

Standard Professional Services Agreement (“PSA”)
Revision G – June 2016
Adapted for Community Development Commission May 2019

AGREEMENT FOR PROFESSIONAL SERVICES

This agreement (“Agreement”), dated as of _____, 20__ (“Effective Date”) is by and between the Sonoma County Community Development Commission, a public body corporate and politic (hereinafter “Commission”), and 4LEAF, Inc. (hereinafter “Consultant”).

RECITALS

WHEREAS, Consultant represents that it is a duly qualified Consulting Firm, experienced in the coordination and preparation of Regional Assessment of Fair Housing and related services; and

WHEREAS, in the judgment of the Commission, it is necessary and desirable to employ the services of Consultant for the development of a HUD-approved Regional Assessment of Fair Housing which meets all HUD requirements for the Fair Housing Analysis and the State of California’s AB686 requirements for Affirmatively Furthering Fair Housing within Sonoma County.

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

AGREEMENT

1. Scope of Services.

1.1. Consultant’s Specified Services.

Consultant shall perform the following services within the times or by the dates provided below and pursuant to Article 7, Prosecution of Work:

- Provide a high quality and thorough Assessment of Fair Housing (“AFH”) for the County and each participating jurisdiction (County of Sonoma, City of Petaluma, City of Santa Rosa, City of Cloverdale, City of Healdsburg, Town of Windsor, City of Sebastopol, City of Sonoma, City of Rohnert Park)) and generate reports required to meet standards set by the HUD rule on Affirmatively Furthering Fair Housing (“AFFH”), California Assembly Bill 686 from 2018 (“AB 686”), and any applicable guidance from the California Department of Housing and Community Development
- Hiring and project management of sub-consultant, Lawyers’ Committee for Civil Rights Under Law, to ensure completion of the AFH and preparation of reports that comply with the HUD rule on AFFH and AB 686 for each Sonoma County jurisdiction

- Lead the collaborative efforts required to prepare the AFH and individual AB 686 reports, between all County of Sonoma jurisdictions, the Association of Bay Area Governments (ABAG), and the California Department of Housing and Community Development (HCD)
- The AFH and individual reports shall be completed and submitted to the Commission on or before April 30, 2022

1.2. Cooperation With Commission. Consultant shall cooperate with Commission and Commission staff in the performance of all work hereunder.

1.3. Performance Standard. Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. Commission has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by Commission shall not operate as a waiver or release. If Commission determines that any of Consultant's work is not in accordance with such level of competency and standard of care, Commission, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with Commission to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4. Assigned Personnel.

- a. Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time Commission, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from Commission.
- b. Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by Commission to be key personnel whose services were a material inducement to Commission to enter into this Agreement, and without whose services Commission would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of Commission. With respect to performance under this Agreement, Consultant shall employ the following key personnel: Jane Riley and the Lawyers Committee for Civil Rights Under Law.
- c. In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or

other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

2. Payment.

For all services and incidental costs required hereunder, Consultant shall be paid in accordance with the following terms:

Consultant shall be paid a lump sum amount of \$80,000 upon completion of an AFH report that may be used by each jurisdiction that complies with the standards set by the HUD Affirmatively Furthering Fair Housing Rule, AB 686, and any applicable guidance from the California Department of Housing and Community Development, regardless of the number of hours or length of time necessary for Consultant to complete the services. Consultant shall not be entitled to any additional payment for any expenses incurred in completion of the services.

A breakdown of costs used to derive the lump sum amount, including but not limited to hourly rates, estimated travel expenses and other applicable rates, is specified in Exhibit A, attached hereto and incorporated herein by this reference.

Upon completion of the work, Consultant shall submit its bill[s] for payment in a form approved by Commission. The bill[s] shall identify the services completed and the amount charged.

Unless otherwise noted in this Agreement, payments shall be made within the normal course of Commission business after presentation of an invoice in a form approved by the Commission for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the Commission.

Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the Commission shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Consultant does not qualify, Commission requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If Consultant is qualified, then the Commission requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the Consultant agrees to promptly notify the Commission of any changes in the facts. Forms should be sent to the Commission pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide Commission with either a full or partial waiver from the State of California.

2. Payment. All or part of this Agreement will be paid with Federal awards. As a pass-through entity, the Commission is required to provide certain information regarding Federal award(s) to Consultant as a sub recipient. In signing this Agreement, Consultant acknowledges receipt of the following information regarding Federal award(s) that will be used to pay this Agreement:

CFDA Title: Section 8 Housing Choice Vouchers

CFDA Number: 14.871

Award Name: Administrative Fees

Award Number: 2021

Award Year: 2021

Federal Agency: US Department of Housing and Urban Development

Pass-Through Agency: Sonoma County Housing Authority

Commission Federal Tax Identification Number: 94-2158408

Consultant Federal Tax Identification Number:

As a sub recipient of Federal awards, Consultant is subject to the provisions of Office of Management and Budget Guidance for Grants and Agreements found at 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*) (hereinafter “2 CFR Part 200”). In signing this Agreement, Consultant acknowledges that it understands and will comply with the provisions of 2 CFR Part 200. One provision of 2 CFR Part 200 requires a sub recipient that expends \$750,000 in Federal awards during its fiscal year to have a single audit performed in accordance with 2 CFR Part 200. If such an audit is required, Consultant agrees to provide Commission with a copy of the audit report within the earlier of 30 calendar days after receipt of the auditor’s report(s), or nine months after the Consultant’s fiscal year end. Questions regarding 2 CFR Part 200 can be directed to the Sonoma County Auditor-controller Treasurer-Tax Collector’s Office – General Accounting Division.

3. Term of Agreement. The term of this Agreement shall be from Effective Date to December 31, 2022 unless terminated earlier in accordance with the provisions of Article 4 below.

4. Termination.

4.1. Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, Commission shall have the right, in its sole discretion, to terminate this Agreement by giving 5 days written notice to Consultant.

4.2. Termination for Cause. Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, Commission may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

4.3. Delivery of Work Product and Final Payment Upon Termination.

In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to Commission all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant’s subcontractors, consultants, and other agents in connection with this Agreement and shall submit to Commission an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

4.4. Payment Upon Termination. Upon termination of this Agreement by Commission, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to the termination times the applicable hourly or daily rate; and further provided, however, that if Commission terminates the Agreement for cause pursuant to Section 4.2, Commission shall deduct from such amount the amount of damage, if any, sustained by Commission by virtue of the breach of the Agreement by Consultant.

4.5. Authority to Terminate. The Commission's Executive Director, in consultation with County Counsel, has the authority to terminate this Agreement on behalf of the Commission.

5. Indemnification. Consultant agrees to accept all responsibility for loss or damage to any person or entity, including Commission, and to indemnify, hold harmless, and release Commission and the County of Sonoma, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against Commission based upon a claim relating to such Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant's obligations under this Section apply whether or not there is concurrent or contributory negligence on Commission's part, but to the extent required by law, excluding liability due to Commission's conduct. Commission shall have the right to select its legal counsel at Consultant's expense, subject to Consultant's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance. With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit A, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work. The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Changes

which do not exceed the delegated signature authority of the Commission may be executed by the Executive Director in a form approved by County Counsel. The Board of Commissioners must authorize all other extra or changed work which exceeds the delegated signature authority of the Department Head. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, Commission personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the Commission.

9. Content Online Accessibility. County policy requires that all documents that may be published to the Web meet accessibility standards to the greatest extent possible, and utilizing available existing technologies.

9.1. Standards. All consultants responsible for preparing content intended for use or publication on a County-managed or County-funded web site must comply with applicable Federal accessibility standards established by 36 C.F.R. Section 1194, pursuant to Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794(d)), the County's Web Standards & Guidelines located at <https://sonomacounty.ca.gov/Services/Web-Standards-and-Guidelines/>, and the County's Web Site Accessibility Policy located at <https://sonomacounty.ca.gov/CAO/Administrative-Policies/9-3-Website-Accessibility-Policy/>.

9.2. Alternate Format: When it is strictly impossible due to the unavailability of technologies required to produce an accessible document, Consultant shall identify the anticipated accessibility deficiency prior to commencement of any work to produce such deliverables. Consultant agrees to cooperate with County staff in the development of alternate document formats to maximize the facilitative features of the impacted document(s), e.g. embedding the document with alt-tags that describe complex data/tables.

9.3. Noncompliant Materials; Obligation to Cure. Remediation of any materials that do not comply with County's Web Site Accessibility Policy shall be the responsibility of Consultant. If County, in its sole and absolute discretion, determines that any deliverable intended for use or publication on any County-managed or County-funded Web site does not comply with County Accessibility Standards, County will promptly inform Consultant in writing. Upon such notice, Consultant shall, without charge to County, repair or replace the non-compliant materials within such period of time as specified by County in writing. If the required repair or replacement is not completed within the time specified, County shall have the right to do any or all of the following, without prejudice to County's right to pursue any and all other remedies at law or in equity:

- a. Cancel any delivery or task order;
- b. Terminate this Agreement pursuant to the provisions of Article 4; and/or

c. In the case of custom EIT developed by Consultant for County, County may have any necessary changes or repairs performed by itself or by another contractor. In such event, contractor shall be liable for all expenses incurred by County in connection with such changes or repairs.

9.4. County's Rights Reserved. Notwithstanding the foregoing, County may accept deliverables that are not strictly compliant with County Accessibility Standards if County, in its sole and absolute discretion, determines that acceptance of such products or services is in County's best interest.

10. Representations of Consultant.

10.1. Standard of Care. Commission has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by Commission shall not operate as a waiver or release.

10.2. Status of Consultant. The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of Commission and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits Commission provides its employees. In the event Commission exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

10.3. No Suspension or Debarment. Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, consultant has the obligation to inform the Commission.

10.4. Taxes. Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold Commission harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case Commission is audited for

compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish Commission with proof of payment of taxes on these earnings.

10.5. Records Maintenance. Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to Commission for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

10.6. Conflict of Interest. Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by Commission, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with Commission disclosing Consultant's or such other person's financial interests.

10.7. Statutory Compliance/Living Wage Ordinance. Consultant agrees to comply, and to ensure compliance by its subconsultants or subcontractors, with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement may be subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

10.8. Nondiscrimination. Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religious creed, belief or grooming, sex (including sexual orientation, gender identity, gender expression, transgender, pregnancy, childbirth, medical conditions related to pregnancy, childbirth or breast feeding), marital status, age, medical condition, physical or mental disability, genetic information, military or veteran status, or any other legally protected category or prohibited basis, including without limitation, the Commission's Non-Discrimination Policy and Executive Order 11246, Equal Employment Opportunity. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

10.9. Title VI Discrimination. Consultant assures that no person shall on the grounds of race, color, national origin, or sex, as provided by Title VI of the Civil Rights Act of 1964 and 24 CFR Part 1, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services in this Agreement. Such discrimination

includes, but it not limited to, a failure to provide sufficient language services to participants with Limited English Proficiency.

10.10. **Section 504 Discrimination.** Consultant shall comply with Section 504 of the Rehabilitation Act of 1973 and 24 CFR Part 8, which provides in part that no otherwise qualified individual shall be denied the opportunity to participate in a program or activity because of their disability, may not be required to accept a different kind or lesser program or service than what is provided to others without disabilities, may not be denied access to locations where services are offered because of physical impairments, and may not be required to participate in separate programs and services from those available to persons without disabilities. Generally, an otherwise qualified individual with a disability shall not, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services in this Agreement.

10.11. **AIDS Discrimination.** Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

10.12. **Assignment of Rights.** Consultant assigns to Commission all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to Commission in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as Commission may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of Commission. Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of Commission.

10.13. **Ownership and Disclosure of Work Product.** All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of Commission. Commission shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to Commission all such documents, which have not already been provided to Commission in such form or format, as Commission deems appropriate. Such documents shall be and will remain the property of Commission without restriction or limitation. Consultant may retain copies of the above- described documents but agrees not to disclose or discuss any

information gathered, discovered, or generated in any way through this Agreement without the express written permission of Commission.

10.14. Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

11. Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits Commission's right to terminate this Agreement pursuant to Article 4.

12. Assignment and Delegation. Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

13. Method and Place of Giving Notice, Submitting Bills and Making Payments. All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

TO COMMISSION: Sonoma County Community Development Commission
ATTN: Martha Cheever
1440 Guerneville Road
Santa Rosa, CA 95403
Fax: (707) 565-7583
Email: Martha.Cheever@sonoma-county.org

TO CONSULTANT: 4LEAF, Inc.
ATTN: Jane Riley
2126 Rheem Drive
Pleasanton, CA 94588
Email: jriley@4leafinc.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is

promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

14. Miscellaneous Provisions.

14.1. No Waiver of Breach. The waiver by Commission of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

14.2. Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and Commission acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and Commission acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

14.3. Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

14.4. No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

14.5. Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

14.6. Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

14.7. Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. Each Party acknowledges that, in entering into this Agreement, it has not relied on any representation or undertaking, whether oral or in writing, other than those which are expressly set forth in this

Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

14.8. Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

14.9. Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

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SIGNATURES BEGIN ON NEXT PAGE

CONSULTANT

Dated: _____ By: _____
Name:
Title:

**SONOMA COUNTY COMMUNITY DEVELOPMENT
COMMISSION**

Dated: _____ By: _____
Dave Kiff, Executive Director

**CERTIFICATES OF INSURANCE ON FILE WITH
AND APPROVED AS TO SUBSTANCE BY THE
COMMISSION**

Dated: _____ By: _____
Dave Kiff, Executive Director

APPROVED AS TO FORM

Dated: _____ By: _____
Deputy County Counsel

Exhibit A

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

County reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

Workers Compensation and Employers Liability Insurance

- a. Required if Consultant has employees as defined by the Labor Code of the State of California.
- b. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c. Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d. **Required Evidence of Insurance:** Certificate of Insurance.

If Consultant currently has no employees as defined by the Labor Code of the State of California, Consultant agrees to obtain the above-specified Workers Compensation and Employers Liability insurance should employees be engaged during the term of this Agreement or any extensions of the term.

General Liability Insurance

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance. If Consultant maintains higher limits than the specified minimum limits, County requires and shall be entitled to coverage for the higher limits maintained by Consultant.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by County. Consultant is responsible for any deductible or self-insured retention and shall fund it upon County's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving the County.
- d. **Sonoma County Community Development Commission, its Officers, Agents and**

Employees, the County of Sonoma its Officers Agents and Employees, the City of Santa Rosa, its Officers Agents and Employees, and the City of Petaluma its Officers, Agents, and Employees shall be endorsed as additional insureds for liability arising out of operations by or on behalf of the Consultant in the performance of this Agreement.

- e. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- f. The policy definition of “insured contract” shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the “f” definition of insured contract in ISO form CG 00 01, or equivalent).
- g. The policy shall cover inter-insured suits between the additional insureds and Consultant and include a “separation of insureds” or “severability” clause which treats each insured separately.
- h. Required Evidence of Insurance:
 - i. Copy of the additional insured endorsement or policy language granting additional insured status; and
 - ii. Certificate of Insurance.

Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limits may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance.
- b. Insurance shall cover all owned autos. If Consultant currently owns no autos, Consultant agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. Required Evidence of Insurance: Certificate of Insurance.

Professional Liability/Errors and Omissions Insurance

- a. Minimum Limits: \$1,000,000 per claim or per occurrence; \$1,000,000 annual aggregate.
- b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by County.
- c. If Consultant’s services include: (1) programming, customization, or maintenance of software; or (2) access to individuals’ private, personally identifiable information, the insurance shall cover:
 - i. Breach of privacy; breach of data; programming errors, failure of work to meet contracted standards, and unauthorized access; and
 - ii. Claims against Consultant arising from the negligence of Consultant, Consultant’s employees and Consultant’s subcontractors.
- d. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
- e. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation

coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.

- f. Required Evidence of Insurance: Certificate of Insurance specifying the limits and the claims-made retroactive date.

Standards for Insurance Companies

Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

Documentation

- a. The Certificate of Insurance must include the following reference: AB 686/AFFH.
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Evidence of Insurance on file with County for the entire term of this Agreement and any additional periods if specified in Sections 1 – 4 above.
- c. The name and address for Additional Insured endorsements and Certificates of Insurance is: Sonoma County Community Development Commission, 1440 Guerneville Road, Santa Rosa, CA 95403
- d. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. Consultant shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

Policy Obligations

Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Material Breach

If Consultant fails to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. County, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, County may purchase the required insurance, and without further notice to Consultant, County may deduct from sums due to Consultant any premium costs advanced by County for such insurance. These remedies shall be in addition to any other remedies available to County.

