

NAPA COUNTY AGREEMENT NO. 8474

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE COUNTIES OF NAPA, MARIN, AND LAKE**

THIS AGREEMENT is made and entered into as of this 10th day of May, 2016, by and between the NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "Napa County", MARIN COUNTY, a political subdivision of the State of California, hereinafter referred to as "Marin County" and LAKE COUNTY, a political subdivision of the State of California, hereinafter referred to as "Lake County;"

RECITALS

WHEREAS, in 2014 the Congress of the United States enacted the Workforce Innovation and Opportunity Act "WIOA" for the purpose of providing for stronger alignment of the workforce, education and economic development; and

WHEREAS, to promote regional economic development opportunities, Marin County, Napa County and Lake County, hereinafter "Parties," have decided to operate as a Single Local Workforce Development Area, hereinafter "LWDA," and form one Workforce Development Board; and

WHEREAS, to operate as a single LWDA and create a single Workforce Development Board, hereinafter "WDB," the Parties have agreed to enter into a Joint Powers Agency called Workforce Alliance of the North Bay hereinafter "Agency;" and

WHEREAS, the Agency's governing board will act as the Chief Local Elected Official for the Agency to coordinate regional efforts to support training and development programs and to form one WDB, The Workforce Alliance of the North Bay WDB, under the WIOA to be operated in the LWDA of Napa, Marin and Lake Counties; and

WHEREAS, in addition to the terms described in the Joint Powers Agency Agreement, the Parties want to agree to terms regarding allocation of WIOA funds, indemnity and Insurance.

TERMS

NOW, THEREFORE, the Parties agree to the terms and conditions as follows regarding the Agency:

1. Allocation of WIOA funds

(a) All funds allocated to Agency on behalf of the LWDA will be allocated for LWDA programs and services provided within each Parties' respective geographical area in the same proportion as determined by Federal and State formula under WIOA to Napa, Marin and Lake Counties and based on the same data sources used for the WIOA allocation formula to the Parties. The allocated funds shall be used for the purpose of developing and implementing a workforce development system meeting the requirements of the WIOA and the local needs of Napa, Marin and Lake Counties.

(b) All other discretionary funds and special purpose funds will be allocated as equitably as practicable based on the applicable terms of the funding source requirements, service levels and/or vote of the Workforce Alliance of the North Bay WDB.

(c) The Agency's Executive Director will serve, as defined in the Joint Powers Agreement, as the Local Workforce Innovation and Opportunity Act Administrator for the LWDA of Napa, Marin and Lake Counties for all programs and funds accepted by contract or grant from the United States Department of Labor, State or any other public or private agency, and will perform such functions as are required of the administrative entity of the Agency by the contractor or grantor.

2. Indemnification

(a) Hold Harmless/Defense/Indemnification by Napa County

(i) To the full extent permitted by law, Napa County shall hold harmless, defend at its own expense, and indemnify Agency, Marin County and/or Lake County and their officers, agents, employees and volunteers from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property or losses, including, but not limited to, disallowances for payments or recoupment of WIOA funds, arising from acts or omissions of Napa County or its respective officers, agents,

investment services under this Agreement or the Joint Powers Agreement pursuant to WIOA regulations for LWDA of Napa, Marin and Lake Counties, excluding, however, such liability, claims, losses, damages or expenses arising from the negligence or willful acts of Agency or its officers, agents, employees, volunteers, or other contractors or their subcontractors.

(ii) Napa County shall make Agency, Marin County and/or Lake County whole for any payment of any penalty, fine or assessment against Agency arising from the failure of Napa County or its respective officers, agents, employees, volunteers, contractors and subcontractors to comply with all applicable WIOA regulations, including, but not limited to, any penalties, fines or assessments that may be assessed under a Federal or State False Claims Act Provision. To the extent that Parties must make Agency whole under this Paragraph, Agency may elect to offset against any future allocated funds to Parties to the extent permitted under law, or demand to be made whole for any losses without offset.

(b) Hold Harmless/Defense/Indemnification by Marin County

(i) To the full extent permitted by law, Marin County shall hold harmless, defend at its own expense, and indemnify Agency, Napa County and/or Lake County and their officers, agents, employees and volunteers from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property or losses, including, but not limited to, disallowances for payments or recoupment of WIOA funds, arising from acts or omissions of Marin County or its respective officers, agents, employees, volunteers, contractors and subcontractors in the course of rendering workforce investment services under this Agreement or the Joint Powers Agreement pursuant to WIOA regulations for LWDA of Napa, Marin and Lake Counties, excluding, however, such liability, claims, losses, damages or expenses arising from the negligence or willful acts of Agency or its officers, agents, employees, volunteers, or other contractors or their subcontractors.

(ii) Marin County shall make Agency, Napa County and/or Lake County whole for any payment of any penalty, fine or assessment against Agency arising from the failure of Marin County or its respective officers, agents, employees, volunteers, contractors and subcontractors to comply with all applicable WIOA regulations, including, but not limited to,

any penalties, fines or assessments that may be assessed under a Federal or State False Claims Act provision. To the extent that Parties must make Agency whole under this Paragraph, Agency may elect to offset against any future allocated funds to Parties to the extent permitted under law, or demand to be made whole for any losses without offset.

(c) **Hold Harmless/Defense/Indemnification by Lake County**

(i) To the full extent permitted by law, Lake County shall hold harmless, defend at its own expense, and indemnify Agency, Marin County and/or Napa County and their officers, agents, employees and volunteers from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property or losses, including, but not limited to, disallowances for payments or recoupment of WIOA funds, arising from acts or omissions of Lake County or its respective officers, agents, employees, volunteers, contractors and subcontractors in the course of rendering workforce investment services under this Agreement or the Joint Powers Agreement pursuant to WIOA regulations for LWDA of Napa, Marin and Lake Counties, excluding, however, such liability, claims, losses, damages or expenses arising from the negligence or willful acts of Agency or its officers, agents, employees, volunteers, or other contractors or their subcontractors.

(ii) Lake County shall make Agency, Napa County and/or Marin County whole for any payment of any penalty, fine or assessment against Agency arising from the failure of Lake County or its respective officers, agents, employees, volunteers, contractors and subcontractors to comply with all applicable WIOA regulations, including, but not limited to, any penalties, fines or assessments that may be assessed under a Federal or State False Claims Act provision. To the extent that Parties must make Agency whole under this Paragraph, Agency may elect to offset against any future allocated funds to Parties to the extent permitted under law, or demand to be made whole for any losses without offset.

(d) Notification Requirements of Claim or Damage. The Parties shall notify the Agency and other Parties 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 any party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(e) Survival of this Paragraph. The obligations of the Parties prescribed under Paragraph 2 shall continue after the termination in relation to acts or omissions occurring prior to the date of termination.

3. Insurance.

Each party 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, each party shall provide workers' compensation insurance for the performance of any of the party's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation.

(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:

(c) **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 FIVE HUNDRED THOUSAND (\$1,500,000) 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 the 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 from 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.

(d) **Certificates of Coverage.** Where the foregoing coverages are provided by insurance rather than by self-insurance (written proof of which shall be provided to the other party in a letter of Self-Insurance which shall include the acknowledgement of the additional insured status of all Parties to this Agreement), the coverages shall be evidenced by one or more certificates of coverage which shall be filed with the other party's Secretary or Clerk prior to reimbursement for performance of any of the party's duties under this Agreement; shall reference this Agreement by its COUNTY number or title and department; 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. For the insurance coverage referenced in Paragraph 3(b), each party shall also file with the evidence of coverage an endorsement from the insurance provider naming the other party, its officers, employees, agents and volunteers as additional insureds and waiving subrogation, and the certificate or other evidence of coverage shall provide that if the same policy applies to activities of the party not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of the party shall pertain only to liability for activities of the party under this Agreement, and that the insurance provided is primary coverage to the other party with respect to any insurance or self-insurance programs maintained by the other party. 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. Upon request by the other party, the party shall provide or arrange for the insurer to provide the other party with certified copies of the actual insurance policies or relevant portions thereof within thirty (30) days of the request.

(e) **Deductibles/Retentions.** Any deductibles or self-insured retentions shall be declared to the other Parties, through their respective designated Risk Manager.

(f) **Survival of This Paragraph.** The obligations of the Parties prescribed under this Paragraph 3 shall continue after the termination in relation to acts or omissions occurring prior to the date of termination.

4. Counterparts.

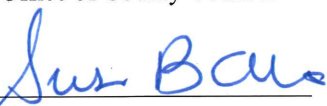
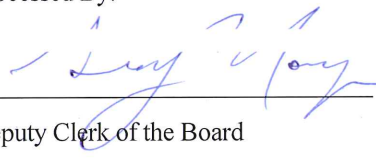
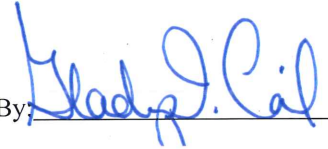
This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument, and shall become effective when counterparts have been signed by each of the Parties and delivered to the other Parties; it being understood that all Parties need not sign the same counterparts.

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

NAPA COUNTY, a political subdivision
of the State of California



ALFREDO PEDROZA, Chairman of the
Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By:  County Counsel Date: <u>5.2.16</u>	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: <u>5/10/16</u> Processed By:  Deputy Clerk of the Board	ATTEST: GLADYS I. COIL Clerk of the Board of Supervisors By: 
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cc:\D\Wib\Side Agreement 5.2.16 Final.Doc

COUNTY OF MARIN, a political subdivision
of the State of California

Steve Kinsey, President of the
County of Marin Board of Supervisors

ATTEST: DIANE PATTERSON
Assistant Clerk of the Board

By: _____

APPROVED AS TO FORM:
STEVEN M. WOODSIDE, County Counsel

By: _____
Deputy

COUNTY OF LAKE, a political subdivision
of the State of California

Chair, Board of Supervisors

ATTEST: CAROL J. HUCHINGSON
Clerk of the Board

By: _____

APPROVED AS TO FORM:
ANITA L. GRANT, County Counsel

By: _____
Deputy