF HUMBOLDT:

By: 
Michele Stephens, Director
DHHS – Public Health
(Pursuant to the authority granted by the
Humboldt County Board of Supervisors
on March 26, 2020 [Item D-1])

Date: 12/7/2020

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By: 
Risk Management

Date: 12/7/2020

LIST OF EXHIBITS:

- Exhibit A – Shared Responsibilities
Exhibit B – Federal Provisions

EXHIBIT A
SHARED RESPONSIBILITIES
FORTUNA
For Fiscal Year 2020-2021

1. RESPONSIBILITIES OF FORTUNA:

- a. Provide access to, and use of, its Facility as needed by COUNTY for COVID-19 operations. Operations include, without limitation, COUNTY's COVID-19 testing services. Access to the Facility is restricted to COUNTY and Optum staff only and is limited to the following locations:
 - i. The Facility's entryway; and
 - ii. The Facility's restrooms.
- b. Provide use of the Facility's surrounding parking lot for the purposes of resident and COUNTY staff parking.
- c. Provide use of its Facility between the hours of 7:00 AM and 7:00 PM every Wednesday until the termination of this MOU.
- d. Submit monthly invoices for Facility costs incurred based on agreed upon rates as set forth herein.

2. RESPONSIBILITIES OF COUNTY:

- a. Provide an estimated timeline for the duration of use of FORTUNA's Facility.
- b. Provide a list of COUNTY contacts to FORTUNA.
- c. COUNTY is responsible for the collection and disposal of any non-traditional/hazardous waste, including, without limitation, medical waste.
- d. Coordinate the demobilization and return of the Facility at the termination of this MOU.
- e. Return the Facility back to the original condition in which they were at the commencement of this MOU.
- f. COUNTY will pay FORTUNA for costs and expenses incurred based on the agreed upon rates set forth herein per FEMA regulations.
- g. COUNTY will issue reimbursement of costs as invoiced by FORTUNA.
- h. COUNTY will notify FORTUNA of the closing date for the testing operations.

EXHIBIT B
FEDERAL PROVISIONS
FORTUNA
For Fiscal Year 2020-2021

1. ACCESS TO RECORDS:

The following access to records requirements applies to this MOU:

- A. FORTUNA agrees to provide the COUNTY, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives' access to any books, documents, papers, and records of FORTUNA which are directly pertinent to this MOU for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. FORTUNA agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. FORTUNA agrees to provide the FEMA Administrator or their authorized representatives' access to construction or other work sites pertaining to the work being completed under the MOU.
- D. In compliance with the Disaster Recovery Act of 2018, the COUNTY and FORTUNA acknowledge and agree that no language in this MOU is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

2. REMEDIES:

In the event of a breach by FORTUNA of any term or provision of this MOU, the COUNTY shall have the right to pursue all available remedies at law or equity, including recovery of damages and specific performance of this MOU. The parties hereto agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this MOU and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall waive the defense that a remedy at law would be adequate. Except as expressly provided elsewhere in this MOU, each party's rights and remedies under this MOU are cumulative and in addition to, not exclusive of or in substitution for, any rights or remedies otherwise available to that party.

3. CLEAN AIR ACT:

FORTUNA agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.

FORTUNA agrees to report each violation to the COUNTY and understands and agrees that the COUNTY will, in turn, report each violation as required to assure notification to the California Governor's Office of Emergency Services, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

FORTUNA agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

4. FEDERAL WATER POLLUTION CONTROL ACT:

FORTUNA 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. Sections 1251 et seq.

FORTUNA agrees to report each violation to the COUNTY and understands and agrees that the COUNTY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

FORTUNA agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

5. DEBARMENT AND SUSPENSION CLAUSE:

This MOU is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, FORTUNA is required to verify that none of FORTUNA, 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).

FORTUNA 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.

This certification is a material representation of fact relied upon by the COUNTY. If it is later determined that FORTUNA 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 COUNTY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

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.

6. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. §1352 (AS AMENDED)

If FORTUNA applies or bids for an award of \$100,000 or more, FORTUNA shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to COUNTY.

APPENDIX A, 44 C.F.R. PART 18- CERTIFICATION REGARDING LOBBYING

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


- A. 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.

- B. 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.
- C. 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.

FORTUNA certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, FORTUNA understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.



Signature
By: 12/3/2020
Date: Meir H. Perry, City Manager

7. PROCUREMENT OF RECOVERED MATERIALS:

In the performance of this Agreement, FORTUNA shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- A. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
- B. Meeting Agreement performance requirements; or
- C. At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

FORTUNA also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

8. DEPARTMENT OF HOMELAND SECURITY (DHS) SEAL, LOGO, FLAGS:

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

9. NO OBLIGATION BY FEDERAL GOVERNMENT:

The Federal Government is not a party to this MOU and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the Agreement.

10. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS:

FORTUNA acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to FORTUNA's actions pertaining to this MOU.

