

EXHIBIT A

COOPERATIVE AGREEMENT FOR MUTUAL PUBLIC WORKS ASSISTANCE

County Agreement No. _____

City Agreement No. _____

City Budget Code: Various operating and project
expenditure accounts

This Cooperative Agreement (this "Agreement") is made and entered into (the "Effective Date"), by and between the CITY OF NAPA, a California charter city ("City"), and NAPA COUNTY, a political subdivision of the State of California ("County") on the Effective Date identified on the signature page. City and County may be hereinafter individually identified as "a Party," or collectively, as "the Parties."

RECITALS

- A. The Parties are responsible for the provision of a wide array of public works services within their respective boundaries and service areas.
- B. On occasion, the Parties do not have sufficient staffing, equipment, and/or other resources to perform the required public works services in their respective boundaries and service areas, and seek the assistance of other local agencies to fill such gaps.
- C. Due to their geographic proximity to one another, the Parties wish to cooperate in providing periodic public works assistance to each other on a case-by-case basis.

NOW, THEREFORE, City and County, for the mutual consideration described herein, agree as follows:

1. REQUEST FOR SERVICES.

- 1.1. **Services Provided on Case-By-Case Basis.** Public works services may be provided by one Party to the other Party on a case-by-case basis as such cases are identified and agreed upon by the Parties in accordance with the procedures set forth herein.
- 1.2. **Process for Making a Request.** A Party may request ("Requesting Party") public works services from the other Party ("Assisting Party") by submitting a written request to the Assisting Party's Authorized Representative at least 20 business days prior to the date the requested services are expected to commence,

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although if that is not possible, requests may be made under a shorter time frame. The request for services shall specify the scope of the services, the personnel, equipment, and/or materials requested, the dates for which the services are requested (including the number of hours of per day), and the location of the services. Within 5 business days from receipt of the Requesting Party's request, the Assisting Party shall notify the Requesting Party in writing whether it accepts or rejects the request.

2. **RESPONSIBILITIES OF REQUESTING PARTY.** The Requesting Party shall be responsible for the safekeeping of equipment provided by the Assisting Party and shall promptly return such equipment to the Assisting Party to the location specified by the Assisting Party (unless the Assisting Party agrees to retrieve the equipment) and in the same condition as it was received by the Requesting Party. Any damage caused by the Requesting Party while the equipment is under their care shall be repaired at the expense of the Requesting Party.
3. **COMPENSATION.** The Requesting Party shall pay the Assisting Party for all costs incurred by the Assisting Party in providing services to the Requesting Party pursuant to this Agreement. Compensation for staff time shall be the then-current fully burdened overhead rate (the "Fully Burdened Overhead Rate") for the Assisting Party's employee performing the services. The Fully Burdened Overhead Rate is an hourly billable rate that captures all of the Assisting Party's costs (direct and indirect) associated with an employee, over and above gross compensation or payroll costs. Typical costs associated with the Fully Burdened Overhead Rate include payroll taxes, worker's compensation, health insurance, paid time off, pension contributions, other benefits, and indirect costs including departmental and agency-wide administrative overhead allocations. The applicable Fully Burdened Overhead Rate will depend on the employee performing the services as each employee has a different Fully Burdened Overhead Rate that is calculated based on that particular employee's salary and benefits. Each Party shall document and provide to the other Party, along with each invoice, the method/formula on which the Party relies for calculating the Fully Burdened Overhead Rate for its employees.

Compensation for materials shall be the Assisting Party's actual cost for acquiring the materials. Compensation for equipment shall be the applicable prorated monthly rental fleet rate for each piece of equipment.

4. **BILLING AND PAYMENT.** Within 30 days of completion of a task, the Assisting Party shall submit an invoice to the Requesting Party for the services provided by that Party pursuant to this Agreement ("Invoice"). The Invoice shall identify the services performed, the dates of such services and the charges therefor, based upon the rates set forth in Section 3 of this Agreement. Payments of any undisputed amounts shall be due within thirty days after receipt of the Invoice. If either Party disputes any portion of the Invoice submitted by the other Party, that Party shall provide written notice of the dispute to the other Party within thirty days after receipt of the disputed invoice, and the Parties shall thereafter cooperate in good faith to resolve the dispute.

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5. **AUTHORIZED REPRESENTATIVES.**

5.1. **City's Authorized Representative.** All services performed by City under this Agreement shall be performed by, or under the supervision of, City's authorized representative, the Operations Manager ("City's Authorized Representative") unless otherwise designated in writing by City's Authorized Representative or City's Public Works Director.

5.2. **County's Authorized Representative.** All services performed by County shall be performed by, or under the supervision of, the Roads Superintendent, ("County's Authorized Representative") unless otherwise designated in writing by County's authorized representative or the County's Public Works Director.

6. **INFORMATION AND DOCUMENTATION.**

6.1. **Accounting Records.** City and County shall maintain all accounting records related to this Agreement in accordance with generally accepted accounting principles and state law requirements, and in no event for less than four years. The accounting records to be maintained in accordance with this Agreement shall include, at a minimum, documents which support City and County's costs and expenses related to this Agreement, including documentation of requests for services, services performed, invoices, and payments. Each Party's accounting records shall be made available to the other Party within a reasonable time after request, during normal business hours.

6.2. **Ownership of Work Product.** All original documents prepared by the Assisting Party (including its employees and agents) in performing the services under this Agreement ("work product"), whether complete or in progress, shall become the property of the Assisting Party, and shall be given to the Requesting Party at the completion of services, or upon demand by the Requesting Party. Each Party shall have a right to make and keep copies of the work product.

7. **RELATIONSHIP BETWEEN THE PARTIES.** City and County are each an independent "public agency," as defined by Government Code section 6500, and this Agreement does not create a separate legal entity. Each Party shall, at all times, remain an independent public agency solely responsible for all acts of its employees or agents, including any negligent acts or omissions, except as otherwise provided in Section 10(y) of this Agreement.

7.1. City (including its employees and agents) is not County's agent and shall have no authority to act on behalf of County, or to bind County to any obligation whatsoever, unless County provides prior written authorization to City. City is not an officer or employee of County, and City shall not be entitled to any benefit, right, or compensation other than that provided in this Agreement.

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7.2. County (including its employees and agents) is not City's agent and shall have no authority to act on behalf of City, or to bind City to any obligation whatsoever, unless City provides prior written authorization to County. County is not an officer or employee of City, and County shall not be entitled to any benefit, right, or compensation other than that provided in this Agreement.

8. COMPLIANCE WITH LAW. Each Party shall comply with all applicable legal requirements including all federal, state, and local laws (including ordinances and resolutions), whether or not said laws are expressly stated in this Agreement.

9. INSURANCE. Each Party shall, throughout the duration of this Agreement, maintain the following insurance (including, for the purpose of this section, self-insurance or coverage under a self-insurance pool) to cover each of their respective interests related to work performed under this Agreement (including coverage for their employees and agents). Concurrently with the execution of this Agreement, and prior to the commencement of any services, each Party shall provide the other with written proof of insurance (including self-insurance or self-insurance pool coverage) (certificates and endorsements), in a form acceptable to the other Party. Each Party shall provide substitute written proof of insurance no later than 30 days prior to the expiration date of any insurance coverage required by this Agreement.

9.1. Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) coverage in an amount not less than \$1,000,000 (ONE MILLION DOLLARS) per general occurrence for general liability, bodily injury, personal injury, and property damage. Each Party shall name the other as an additional covered Party or an additional insured.

9.2. Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") coverage in an amount not less than \$1,000,000 (ONE MILLION DOLLARS) per accident for bodily injury and property damage.

9.3. Workers' Compensation coverage as required by the State of California.

10. Indemnification. To the full extent permitted by law, each Party ("Indemnifying Party") shall indemnify, hold harmless, release, and defend the other Party (including its officers, elected or appointed officials, employees, volunteers, and agents) ("Indemnified Party") from and against any and all liability or claims (including actions, demands, damages, injuries, settlements, losses, or costs [including legal costs and attorney's fees]) (collectively, "Liability") of any nature, arising out of, pertaining to, or relating to the following: (x) the acts or omissions of the Indemnifying Party or its officers, agents, or employees under this Agreement; and (y) the acts or omissions of the employees or agents of the Indemnified Party under this Agreement working under the direction and control of the Indemnifying Party if such acts or omissions are within the scope of employment under the direction and control of the Indemnifying Party. Except as set forth

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in subsection (y) above, an Indemnifying Party will not be obligated to indemnify the Indemnified Party for the proportionate share of the Liability caused by the active negligence, sole negligence, or willful misconduct of the Indemnified Party. An Indemnifying Party's indemnification obligations under this Agreement are not limited by any limitations of any insurance held by it, including, but not limited to, workers' compensation insurance.

- 11. TERM OF THE AGREEMENT.** The term of this Agreement begins on the date it is signed by the City Clerk, below, attesting to full execution of the Agreement by both parties ("Effective Date") and shall continue in effect until it is terminated in accordance with Section 12 of this Agreement.
- 12. TERMINATION.** This Agreement may be terminated by either Party without cause by providing 30 days' written notice of termination to the other Party's Authorized Representative, effective upon the date set forth in the notice; provided however, if the non-terminating Party made a request for services to the terminating Party, which the terminating Party agreed to accept in accordance with Section 1.2 of this Agreement prior to the non-terminating Party's receipt of the written notice of termination, the notice of termination shall not be effective until after the terminating Party has provided the requested services to the non-terminating Party. If either Party exercises its right to terminate this Agreement in accordance with this Section, each Party shall pay the other Party for all services satisfactorily performed in accordance with this Agreement, up to and including the effective date of the termination in accordance with the rates set forth in Section 3 and the procedures set forth in Section 4 of this Agreement.
- 13. DEFAULT.** If either Party ("demanding Party") has a good faith belief that the other Party ("defaulting Party") is not complying with the terms of this Agreement, the demanding Party shall give written notice of the default (with reasonable specificity) to the defaulting Party, and demand the default to be cured within ten days of the notice. If: (a) the defaulting Party fails to cure the default within ten days of the notice, or, (b) if more than ten days are reasonably required to cure the default and the defaulting Party fails to give adequate written assurance of due performance within ten days of the notice, then (c) the demanding Party may terminate this Agreement upon written notice to the defaulting Party.
- 14. NOTICES.** All notices or requests required or contemplated by this Agreement will be in writing and delivered to the other Party's Authorized Representative by personal delivery, U.S. Mail, nationwide overnight delivery service, email, or as otherwise specified herein. Delivery is deemed effective upon the first to occur of: (a) actual receipt by a Party's Authorized Representative, (b) actual receipt at the address identified below, or (c) three business days following deposit in the U.S. Mail of registered or certified mail sent to the address identified below. A Party's contact information, below, may be changed by providing written notice of any change to the other Party.

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TO CITY: Public Works Operations Manager
CITY OF NAPA
P.O. Box 660
NAPA, CA 94559-0660

TO COUNTY: Stephen Stangland, Roads Superintendent
COUNTY OF NAPA
1195 Third St., Suite 101
Stephen.stangland@countyofnapa.org

- 15. HEADINGS.** The heading titles for each section of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.
- 16. SEVERABILITY.** If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement will be construed as not containing that term, and the remainder of this Agreement will remain in full force and effect; provided, however, this section will not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.
- 17. GOVERNING LAW, JURISDICTION, AND VENUE.** The interpretation, validity, and enforcement of this Agreement will be governed and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement will be filed and heard in a court of competent jurisdiction in the County of Napa.
- 18. ATTORNEY'S FEES.** If any litigation is commenced to enforce or interpret this Agreement, the prevailing Party is entitled to reasonable attorney's fees, costs, and expenses incurred.
- 19. MODIFICATIONS.** This Agreement may not be amended or modified orally. No amendment or modification of this Agreement is binding unless it is in a writing signed by both parties.
- 20. WAIVERS.** No waiver of a breach, default, or duty under this Agreement will be effective unless it is in writing and signed by the Party waiving the breach, default, or duty. Waiver of a breach, default, or duty under this Agreement will not constitute a continuing waiver or a waiver of any subsequent breach, default, or duty under this Agreement.
- 21. ENTIRE AGREEMENT.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the Services. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in

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one is binding as if called for in all. If any provision in any document attached or incorporated into this Agreement conflicts or is inconsistent with a provision in the body of this Agreement, the provisions in the body of this Agreement will control over any such conflicting or inconsistent provisions.

22. INTERPRETATION. Each Party to this Agreement has had an opportunity to review the Agreement, and to consult with its respective legal counsel regarding the meaning of the Agreement. Accordingly, Civil Code section 1654 will not apply to interpret any uncertainty in the meaning of the Agreement.

23. PRIVILEGES AND IMMUNITIES. In accordance with California Government Code section 6513, all of the privileges and immunities from liability, all exemptions from laws, ordinances and rules, and all pension, relief, disability, workmen's compensation, and other benefits which apply to the activity of the trustees, officers, employees or agents of the Parties when performing their functions within the territorial limits of their respective public agencies, shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties associated with performance of this Agreement.

24. COUNTERPARTS. This Agreement may be executed in counterparts, each one of which is deemed an original, but all of which together constitute a single instrument.

25. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the County and the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the Effective Date set forth below.

CITY OF NAPA

By _____
Steve Potter, City Manager

"CITY"

ATTEST:

Tiffany Carranza, City Clerk

Date: _____
("Effective Date")

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COUNTERSIGNED:

Joy Riesenbergs, City Auditor

APPROVED AS TO FORM:

Michael W. Barrett, City Attorney

NAPA COUNTY, a political subdivision of
the State of California

By _____
RYAN GREGORY, Chair
Board of Supervisors

"COUNTY"

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Shana A. Bagley</u> Deputy County Counsel</p> <p>Date: <u>April 12, 2022</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____ Processed By: _____ Deputy Clerk of the Board</p>	<p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors</p> <p>By: _____</p>
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