

COUNTY OF MENDOCINO

EMERGENCY OCCUPANCY AGREEMENT

OCCUPANCY AGREEMENT COVERING PREMISES

LOCATED AT: Surf Motel

1220 South Main Street

Fort Bragg, CA 95437

OWNER'S FED. TAX. I.D., NO. OR SOCIAL SECURITY NO.:

TENANT:

County of Mendocino

LS# 21-22

File No:

Preamble

THIS OCCUPANCY AGREEMENT, dated as of 04-01-2021, 2021, by and between
NORTH COAST ENTERPRISES, INC.

hereinafter called the Owner, without distinction as to number or gender, and the County of Mendocino, a political subdivision of the State of California, hereinafter called the County. County and Owner are sometimes referred to herein as "party" or collectively as "parties."

This Agreement is entered into pursuant to the Governor's State of Emergency Proclamation dated March 4, 2020 and Executive Order N-25-20, in response to COVID-19, and is directly related to that emergency and necessary for the preservation of public health and safety. This Agreement is also entered into pursuant to the March 22, 2020 issuance by Lessee of that certain ORDER OF THE COUNTY EXECUTIVE OFFICER AS DIRECTOR OF EMERGENCY SERVICES PERMITTING THE COMMANDEERING OF PROPERTY FOR TEMPORARY RESIDENCES AND MEDICAL FACILITIES (the "Order").

WITNESSETH

Description

1. A. The Owner hereby authorizes the County and the County hereby hires from the Owner those certain premises "AS IS" with appurtenances situated in the City of Fort Bragg, County of Mendocino, State of California, and more particularly described as follows:

Surf Motel located at 1220 South Main Street, Fort Bragg, CA hereby being incorporated into this occupancy agreement (the "premises"), and including use of parking spaces contiguous to the subject hotel building, and unlimited use of the building's common facilities. The County shall occupy a fluctuating number of rooms, up to 8 rooms (the "occupied premises"), and pay for rooms based on the actual daily occupancy. County and Owner shall document the rooms occupied by County on a daily basis. The County shall have exclusive access to and use of the occupied premises set forth in this occupancy agreement twenty-four (24) hours per day, seven (7) days per week with no exceptions.

B. The County is executing this occupancy Agreement as an emergency protective measure in order to support its efforts to respond to the COVID-19 epidemic in a manner consistent with the Governor's State of Emergency Proclamation dated March 4, 2020, and Executive Order N-25-20, by establishing an alternate care site and to provide emergency shelter and housing for members of the public, including, but not limited to, housing individuals who need to be sheltered due to being at high risk for contracting COVID-19 due to being aged 65 or older, suffering from serious underlying health conditions, experiencing street-level homelessness or

who otherwise need assistance and care, and for any other related purpose. Owner acknowledges and authorizes County, and its officers, employees, agents, invitees, and other necessary parties, to access, occupy, and use the premises solely for purposes of this Agreement. All provisions of this occupancy agreement shall be read and construed in a manner that is consistent with this stated purpose.

Term 2. The term of this occupancy agreement shall commence as of March 1, 2021, and shall terminate on September 30, 2021, with such rights of termination as may be hereinafter expressly set forth.

Early Termination 3. The County may terminate this occupancy agreement at any time by giving written notice to the Owner at least fifteen (15) days prior to the date when such termination shall become effective. If the County fails to complete its move out within the notice period and remains in the occupied premises, additional rent shall be paid in the amount of the room rate stated in paragraph 4 below for each room still occupied, for each day the County occupies the occupied premises following the effective date of termination. Any such payments for additional rent shall be limited to the actual number of rooms occupied by the County following the effective date of termination.

Rent 4. Rental payments shall be paid by the County, from legally available funds and subject to the California Constitution and the County Budget Act. Specific rooms shall be secured and payments for rooms shall be made to the Owner through the Pandemic Prevention Motel Voucher Program operated by the Mendocino County Health and Human Services Agency, with payments made for each room actually occupied. The daily voucher room rate shall be a maximum of \$170.

Notices 5. All notices and correspondence herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and either: 1) deposited in the United States Mail, certified and postage prepaid; or 2) sent via an alternate commercial overnight delivery service (i.e. FedEx or similar) with receiver's signature required; and addressed as follows:

To the Owner:

North Coast Enterprises, Inc.
1220 South Main Street
Fort Bragg, CA 95437

Phone No.: 964-5361

Hotel No.:

Email: surfmotel@mcn.org

To the County:

PURCHASING AGENT
EXECUTIVE OFFICE
COUNTY OF MENDOCINO
501 LOW GAP ROAD, ROOM 1010
UKIAH, CA 95482

Phone No. 707-463-4441

Email: CEO@mendocinocounty.org

ALL NOTICES AND CORRESPONDENCE MUST REFERENCE
COUNTY AND PREMISES ADDRESS

Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices and correspondence shall be mailed to either party may be changed by giving written notice to the other party.

Parking 6. Parking spaces, upon commencement of the occupancy agreement, shall be unobstructed and completely accessible for County's use.

**Services,
Utilities, and
Supplies**

7. Owner, at Owner's sole cost and expense, shall furnish normal and standard hotel operation functions including but not limited to the following services, utilities, and supplies to the area occupied by the County, and also to the "common" building areas (if any) such as lobbies, elevators, stairways, corridors, etc., if any:

- A. Sewer, trash disposal, and water service, including both hot and cold water to the lavatories.
- B. Elevator (if any) service.
- C. Electricity and/or gas as necessary to provide power for heating, ventilating, and air conditioning, and electrical or gas service as needed for County's operations.
- D. Pool, pool area, and pool equipment, if any.
- E. Standard hotel housekeeping/janitorial services not less than every 3 days.
- F. Onsite manager. Onsite manager shall coordinate with County representatives on the development and implementation of policies and procedures to facilitate County's use of the premises for the purposes outlined in this occupancy agreement.
- G. Maintenance and operation of building mechanical, plumbing, electrical and HVAC systems, including maintenance of furniture and electronic equipment in rooms.
- H. On-call maintenance services for occupied rooms and common areas.

All housekeeping/janitorial services, as well as maintenance and linen/terry and laundry services shall be provided in accordance with any applicable, current health and safety protocols established by public health officials.

In the event of failure by the Owner to furnish any of the above services or utilities in a satisfactory manner, the County may furnish the same at its own cost; and, in addition to any other remedy the County may have, may deduct the amount thereof, including County's administrative costs, from the rent that may then be, or thereafter become due hereunder.

**Repair and
Maintenance**

8. During the term of this occupancy agreement, the Owner shall maintain the premises in good repair and tenantable condition.

Assignment

9. The County shall have the ability to assign this occupancy agreement. Furthermore, the County shall have the ability to permit and allow specified members of the public to occupy the occupied premises as part of the County's response to the COVID-19 outbreak.

**Quiet
Possession**

10. The Owner agrees that the County, while keeping and performing the covenants herein contained, shall at all times during the existence of this occupancy agreement, peaceably and quietly have, hold, and enjoy the occupied premises without suit, trouble, or hindrance from the Owner or any person claiming under Owner.

Destruction

11. If the premises are totally destroyed by fire or other casualty, this occupancy agreement shall terminate. If such casualty shall render ten percent (10%) or less of the floor space of the occupied premises unusable for the purpose intended, Owner shall effect restoration of the premises as quickly as is reasonably possible, but in any event within thirty (30) days.

In the event such casualty shall render more than ten percent (10%) of such floor space unusable but not constitute total destruction, Owner shall forthwith give notice to County of the specific number of days required to repair the same. If Owner under such circumstances shall not give such notice within fifteen (15) calendar days after such destruction, or if such notice shall specify that such repairs will require more than ninety (90) days to complete from date such notice is given, County, in either such event, at its option may terminate this occupancy agreement or, upon notice to Owner, may maintain occupancy and elect to undertake the repairs itself, deducting

the cost thereof from the rental due or to become due under this occupancy agreement and any other occupancy agreement between Owner and County.

In the event of any such destruction other than total, where the County has not terminated the occupancy agreement as herein provided, or pursuant to the terms hereof has not elected to make the repairs itself, Owner shall diligently prosecute the repair of said premises and, in any event, if said repairs are not completed within the period of thirty (30) days for destruction aggregating ten percent (10%) or less of the floor space, or within the period specified in Owner's notice in connection with partial destruction aggregating more than ten percent (10%), the County shall have the option to terminate this occupancy agreement or complete the repairs itself, deducting the cost thereof from the rental due or to become due under this occupancy agreement and any other occupancy agreement between Owner and County.

It is understood and agreed that the County or its agent has the right to enter its destroyed or partially destroyed occupied facilities no matter what the condition. At the County's request, the Owner shall immediately identify an appropriate route through the building to access the County occupied space. If the Owner cannot identify an appropriate access route, it is agreed that the County may use any and all means of access at its discretion in order to enter its occupied space.

**Subrogation
Waived**

12. To the extent authorized by any fire and extended coverage insurance policy issued to Owner on the herein premises, Owner hereby waives the subrogation rights of the insurer, and releases the County from liability for any loss or damage covered by said insurance.

**Prevailing
Wage
Provision**

13. For those projects defined as "public works" pursuant to Labor Code §1720.2, the following shall apply:

- A. Owner/contractor shall comply with prevailing wage requirements and be subject to restrictions and penalties in accordance with §1770 et seq. of the Labor Code which requires prevailing wages be paid to appropriate work classifications in all bid specifications and subcontracts.
- B. The Owner/contractor shall furnish all subcontractors/employees a copy of the Department of Industrial Relations prevailing wage rates which Owner will post at the job site. All prevailing wage rates shall be obtained by the Owner/contractor from:

Department of Industrial Relations
Division of Labor Statistics and Research
455 Golden Gate Avenue, 8th Floor
San Francisco, California 94102
Phone: (415) 703-4774
Fax: (415) 703-4771

For further information on prevailing wage: http://www.dir.ca.gov/dlsr/statistics_research.html

- C. Owner/contractor shall comply with the payroll record keeping and availability requirement of §1776 of the Labor Code.
- D. Owner/contractor shall make travel and subsistence payments to workers needed for performance of work in accordance with the Labor Code.
- E. Prior to commencement of work, Owner/contractor shall contact the Division of Apprenticeship Standards and comply with §1777.5, §1777.6, and §1777.7 of the Labor Code and Applicable Regulations

**Fair
Employment
Practices**

14. During the performance of this occupancy agreement, the Owner shall not deny benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental

disability, medical condition, marital status, age, or sex. Owner shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

Owner shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Sections 11135-11139.8), and the regulations or standards adopted by the awarding County to implement such article.

Holding Over

15. In the event the County remains in possession of the occupied premises after the expiration of the occupancy agreement term, or any extension or renewal thereof, this occupancy agreement shall be automatically extended on a month to month basis, subject to a thirty (30) days termination by the County and otherwise on the terms and conditions herein specified, so far as applicable. If the County fails to vacate the occupied premises within the notice period and remains for an extended period, additional rent shall be paid in the amount of the room rate stated in paragraph 4 above for each room still occupied, for each day the County occupies the occupied premises following the effective date of termination. Any such payments for additional rent shall be limited to the actual number of rooms occupied by the state following the effective date of termination.

Surrender of Possession

16. Upon termination or expiration of this occupancy agreement, the County will peacefully surrender to the Owner the occupied premises in as good order and condition as when received, except for reasonable use and wear thereof and damage by earthquake, fire, public calamity, the elements, acts of God, or circumstances over which County has no control or for which Owner is responsible pursuant to this occupancy agreement.

Time of Essence, Binding upon Successors

17. Time is of the essence of this occupancy agreement, and the terms and provisions of this occupancy agreement shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns to the respective parties hereto. All of the parties hereto shall be jointly and severally liable hereunder.

No Oral Agreements

18. It is mutually understood and agreed that no alterations or variations of the terms of this occupancy agreement shall be valid unless made in writing and signed by the parties hereto, and that no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

Indemnification

19. Except as otherwise provided herein, County represents that it has inspected the premises, accepts the condition and fully assumes any and all risks incidental to the use thereof. County shall not be liable to Owner, its agents, employees, subcontractors or independent contractors for any personal injury or property damage suffered by them which may result from hidden, latent or other dangerous conditions in, on, upon or within the premises unknown to the County, its officers, agents or employees. Owner shall indemnify and hold harmless the County of Mendocino, its Agencies, Districts, Special Districts, and Departments, their respective directors, its officers, officers, Board of Supervisors, agents, employees, elected or appointed officials, agents or representatives and independent contractors (individually and collectively hereinafter referred to as Indemnitees) free and harmless from any liability whatsoever, based or asserted upon any act or omission of Owner, its officers, agents, employees, subcontractors and independent contractors for property damage, bodily injury, or death (County's employees included) or any other element of damage of any kind or nature, relating to or in any way connected with or arising from its use, occupancy or operation of the premises, and Owner, shall defend, at its expense, including attorney fees, Indemnitees in any legal action based upon such alleged acts or omissions. With respect to any action or claim subject to indemnification herein by Owner, Owner shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Owner's indemnification to Indemnitees as set forth herein.

Owner's obligation hereunder shall be satisfied when Owner has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved. The specified insurance limits required in this occupancy agreement shall in no way limit or circumscribe Owner obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

Insurance

20. A. **Owner Insurance.** Without limiting or diminishing the Owner's obligation to indemnify or hold the County harmless, Owner shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this occupancy agreement. As respects to the insurance section only, the County herein refers to the County of Mendocino, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

(i) Workers' Compensation: If Owner has employees as defined by the State of California they shall procure and maintain Workers' Compensation Insurance, in full compliance with the Workers' Compensation and Occupational Disease Laws of all authorities having jurisdiction over the premises. Such policy shall include Employer's Liability (Coverage B) and Occupational Disease coverage, with limits not less than One Million Dollars (\$1,000,000) per person, per occurrence. Policy shall provide a Waiver of Subrogation in favor of the County.

(ii) Commercial General Liability: Procure and maintain comprehensive general liability insurance coverage that shall protect County from claims for damages for personal injury, including, but not limited to, accidental and wrongful death, as well as from claims for property damage, which may arise from County's use of the premises or the performance of its obligations hereunder, whether such use or performance be by County, by any subcontractor, or by anyone employed directly or indirectly by either of them. Policy shall also include fire and extended coverage on the improvements, alterations and fixtures to be constructed and installed upon the premises in an amount not less than the full replacement value of such improvements, alterations and fixtures. Such insurance shall name County as an additional insured with respect to this occupancy agreement and the obligations of County hereunder. Such insurance shall provide for limits of not less than One Million Dollars (\$1,000,000) per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

(iii) Vehicle Liability. If vehicles or mobile equipment are used in the performance of the obligations under this occupancy agreement, then Owner shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the County as Additional Insureds.

(iv) General Insurance Provisions - All lines:

1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2) The insurance requirements contained in this occupancy agreement may be met with a program(s) of self-insurance. Owner must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior

written consent of the County Risk Manager before the commencement of operations under this occupancy agreement. Upon notification of self-insured retention unacceptable to the County, and at the election of the County's Risk Manager, Owner's carriers shall either; 1) reduce or eliminate such self-insured retention as respects this occupancy agreement with the County, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

3) Owner shall cause Owner's insurance carrier(s) to furnish the County of Mendocino with a properly executed Certificate(s) of Insurance and copies of Endorsements effecting coverage as required herein. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that a minimum of thirty (30) days written notice shall be given to the County of Mendocino prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. If Owner insurance carrier(s) policies does not meet the minimum notice requirement found herein, Owner shall cause Owner's insurance carrier(s) to furnish a 30-day Notice of Cancellation Endorsement.

4) In the event of a material modification, cancellation, expiration, or reduction in coverage, this occupancy agreement shall terminate forthwith, unless the County of Mendocino receives, prior to such effective date, another properly executed Certificate of Insurance and copies of endorsements evidencing coverage's set forth herein and the insurance required herein is in full force and effect. County shall not commence operations until the County has been furnished Certificate(s) of Insurance and copies of endorsements. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.

5) It is understood and agreed to by the parties hereto that the Owner's insurance shall be construed as primary insurance, and the County's insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

6) County reserves the right to require that Owner adjust the monetary limits of insurance coverage as required in this Paragraph 20 herein every fifth (5th) year during the term of this occupancy agreement or any extension thereof, subject to ninety (90) days written notice to County of such adjustment, in the event that County reasonably determines that the then existing monetary limits of insurance coverage are no longer consistent with those monetary limits of insurance coverage generally prevailing in the Mendocino County area for facilities comparable to the premises; provided, however, that any adjustment shall not increase the monetary limits of insurance coverage for the preceding five (5) years in excess of fifty percent (50%) thereof.

7) Owner shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this occupancy agreement.

8) Owner agrees to notify County of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this occupancy agreement.

9) To the extent authorized by any fire and extended coverage insurance policy issued to Owner on the herein premises, Owner hereby waives the subrogation rights of the insurer, and releases the County from liability for any loss or damage covered by said insurance.

B. County Insurance. County is a self-insured public entity for purposes of addressing all lines of insurance coverage as follows:

- (i) General Liability: One Million Dollars (\$1,000,000) per occurrence.
- (ii) Vehicle Liability: One Million Dollars (\$1,000,000) per occurrence.
- (III) Workers' Compensation: Statutory, County shall waive subrogation in favor of Owner.

County shall provide a certificate of insurance as evidence of coverage as required herein.

**Hazardous
Substance**

21. County agrees that it will comply with all applicable laws existing during the term of this occupancy agreement pertaining to the use, storage, transportation, and disposal of any hazardous substance as that term is defined in such applicable law. In the event a government order is issued naming the County or the County incurs any liability during or after the term of the occupancy agreement in connection with contamination which pre-existed the County's obligations and occupancy under this occupancy agreement or which were not caused by the County, Owner shall hold harmless, indemnify, and defend the County in connection therewith and shall be solely responsible as between County and Owner for all efforts and expenses thereto.

**Restoration of
Premises**

22. A. Upon termination of this Occupancy agreement, Owner agrees that the equipment installed by the County shall be and remain the property of the County, and County shall remove such property when vacating the premises. County shall restore all surfaces, including floors and walls, to the condition existing prior to its installation, including repair of damaged floor tile and patching and repainting damaged wall surfaces to match adjacent existing surfaces

B. Owner agrees that in no event shall County be liable to Owner for any alleged damages to business reputation due to the use of premises by County under this occupancy agreement.

Access

23. Owner shall allow County or its agents to enter the premises as the date of this agreement to stage and prepare the premises for the County's use, to the extent the County deems necessary.

Taxes

24. Owner is solely responsible for all tax liabilities, including property taxes.

**Intentionally
Omitted**

25.

**Occupancy of
Premises**

26. Owner and County understand that they shall not receive rent, fees, or any other form of payments or consideration, or gifts from occupants of hotel rooms in exchange for access to or use of the premises. Owner and County also understand that they have not entered into any agreements with the occupants of the hotel rooms related to the use of the premises. The occupants of the hotel rooms are not persons who hire any dwelling unit from Owner or County within the meaning of California Civil Code section 1940.

**Orders of
State or Local
Public Health
Officials;
Executive
Orders**

27. A. County and Owner mutually acknowledge that local, state, or federal authorities may issue official orders related to the COVID-19 epidemic, or take other official actions, subsequent to the execution of this occupancy agreement that parties to this occupancy agreement cannot presently predict. County and Owner mutually acknowledge and agree that this occupancy agreement shall be subject to the provisions of any such official action or order, particularly but not limited to Executive Orders of the Governor of the State of California and Orders of the County Public Health Officer, and the like ("Official Actions"), and if the provisions of any such Official Actions materially impact the terms of this occupancy agreement, the provisions of those Official Actions shall govern.

B. In the event that such Official Actions make occupancy and/or use of the premises by County under this occupancy agreement illegal, unlawful, or contrary to public policy, County shall provide written notice to Owner in the manner described herein, and County and Owner mutually agree that this occupancy agreement shall terminate as of the date of that Official Action, at no penalty to County. In such an event, County shall pay outstanding rent to due to Owner pro-rated from the date of the Official Action, along with all other remaining sums due to Owner, within thirty (30) calendar days from the date of that Official Action.

Remedies

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

**Governing
Law;
Venue;
Costs**

29. In the event of a dispute between the parties to this occupancy agreement regarding or related to the terms and provisions contained herein, County and Owner mutually agree that the sole venue for any such dispute shall be the Superior Court of the County of Mendocino, and that the terms and provisions of this occupancy agreement shall be interpreted under the laws of the State of California. In the event litigation arises between the parties hereto, in connection with this occupancy agreement, each party shall be responsible for their own costs and attorney fees relating to said dispute, including any lawsuit brought by either party.

**Mutual
Drafting;
Opportunity
to Consult
Counsel**

30. County and Owner mutually represent and warrant that they have each had the opportunity to be represented by counsel of their choice in negotiating this occupancy agreement, and therefore this occupancy agreement shall be deemed to have been negotiated and prepared at the joint request, direction and construction of the parties, at arm's length, with the advice and participation of counsel, and shall be interpreted in accordance with its terms without favor to either party, and no presumption or burden of proof shall arise favoring or disfavoring either party by virtue of the authorship of any of the provisions of this occupancy agreement.

**Premises
as
Alternate
Care Site**

31. The parties agree that to the fullest extent possible and consistent with the designation and use of the premises as a health emergency-related alternate care site, the premises and the subject building constitute a mass care center, first aid station, temporary hospital annex, and a necessary facility for mitigating the effects of the COVID-19 local emergency, local health emergency, State of California state of emergency, and federally-declared national emergency, and as such should be entitled to the fullest protections and immunities available under applicable law, including California Civil Code section 1714.5.

Severability

32. In the event any parts of this occupancy agreement are found to be void, the remaining provisions of this occupancy agreement shall nevertheless be binding with the same effect as though the void parts were deleted.

**No Changes
Except by
Written
Amendment**

33. No changes shall be made to this occupancy agreement except by written amendment, duly executed by the parties hereto.

**Entire
Agreement**

34. This occupancy agreement (including the documents referred to herein) constitutes the entire agreement between the parties and supersedes any prior understandings, agreements, or representations by or among the parties, written or oral, to the extent they related in any way to the subject matter hereof.

**Exhibits
Incorporated**

35. The following Exhibits are attached hereto and made part of this occupancy agreement, and compliance with any terms therein is required a material term of this occupancy agreement:

A. None

FEDERAL PROVISIONS

Clean Air Act

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

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

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

**Federal Water
Pollution
Control Act**

39. The Owner agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Sections 1251 et seq.

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

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

**Debarment
and
Suspension
Clause**

42. This Occupancy Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Owner is required to verify that none of the Owner, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

43. The Owner must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

(Lower Tier refers to the agency or contractor receiving Federal funds, as well as any subcontractors that the agency or contractor enters into contract with using those funds)

As required by Executive Order 12549, Debarment and Suspension, as defined at 44 CFR Part 17, County may not enter into contract with any entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal Government from participating in transactions involving Federal funds. Contractor is required to sign the certification below which specifies that neither Contractor nor its

principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Contractor will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any contractor that is debarred, suspended, or ineligible under 44 CFR Part 17.

Instruction for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definition and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction originated may pursue available remedies, including suspension and/or debarment.

*Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion –
Lower Tier Covered Transactions*

1. The prospective lower tier participant certifies, by submission of its proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

OWNER

By SUHAIL AHMED
Date 04-01-2021

44. This certification is a material representation of fact relied upon by the County. If it is later determined that the Owner did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

45. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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

**Byrd Anti-
Lobbying
Amendment,
31 U.S.C. §
1352 (as
amended)**

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

The undersigned [Owner] certifies, to the best of his or her knowledge, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure

Form to Report Lobbying," in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

OWNER

By SUHAIL AHMED
Date 4-1-2021

**Procurement
of Recovered
Materials**

47. In the performance of this occupancy agreement, the Owner shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

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

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

**Access to
Records**

50. The following access to records requirements apply to this occupancy agreement:

- i. The Owner agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Owner which are directly pertinent to this occupancy agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- ii. The Owner agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- iii. The Owner agrees to provide the FEMA Administrator or his or her authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

iv. In compliance with the Disaster Recovery Act of 2018, the County and the Owner acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**Department of
Homeland
Security Seal,
Logo, Flags**

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

**Compliance
with Federal
Law,
Regulations,
and Executive
Orders**

52. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the occupancy agreement. The Owner will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

**No Obligation
by Federal
Government**

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

**Program
Fraud and
False or
Fraudulent
Statements or
Related Acts**

54. The Owner acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this occupancy agreement.

The parties hereto have executed this Agreement in duplicate the day and year first written above.

OWNER

COUNTY

COUNTY OF MENDOCINO

BY: Janette Rau

By: Carmel J. Angelo
Carmel J. Angelo
Chief Executive Officer/
Director of Emergency Services

FEDERAL TAX ID: (to be provided under
separate cover)

RECOMMENDED BY:

By: SUHAIL AHMED
Department Head

INSURANCE PROVISIONS REVIEWED
BY:

By: Carmel J. Angelo
Risk Management

PURCHASING AGENT

By: Janette Rau
CARMEL J. ANGELO,
Chief Executive Officer

FISCAL REVIEW:

By: Darcie Antle
Deputy CEO/Fiscal

APPROVED AS TO FORM:

By: Matthew Kiedrowski, Deputy
Christian Curtis County Counsel