

**COUNTY OF TULARE
FUNDING AGREEMENT WITH CSET FOR
TC HOPE NAVIGATION CENTER**

THIS AGREEMENT ("Agreement") is entered into as of May 2, 2023, between the **COUNTY OF TULARE**, a political subdivision of the State of California ("COUNTY"), and **Community Services and Employment Training, Inc.**, ("CONTRACTOR"). COUNTY and CONTRACTOR are each a "Party" and together are the "Parties" to this Agreement, which is made with reference to the following:

- A.** The CONTRACTOR and its partners in the TC Hope (Tulare County Hope for the Homeless) project formed in 2019 with the goal of building a low-barrier Navigation Center in Tulare County to assist individuals and families with a pathway to permanent housing.
- B.** The CONTRACTOR and the COUNTY recognize that Visalia does not currently have a low-barrier Navigation Center, there are many individuals and families who are being turned away and unable to access safe, secure, temporary housing.
- C.** The COUNTY has determined that one-time funding will be provided to support the construction of the Navigation Center facility in accordance with Government Code section 26227.
- D.** The CONTRACTOR will allow 25% of the Navigation Center's beds to be reserved for unhoused persons outside of Visalia.

THE PARTIES AGREE AS FOLLOWS:

- 1. TERM:** This Agreement becomes effective as of May 2, 2023 and shall continue until terminated as set forth in the COUNTY'S "General Agreement Terms and Conditions (Form revision approved as of 01/01/2021)."
- 2. AMOUNT OF FUNDING AND USES:** In accordance with Government Code Section 26227 and the Tulare County Board of Supervisors determination that the Navigation Center is anticipated to be a benefit to the community, the COUNTY will pay \$1,500,000 to the CONTRACTOR for the purpose of funding the construction of the Navigation Center facility. The CONTRACTOR will reserve 25% of the Navigation Center beds for unhoused persons outside of Visalia as set forth in the attached **Exhibit A** and under the terms and conditions of this Agreement.
- 3. PAYMENT FOR SERVICES:** COUNTY shall pay CONTRACTOR for services not to exceed \$1,500,000 as outlined in the attached **Exhibit A**.
- 4. GENERAL AGREEMENT TERMS AND CONDITIONS:** COUNTY'S "General Agreement Terms and Conditions (Form revision approved as of 01/01/2021)" are attached hereto as **Exhibit B** and hereby incorporated by reference and made a part of this Agreement as if fully set forth herein.
- 5. INSURANCE:** Before approval of this Agreement by COUNTY, CONTRACTOR must file with the Clerk of the Board of Supervisors evidence of the required insurance as set forth in the attached **Exhibit C**.
- 6. NOTICES:** (a). Except as may be otherwise required by law, any notice to be given must be written and must be either personally delivered, sent by facsimile transmission or sent by first class mail, postage pre-paid and addressed as follows:

COUNTY:

County Administrative Office
2800 W. Burrell Ave.
Visalia, CA 93291
Phone No.: 559-636-5005
Fax No.: 559-733-6318

CONTRACTOR:

Community Services and Employment Training, Inc.
312 NW Third Ave.
Visalia, CA 93291
Phone No.: 559-732-4194
Fax No.: 559-733-3971

(b). Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail will be deemed received on the fifth calendar day after the date of mailing. Either Party may change the above address by giving written notice under this section.

7. AUTHORITY: CONTRACTOR represents and warrants to COUNTY that the individual(s) signing this Agreement on its behalf are duly authorized and have legal capacity to sign this Agreement and bind CONTRACTOR to its terms. CONTRACTOR acknowledges that COUNTY has relied upon this representation and warranty in entering into this Agreement.

8. COUNTERPARTS: The Parties may sign this Agreement in counterparts, each of which shall be deemed an original and all of which taken together form one and the same agreement. A signed copy or signed counterpart of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of a signed original or signed copy of this Agreement.

9. MANUAL OR ELECTRONIC SIGNATURES: The Parties may sign this Agreement by means of manual or electronic signatures. The Parties agree that the electronic signature of a Party, whether digital or encrypted, is intended to authenticate this Agreement and to have the same force and effect as a manual signature. For purposes of this Agreement, the term "electronic signature" means any electronic sound, symbol, or process attached to or logically associated with this Agreement and executed and adopted by a Party with the intent to sign this Agreement, including facsimile, portable document format, or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Cal. Civ. Code §§ 1633.1 to 1633.17), as it may be amended from time to time.

[THIS SPACE LEFT BLANK INTENTIONALLY; SIGNATURES FOLLOW ON NEXT PAGE]

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

Community Services and Employment Training, Inc.

Date: _____

E-SIGNED by Mary Escarsega-Fechner
By _____ on 2023-04-06 08:52:12 PDT

Print Name Mary Alice Escarsega-Fechner

Title Executive Director

Date: _____

By _____

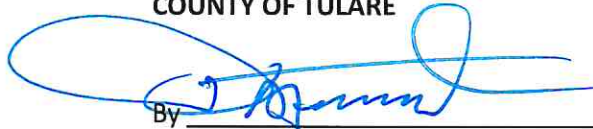
Print Name _____

Title _____

[Pursuant to Corporations Code section 313, County policy requires that contracts with a **Corporation** be signed by both (1) the chairman of the Board of Directors, the president or any vice-president (or another officer having general, operational responsibilities), and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer (or another officer having recordkeeping or financial responsibilities), unless the contract is accompanied by a certified copy of a resolution of the corporation's Board of Directors authorizing the execution of the contract. Similarly, pursuant to California Corporations Code section 17703.01, County policy requires that contracts with a **Limited Liability Company** be signed by at least two managers, unless the contract is accompanied by a certified copy of the articles of organization stating that the LLC is managed by only one manager.]

COUNTY OF TULARE

Date: May 2, 2023

By 

Chair, Board of Supervisors

DENNIS TOWNSEND



ATTEST: JASON T. BRITT

County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By 
Deputy Clerk

Approved as to Form
COUNTY COUNSEL

By 
Deputy

Matter # 2023223

Jlk/jmf/3-27-23/2023223/1947599.docx



September 30, 2022

Dr. Jason Britt, County Administrative Officer
County of Tulare Administration Building
2800 West Burrel Avenue
Visalia, CA 93291

SUBJECT: SUPPORT FOR THE TC HOPE NAVIGATION CENTER

Dear Jason,

CSET and its partners in the TC Hope Navigation Center project greatly appreciate your consideration of a \$1.5 million donation for construction of the facility, allowing it achieve a critical goal of the “Pathway Home” strategic plan commissioned by the Kings/Tulare Homeless Alliance: increasing access to services to support exits from homelessness.

As the 2019 plan elaborates, “With more than 70% of people experiencing homelessness in Tulare County living outside – on the streets, in vehicles, by the river – the community needs to address unsheltered homelessness. The cities, County, nonprofits and other partners can collaborate to help those most in need get the services and support they require to exit homelessness by expanding outreach, targeting services, and developing accessible crisis shelters with tailored, housing-focused programming . . .”. In addition to CSET and the County, Tulare County Hope for the Homeless, Self-Help Enterprises, Visalia Senior Housing and the City of Visalia have made major commitments of resources for the TC Hope Center, and dozens of additional partners have pledged their support.

312 N.W. 3rd Avenue
Visalia, CA 93291

Phone
(559) 732-4194
Fax
(559) 733-3971
www.cset.org

Earlimart
(661) 849-2960
Porterville
(559) 788-1400
Tulare
(559) 684-1987
Cutler/Orosi
(559) 528-1095
Pixley
(559) 757-0098
Senior Services
1(800) 321-2462

The 2022 Point in Time report recently released by the Homeless Alliance reinforces the need, with 922 persons experiencing homelessness counted in Tulare County – 258 of them considered chronically homeless, with disabling conditions – and 632 of them sleeping in unsheltered locations. Because of the kinds of barriers faced by many of those surveyed, such as mental disability (24%), substance use (22%) and HIV/AIDS treatment (10%), the County’s Health and Human Services Agency is a vital partner in their service. While the majority of the TC Hope Center’s clients would come from Visalia, many unsheltered persons are found in the unincorporated area and in other cities in the vicinity. The County’s \$1.5 million donation would allow 25% of the Center’s beds to be reserved for unhoused persons outside of Visalia.

We welcome the County’s involvement in the design of a robust program for those experiencing homelessness and hope future operational funding will be considered to ensure the TC Hope Center has highest level of operational efficiency and offers the full range of needed services. Thank you for your consideration and the service you provide.

Sincerely,


Mary Alice Escarsega-Fechner
Executive Director

**COUNTY OF TULARE'S
GENERAL AGREEMENT TERMS AND CONDITIONS
(Form revision approved as of 01/01/2021)**

1. PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK: CONTRACTOR is not entitled to any payments from COUNTY until the County Department for which services are provided under the Agreement approves services, including any furnished deliverables, as satisfying all of the requirements of this Agreement. Payments to CONTRACTOR by COUNTY shall not excuse CONTRACTOR from its obligation to replace unsatisfactory deliverables, including equipment, components, materials, or services even if the unsatisfactory character of such deliverables, equipment, components, materials, or services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and services that do not conform to the requirements of this Agreement may be rejected by COUNTY and in such case must be replaced by CONTRACTOR without delay and at no cost to the COUNTY.

2. DISALLOWANCE: If CONTRACTOR requests or receives payment from COUNTY for services hereunder, reimbursement for which is later disallowed by the State of California or United States Government, CONTRACTOR shall promptly refund the disallowed amount to COUNTY upon COUNTY'S request. At its option, COUNTY may offset the amount disallowed from any payment due or to become due to CONTRACTOR under this Agreement or any other Agreement between CONTRACTOR and COUNTY. CONTRACTOR'S obligations under this section 2 will survive the expiration or termination of this Agreement.

3. LIABILITY OF COUNTY: COUNTY'S payment obligations under this Agreement shall be limited to the payment of the compensation provided for in section 3, "PAYMENT FOR SERVICES," of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall COUNTY be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

4. QUALIFIED PERSONNEL: CONTRACTOR shall utilize only competent personnel under the supervision

of, and in the employment of, CONTRACTOR (or CONTRACTOR'S authorized subcontractors) to perform the services. CONTRACTOR will comply with COUNTY'S reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at COUNTY'S request, must be supervised by CONTRACTOR. CONTRACTOR shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

5. INDEPENDENT CONTRACTOR STATUS: The Parties enter into this Agreement with the express understanding that CONTRACTOR will perform all services required under this Agreement as an independent contractor. The Parties agree that the CONTRACTOR and any of its agents, employees, or officers cannot be considered agents, employees, or officers of COUNTY.

CONTRACTOR agrees to advise everyone it assigns or hires to perform any duty under this Agreement that they are not employees of COUNTY. Subject to any performance criteria contained in this Agreement, CONTRACTOR will be solely responsible for determining the means and methods of performing the specified services and COUNTY will have no right to control or exercise any supervision over CONTRACTOR as to how the CONTRACTOR will perform the services. As CONTRACTOR is not COUNTY'S employee, CONTRACTOR is responsible for paying all required state and federal taxes. In particular, COUNTY will not:

- (1) Withhold FICA (Social Security) from CONTRACTOR'S payments.
- (2) Make state or federal unemployment insurance contributions on CONTRACTOR'S behalf.
- (3) Withhold state or federal income tax from payments to CONTRACTOR.
- (4) Make disability insurance contributions on behalf of CONTRACTOR.
- (5) Obtain unemployment compensation insurance on behalf of CONTRACTOR.

Notwithstanding this independent contractor relationship, COUNTY will have the right to monitor and

**COUNTY OF TULARE'S
GENERAL AGREEMENT TERMS AND CONDITIONS
(Form revision approved as of 01/01/2021)**

evaluate the performance of CONTRACTOR to assure compliance with this Agreement.

6. COMPLIANCE WITH LAW: CONTRACTOR must provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to CONTRACTOR'S employees, CONTRACTOR must comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

7. LICENSES AND PERMITS: CONTRACTOR represents and warrants that it possesses and will maintain during the term of this Agreement all licenses and permits required for its performance of the services required under this Agreement.

8. GOVERNING LAW: The laws of the State of California, without reference to California conflict of laws principles, govern this Agreement and its interpretation. The Parties agree that this Agreement is made in and will be performed in Tulare County, California.

9. RECORDS AND AUDIT: CONTRACTOR must maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, CONTRACTOR must maintain complete and accurate records with respect to any payments to employees or subcontractors. All of the records must be prepared in accordance with generally accepted accounting procedures, must be clearly identified, and must be kept readily accessible. Upon request, CONTRACTOR must make the records available within Tulare County to the Auditor of Tulare County and to his or her agents and representatives, for the purpose of auditing and/or copying the records for a period of five (5) years from the date of final payment under this Agreement.

10. CONFLICT OF INTEREST:

(a) At all times during the performance of this Agreement, CONTRACTOR must comply with the law of the State of California regarding conflicts of interests and

appearance of conflicts of interests, including, but not limited to, Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including CONTRACTOR for this purpose, from making any decision on behalf of COUNTY in which the officer, employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influences any COUNTY decision that has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest, with certain narrow exceptions.

(b) CONTRACTOR agrees that if any facts come to its attention that raise any questions as to the applicability of conflicts of interests laws, then it will immediately inform COUNTY and provide all information needed for resolution of this question.

11. INSURANCE: The attached **Exhibit C** outlines the minimum scope, specifications, and limits of insurance required under this Agreement. Additional insured endorsements required as outlined in **Exhibit C** cannot be used to reduce limits available to COUNTY as an additional insured from CONTRACTOR'S full policy limits. Insurance policies cannot be used to limit liability or to limit the indemnification provisions and requirements of this Agreement or act in any way to reduce the policy coverage and limits available from the insurer(s). If CONTRACTOR fails to maintain or renew coverage, or to provide evidence of renewal, then COUNTY may consider that failure a material breach of this Agreement. COUNTY may also withhold any payment otherwise due to CONTRACTOR for failure to provide evidence of renewal until CONTRACTOR provides such evidence.

12. INDEMNIFICATION AND DEFENSE:

(a) To the fullest extent permitted by law, CONTRACTOR must indemnify, defend (at CONTRACTOR'S sole cost and expense and with legal counsel approved by

**COUNTY OF TULARE'S
GENERAL AGREEMENT TERMS AND CONDITIONS
(Form revision approved as of 01/01/2021)**

COUNTY, which approval may not be unreasonably withheld), protect and hold harmless COUNTY, all subsidiaries, divisions and affiliated agencies of COUNTY, and all of their representatives, partners, designees, officers, directors, employees, consultants, agents, successors and assigns, (each, an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional expert or consultants' fees and costs and COUNTY general and administrative expenses) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") which may arise out of, pertain to, or relate (directly or indirectly) to the negligence, recklessness, or misconduct of CONTRACTOR with respect to any work performed or services provided under this Agreement (including, without limitation, the acts, errors and/or omissions of CONTRACTOR, its principals, officers, agents, employees, vendors, suppliers, consultants, sub-consultants, contractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them). CONTRACTOR'S obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, then CONTRACTOR'S indemnification obligation shall be reduced in proportion to the established comparative liability.

(b) The duty to defend is a separate and distinct obligation from CONTRACTOR'S duty to indemnify. CONTRACTOR shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, the Indemnified Parties immediately upon tender to CONTRACTOR of the Claim in any form or at any stage of an action or proceeding, whether or not liability is established. Payment to CONTRACTOR by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party cannot be a condition

precedent to enforcing the Indemnified Party's rights to indemnification under this Agreement. An allegation or determination that persons other than CONTRACTOR are responsible for the Claim does not relieve CONTRACTOR from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if CONTRACTOR asserts that liability is caused in whole or in part by the negligence or willful misconduct of an Indemnified Party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an Indemnified Party, then CONTRACTOR may submit a claim to the COUNTY for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established comparative liability of the Indemnified Party. CONTRACTOR'S indemnification obligations under this Agreement will survive the expiration or earlier termination of this Agreement until action against the Indemnified Parties for the matter indemnified is fully and finally barred by the applicable statute of limitations or statute of repose. CONTRACTOR'S liability for indemnification under this Agreement is in addition to any liability CONTRACTOR may have to COUNTY for a breach by CONTRACTOR of any of the provisions of this Agreement. Under no circumstances may the insurance requirements and limits set forth in this Agreement be construed to limit CONTRACTOR'S indemnification obligation or other liability under this Agreement. The terms of this Agreement are contractual and the result of negotiation between the Parties.

(c) CONTRACTOR must indemnify and hold COUNTY harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses, for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by COUNTY, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

**COUNTY OF TULARE'S
GENERAL AGREEMENT TERMS AND CONDITIONS
(Form revision approved as of 01/01/2021)**

13. TERMINATION:

(a) **Without Cause:** COUNTY may terminate this Agreement without cause by giving thirty (30) days' prior written notice to CONTRACTOR of its intention to terminate under this provision, specifying the date of termination. COUNTY will pay to CONTRACTOR the compensation earned for work satisfactorily performed and not previously paid for to the date of termination. COUNTY will not pay lost anticipated profits or other economic loss. The payment of any compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of all plans, specifications and estimates, and other documents prepared by CONTRACTOR in accordance with this Agreement. COUNTY will not impose sanctions on CONTRACTOR under these circumstances.

(b) **With Cause:** Either Party may terminate this Agreement immediately, by written notice to the other Party, should the other Party:

- (1) Be adjudged a bankrupt, or
- (2) Become insolvent or have a receiver appointed, or
- (3) Make a general assignment for the benefit of creditors, or
- (4) Suffer any judgment that remains unsatisfied for 30 days, and that would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- (5) Materially breach this Agreement.

In addition, COUNTY may terminate this Agreement based on:

- (6) Material misrepresentation, either by CONTRACTOR or anyone acting on CONTRACTOR'S behalf, as to any matter related in any way to COUNTY'S retention of CONTRACTOR, or
- (7) Other misconduct or circumstances that, in the sole discretion of COUNTY, either impairs the ability of CONTRACTOR to competently provide the services under this Agreement,

or exposes COUNTY to an unreasonable risk of liability.

For any of the occurrences except item (5) above, termination may be effected upon written notice by the terminating Party specifying the date of the termination. If CONTRACTOR fails to perform according to the terms and conditions of this Agreement, then COUNTY may, in addition to any other remedy it may have, issue a declaration of default after 10 days written notice to CONTRACTOR.

Upon a material breach, the Agreement may be terminated after the failure of the defaulting Party to remedy the breach to the satisfaction of the non-defaulting Party within 5 days of written notice specifying the breach. If the breach is not remedied within that 5-day period, then the non-defaulting Party may terminate this Agreement on further written notice specifying the date of termination. If the nature of the breach is such that it cannot be cured within a 5-day period, then the defaulting Party may submit a written proposal within that period which sets forth a specific means to resolve the default. If the non-defaulting Party consents to that proposal in writing, which consent may not be unreasonably withheld, then the defaulting Party must immediately embark on its plan to cure the default or breach. If the default or breach is not cured within the time agreed, then the non-defaulting Party may terminate this Agreement upon written notice specifying the date of termination.

COUNTY will pay to CONTRACTOR the compensation earned for work satisfactorily performed and not previously paid for to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of all plans, specifications and estimates, and other documents prepared by CONTRACTOR by the date of termination in accordance with this Agreement. COUNTY will not pay lost anticipated profits or other economic loss, nor will COUNTY pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If COUNTY terminates this Agreement

**COUNTY OF TULARE'S
GENERAL AGREEMENT TERMS AND CONDITIONS
(Form revision approved as of 01/01/2021)**

for cause and the expense of finishing CONTRACTOR'S scope of work exceeds the unpaid balance of the Agreement, then CONTRACTOR must pay the difference to COUNTY. COUNTY may impose sanctions under these circumstances, which may include possible rejection of future proposals based on specific causes of CONTRACTOR'S non-performance.

(c) **Effects of Termination:** Expiration or termination of this Agreement will not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where COUNTY terminates CONTRACTOR'S services, that termination will not affect any rights of COUNTY to recover damages against CONTRACTOR.

(d) **Suspension of Performance:** Independent of any right to terminate this Agreement, the authorized representative of the COUNTY department or agency for which CONTRACTOR'S services are to be performed, may immediately suspend performance by CONTRACTOR, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by CONTRACTOR to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

14. LOSS OF FUNDING: It is understood and agreed that if COUNTY'S funding is either discontinued or reduced for the services to be provided hereunder, then COUNTY will have the right to terminate this Agreement under section 13 (a) ("Termination Without Cause") as of the end of the term for which funds are appropriated. Such termination shall be without penalty, liability, or expense to COUNTY of any kind, provided that COUNTY shall pay CONTRACTOR in accordance with section 13 (a) for services satisfactorily performed prior to the date of such termination and to the extent funds have been appropriated for such payment.

15. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES: Under applicable federal and state law, if CONTRACTOR submits a false claim to COUNTY under this Agreement, then CONTRACTOR will be liable to COUNTY for the statutory penalties set forth in those statutes, including but not limited to statutory fines, treble damages, costs, and attorneys' fees. CONTRACTOR will be deemed to have submitted a false claim to COUNTY if CONTRACTOR:

(a) Knowingly presents or causes to be presented to COUNTY a false claim or request for payment or approval;

(b) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by COUNTY;

(c) Conspires to defraud COUNTY by getting a false claim allowed or paid by COUNTY;

(d) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to COUNTY; or

(e) Is a beneficiary of an inadvertent submission of a false claim to COUNTY, later discovers the falsity of the claim, and fails to disclose the false claim to COUNTY within a reasonable time after discovery of the false claim.

16. FORM DE-542: If CONTRACTOR is an individual, CONTRACTOR acknowledges that this Agreement is subject to filing obligations under Unemployment Insurance Code Section 1088.8. Accordingly, COUNTY has an obligation to file a report with the Employment Development Department, which report will include CONTRACTOR'S full name, social security number, address, the date this Agreement was executed, the total amount of the Agreement, its expiration date or whether it is ongoing. CONTRACTOR agrees to cooperate with COUNTY to make that information available and to complete Form DE- 542. Failure to provide the required information may, at COUNTY'S option, prevent approval of this Agreement, or be grounds for termination by COUNTY.

**COUNTY OF TULARE'S
GENERAL AGREEMENT TERMS AND CONDITIONS
(Form revision approved as of 01/01/2021)**

17. WORKS FOR HIRE: CONTRACTOR acknowledges that all work(s) under this Agreement are "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to COUNTY all rights and interests CONTRACTOR may have in the work(s) it prepares under this Agreement, including any right to derivative use of the work(s). All software and related materials developed by CONTRACTOR in performance of this Agreement for COUNTY will be the sole property of COUNTY, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein to COUNTY. CONTRACTOR will execute all necessary documents to enable COUNTY to protect COUNTY'S intellectual property rights under this section.

18. WORK PRODUCT: All work product, equipment, or materials created for COUNTY or purchased by COUNTY under this Agreement belong to COUNTY and CONTRACTOR must immediately deliver them to COUNTY at COUNTY'S request upon termination or completion of this Agreement.

19. TIME OF ESSENCE: The Parties agree that time is of the essence under this Agreement, unless they agree otherwise in writing.

20. CONFIDENTIALITY: CONTRACTOR may not use or disclose any information it receives from COUNTY under this Agreement that COUNTY has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by COUNTY. Unless required to do so by law, including, but not limited to, the Ralph M. Brown Act or the California Public Records Act, COUNTY may not disclose to third parties any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential. If COUNTY determines that it must disclose any information that CONTRACTOR previously identified as confidential, then it shall promptly give CONTRACTOR written notice of its intention to disclose such information and the authority for such disclosure. CONTRACTOR shall have period of five (5) calendar days thereafter within which to seek a protective court order to prevent such disclosure or to notify COUNTY that it will

not seek such an order. COUNTY shall cooperate with CONTRACTOR in any efforts to seek such a court order. COUNTY shall not disclose the information until the five (5) day period has expired without a response from CONTRACTOR, or CONTRACTOR has notified COUNTY that it will not seek such an order, or CONTRACTOR has sought and a court has declined to issue a protective order for such information. If CONTRACTOR seeks a protective order for such information, CONTRACTOR shall defend and indemnify COUNTY from any and all loss, injury, or claim arising from COUNTY'S withholding of the information from the requestor. This includes any attorney's fees awarded to the requestor. The duty of COUNTY and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Agreement.

21. ASSIGNMENT/SUBCONTRACTING: Unless otherwise provided in this Agreement, COUNTY is relying on the personal skill, expertise, training and experience of CONTRACTOR and CONTRACTOR'S employees and no part of this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of COUNTY, which consent COUNTY may grant, delay, deny, or condition in its absolute discretion.

22. DISPUTES AND DISPUTE RESOLUTION: (a) CONTRACTOR shall continue with its responsibilities under this Agreement during any dispute.

(b) **Informal Negotiations.** If a dispute arises out of or relating to this Agreement, or the breach of the Agreement, then the Parties shall make their best efforts to informally resolve such disputes. To foster a spirit of cooperation and efficiency in the administration of this Agreement, disputes between the Parties shall first be subjected to a good faith negotiations process as follows:

- (1) The aggrieved Party shall give the other Party, as soon as possible after the event giving rise to the concern, written notice setting forth, with specificity, the issues to be resolved. Notice shall be provided consistent with the terms of the Agreement. Said notice

**COUNTY OF TULARE'S
GENERAL AGREEMENT TERMS AND CONDITIONS
(Form revision approved as of 01/01/2021)**

shall suggest a date, time and place for the negotiations session. The Parties may jointly decide to meet at another time and place; provided, however, the Parties agree that such negotiations session shall commence within fifteen (15) calendar days after the date that the original notice was given to the applicable Party, unless the Parties agree that there is good cause to extend this time limit.

- (2) The Parties agree that the negotiations session(s), including proceedings or discussions concerning the proposed negotiations session(s), are to be considered confidential settlement negotiations for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence. All conduct, statements, promises, offers, views and opinions, oral or written, made during a negotiations session by any Party or a Party's agent, employee, or attorney shall be deemed to be confidential and shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding, including mediation and non-binding arbitration, involving the Parties; provided, however, that evidence otherwise subject to discovery or otherwise admissible is not

excluded from discovery or admission into evidence simply as a result of it having been used in connection with the negotiations session(s).

- (3) Absent mutual consent of the Parties, if a noticed negotiations session fails to commence within the fifteen (15) calendar day period, or if a reasonable attempt to schedule or re-schedule the negotiations session has not been made within those fifteen (15) calendar days, then the negotiations obligation imposed under this Section shall be deemed to have been satisfied and the Parties shall be free to pursue their rights and remedies under this Section 22, unless the reason for such failure to convene a negotiations session is the refusal of the Party asserting a claim to participate in the negotiations session, in which event said claim will be deemed to have been waived.
- (4) If the dispute is not resolved to the satisfaction of the Parties within thirty (30) calendar days after the first negotiations session, then upon the written request of either Party, the dispute may be submitted to non-binding mediation in accordance with this Section 22 ("Mediation Request").

(c) **Mediation.** If a dispute arising out of or relating to this Agreement is not resolved through the above-described negotiations process, then within thirty (30) days after notice is provided through a Mediation Request, the Parties shall participate in non-binding mediation administered by a mediator to help mediate and settle the dispute as soon as practicable. The mediation shall proceed as follows:

- (1) The mediation shall be held at a mutually agreeable location within Tulare County, California.
- (2) The Parties shall mutually select the mediator, who shall be an attorney currently licensed to practice law in the State of California, or

**COUNTY OF TULARE'S
GENERAL AGREEMENT TERMS AND CONDITIONS
(Form revision approved as of 01/01/2021)**

be a retired federal or state judge or magistrate. If the Parties disagree on selection of the mediator, then the Parties will select the mediator by lot from among two nominations provided by each Party.

- (3) The mediator shall meet with and hear presentations by the Parties as soon as practicable after appointment.
- (4) Mediation will be conducted consistent with California Evidence Code Sections 1115-1128. The mediator shall owe a professional duty to both Parties, and shall be barred from testifying in any litigation concerning any information obtained or disclosed in the course of the mediation.
- (5) Each side shall bear its own costs and attorneys' fees, and one-half of all fees and expenses of the mediator.
- (6) Unless otherwise agreed upon by the Parties in writing, the mediation shall be completed within thirty (30) days of the selection of the mediator.
- (7) The Parties agree that the mediation, including proceedings or discussions concerning the mediation, is to be considered a confidential settlement negotiation for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence. All conduct, statements, promises, offers, views and opinions, oral or written, made during the mediation by any Party or a Party's agent, employee, or attorney shall be deemed to be confidential and shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding, including and non-binding arbitration, involving the Parties; provided, however, that evidence otherwise subject to discovery or admissible is not excluded from discovery or admission into evidence simply as a result of it having

been used in connection with the mediation.

- (8) The mediator's decision shall not be binding on or admissible against either Party. If mediation fails to resolve the dispute, then either Party may pursue litigation to resolve the dispute.

23. PROPERTY TAXES: Under the terms of California Revenue and Taxation Code section 107.6 (possessory interest tax), CONTRACTOR'S possession or use of any COUNTY-owned real property under this Agreement may create a "possessory interest" in the real property. If a possessory interest is created, then it may be subject to property taxation and CONTRACTOR may be subject to the payment of property taxes on that possessory interest.

24. FURTHER ASSURANCES: Each Party will execute any additional documents and perform any further acts that may be reasonably required to effect the purposes of this Agreement.

25. CONSTRUCTION: This Agreement reflects the contributions of all Parties and so the provisions of Civil Code section 1654 will not apply to address and interpret any alleged uncertainty or ambiguity.

26. HEADINGS: Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning, or intent of the provisions under the headings.

27. NO THIRD-PARTY BENEFICIARIES INTENDED: Unless specifically set forth, the Parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

28. WAIVERS: The failure of either Party to insist on strict compliance with any provision of this Agreement will not be considered a waiver of any right to do so, whether for that breach or any later breach. The acceptance by either Party of either performance or payment will not be considered a waiver of any preceding breach of the Agreement by the other Party.

**COUNTY OF TULARE'S
GENERAL AGREEMENT TERMS AND CONDITIONS
(Form revision approved as of 01/01/2021)**

29. ORDER OF PRECEDENCE: In the event of any conflict or inconsistency between or among the body of the Agreement (which includes these "General Agreement Terms and Conditions") and any Exhibit, Schedule, or Attachment, then the terms and conditions of the body of the Agreement shall prevail.

30. CONFLICT WITH LAWS OR REGULATIONS/ SEVERABILITY: This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the Parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision will be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either Party is lost, then the Agreement may be terminated at the option of the affected Party. In all other cases, the remainder of the Agreement will continue in full force and effect.

31. ENTIRE AGREEMENT: This Agreement represents the entire agreement between CONTRACTOR and COUNTY as to its subject matter and no prior oral or written understanding will be of any force or effect. No part of this Agreement may be modified without the written consent of both Parties.

32. ASSURANCES OF NON-DISCRIMINATION: CONTRACTOR must not discriminate in employment or in the provision of services based any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation. The Parties recognize that both CONTRACTOR and COUNTY have the responsibility to protect COUNTY employees and clients from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, CONTRACTOR agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities. COUNTY, in its sole discretion, has the right to require CONTRACTOR to replace any employee who provides services of any kind to COUNTY under this Agreement with other employees where COUNTY is concerned that its employees or clients may have been or may be the subjects of discrimination or harassment by such em-

ployees. COUNTY'S right to require replacement of employees under this section does not preclude COUNTY from terminating this Agreement with or without cause as provided for under this Agreement.

33. DRUG-FREE WORKPLACE POLICY: CONTRACTOR acknowledges that under the Federal Drug-Free Workplace Act of 1989 and the California Drug-Free Workplace Act of 1990, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on COUNTY premises. CONTRACTOR agrees that any violation of this prohibition by CONTRACTOR, its employees, agents, or assigns will be deemed a material breach of this Agreement.

34. RECYCLED PAPER CONTENT: To the extent CONTRACTOR'S services under this Agreement include printing services, pursuant to Public Contract Code section 22153 CONTRACTOR shall use paper that meets the recycled content requirements of Public Contract Code section 12209.

EXHIBIT C
NON-PROFESSIONAL SERVICES
INSURANCE REQUIREMENTS

CONTRACTOR shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the CONTRACTOR, his agents, representatives, employees and subcontractors, if applicable.

A. Minimum Scope & Limits of Insurance

1. Commercial General Liability coverage of \$1,000,000 on an occurrence basis, including products and completed operations, property damage, bodily injury and personal & advertising injury (occurrence Form CG 00 01). If a general aggregate applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit must be no less than \$2,000,000.
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability, (any auto) of no less than \$1,000,000 per accident for bodily injury and property damage. If an annual aggregate applies it must be no less than 2,000,000.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

B. Specific Provisions of the Certificate

1. If any of the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
2. CONTRACTOR must submit endorsements to the General Liability reflecting the following provisions:
 - a. *The COUNTY OF TULARE, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operation.*
 - b. *For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.*
 - c. *Each insurance policy required by this agreement shall provide that coverage shall not be canceled, except with written notice to the COUNTY.*
 - d. *CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of the CONTRACTOR may acquire against the COUNTY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.*

3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CONTRACTOR, its employees, agents and subcontractors. CONTRACTOR waives all rights against the COUNTY and its officers, agents, officials, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.

C. Deductibles and Self-Insured Retentions

Deductibles and Self-insured retentions must be declared and any deductible or self-insured retention that exceeds \$100,000 will be reviewed by the COUNTY Risk Manager for approval.

D. Acceptability of Insurance

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A-VII and a Standard & Poor's rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.

E. Verification of Coverage

Prior to approval of this Agreement by the COUNTY, the CONTRACTOR shall file with the submitting department, certificates of insurance with original endorsements effecting coverage in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.

WAIVERS:

I represent and attest that I am a person authorized to make representations on behalf of the CONTRACTOR, and represent the following:

(mark X if applicable)

☐

Automobile Exemption: I certify that _____ does not own nor use vehicles in the performance of the agreement for which this insurance requirement is attached.

☐

Workers' Compensation Exemption: I certify that _____ is not required to carry workers' compensation coverage or has filed an exemption with the State of California as required by law.

I acknowledge and represent that we have met the insurance requirements listed above.

Print Name Mary Alice Escarsega-Fechner Date: 4.6.2023

Contractor Name CSET

Signature E-SIGNED by Mary Escarsega-Fechner
on 2023-04-06 08:52:17 PDT