



**Local Agency Formation Commission of Napa County**  
Subdivision of the State of California

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*We Manage Local Government Boundaries, Evaluate Municipal Services, and Protect Agriculture*

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**Agenda Item 7b (Consent/Action)**

**TO:** Local Agency Formation Commission

**PREPARED BY:** Brendon Freeman, Executive Officer *BF*

**MEETING DATE:** December 6, 2021

**SUBJECT:** Approval of Contract with Brown Armstrong for Audit Services

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**RECOMMENDATION**

It is recommended the Commission approve the audit contract with Brown Armstrong and authorize the Executive Officer to sign the contract (Attachment One).

**BACKGROUND AND SUMMARY**

The County of Napa previously entered into a contract with Brown Armstrong for audit services on behalf of the County, as well as several other joint powers agencies, special districts, and other designated units, including the Commission. Following the expiration of the previous contract, the County entered into a new contract with Brown Armstrong for audit services covering fiscal years ending 2021, 2022, and 2023 with an optional two-year extension (2024 and 2025). Brown Armstrong provided a bid that was less than their previous contract amount.

The new contract between the County and Brown Armstrong provides an option for the Commission to enter into a new contract with Brown Armstrong for its own annual audits. This opportunity allows for efficiency and cost savings for LAFCO.

Given that the County serves as LAFCO's treasurer, staff recommends the Commission follow the County's procurement effort and enter into a new contract with Brown Armstrong for audit services. It has been the Commission's practice to select this option in years past, and it appears appropriate to continue with this practice at this time.

Annual audit fees for the Commission throughout the term of the contract would remain consistent at \$4,200. The terms of the attached contract have been reviewed by legal counsel and accepted by Brown Armstrong, pending approval by the Commission.

**ATTACHMENT**

- 1) Draft Professional Services Agreement with Brown Armstrong

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Margie Mohler, Vice Chair  
Councilmember, Town of Yountville

Mariam Aboudamous, Commissioner  
Councilmember, City of American Canyon

Beth Painter, Alternate Commissioner  
Councilmember, City of Napa

Diane Dillon, Chair  
County of Napa Supervisor, 3rd District

Brad Wagenknecht, Commissioner  
County of Napa Supervisor, 1st District

Ryan Gregory, Alternate Commissioner  
County of Napa Supervisor, 2nd District

Kenneth Leary, Commissioner  
Representative of the General Public

Eve Kahn, Alternate Commissioner  
Representative of the General Public

Brendon Freeman  
*Executive Officer*

**LOCAL AGENCY FORMATION COMMISSION OF NAPA COUNTY**

**AGREEMENT NO. \_\_\_\_\_**

**PROFESSIONAL SERVICES AGREEMENT**

**THIS AGREEMENT** is made and entered into as of this 6<sup>th</sup> day of December, 2021, by and between the LOCAL AGENCY FORMATION COMMISSION OF NAPA COUNTY, a public agency, hereinafter referred to as “COMMISSION”, and Brown Armstrong Accountancy Corporation, a California corporation, whose business address is 4200 Truxtun Avenue, Suite 300, Bakersfield, California 93309, hereinafter referred to as “CONTRACTOR”;

**RECITALS**

**WHEREAS**, COMMISSION wishes to obtain specialized services, as authorized by subdivision (k) of Government Code section 56375, in the form of specialized audit services; and

**WHEREAS**, CONTRACTOR is willing to provide such specialized services to COMMISSION under the terms and conditions set forth herein; and

**TERMS**

**NOW, THEREFORE**, COMMISSION hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve COMMISSION in accordance with the terms and conditions set forth herein:

- 1. Term of the Agreement.** The term of this Agreement shall commence on July 1, 2021 and shall expire on December 31, 2023, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination) or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COMMISSION shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes) and 21 (Access to Records/Retention). The term of this Agreement shall be automatically renewed one-time for an additional 2 years at the end of the initial term, under the terms and conditions then in effect, unless either party gives the other party written notice of intention not to renew no less than thirty (30) days prior to the expiration of the then current term.
- 2. Scope of Services.** CONTRACTOR shall provide COMMISSION those services set forth in Exhibit “A”, attached hereto and incorporated by reference herein.

3. **Compensation.**

(a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work, COMMISSION shall pay CONTRACTOR at the rates set forth in Exhibit "B", attached hereto and incorporated by reference herein.

(b) Expenses. No travel or other expenses will be reimbursed by COMMISSION.

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement per fiscal year shall be a total of four thousand two hundred dollars (\$4,200) for professional services; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered.

4. **Method of Payment.**

(a) Professional Services. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to COMMISSION of an itemized billing invoice in a form acceptable to the COMMISSION which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked, a detailed description of the tasks completed during the billing period, the names of person(s) performing the services and the position(s) held by such person(s), and the approved hourly or task rate.

(b) Fixed Price. If the Agreement provides for a fixed price, if CONTRACTOR presents interim invoices, CONTRACTOR must state the percentage of work completed, which must be verified by COMMISSION, i.e., 35% design, 95% design, draft report, et cetera, at which time CONTRACTOR shall be paid the equivalent percentage of the fixed price.

(c) CONTRACTOR shall submit invoices not more often than 30 days to the COMMISSION who, after review and approval as to form and content, shall submit the invoice to the Napa County Auditor-Controller no later than fifteen (15) calendar days following receipt.

5. **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, COMMISSION employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that COMMISSION may monitor the work performed by CONTRACTOR. COMMISSION shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes, unless required to do so by court order. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

6. **Specific Performance.** It is agreed that CONTRACTOR, including the agents or employees of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, COMMISSION, in addition to any other

rights or remedies which COMMISSION may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation Insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide COMMISSION with certification of all such coverages upon request by the COMMISSION.

(b) Liability Insurance. Each party shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better or equivalent self-insurance:

(1) General Liability. Each party shall obtain and maintain in full force and effect during the term of this Agreement commercial or comprehensive general liability insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, either issued by a company admitted to do business in the State of California and having an A.M. Best Rating of no less than A:VII or by self-insurance satisfactory to other party's risk manager or employee designated by that party to perform such function, or by a combination thereof, covering liability for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of that party under this Agreement except for acts or omissions performed in strict compliance with express direction the other party's governing board, officers or personnel. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability. Each party shall obtain and maintain in full force and effect during the term of this Agreement professional liability/errors and omissions insurance coverage in an amount of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit for each occurrence and, where provided through a policy of insurance, issued by a company admitted to do business in the State of California and having an A.M. Best Rating of A:VII or better, covering all professional acts or omissions of that party arising out of or in connection with this Agreement except for those acts or omissions performed in strict compliance with express direction from the other party's governing board, officers or personnel unless such direction was based upon professional advice from the first party or its personnel or other agents under this Agreement.

(3) Comprehensive Automobile Liability Insurance. Each party shall obtain and maintain in full force and effect during the term of this Agreement a comprehensive automobile liability insurance policy (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with that party's activities under this Agreement of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence.

(c) Certificates of Coverage. Insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of COMMISSION's Risk

Manager, demonstrated by other evidence of coverage acceptable to COMMISSION's Risk Manager, which shall be filed by CONTRACTOR with the Auditor-Controller prior to commencement of performance of any of CONTRACTOR's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its COMMISSION number or title and department; shall be kept current during the term of this Agreement; shall provide that COMMISSION shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) **Waiver of Subrogation and Additional Insured Endorsements.** For the commercial general liability insurance coverage referenced in 7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming COMMISSION, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, CONTRACTOR shall file with the evidence of coverage an endorsement waiving subrogation.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of COMMISSION shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to COMMISSION with respect to any insurance or self-insurance programs maintained by COMMISSION. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by COMMISSION's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) **Deductibles/Retentions.** Any deductibles or self-insured retentions shall be declared to COMMISSION's Risk Manager.

(e) **Inclusion in Subcontracts.** CONTRACTOR agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 7.

## 8. **Hold Harmless/Defense/Indemnification.**

(a) **In General.** To the full extent permitted by law, CONTRACTOR and COMMISSION shall each defend, indemnify and hold harmless each other as well as their respective officers, agents, employees, volunteers or representatives from and against any and all liability, claims, actions, proceedings, losses, injuries, damages or expenses of every name, kind and description, including litigation costs and reasonable attorney's fees incurred in

connection therewith, brought for or on account of personal injury (including death) or damage to property, arising out of or connected with any acts or omissions of that party or its officers, agents, employees, volunteers, or contractors or their subcontractors, when performing any activities or obligations required of that party under this Agreement. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold COMMISSION and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

9. **Termination for Cause.** If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within 10 days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving 5 days prior written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices). The Napa County Purchasing Agent or designee pursuant to Napa County Code section 2.36.050 is hereby authorized to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COMMISSION for cause.

10. **Other Termination.** This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least 60 days prior to the effective date, as long as the date the notice is given and the effective date of the termination are in the same fiscal year; provided, however, that no such termination may be effected by COMMISSION unless an opportunity for consultation is provided prior to the effective date of the termination. COMMISSION hereby authorizes the COMMISSION'S Executive Officer to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COMMISSION for the convenience of COMMISSION.

11. **Disposition of, Title to and Payment for Work Upon Expiration or Termination.**

(a) Upon expiration of this Agreement or termination for cause under Paragraph 9 or termination for convenience of a party under Paragraph 10:

(1) To the extent CONTRACTOR has provided services through Software and Applications materials licensed to COMMISSION, COMMISSION shall promptly return the Software and Application materials to CONTRACTOR. In addition, to the extent CONTRACTOR maintains COMMISSION data on those portions of digital software hosted by CONTRACTOR and not controlled by COMMISSION ("County data"), CONTRACTOR shall

promptly return County data to COUNTY Information Technology Department (ITS) in a format designated by ITS and shall subsequently purge County data from CONTRACTOR's systems upon confirmation from COUNTY that the copy of the data provided to COMMISSION is comprehensive of the data previously hosted by CONTRACTOR.

(2) All finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of COMMISSION, the property of and shall be promptly returned to COMMISSION, although CONTRACTOR may retain a copy of such work for its personal records only, except as otherwise provided under Paragraph 15 (Confidentiality) of this Agreement. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only COMMISSION shall be entitled to claim or apply for the copyright or patent thereof. Notwithstanding the foregoing and to the extent services under this Agreement involve the development of previously patented inventions or copyrighted software, then upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CONTRACTOR or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that COMMISSION shall receive, at no additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which COMMISSION is a party. If the product involves a source code, CONTRACTOR shall either provide a copy of the source code to COMMISSION or shall place the source code in an escrow account, at CONTRACTOR's expense, from which the source code may be withdrawn and used by COMMISSION for the sole purpose of maintaining and updating the system dependent upon such code when such use is necessary to prevent loss of service to COMMISSION.

(b) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of the notice of termination and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to COMMISSION for damages sustained by COMMISSION by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or otherwise terminated, and COMMISSION may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to COMMISSION from CONTRACTOR is determined.

12. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

13. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this

paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

COMMISSION

Tracy A. Schulze  
Napa County  
1195 Third Street, Suite B10  
Napa, CA 94559

CONTRACTOR

Lindsey McGuire  
Brown Armstrong  
4200 Truxton Avenue, Suite 300  
Bakersfield, CA 98309

14. **Compliance With COMMISSION Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by COMMISSION employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy adopted by resolution of the Board of Supervisors on March 26, 1991.

(b) County of Napa "Policy for Maintaining a Harassment and Discrimination Free Work Environment" revised effective August 23, 2005.

(c) County of Napa Drug and Alcohol Policy adopted by resolution of the Board of Supervisors on June 25, 1991.

(d) Napa County Information Technology Use and Security Policy adopted by resolution of the Board of Supervisors on April 17, 2001. To this end, all employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the COMMISSION computer network shall sign and have on file with COMMISSION'S ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

15. **Confidentiality.**

(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to CONTRACTOR which relates to COMMISSION's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive, if any, in trust and confidence, except with the prior written approval of COMMISSION, expressed through the Executive Officer. Upon cancellation or expiration of this Agreement, CONTRACTOR shall return to COMMISSION all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by COMMISSION.

(b) Protection of Personally Identifiable Information and Protected Health Information.



(1) To the extent CONTRACTOR is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as “Protected Information”), CONTRACTOR shall adhere to all federal, state and local laws, rules and regulations protecting the privacy of such information. CONTRACTOR shall adhere to all existing and future federal, state and local laws, rules and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of COMMISSION Protected Information provided to, or accessed or created by, CONTRACTOR. Additionally, CONTRACTOR shall only access, use or disclose COMMISSION Protected Information if such access, use, or disclosure is expressly permitted by the terms of its agreement with COMMISSION. Any other access, use or disclosure of COMMISSION Protected Information is prohibited. Examples of prohibited accesses, uses and disclosures include, but are not limited to: the removal of confidential files, documents or devices containing COMMISSION Protected Information from a COMMISSION facility; the unauthorized transmission of COMMISSION Protected Information via email, fax or other means; and the discussion of such information with other individuals (including other CONTRACTOR or COMMISSION employees) who do not have a COMMISSION approved business reason to obtain the information.

(2) CONTRACTOR shall ensure that its staff and any third party organizations or individuals that it engages to perform services in conjunction with the terms of this agreement are trained to its privacy and security policies, as well as Paragraph 15 of this agreement; and procedures and that appropriate physical, technological and administrative safeguards are in place to protect the confidentiality of COMMISSION’s Protected Information. Upon request, CONTRACTOR shall make available to COMMISSION its policies and procedures, staff training records and other documentation of compliance with this Paragraph 15.

(3) CONTRACTOR agrees to notify COMMISSION immediately of any unauthorized access to or disclosure of Protected Information that it becomes aware of. This includes instances wherein CONTRACTOR encounters unsecured Protected Information in areas where CONTRACTOR employees are performing services.

(4) CONTRACTOR will be responsible for all costs associated with CONTRACTOR’s breach of the security and privacy of COMMISSION’s Protected Information, or its unauthorized access to or disclosure of COMMISSION’s Protected Information, including, but not limited to, mitigation of the breach, cost to the COMMISSION of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules or regulations applicable at the time of the breach.

(c) Protection of COMMISSION Data. If CONTRACTOR will be processing and storing the COMMISSION’s data in an offsite location, such as a cloud service site, cloud storage site, hosted application site, or hosted storage site, CONTRACTOR shall guarantee that such data is encrypted using an encryption algorithm that meets the current US Department of Defense minimum requirements in order to protect COMMISSION data against a breach of protected data if lost or stolen. All offsite cloud applications and storage systems utilized by CONTRACTOR shall be located in the United States, which includes any backup and failover facilities. Application and storage solutions in any foreign location is prohibited.

All desktop and laptop computers, as well other similar type computer systems, used by CONTRACTOR shall be encrypted using the same encryption algorithm described above. All data in transit shall require the same encryption. Storage of COMMISSION data on removable portable storage is prohibited.

Upon termination of this agreement, CONTRACTOR shall purge all COMMISSION data from all CONTRACTOR systems using a forensic grade deletion that conforms to US Department of Defense DoD 5220.22-M (E) standards.

CONTRACTOR shall reimburse the COMMISSION for all associated costs of a breach, including but not limited to reporting costs and associated penalties the COMMISSION must bear.

**16. No Assignments or Subcontracts.**

(a) In General. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of COMMISSION, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for COMMISSION to withhold its consent to assignment. For purposes of this subparagraph, the consent of COMMISSION may be given by the Executive Officer or Auditor-Controller or designee.

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

**17. Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties. Failure of CONTRACTOR to secure such authorization in writing in advance of performing any of the extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

**18. Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement

lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

19. **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of COMMISSION by the State of California pursuant to agreement between COMMISSION and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to COMMISSION for inspection.

(c) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include all of the provisions of this Paragraph 19 in all such subcontracts as obligations of the subcontractor.

20. **Taxes.** CONTRACTOR agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold COMMISSION harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that COMMISSION is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish COMMISSION with proof of payment of taxes or withholdings on those earnings.

21. **Access to Records/Retention.** COMMISSION, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall maintain all required records for at least seven (7) years after COMMISSION makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

22. **Authority to Contract.** CONTRACTOR and COMMISSION each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

23. **Conflict of Interest.**

(a) **Covenant of No Undisclosed Conflict.** The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to COMMISSION and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as COMMISSION may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of COMMISSION relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, COMMISSION may terminate this Agreement immediately upon giving written notice without further obligation by COMMISSION to CONTRACTOR under this Agreement.

(b) **Statements of Economic Interest.** CONTRACTOR acknowledges and understands that COMMISSION has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the COMMISSION "assuming office", "annual", and "leaving office" Statements of Economic Interest as a "consultant", as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless it has been determined in writing that CONTRACTOR, although holding a "designated" position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation.

24. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

25. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

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

27. This Amendment may be executed in multiple counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement. This Amendment may be executed by facsimile or electronic (.pdf) signature and a facsimile or electronic (.pdf) signature shall constitute an original for all purposes.

28. **Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

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**IN WITNESS WHEREOF**, this Agreement was executed by the parties hereto as of the date first above written.

**BROWN ARMSTRONG ACCOUNTANCY CORPORATION**

By \_\_\_\_\_  
Lindsey McGuire, CPA/Partner

By \_\_\_\_\_  
Christina M. Thornburgh, Corporate Secretary

"CONTRACTOR"

**LOCAL AGENCY FORMATION COMMISSION,**  
a political subdivision of  
the State of California

By \_\_\_\_\_  
Brendon Freeman, Executive Officer

"COMMISSION"

<p>APPROVED AS TO FORM COMMISSION COUNSEL</p> <p>By: _____ Sloan Sakai Yeung &amp; Wong LLP</p> <p>Date: _____</p>	<p>APPROVED BY THE LOCAL AGENCY FORMATION COMMISSION OF NAPA COUNTY</p> <p>Date: _____</p> <p>Processed By: _____ Commission Clerk</p>
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**EXHIBIT "A"**

**SCOPE OF WORK**

CONTRACTOR shall provide COMMISSION with the following services:

**I. DESCRIPTION OF SERVICES**

- Audit and report on the financial statements for the COMMISSION
- Express an opinion on the fair presentation of the COMMISSION'S basic financial statements.

**II. COMPLIANCE WITH GOVERNMENT CODE SECTION 7550.** As required by Government Code section 7550, each document or report prepared by CONTRACTOR for or under the direction of COMMISSION pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

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**EXHIBIT “B”**

**COMPENSATION AND EXPENSE REIMBURSEMENT**

Auditing Services:

Fiscal Year	<u>2020-21</u>	<u>2021-22</u>	<u>2022-23</u>
	\$4,200	\$4,200	\$4,200

Auditing Services if optional years exercised:

Fiscal Year	<u>2023-24</u>	<u>2024-25</u>
	\$4,200	\$4,200

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