



AUGUST 8, 2018

# DONATIONS MANAGEMENT ANNEX

TO THE COUNTY OF SANTA CLARA EMERGENCY OPERATIONS PLAN



OFFICE OF EMERGENCY SERVICES  
COUNTY OF SANTA CLARA & SANTA CLARA COUNTY FIRE  
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SAN JOSE, CA



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## EXECUTIVE SUMMARY

This planning document serves as a functional annex to the Santa Clara County Emergency Operations Plan. It describes the general strategy for emergency donations management with respect to both monetary and in-kind donations during response to an incident with local, as well as regional impacts.

This Annex has been prepared in accordance with the standards of the National Incident Management System (NIMS), the California Standardized Emergency Management System (SEMS), and other Federal and State requirements and standards for emergency response plans, applicable as of the date of this Annex's preparation.

This Annex provides guidance only; it is intended for use in further development of response capabilities, implementation of training and exercises, and defining the general approach to incident response. The actual response to an incident is dependent on:

- The specific conditions of the incident, including the incident type, geographic extent, severity, timing, and duration
- The availability of resources for response at the time of the incident
- Decisions of Incident Commanders and political leadership
- Actions taken by neighboring jurisdictions, regional entities, the State, and the Federal Government

These and other factors may result in unforeseen circumstances, prevent the implementation of Annex components, or require actions that are significantly different from those described in the Plan.

The Annex is not applicable outside of Santa Clara County.



## ACKNOWLEDGEMENTS

We would like to acknowledge contributions from the following county departments; special districts; and local/state planning partners:

### **County Departments**

Office of Emergency Services  
Office of the County Executive  
Facilities and Fleet Department

### **Non-Profit Organizations**

Silicon Valley Community Foundation  
Goodwill of Silicon Valley  
Salvation Army of Silicon Valley  
NorCal VOAD/CADRE

### **Special Districts**

Santa Clara County Fire Department

### **State Agencies**

Cal OES Long-Term Recovery Liaison



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## RECORD OF CHANGE

Number	Date	Section #	Description
01.	August 2018	NA	Initial Publication
02.			
03.			
04.			
05.			
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07.			
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## PROMULGATION

The preservation of life, property, and the environment are inherent responsibilities of local, state, and the federal government(s). Additionally, history has demonstrated that government agencies must understand and strengthen their organizations' disaster management and recovery procedures before and during times of disaster, in order to maintain and improve their ultimate charge - including through donations management planning. While no plan can completely prevent error, reasonable plans - carried out by knowledgeable and well-trained personnel can minimize loss of life, increase financial stability, and reduce negative impacts to improved property and the environment.

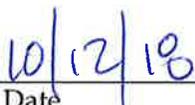
This planning document, as a functional annex to the Emergency Operations Plan complies with California's Standardized Emergency Management System (SEMS), the National Incident Management System (NIMS).

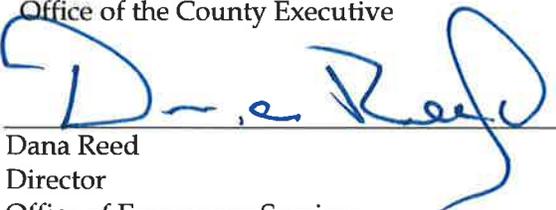
This Annex provides the basis for coordination of support efforts amongst the stakeholders identified in this planning document to effectively coordinate both monetary and in-kind donations during a disaster through the establishment of an emergency organization, the assignment of tasks, the provision of policies and general procedures.

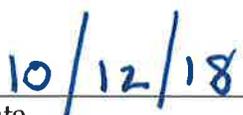
This Annex will be reviewed and exercised periodically, and revised in accordance with the plan development and maintenance provisions of this planning document, as well as when conditions and needs change.

The Office of the County Executive, the Office of Emergency Services, and the Silicon Valley Community Foundation give their full support to this Annex and urge all officials, employees, and residents - individually and collectively - to do their share in the total emergency effort of the County of Santa Clara.

  
\_\_\_\_\_  
Garry Hergeg  
Deputy County Executive  
Office of the County Executive

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Dana Reed  
Director  
Office of Emergency Services

  
\_\_\_\_\_  
Date



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## HOW TO USE THIS PUBLICATION

The Donations Management Annex is organized into several components, as shown below; a summary of each component follows on the next several pages. This planning document is not meant to be read from beginning to end in just one sitting - or even several sittings. This publication was designed for a variety of audiences, operating under a broad range of emergency conditions, utilizing this document at various times throughout the donations management process.

Each component is intended to be read by a particular audience at a particular time; for instance, the Roles and Responsibilities Component is organized by agency and is an excellent source of condensed information that relates to how each agency is tasked to perform actions within the scope of this planning document.

A summary of each component; including information related to when each component should be used, as well as their intended audiences follows on the next several pages.

**NOTE:** If this Annex has been activated, response and support personnel should utilize the following components (components are listed in descending priority order):

- **Component 2 - Concept of Operations:** to gain broad understanding and perspective
- **Component 3 - Roles and Responsibilities:** to provide response and support
- **Component 4 - Authorities and References:** as needed
- **Component 1- Annex Administration:** to provide maintenance and T&E information



### **Component 1: Annex Administration and Overview**

**Who should read?**

Agency planners, leaders; partner agencies

**When to read?**

Before event; during training; during annex review and revision

**Component Contents**

- Acknowledgements
- Messages from the County Executive
- Notes on Use of Terms
- Promulgation
- Annex Development
- Annex Planning Organization
- Annex Maintenance
- Training & Exercises

### **Component 2: Concept of Operations**

**Who should read?**

Agency, planners, leaders; response/recovery directors, coordinators, and personnel (including EOC members and departmental staff); partner agencies and jurisdictions

**When to read?**

During training; during event through project close-out for context; during annex review and revision

**Component Contents**

- Pre-planning concept
- Response concept
- Recovery

### **Component 3: Roles and Responsibilities**

**Who should read?**

Agency leaders; response/recovery coordinators/directors; partner agencies partner agencies and jurisdictions

**When to read?**

Before event; during training; during event as refresher; during annex review and revision

**Component Contents**

- Local Jurisdictions
- County Departments
- Private Organizations
- State & Federal Agencies

### **Component 4: Authorities and References**

**Who should read?**

Agency planners, response/recovery coordinators, directors, and personnel (including EOC members and departmental staff), as needed; partner agencies and jurisdictions

**When to read?**

During training; during event through project close-out as reference; during annex review and revision

**Component Contents**

- Authorities and References
- Acronyms
- Support Material



## COMPONENT 1: ANNEX ADMINISTRATION AND OVERVIEW

### Intended Audience

The intended audience for this component includes the following:

- Department leaders tasked with the implementation of this functional annex
- Departmental/Agency/Jurisdictional planners within the Santa Clara County Operational Area likely to participate in, or contribute to, any disaster planning, response, and/ or recovery activities
- State and federal counterparts
- Partner and ancillary organizations and jurisdictions

### When to Read

This component is intended to be read:

- Before any emergency/disaster event to ensure compliance with established County policies with the ultimate intention of promulgation
- During plan review/ revision cycle

### Summary

*The purpose of Component 1: Administration and Overview is:*

- For local jurisdictions to develop local donations management planning products in alignment with County policies and procedures
- For state and federal auditors to evaluate the comprehensiveness of the County's donations management planning policies and procedures
- To inform partner and ancillary organizations of the County's donations management policies and procotols



## COMPONENT 2: CONCEPT OF OPERATIONS

### Intended Audience

The Intended Audience for this component include:

- Departmental/ Agency /Jurisdictional planners within the Santa Clara County Operational Area likely to participate in, or contribute to, any disaster planning, response, and/ or recovery activities
- State and federal auditors
- Partner and ancillary organizations and jurisdictions

### When to Read

- This component is intended to be read: During training to educate annex stakeholders on the document's purpose, scope, and assumptions
- During training to educate annex stakeholders on the operational coordination concepts utilized by all defined organizational entities identified throughout the Donations Management Functional Annex
- During emergency or disaster event through project close-out for operational context;
- During plan review/revision cycle

### Summary

*The purpose of Component 2: Concept of Operations is:*

- For local jurisdictions to develop local donations management planning products in alignment with County policies and procedures
- For state and federal auditors to evaluate the comprehensiveness of the County's donations management planning policies and procedures
- To inform partner and ancillary organizations of the County's donations management policies and procedures

Component 2 begins with a description of the planning purpose and scope, as well as a catalog of the assumptions that County planners utilized as parameters for this planning document. Changes in the planning environment may alter the anticipated outcome of this document. Additionally, any operation that deviates from the stated planning purpose, scope, and assumptions outlined in this publication may produce unintended or unanticipated outcomes.

Component 2 goes on to define the Silicon Valley Community Foundation Group, as this is the primary organizational entity tasked with managing monetary donations.



## COMPONENT 3: ROLES AND RESPONSIBILITIES

### Intended Audience

The intended audience for this component include:

- Departmental/ Agency /Jurisdictional planners within the Santa Clara County Operational Area likely to participate in, or contribute to, any donations planning, response, and/ or recovery activities
- State and federal auditors
- Partner and ancillary organizations and jurisdictions

### When to Read

- Before event
- During event, as refresher (particularly if department and/ or agency leader)
- During plan review/ revision cycle

### Summary

The purpose of *Component 3: Roles and Responsibilities* is:

- For local jurisdictions to develop local donations management planning products in alignment with County policies and procedures
- For state and federal auditors to evaluate the comprehensiveness of the County's donations management planning policies and procedures
- To inform partner and ancillary organizations of the County's donations management policies and protocols.

Component 3 goes on to define roles and responsibilities of different stakeholders including highlighting the role of the National Voluntary Organizations Active in Disasters (NVOAD) and its national Donations Management Committee; as the primary organizational entity tasked with convening conference calls to bring key players together for information-sharing and resource coordination.



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## COMPONENT 4: AUTHORITIES, REFERENCES, AND SUPPORT MATERIAL

### Intended Audience

The intended audience for this component include:

- Departmental/ Agency /Jurisdictional planners within the Santa Clara County Operational Area likely to participate in, or contribute to, donations management, response, and/or recovery activities
- State and federal auditors
- Partner and ancillary organizations and jurisdictions

### When to Read

- Before event
- During plan review/ revision cycle

### Summary

*The purpose of Component 4: Authorities, References, and Support Material is:*

- For local jurisdictions to develop local donations management planning products in alignment with County policies and procedures
- For state and federal auditors to evaluate the comprehensiveness of the County's donations management planning policies and procedures
- To inform partner and ancillary organizations of the County's donations management policies and procedures

The last component, *Component 4 References, Authorities, and Support Material*, provides users of this publication with a listing of all relevant authorities associated with this planning document (i.e., California Emergency Services Act, Chapter 7 of Division 1 of Title 2 of the Government Code) and applicable references that may be used for further investigation and research. Furthermore, this component provides the reader with a listing of documents and other support material (i.e., forms) that emergency planners from the County anticipate as necessary to the efficient and successful donations management process.



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# COMPONENT 1

## ANNEX ADMINISTRATION



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## ANNEX ADMINISTRATION

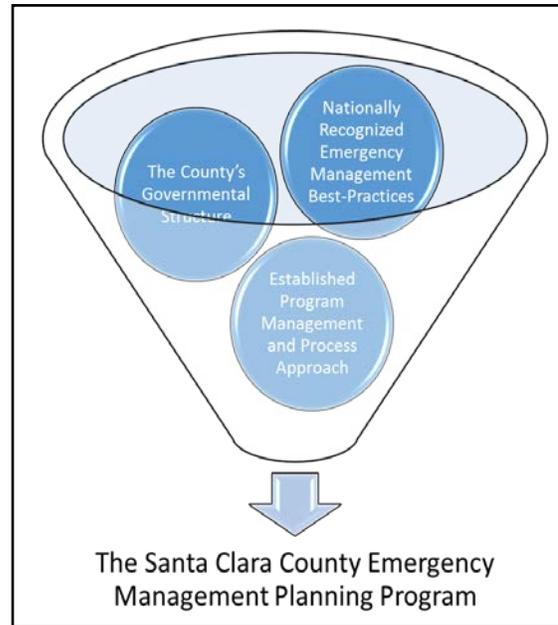
### ANNEX DEVELOPMENT

This Annex utilizes a whole community planning approach consisting of the Operational Area Advisory Group - Planning, the Donations Management Annex Working Group, and three (3) Sub-Working Groups, including:

1. Operational Coordination Sub-Working Group
2. Public Information and Warning Sub-Working Group
3. Logistics and Supply Chain Sub-Working Group

The County and other Operational Area stakeholder groups facilitated or participated in numerous events to gain insight, learn best-practices, and test the donations management concepts detailed in this Annex, including:

- Hosted, and/or attended, a variety of training events:
  - Several meetings with the Silicon Valley Community Foundation to build assumptions, concept of operations, and roles/responsibilities for monetary donations management that meet the spirit of the County of Santa Clara Emergency Fund Agreement
  - Two (2) meetings with Goodwill and Salvation Army to determine overall coordination and responsibility of in-kind donations
  - Modelled much of in-kind donations management from the Emergency Management Performance Grant that funded the Collaborating Agencies in Disaster Relief Efforts (CADRE) Workplan
- Produced event 2 After-Action Reports:
  - Loma Fire
  - 2017 Winter Storms
- Conducted table-top exercises that assisted in conveying the concepts of in-kind donations:
  - Mass Care and Shelter, June 2017
  - Mass Care and Shelter, August 2017





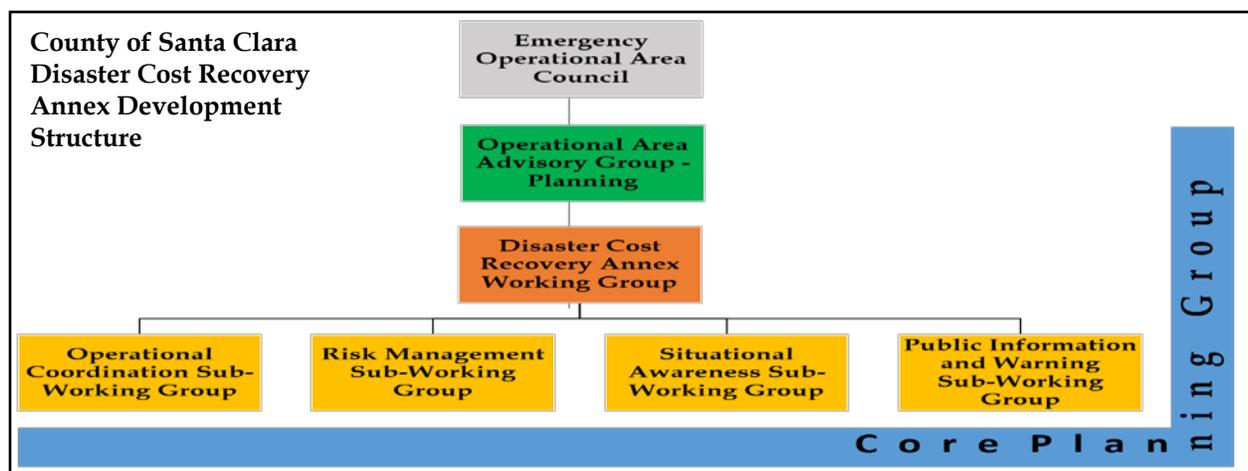
## ANNEX PLANNING ORGANIZATION

### EMERGENCY OPERATIONAL AREA COUNCIL

The Emergency Operational Area Council (EOAC) sets emergency/contingency planning priorities for the entire OA. The OA Advisory Group established donations management as a planning priority.

### SANTA CLARA COUNTY OPERATIONAL AREA ADVISORY GROUP FOR EMERGENCY PLANNING

The Santa Clara County Operational Area (OA) Advisory Group for Emergency Planning and CADRE served as a pool of subject matter experts from the various topics covered by the Donations Management Annex.



### DONATIONS MANAGEMENT ANNEX WORKING GROUP

The Donations Management Annex Working Group developed the framework, identified related subject matter experts, established divisions of labor, and developed work schedules necessary to the drafting of the Annex, as designated by the EOAC, and with assistance from the OA Advisory Group - Planning.

The Donations Management Annex Working Group established three (3) sub-working groups in order to collect, analyze, and synthesize information and resources necessary for the development of this Annex. Additionally, the sub-working groups, aligned with FEMA’s core capabilities, were established to assist the County identify program deficiencies and methodically enhance the County’s emergency management capabilities.

Donations Management Annex Sub-Working Groups:

- Operational Coordination Sub-Working Group
- Public Information and Warning Sub-Working Group
- Logistics and Supply Chain Sub-Working Group



## OPERATIONAL COORDINATION SUB-WORKING GROUP

The purpose of the Operational Coordination Sub-Working Group was to develop the decision-making framework that the Monetary Donations Management Group would employ before, during, and after an emergency or natural disaster to engage and manage applicable stakeholder groups – both internal and external – to collect, track, and disseminate monetary donations in the most effective way. This group was comprised of Emergency Managers from Santa Clara County OES, as well as staff from CADRE and the Silicon Valley Community Foundation.

## PUBLIC INFORMATION AND WARNING SUB-WORKING GROUP

The purpose of the Public Information and Warning Sub-Working Group was to examine national best-practices and develop a public engagement strategy. The goal of the public engagement strategy was to create a communications process to inform the public of the best way to help and what actions they could take during and after a disaster. Additionally, the Sub-Working Group designed tools to efficiently and effectively inform impacted residents of the best way to get disaster-assistance in the form of monetary donations. This was accomplished by utilizing the County of Santa Clara’s OES Crisis Communication Officer in partnership with OES Emergency Managers.

## LOGISTICS AND SUPPLY CHAIN MANAGEMENT SUB-WORKING GROUP

The purpose of the Logistics and Supply Chain Management Sub-Working Group was to examine national best-practices and develop a strategy for receiving and disseminating in-kind and bulk goods donations in the most expeditious and coordinated method. This group determined the best method for collecting, processing, and issuing/ disseminating in-kind donations. This group was comprised of Emergency Managers from Santa Clara County OES, and also had community involvement from Goodwill, the Salvation Army, and CADRE.

## CORE PLANNING GROUP

The Donations Management Annex Core Planning Group, consisted of OES personnel as well as Facilities and Fleet Department, serving as the EOC Logistics Section. The Core Planning Group was responsible for coordination, leadership, and documentation of all advisory group, working group and sub-working group meetings. Additionally, the Core Planning Group was tasked to write, edit, and validate this Annex. As such, the Core Planning Group provides continuity, transparency, and a broad perspective in the drafting of all County and Operational Area planning products, including this Annex.

Over the course of several months, the Core Planning Group held more than a dozen working meetings to:

- Investigate best-practices
- Review, and update, as necessary, existing County donations management plans and procedures
- Incorporate lessons-learned from recent disaster events (Loma Fire, October 2016; Winter Storm, January 2017; Winter Storm, February 2017)
- Compose a planning document for County partnership and leadership review
- Finalize a Donations Management Annex for the County of Santa Clara



## ANNEX MAINTENANCE

Santa Clara County, in coordination with the Silicon Valley Community Foundation, and other stakeholders, is responsible for the maintenance, revision, and distribution of this Donations Management Annex. They will—at a minimum—review this Annex every year and update the Annex every three (3) years. It is essential that the Office of Emergency Services make revisions and updates, in collaboration with participating persons, local jurisdictions, and other planning partners identified in this Annex to ensure accuracy and validity. If this Annex requires an immediate change due to lessons learned from trainings, exercises, or actual incidents or events, County OES will identify a course of action for the review, update, and implementation of the necessary changes.

## TRAININGS AND EXERCISES

The County of Santa Clara Office of Emergency Services (OES) has established a Training and Exercise program to enhance the Santa Clara Operational Area's capability in the mission areas of prevention, protection, mitigation, response, and recovery. The provisions of this planning document shall be incorporated into the County OES Training and Exercise - Annual Training Plan.

The nature of the training and exercise events is determined by the County OES Training and Exercise Section in collaboration with the County OES Planning Section and coordination with essential stakeholders identified in this planning document. Any lessons-learned via training/exercising should be documented and forwarded to the County OES Planning Section for planning product improvement based on the Homeland Security Exercise and Evaluation Program (HSEEP) methodology.

### PHASES OF TRAINING & EXERCISE

One of the priorities of the Training and Exercise program is to enhance stakeholder's understanding and knowledge of written/revise plans through socialization, training and/or exercises. All Op Area plans require a training and exercise component to either identify gaps before the plan is written/revise or, after the fact, to validate the elements of the plan. The process could be broken into phases:

**Phase 1** Three to six months before a plan is scheduled to be written or revised a discussion-based exercise could be coordinated to learn the capabilities and gaps in that particular process

**Phase 2** Once the plan is written some kind of socialization of the plan needs to be provided to ensure that stakeholders have a clear understanding of their roles and responsibilities; this phase could be accomplished either through training or an exercise depending on the requirements of the plan; future revisions or updates to the plan might be informed by the results of this phase

**Phase 3** An exercise, typically three to six months after the plan is finalized, will be incorporated into the regular exercise schedule to validate the plan; a list of proposed changes/edits will be kept for consideration during the next review of the plan; this process is cyclical and driven by the Multi-Year Emergency Planning Cycle



## TYPES OF EXERCISES

Exercises are meant to test systems, plans, and procedures, not people. An exercise can be as simple as a topic discussion seminar or as complex as a full-scale, statewide exercise. It is the responsibility of the Training and Exercise team to determine the best method to use.

Exercises fall into the following classifications:

- Discussion-Based Exercises
  - Seminars
  - Workshops
  - Tabletop Exercises
  - Games
- Operations-Based Exercises
  - Drills
  - Functional Exercise
  - Full-Scale Exercises

## RELATED TRAINING COURSES, DISCUSSIONS AND WORKSHOPS

Local Training Courses	
Course ID	Course Title
NA	Ongoing CADRE workshops and trainings
NA	Ongoing discussions and workshop with focus on long-term recovery
State Training Courses	
G108	Community Mass Care Management
G288	Volunteers and Donations Management
G235	Emergency Planning
LSEMSL-G611	Essential EOC Logistics Section/Position Specific Training
Federal Training Courses	
IS-244	Developing and Managing Volunteers
IS-288	The Role of Voluntary Organizations in Emergency Management
IS-806	Emergency Support Function #6 Mass Care, Emergency Assistance, Housing and Human Services



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## PURPOSE, SCOPE, AND ASSUMPTIONS



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## PURPOSE, SCOPE, OVERVIEW & ASSUMPTIONS

### PURPOSE

Effective donations management after a catastrophic event requires close cooperation between governmental and non-governmental organizations (NGOs), particularly with regard to monetary donations, the management of which is not usually the role of government. The role of OES is to conduct, coordinate and manage resources. Therefore, SVCF and CADRE's role is to lead monetary donations management, while OES would function as their customer. Consequently, existing practices for managing donations are less prevalent and refined than for other response activities. This Annex is intended to add clarity to this essential emergency support function.

The audience for this Annex is not limited to government agencies but rather includes representatives from the private sector and voluntary organizations. For these reasons, the Annex includes some concepts and details that are beyond the role of government, and much of the content herein pertains to organizations in those sectors. This content is intended to illustrate the necessary coordination, collaboration, and cooperation between these sectors to effectively conduct donations management during a disaster.

The provisions of this Annex should not be considered prescriptive for participating NGOs; instead, it should be read as descriptive, as it is intended to connect the government's own activities with the autonomous and independent activities of its non-governmental collaborators.

An additional feature of this Annex is its detailed illustration of coordination, collaboration, and cooperation between these sectors that is necessary for effective donations management. NGOs maintain their own internal processes and operating principles, and nothing in this Annex is intended to convey that government agencies at any level will control or direct these independent NGOs.

The purpose of the monetary donations section of the Donations Management Plan is intended to fulfill the obligations of the contract signed between Santa Clara County and Silicon Valley Community Foundation pertaining to monetary donations management.

### SCOPE

This Annex serves as a guide for the coordination of monetary and in-kind donations for the benefit of those affected by the disaster within the boundaries of the Santa Clara County Operational Area.

This Annex addresses pre-planning, response, and recovery activities associated with donations management during disasters. The provisions of this Annex are applicable to all County departments and employees, as well as any other agency (public or private) that intends to coordinate donations management actions with the County of Santa Clara.

### ASSUMPTIONS

The impact of a catastrophic disaster triggers an influx of donations, both solicited and unsolicited. These donations may be monetary or goods and services. The magnitude of the disaster requires a donations-management response that engages multiple Federal agencies, State and local government agencies, and a range of NGOs including private corporations and national and local



voluntary organizations. To facilitate cooperation and coordination between governmental organizations and NGOs for effective receipt, integration, tracking, management, and distribution of all of these types of donations, other assumptions must be made. The assumptions that pertain most specifically to donations are summarized below.

### **ASSUMPTIONS – DEMAND FOR DONATED GOODS, SERVICES, AND FINANCIAL SUPPORT**

The demand for donated goods, services, and financial support is derived from a number of different types of affected population categories, including:

- Flexibility must always be used in disaster operations as there is no single correct way to manage all disasters. Factors determining the approach will depend on the size, kinds of needs, working relationships and agreements between the County and contracted organizations for effective management of donations.
- Local residents whose homes are destroyed or damaged and those who are otherwise adversely affected by damaged infrastructure, utilities, and public services; those who do not leave the area may stay with a friend or family member, in a formal pre-designated shelter, in a mega-shelter, or in a spontaneous (informal) shelter; to the extent these facilities have resource shortages there is a need for donated assistance
- Many of the several hundred thousand commuters, tourists, and other visitors who are in affected areas are stranded away from their usual sources of support and need similar forms of assistance
- People with access and functional needs (AFN) who are affected by a disaster; focused attention is required to meet their needs
- Many people arriving at shelters have pets, companion animals, or service animals with them; donated funds and goods are directed to animal-protection organizations to meet the needs of these animals and their owners
- Other special populations such as children, immigrant communities, the elderly, and AFN may also have specific needs requiring donated money, goods and services
- Whenever possible, communication with donors will discourage restrictions on donations to achieve maximum flexibility, which is essential in the wake of a disaster.

### **ASSUMPTIONS – DONOR-BASE**

- People inside and outside the devastated area want to donate money to local response, relief, and recovery efforts
- Media and social media coverage following an event will likely elicit an outpouring of volunteers, as well as both monetary and in-kind donations
- This coverage may convey inaccurate messages – i.e., donations of certain goods are needed or easily accepted
- After a large-scale emergency, individuals and relief organizations from outside the disaster area begin to collect materials and supplies to assist the impacted areas



- Donors may want to designate their donations for a specific local group or organization or may want to know which organization or people received their donation; this desire is difficult for many organizations to meet
- Donors want to be assured that a majority of their donation is reaching those affected by the disaster in a timely fashion and as intended; they want the accepting organization and other grantee organizations to be reputable and transparent about how funds are used
- Donors may have questions about what is specifically needed in the disaster area, how they should transport their donation to the area, or if someone can transport it for them
- Donors may also express interest in volunteering or exploring other kinds of in-kind donations or services they can provide
- Some donors may request recognition and/or presence to acknowledge the receipt of their gift in a public event or forum
- Some donors attempt to designate their funds to be expended in a specific location or for a specific type of assistance; it may not be possible or feasible to honor all such designations

### ASSUMPTIONS – MONETARY DONATIONS

- Monetary donations are preferred over in-kind donations by virtually all emergency response/recovery stakeholder groups, including: charitable organizations and other assistance or support groups
- Individuals make monetary donations via call centers, online systems, and in person; text messaging may also serve as a mode of donation collection, if applicable or available for a given situation
- These donations are in the form of cash, checks, credit card payments, gift cards, stock options, crypto currencies and complex assets, some of which may be paid for online or through text messages or other smart-phone-enabled systems, if available
- Donations typically go to one or more of several well-known national or international organizations
- Smaller, less well-known organizations may have difficulty attracting donations
- Within 72 hours following an emergency or disaster, major NGOs launch national media campaigns to solicit monetary donations
- Many organizations act independently to solicit donations
- Some attempts to solicit fraudulent donations are made
- The need for monetary donations exists well into the long-term recovery phase, as unmet needs are identified after other resources are exhausted
- Administrative costs vary based on the amount of the donation and size of the disaster; these costs may include credit card or other processing fees charged by the credit card company



- Local and regional grant-makers may allocate financial resources, and some will also be soliciting and collecting resources to distribute
- Foundations may seek to coordinate with each other and local structures
- Corporations may express interest in making donations themselves, or providing matching opportunities to encourage their employees to donate and match those donations

### ASSUMPTIONS – IN-KIND DONATIONS

- Businesses and other organizations make contributions of new goods, including palletized water, canned food, and other useful bulk goods
- The County relies on vendors and contracted organizations for an effective donations management; these entities should coordinate closely with the private sector and the business community
- Individual people make donations of used goods including clothing, blankets, sleeping bags, household items, toys, food, water, and other items
- Although less common, individuals may also donate new goods like those above
- It is incumbent upon vendors and contracted organizations to delineate between what is considered an emergency donation versus other donations. Many of these individual donations are unsolicited or “spontaneous”, which could lead to confusion, inefficiencies, and waste if donations management is conducted poorly.
- Many spontaneous donations arrive unsorted with minimal packaging or markings; others are dirty or otherwise unready for use
- Donations may not correspond to the needs of the individuals or community affected by the disaster
- Material donations overwhelm donation centers due to media focus on those locations
- Businesses donate unwanted inventory, whether or not those goods are useful, in large quantities as a way to cheaply reduce their stockpiles
- The accumulation of donated materials at undesignated reception sites may cause disruption to other relief activities occurring at those locations
- Storage, inventory tracking, and distribution of donations may be needed
- Traditionally FEMA, National Voluntary Organizations Active in Disaster (NVOAD), and State efforts support local programs and policy, depending on the severity of the disaster
- There is a well-known phenomenon of unsolicited and often unusable donations that pour into a community and overwhelm recovery effort; in other words, “stuff” shows up
- Many of these donations may be of a quality that renders them unusable



- Donated goods require significant attention and resources immediately following the event; if not promptly and appropriately managed, attention to this activity increasingly demands the diversion of resources away from service delivery
- Disaster service NGOs could face extreme difficulty to receive, store, secure, process/sort, transport, account for, and/or distribute needed donations to people affected by the disaster, as well as supervise volunteer workers that wish to assist in the effort
- NGO reception centers may be overwhelmed and request local government support to continue operations
- NGOs offer personnel resources outside of spontaneous volunteers, that have subject matter expertise and experience to assist in the reception and distribution of in-kind donations
- Insufficient personnel resources exist for used donations, which must be sorted, cleaned, fixed, discarded, stored, and/or transported to those in need
- The number of warehouses and centers available to conduct donation and volunteer operations are not adequate
- The governmental response relies on NGOs that are experienced in managing donations and that can receive, process, and distribute goods and services to disaster-affected individuals
- Local VOAD affiliates do not always have knowledge of the national affiliate role but want to help/assist until national resources are able to serve the impacted area
- Inexperienced and inadequately organized donations centers and voluntary organizations cause confusion and waste resources
- The movement of donated goods into the affected area is significantly affected by damage to transportation and infrastructure, the status of debris removal, inspections requirements, and any closures associated with repairs
- State control over travel to the disaster area affects vehicles shipping donated goods
- It is difficult to quantify the costs associated with in-kind donations management and operations; associated costs may include labor, storage space and disposal of unused materials
- Challenges with messaging and communications may arise in in-kind donations management, as it may not be possible to donate items directly to the survivors of a particular event, but these items will go into a larger pool of donations that any disaster survivor, and the members of the broader public, have the potential to benefit



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# PLAN DEVELOPMENT AND MAINTENANCE



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## PLAN DEVELOPMENT & MAINTENANCE

The process for maintaining the Plan is described in this section. The discussion identifies who receives and reviews the Plan, how updates are to be integrated into the Plan, how the Plan is tested, what type of training and exercises are developed to enhance understanding and execution of the plan, and how an after-action review is conducted after the Plan has been implemented, whether as part of an exercise or in response to a real emergency.

### PLAN DISTRIBUTION

Once completed and approved, the Donations Management Plan for Santa Clara County is distributed to stakeholders. Printed and electronic copies are also stored in the library of the EOC in Santa Clara County.

### PLAN UPDATES

Santa Clara County, in coordination with Silicon Valley Community Foundation and other stakeholders, is responsible for the maintenance, revision, and distribution of the Santa Clara County Donations Management Annex. The Annex is reviewed annually and updated every three years or as needed. The need for revisions to this document based on the following considerations:

- Changes to local, State, or Federal regulations, requirements, or organization
- Implementation of tools or procedures that alter or improve on plan components

Santa Clara County maintains the record of amendments and revisions (the Record of Changes table in the front of this document), as well as executable versions of all documents, and is responsible for distributing the plan to all applicable agencies.

### PLAN TESTING, TRAINING, AND EXERCISES

Exercising the Annex and evaluating its effectiveness involves using training and exercises and evaluation of actual disasters to determine whether goals, objectives, decision, actions, and timing outlined in the plan led to a successful response.

Exercises are the best method of evaluating the effectiveness of a plan and are also a valuable tool in training emergency responders and government officials to become familiar with the procedures, facilities, and systems that they actually use or manage in emergency situations. Exercises are conducted on a regular basis to maintain readiness. Santa Clara County is responsible for planning and conducting emergency exercises for the operational area.

### AFTER-ACTION REVIEW AND CORRECTIVE ACTION

After every exercise or disaster, an After-Action Report/Improvement Plan (AAR/IP) should be completed. The AAR/IP has two components: an AAR, which captures observations and recommendations based on incident objectives as associated with the capabilities and tasks; and an IP, which identifies specific corrective actions, assigns them to responsible parties, and establishes targets for their completion. The County's Office of Emergency Services is the lead agency for the development of the AAR/IP and convenes participants to discuss action items and solicit recommendations for improvement.



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# COMPONENT 2

## CONCEPT OF OPERATIONS



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## CONCEPT OF OPERATIONS

This section of the Santa Clara County Donations Management Annex provides Santa Clara County with a general framework for conducting donations management, addressing both in-kind and monetary donations.

### COORDINATION – MONETARY DONATIONS

The purpose of addressing monetary coordination in this Annex is to create an effective system to help direct monetary donations to meet emerging and/or unmet needs for disaster affected clients and to provide a framework for communication and coordination among government agencies and NGOs in Santa Clara County.

Coordination also helps to support smaller local community-based organizations (CBOs) that may serve diverse populations, such as clients and consumers with access and functional needs, undocumented and immigrant populations, as well as other underserved populations. These local organizations are essential for providing services to meet a wide range of human needs following a major disaster, and funding for local organizations is a critical resource.

Aggressive and early public messaging can encourage donors to give monetary donations – the *overwhelmingly* preferred method of donations for most organizations providing disaster relief and recovery services. The easier it is for donors to determine appropriate recipients for donated funds, the more likely they are to donate. Additionally, donor confidence may be boosted through transparency and clear understanding of fund allocations.

There are several forms of monetary donations, including, cash, checks, credit card payments, stock and complex assets. If the potential donation of gift cards is raised by a donor, a direct services agency may be best positioned to potentially receive and distribute these gift cards, if appropriate considerations are made for the reception, documentation, and distribution of those cards are made.

### MONETARY ALLOCATIONS

The goal of planning for monetary donations is to get funding flowing as quickly as possible to organizations providing response and relief services.

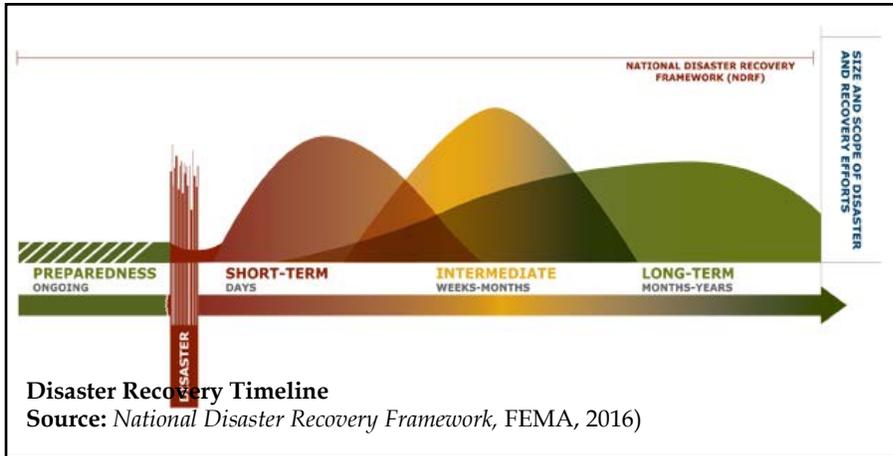
#### PREPAREDNESS PHASE

Silicon Valley Community Foundation (SVCF), working in partnership with the County and non-governmental organizational leadership establishes criteria for a preparedness phase, such as:

- Pre-identifying agencies who are involved in immediate disaster relief
- Vetting these organizations through SVCF's entity verification process to ensure organizations are in good standing to receive charitable funds in accordance with IRS and other compliance rules; broadly speaking, organizations such as 509(a)(4), Type III Supporting Organizations, Private Non-Operating Foundations and non-charities may require additional due diligence to determine potential eligibility and may ultimately not be eligible to receive monetary donations
- Establishing an annual review process to ensure the list of organizations is updated

## RESPONSE PHASE

SVCF will implement immediate procedures for grant making based on their expertise following a disaster to direct money to service providers as quickly as possible and would serve as the lead agency on funding decisions.



In evaluating grantmaking requests, SVCF may consider overhead and administrative costs of response organizations in grantmaking. Depending on the response level, grantmaking may not be exclusive to pre-identified organizations.

During the response phase the NVOAD will host the national Donations Management Committee which convenes daily conference calls to bring the key players together for information-sharing and resource coordination.

## RECOVERY PHASE

Long-term recovery can last for several years following a major disaster. Planning for it is an important part of donations management because the identification of funding needs often lags behind the actual donations.

Planning for long-term recovery begins almost immediately after the disaster starts, with the goal of moving those affected by the disaster to a place of self-sufficiency as soon as possible. Many communities establish a Long Term Recovery Committee or Organization (see Local Disaster Recovery Organization chart on next page) to address emerging and unmet needs, particularly where needs have not been completely met through government funding and other sources.

In local disasters, when no eligible Federal assistance is available, funding for long-term recovery may be established through local government and organizations to meet local needs. Sometimes organizations that receive funding for relief services and do not expend all of the monies transfer those donations to long-term recovery funds in order to honor donor intent to serve clients affected by a specific disaster.

Northern California VOAD, CADRE, other NGOs, and local government all play important roles in the transition to long-term recovery. It is important that the unmet needs are identified and documented in the recovery process.

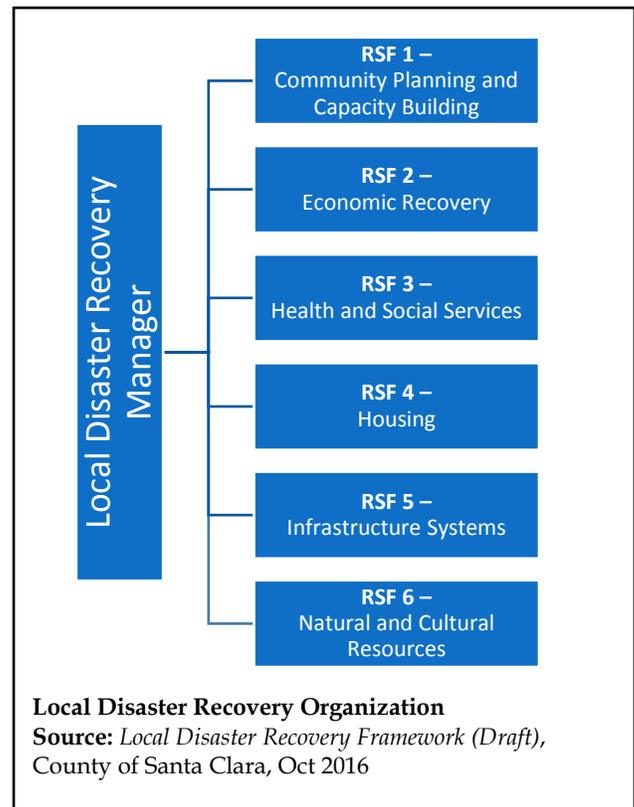
One of the goals of a long-term disaster relief and recovery fund is to provide resources for long-term recovery. Long-term recovery is typically when government resources are exhausted and multiple unmet needs surface. A long-term disaster relief and recovery fund is used to provide grants to local agencies that provide a variety of services to clients to assist with the recovery process.



Organizing long-term recovery involves identifying key players and resources available in the community. The County of Santa Clara works closely with CADRE, as the designated Northern California VOAD for Santa Clara County and surrounding jurisdictions, to enlist available partners with capacity to participate and possibly lead in the long-term recovery process. NVOAD also hosts the national Donations Management Committee which at the time of a major disaster will convene daily conference calls to bring the key players together for information-sharing and resource coordination.

Organizations that understand case management, such as Catholic Charities, are critical players in helping residents with unmet needs recover from a disaster.

SVCF will work closely with Santa Clara County OES and/or the Northern California VOAD or CADRE to identify emerging and unmet needs. As part of this process, SVCF will launch an application process to determine grant awards.



Similar to the response phase, SVCF would serve as the lead agency on funding decisions. If some response and relief organizations have excess funds from response phase allocations, they may be re-directed to a long-term disaster relief fund to address unmet needs during the recovery phase.

### FISCAL MANAGEMENT, TRACKING, AND REPORTING

A long-term disaster relief fund is established for private donations from individuals, businesses, foundations, organizations, and large corporations. The following basic processing criteria provides minimal agreed-upon requirements for the fund:

- A separate fund is established and maintained for each disaster event as a separate account at all times
- Move money as quickly as possible to critical organizations providing services to those affected by the disaster (some may be pre-identified and pre-qualified)
- Funds should be expended within one year of receipt, unless additional agreements are authorized; timeline extension for the Fund is to be determined based on the nature of the disaster in cooperation with California VOAD or CADRE and the County.
- Up to 3% of donations are allowed for management and administrative purposes for grant-making agencies such as SVCF; as mentioned above, SVCF may consider administrative costs of grantee organizations as part of grantmaking process
- SVCF will ensure internal accounting controls would adhere to fees structure outlined in the agreement with the County of Santa Clara



- Contributions from individual donors are tracked to ensure that they are provided with the required receipts for their tax-deductible donation
- If government (e.g., a mayor's office) donates to the Santa Clara County Disaster Relief Fund, funds need to be unrestricted and cannot require accounting and reporting above and beyond the normal operational procedures established for the fund

As lead agency and administrator of the Fund, SVCF will provide a monthly report to County OES during the first six months of activation of this Annex. The report details basic data such as:

- Total amount in fund
- New contributions received for the month
- Ongoing information about how to apply for grant funding
- When grants are approved, a monthly report lists grant recipients, including name, amount, and a brief purpose statement
- Once disaster solicitation is complete, or donations decrease considerably, compliance reporting should be conducted quarterly, or another occurrence frequency, if agreed upon by County Counsel and SVCF

## COORDINATION – IN-KIND DONATIONS

While the *overwhelmingly* preferred method of donations is monetary, in-kind donations are inevitable. An efficient way of managing in-kind donations would be to direct donors to a web-based system where donors can post their donation offers and be matched with a recipient organization. Even with strong and early public messaging and an insistence on monetary donations and/or offers of in-kind donations via a web system, donated goods still arrive in an affected area. This section outlines strategies for the coordination of in-kind donations in collaboration with NGOs and private sector organizations in Santa Clara County.

Strategies identified in this Annex for the coordination of in-kind donations include:

- SVCF will lead on how to track and coordinate donations; including the development of a web-based system to match donors with recipients and establishment of policies and procedures with regard to their utilization
- Use the Donations Management Annex Working Group to engage with a range of community-based organizations as key partners for successful implementation of the Annex
- The OES Crisis & Public Communications Section will help facilitate early, proactive, and consistent messaging with regard to donations, to limit the influx of unwanted goods
- CADRE & NorCal VOAD should help identify local resources for the management of donated goods

## BULK (NEW) GOODS

Though the specific amounts and types of material goods needed after the event cannot be known with exact certainty, many of the community needs can be anticipated well in advance. These



include bulk food and water, new clothing, animal care supplies, infant care supplies, personal hygiene items, and more. These types of goods, if new and packaged, and if donated through a coordinated system, could be welcome donations.

### **Distribution**

In general, the distribution of bulk goods to those individuals affected by the disaster is carried out by local CBOs and nationally-recognized organizations, such as Goodwill and the Salvation Army.

Direct distribution of donated goods is not always possible. Distribution sites or points of distribution are generally located in proximity to areas where those affected by the disaster are living. They may be housed in facilities owned or controlled by the voluntary organizations, or through a resource request via the Standardized Emergency Management System (SEMS) to local government or in donated space.

### **Tracking**

Tracking donations is critical for efficient management of donations. When donations are tracked, it allows stakeholders to know what is being offered, what donations have been received, what is stored in warehouses, and what items are needed by agencies and organizations. Organizations accepting bulk donations must have the ability to track and report donations through CADRE/VOAD.

### **NON-BULK GOODS (USED)**

After a catastrophic event, non-bulk donations (mostly used) typically pour into an affected area. These donations include a broad range of items, from used clothing to household goods to food to toys.

Categorized items would be coordinated for distribution through the lead agencies for said categories such as; food-related items would be referred to Second Harvest Food Bank, who in turn would work with their respective Food Partner Agencies, clothing and household items would be referred to Goodwill or Salvation Army for re-direction through their channels. However, local government would facilitate resource requests through SEMS of emergency donated goods only.

## **COORDINATION – EMERGENCY PUBLIC INFORMATION**

During an emergency or disaster, the public information function can support donations management by informing the public of the need for monetary donations and by directing them to a donations website. Widespread media and public attention are tightly focused on emergencies and disasters, especially at the onset, and can continue through the recovery phase.

The following sections provide a brief summary of crisis communication with objectives through all incident phases, as well as information relative to donations management.

### **Preparedness Phase**

Preparedness activities are intended to increase the effectiveness of communications through all phases of an emergency or disaster. Support for donations management in this phase includes:

- Conduct crisis communications planning to include potential donors in the list of stakeholders



- Establishment of coordination among the Santa Clara County OES, SVCF, local agencies, and other nonprofit organizations
- Discernment between the best means to communicate with potential donor audiences
- Development of appropriate messages for likely scenarios – including specific messages for potential donor audiences (will require a website URL and mailing address that will be activated during a crisis)
- Identification of roles and responsibilities for donation-related public information and outreach during a crisis, including designating spokesperson(s), including representatives from the SVCF
- Identification of communication channels that will reach the identified stakeholders – e.g. social media, print and broadcast media, emergency alert systems, etc.
- Exercise of the communications planning – testing the messages, channels, and systems

### **Response Phase**

The response phase is most pivotal in terms of establishing credibility and alleviating public anxiety through public information and communications. The objectives for this phase are to communicate rapidly to the general public and affected groups to:

- Convey empathy
- Establish general and broad-based understanding of the crisis and its consequences and thereby help reduce crisis-related uncertainty
- Inform the whole community about lifesaving and life sustaining operations focused on expediting emergency services delivery and support the public's ability to take appropriate actions
- Share how and where to obtain information
- Help the public understand the roles of various response organizations

Specific actions may include:

- Work within the SEMS/NIMS concepts, perform the necessary functions to ensure the public within the affected area receives complete and accurate information about life safety procedures, public health advisories, relief and assistance programs, as well as other vital information
- Apply content and methods defined via communications planning – including donations information – to the specific crisis or emergency situation
- With policy guidance and approval from the OES Director (or EOC Director, if activated) formulate and disseminate key messages and critical information through news releases, social media, website, press conferences and other channels; donation information can be included in these communications, as deemed appropriate



## Recovery Phase

The communications objectives during this phase include updates to the public for the purpose of:

- Increasing the public's understanding of ongoing risks and how to mitigate them
- Encouraging broad-based support and cooperation with response and recovery efforts, including monetary donations to support those most adversely affected
- Supporting the public's efforts to protect themselves, the SVCF will assume full responsibility for monetary donation-related public information and outreach in coordination with County OES.



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## COMPONENT 3: ROLES AND RESPONSIBILITIES



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## ROLES AND RESPONSIBILITIES

This section discusses the roles and responsibilities of the non-government agencies that are involved in donations management.

### NON-GOVERNMENTAL ORGANIZATIONS

#### NON-GOVERNMENTAL ORGANIZATIONS

##### **Silicon Valley Community Foundation**

Silicon Valley Community Foundation, by mutual agreement, has been designated as the lead agency for the management of the Santa Clara County Disaster Relief Fund. Serving all of San Mateo and Santa Clara counties, Silicon Valley Community Foundation is a partner and resource to organizations improving the quality of life in the region.

Silicon Valley Community Foundation provides reports to the County of Santa Clara on the dissemination of public information related to the fund and full disclosure data on the use of fund monies.

##### **Collaborating Agencies' Disaster Relief Effort (CADRE)**

CADRE is the local Voluntary Agencies Active in Disaster (VOAD) affiliate for Santa Clara County under Northern California's State VOAD (NorCalVOAD).

The CADRE Network is a unique force that matches community needs to resources through counseling, donations, food, housing, information and referral, language translation and interpretation, legal assistance, shelter, storage, transportation and volunteers. CADRE's mission is to enhance disaster preparedness efforts and the capacity of community and faith-based organizations, government agencies and the private sector to provide coordinated response and recovery services to the Santa Clara County community.

CADRE works closely with the Santa Clara County Office of Emergency Services and the County Emergency Management Community to build disaster resilience amongst service organizations through coordination, communication and preparedness training. In partnership with the Santa Clara County Emergency Managers Association, CADRE draws on the strengths of its membership of over 300 community-based organizations to work with government partners to deliver vital services in times of disaster and functions as a resource for individual disaster preparedness, response, and recovery.

When activated, CADRE will host a meeting and/or communicate with agencies as soon as possible, or within 72 hours of activation to mobilize community resources in support of the incident. A CADRE liaison may be assigned to the Operational Area EOC in multi-jurisdictional events, or may provide a direct liaison to jurisdictional EOCs for jurisdiction specific events or incidents.

##### **Northern California VOAD (NorCal VOAD)**

Northern California VOAD (NorCal VOAD) is a membership organization of voluntary organizations (predominantly faith-based) and government agencies that provide a wide variety



of disaster-related services. Its service area encompasses 48 of California’s counties, excluding only the ten southernmost counties, which are affiliated with Southern California VOAD. Among NorCal VOAD members are organizations that play key roles in donations management. These include Adventist Community Services Disaster Response, the Salvation Army, the American Red Cross, 211 providers, and others. Other members of NorCal VOAD include local VOADs, which are predominantly county-based.

In an emergency, NorCal VOAD initiates and maintains communication with its members and with regional and State agencies to facilitate a coordinated response. Its actions may include convening meetings of its members and partners to support response and recovery; providing liaisons as requested to the REOC and the SOC; serving as an information conduit regarding services rendered by its members; supporting local VOADs; responding to requests for information and resources; and providing technical assistance for startup and maintenance of long-term recovery organizations in affected areas.

## COUNTY, REGIONAL AND STATE AGENCIES

### COUNTY OF SANTA CLARA

As designated by California’s SEMS, Santa Clara County serves as the Operational Area lead agency for the entire geographical area of Santa Clara County, including its 15 cities/townships, special districts, and unincorporated areas. The role of the County for donations management is as follows:

- Prepare, maintain, and execute this Annex and all associated procedures, as appropriate
- Determine the need to activate a donations management annex at the time of the disaster
- Receive and share donations management data with appropriate partners and the public as appropriate
- Incorporate the processes and procedures established by this planning document into the Santa Clara County Operational Area Training and Exercise Plan

### CALIFORNIA OFFICE OF EMERGENCY SERVICES (CALOES)

Cal OES functions at both the regional and State levels, as described in the sub-sections below.

#### Coastal Region

The Coastal Region of Cal OES oversees Region II of the Mutual Aid System and the Coastal Administrative Region within the State. When activated, the Cal OES Coastal Region works to coordinate the emergency activities of State agencies within the Region and uses the resources of those agencies to fulfill mission requests and to support emergency operations. The Region coordinates mutual aid and other assistance between Operational Areas, as needed.

#### State Level

The State-level emergency management function of Cal OES typically operates out of the State Operations Center, which is located at the Cal OES Headquarters in Mather. When activated, the



State-level of Cal OES supports the Coastal Region and coordinates the emergency activities of state agencies and mutual aid at the state level.

The State-level of Cal OES provides the primary point of contact between the State and FEMA and federal agencies and with other states through the Emergency Management Assistance Compact (EMAC).

### **California Volunteers**

As directed by Governor’s Executive Order S-02-08, California Volunteers is the lead agency for the coordination of state-wide monetary and in-kind donations during times of disaster. These responsibilities are incorporated into the State Emergency Plan within the Volunteer and Donations Management Emergency Function. Specifically, California Volunteers will manage monetary donations and Cal OES will manage in-kind donations.

### **CALIFORNIA RESILIENCY ALLIANCE**

The California Resiliency Alliance is a 501(c) (3) nonprofit organization that facilitates local partnerships between businesses and government to fill important gaps in all phases of emergency management.

## **FEDERAL AGENCIES AND NATIONAL ORGANIZATIONS**

### **FEDERAL EMERGENCY MANAGEMENT AGENCY (DEPARTMENT OF HOMELAND SECURITY)**

The Federal Government supports tribal and State government efforts to manage unsolicited donated goods. FEMA’s primary purpose is to coordinate the response to disasters that overwhelms the resources of local and state authorities.

### **NATIONAL VOLUNTARY ORGANIZATIONS ACTIVE IN DISASTER**

NVOAD is the forum where organizations share knowledge and resources throughout the disaster cycle—preparation, response and recovery—to help disaster survivors and their communities. Its 50 national members are predominantly faith-based but also include the American Red Cross and other voluntary organizations.

NVOAD is the umbrella for state and territory VOADs (all 50 states have a State VOAD, except California, which has two). NVOAD partners with several agencies and organizations, including FEMA, the American Logistics Aid Association, and the UPS Foundation.

NVOAD hosts the national Donations Management Committee, among others. At the time of a major disaster, NVOAD typically convenes daily conference calls to bring the key players together for information-sharing and resource coordination.



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## DEFINITIONS



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## DEFINITIONS

The term donations, as used in this Plan, refers to all donations, both monetary and in-kind. Key terms to understanding this Plan are listed below. Appendix A includes a full glossary of these and other terms. Key donations management terms include:

**Grantmakers:** Community foundations, business associations, or other organizations that compile individual donations and distribute in bundles to various needy individuals, organizations, or other entities.

**In-Kind Donations:** All non-monetary donations designated for disaster response, relief, and recovery. In-kind donations are sometimes referred to as “donated goods and services,” but the term also includes facilities, real estate, and loaned equipment or vehicles.

**Material Waste:** Packaging and other trash generated from bulk donations or of used goods that are not clean or safe enough for distribution.

**Monetary Donations:** Financial contributions from donors designated for disaster response, relief, and recovery.

**Non-governmental Organization (NGO):** Categorical term for all community-based organizations, faith-based organizations, and other types of organizations that are external to government. Groups, organizations, and individual companies in the private sector are referred to as a specific type of NGO.

**Service Providers (or direct service providers):** A subset of voluntary sector organizations that may include community-based organizations (CBOs), faith-based organizations, and others. The service providers are those 501(c)(3) organizations that provide disaster services to clients in the affected area. These are individual agencies at the local level that provide specific services directly to their clients or consumers. They may provide direct services during the response phase of a disaster such as care and shelter, feeding, and assistance to first responders.

**Unused Goods:** Donated items that are new or of high quality but that are not distributed to people or organizations.

For the purposes of this Plan, government-owned resources—including funding, personnel, facilities, or vehicles—and government-operated programs or systems are not considered donations. Government resources do play a role in supporting donations management operations and are discussed in the Roles and Responsibilities Section of this Plan.



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## COMPONENT 4: AUTHORITIES AND REFERENCES



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## AUTHORITIES AND REFERENCES

The following local, State, and Federal authorities, regulations, and requirements apply to the preparation of this Plan and to donations management operations.

### LOCAL

Not all cities or counties have regulations that specifically require them to be involved in donations management. However, in general, local governments, including cities and counties, have primary responsibility for the public health and safety of their residents after disasters of any type. Since donations are being made to assist residents, these local governments have a duty to use them to achieve those goals.

Local authorities for emergency response are described in the Santa Clara County EOP. As described in the EOP, emergency response operations in Santa Clara County are conducted in accordance with:

- California Emergency Services Act (Government Code [GC] §§ 8550–8668)
- California Disaster Assistance Act

In addition to the local authorities that may apply to incorporated jurisdictions, specific County authorities, regulations, and requirements that apply to the unincorporated areas of the County are described as follows:

- County of Santa Clara Code of Ordinances Division A8, Civil Protection and Emergency Services
- Code of Ordinances Division B7, Fire Protection, regulates height and location of debris
- Code of Ordinances Division B11.5, Nonpoint Source Pollution, regulates debris storage
- Code of Ordinances Appendix 1, Zoning, regulates demolition or removal procedures

### STATE

As described in the RECP, emergency response operations are conducted in accordance with the:

- California Emergency Services Act (GC §§ 8550–8668)
- California Disaster Assistance Act (GC §§ 8680–8692), including recent amendments under Assembly Bill 903 (Chapter 400, Statutes of 2007–2008) that allow for provisions to reimburse private nonprofits for extraordinary expenses related to disaster responses in coordination with appropriate public partners; emergency regulations have been issued and a rulemaking package has been finalized (see Appendix D for more information)
- Emergency Management Assistance Compact (EMAC)
- California Code of Regulations, Title 19, Division 2, which includes the Standardized Emergency Management System (SEMS), public assistance and individual assistance



- Governor's Executive Order S-02-08 establishing California Volunteers as the lead agency under the California Emergency Services Act for the coordination of monetary and in-kind donations during times of disaster, in cooperation with the Office of Emergency Services (February 2008)
- California SEP
- RECP, California Emergency Management Agency (Cal EMA) Coastal Region, March 2008
- Cal EMA's guidance on Public Assistance and Individual Assistance programs

## FEDERAL

Federal operations in support of local and State governments are governed by the following:

- Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 (42 United States Code §§ 5121-5206 [2008])
- NRF, its Catastrophic Incident Supplement and relevant annexes, including the Catastrophic Incident Annex.
- National Incident Management System (NIMS)
- Additional function-specific authorities, regulations, requirements, and guidance documents are:
- Volunteer and Donations Management Support Annex, NRF
- Code of Federal Regulations, Title 44, which defines the roles of FEMA and the U.S. Department of Homeland Security (DHS)
- FEMA guidance on Public Assistance and Individual Assistance programs



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## ACRONYMS



## ACRONYMS

<b>AFN</b>	Access and Functional Needs
<b>AAR/IP</b>	After Action Review/Improvement Process
<b>Cal OES</b>	California Office of Emergency Services
<b>CADRE</b>	Collaborating Agencies in Disaster Relief Efforts
<b>CBO</b>	Community Based Organization
<b>DHS</b>	Department of Homeland Security
<b>EMAC</b>	Emergency Management Assistance Compact
<b>EOAC</b>	Emergency Operational Area Council
<b>EOC</b>	Emergency Operations Center
<b>FEMA</b>	Federal Emergency Management Agency
<b>HSEEP</b>	Homeland Security Exercise and Evaluation Program
<b>ICS</b>	Incident Command System
<b>NGO</b>	Non-Governmental Organizations
<b>NIMS</b>	National Incident Management System
<b>NorCal VOAD</b>	Northern California Volunteer Organizations Active in Disasters
<b>NVOAD</b>	National Volunteer Organizations Active in Disasters
<b>OA</b>	Operational Area
<b>OAS</b>	Operational Area Signatories
<b>OES</b>	Office of Emergency Services
<b>SEMS</b>	Standardized Emergency Management System
<b>SVCF</b>	Silicon Valley Community Foundation
<b>VOAD</b>	Volunteer Organizations Active in Disasters



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# APPENDIX A

## SANTA CLARA COUNTY

### EMERGENCY FUND AGREEMENT



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## APPENDIX A – COUNTY OF SANTA CLARA EMERGENCY FUND AGREEMENT

### SERVICES AGREEMENT FOR DISASTER RELATED DONATIONS MANAGEMENT

This Services Agreement for the provision of Disaster Related Donations Management services (“Agreement”) is entered into by and between the County of Santa Clara, a Political Subdivision of the State of California (“County”) and Silicon Valley Community Foundation, a tax-exempt charitable organization, with its principal place of business located at 2440 West El Camino Real, Suite 300, Mountain View, CA 94040, (“Contractor” or “SVC”) as of the Effective Date stated below. County and Contractor are hereafter sometimes collectively referred to herein as the “Parties” and each individually as a “Party”.

#### RECITALS

**WHEREAS**, the County requires services for a coordinated County-Wide disaster related donations management program following a declared disaster impacting the County; and,

**WHEREAS**, Contractor is specially trained, experienced, and competent to perform the professional services that will be required by this Agreement and Contractor is ready, willing and able to render such professional services on the following terms and conditions.

**NOW THEREFORE**, for valuable consideration, the Parties agree to the foregoing and as follows:

**1. Interpretation and Order of Precedence.** The following order of precedence and interpretation shall be followed in resolving any inconsistencies between the terms of this Agreement and the terms of any Scope(s) of Work, exhibits, attachments, and other documents: (a) first, all terms and conditions contained in the body of this Agreement and Exhibit C (Insurance); (b) second, all content of the County’s Request for Proposals, Document No. RFP-FAF-FY15-0204; (c) third, the representations made in Contractor’s response to the Request for Proposals; (d) fourth, all terms and conditions of the applicable Scopes of Work (if any exist), including its exhibits, attachments and addenda; and (e) fifth, the terms and conditions of any applicable change order approved by the Authorized Representative of County. The County’s Request for Proposals (“RFP”) (Document No. RFP-FAF-FY15-0204) and Contractor’s written bid response to the RFP are made a part of and incorporated by reference into this Agreement.

(a) The following Exhibits are attached hereto and incorporated herein by reference:

**Exhibit A – Statement of Work (SOW) and Project Schedule**  
**Exhibit B - Cost Summary Compensation Plan and Payment Schedule**  
**Exhibit C – Indemnity and Insurance Requirements**  
**Exhibit D – Key Personnel Project Roles and Contact Information**  
**Exhibit E – The Santa Clara County Operational Area Emergency Operations Plan, as amended by the County from time to time**

**2. Term.** The term (“Term”) of this Agreement shall commence as of the last date executed by all of the Parties to this Agreement (the “Effective Date”) and terminate sixty (60) months from said

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date ("Termination Date"), unless sooner terminated or cancelled pursuant to the Agreement terms contained herein.

**3. Other Termination.**

**(a) County's Right to Terminate for Convenience.** County, through its Authorized Representative may, by written notice to Contractor, terminate all of this Agreement or any Scope of Work ("SOW") at any time for County's convenience. Upon receipt of such notice, Contractor must immediately cease all work as specified in the notice.

If this Agreement or any SOW is so terminated, Contractor will receive compensation as follows:

- i. For fully performed, accepted and approved items of service, and authorized reimbursable expenses pursuant to any applicable SOW, compensation will be in the amount specified in the applicable SOW for that item of service or expense.
- ii. For items of service on which County has issued an authorization to proceed but which have not been fully completed and accepted, Contractor will be compensated for its services performed and accepted by County in an amount which bears the same ratio to the total fee otherwise payable for the performance of that service as the services performed bear to the total services necessary for the full performance of that service.
- iii. In no event will the total compensation paid for any item of service exceed the value specified in the applicable SOW for that item of service.

**(b) County Termination for Contractor Breach.** If Contractor violates or breaches any terms or conditions of this Agreement or an SOW or if Contractor fails to fulfill in a timely and proper manner its obligations pursuant to this Agreement or any SOW (as solely determined by County), and does not cure such failure or violation within thirty (30) days, or such shorter period as the County may determine is necessary and appropriate, after receipt of written notice from County's Authorized Representative specifying such failure or violation, County may terminate this Agreement and any or all uncompleted SOWs.

Under such circumstances, County will provide Contractor with written notice as to the effective date of termination, and Contractor is not entitled to compensation for services, deliverables or expenses beyond the specified termination date.

If, after such notice of termination, County determines that Contractor did not breach or violate this Agreement or the applicable SOW, then the termination will be deemed to have been made for County's convenience, and Contractor will receive payment, which is allowed by this Agreement or the applicable SOW for a termination for convenience.

The rights and remedies provided herein to County are in addition to any other rights and remedies provided by law, this Agreement, or any SOW.



In addition, the following events shall be considered a material breach of this Agreement and a basis for automatic termination of this Agreement and any and all SOWs without providing advance notice or an opportunity to cure:

i. Contractor's failure to maintain and comply with at all times during the Term the insurance coverage and protections set out in Exhibit C; or,

ii. The institution of bankruptcy, receivership, insolvency, reorganization or other similar proceedings by or against Contractor under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar laws or statutes of the United States or any state thereof; the insolvency or making of an assignment for the benefit of creditors; the institution of any reorganization, arrangement or other readjustment of a Contractor debt plan outside of the United States Bankruptcy Code; or, the appointment of a receiver for any or all of Contractor's assets.

**(c) Contractor's Termination of this Agreement.** Contractor may terminate this Agreement if County has materially and substantially violated any material term or condition of this Agreement to the direct detriment of Contractor so long as Contractor first provides County advance written notice to terminate of at least thirty (30) days. County's failure to timely pay any undisputed amount owed to Contractor, provided that such failure is not cured within thirty (30) calendar days following receipt of written notice of such failure, shall be deemed a material and substantial violation of a material term of this Agreement to the direct detriment of Contractor.

**(d) Cooperation upon Termination.** Upon termination of this Agreement or any SOW for any reason or for convenience, Contractor shall:

i. cooperate with County in good faith in order to effect an orderly transition of services to County or to any of County's representatives, contractors or consultants;

ii. cooperate with any other consultant retained by County, including attending transition meetings or any other necessary meetings; and,

iii. deliver to County all information and documents in the possession of Contractor relating to this Agreement, without delay.

**4. Compensation.** The parties each agree that the only compensation for all work, services and deliverables will be the percentage of the donated funds expressly provided for in Exhibit B (the "Compensation") and no other form or amount of compensation shall be allowed, required or provided. This Compensation is for all work, services and deliverables contemplated, completed and performed to County's satisfaction (as solely determined by County) per the terms and conditions of this Agreement and as specified in the attached Scope(s) of Work and such other SOWs as are later developed and accepted by County during the Term. The Compensation for all such work, deliverables and services must not cumulatively exceed the Total Maximum Compensation of \$35,000,000. All work, deliverables and services shall be performed under a Scope of Work ("SOW") first accepted and approved by County as a part of this Agreement.



County shall not be liable for any costs or expenses incurred by Contractor in performing such work, services or deliverables or otherwise in connection with this Agreement. If Contractor exceeds the Total Maximum Compensation limit at any time, Contractor shall not be entitled to collect any additional fees under Exhibit B but shall remain liable and responsible for continuing to perform all of its duties and obligations under the terms and conditions of this Agreement for the remainder of the Term.

**(a) Reimbursable Expenses.** There are no reimbursable expenses authorized under this Agreement.

**(b) No Additional Compensation.** Notwithstanding anything to the contrary expressed or implied elsewhere in this Agreement or in any SOW, no additional services, deliverables or work made necessary, in whole or in part, by any fault, act or omission of Contractor, or any of its contractors, agents, employees or consultants, to perform its duties, responsibilities or obligations under this Agreement, shall be compensated as additional service or work under this Agreement or by way of amendment or change order.

**5. Review of Records**

**(a) Accounting System & Records Retention.** Contractor must maintain an accounting system in accordance with current standards of accounting and financial reporting for the purpose of supporting payments for services authorized under this Agreement. Contractor must retain such records for (1) as long as FEMA or other regulatory agencies require that they be maintained, or (2) no less than three (3) years from expiration or termination of this Agreement, or (3) until all claims, if any, have been disposed of, whichever period among the three herein above is longer.

**(b) County's Right to Review Accounts and Other Records.** Upon service of a written notice to Contractor, County, and persons authorized by County, have the right, but not the obligation, at any reasonable time and place to examine, audit, and make copies of books, records, documents, accounting procedures and practices affecting the performance or administration of this Agreement or any SOW, affecting any changes or modifications to this Agreement or any SOW, or involving or relating to the deliverables, operations or services to be performed or performed under this Agreement or any SOW. Contractor shall fully cooperate with all such reviews and audits and shall ensure its employees, consultants and contractors do the same. Such audit and review rights shall continue for (1) as long as FEMA or other regulatory agencies maintain such audit or review rights or (2) a minimum of three (3) years from the date of termination, cancellation or expiration of this Agreement or any SOW, whichever period among the two herein above is longer.

**(c) Applicability to Subcontracts.** Contractor must incorporate the above-stated accounting and audit requirements into all subcontracts and subconsulting agreements exceeding Ten Thousand Dollars (\$10,000) in value pursuant to this Agreement or any modification thereof.

**6. Other Contracting Principles.** Contractor agrees to comply with the County's Contracting Principles set forth in the Board of Supervisors Policy Manual. The Contracting Principles require, among other things, that Contractor be a fiscally responsible entity and treat its employees fairly.



Contractor is also required to:

- i. Comply with all applicable federal, state and local rules, regulations and laws;
- ii. Maintain financial records, and make those records available upon request;
- iii. Provide to the County copies of any financial audits that have been completed during the Term of the Agreement; and upon the County's request, provide the County reasonable access, through representatives of Contractor, to facilities, financial and employee records that are related to the purpose of this Agreement, except where prohibited by federal or state laws, regulations or rules.

7. **Responsibility for Taxes.** Contractor will be responsible for any taxes on its interest in real and personal property, including all franchise or privilege tax on its business or operations, and for all taxes based on its gross or net income or gross receipts. Contractor will also be responsible for all sales, service, value-added, lease, use, personal property, excise, consumption and other taxes and duties, including value-added taxes, payable by Contractor on any goods or services used or consumed by Contractor or any of its consultants, contractors or employees in providing the services or deliverables.

8. **Contractor's Employee Wages and Related Expenses.** Contractor shall pay all expenses related to the performance by Contractor of the services required to be performed by Contractor under this Agreement; and County shall not be liable to reimburse Contractor for any such expenses, except as contained in any applicable Scope of Work. Contractor shall timely (and without delay) hire, pay and supervise, as employees of Contractor, all persons necessary to carry out Contractor's responsibilities and duties hereunder. Contractor shall have the sole responsibility for all matters relating to such employees and shall fully comply with applicable laws and regulations affecting such employees, including, without limitation, laws and regulations regarding prevailing wage, payroll withholding, worker's compensation, Social Security, unemployment insurance, hours of labor, wages and working conditions, and shall maintain worker's compensation insurance in the amount of any statutory requirements. Under no circumstances shall employees of Contractor be considered or deemed employees of County.

Contractor shall cause its employees performing work under this Agreement to be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat 948; 62 Stat 740; 63 Stat 108; title 18 U.S.C.A., Section 874; and title 40 U.S.C.A., Section 276c). Contractor shall comply with all applicable "Anti- Kickback" regulations and shall insert appropriate provisions in all subcontracts covering preparation of deliverables under this Agreement including to insure compliance with such regulations, and shall be responsible for the submission of required affidavits except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements.

9. **Principals and Employees of the Parties.** The principals and employees of the Contractor are identified in Exhibit D, attached herein and incorporated by reference into this Agreement.



**10. Scope of Work.** Contractor's services and deliverables are described as follows and as provided for in the attached Scope of Work, Exhibit A, and as later developed and approved by County during the Term, which are incorporated herein by this reference.

**(a) Scope of Work Content.** In addition to any other terms or conditions of the Scope of Work (as agreed by the Parties or as required elsewhere in this Agreement), each new Scope of Work shall contain or identify:

- i. Tasks;
- ii. Milestone events;
- iii. Critical path milestones;
- iv. The document deliverables (e.g., completion of written specifications, plans, worksheets, drawings, designs, training materials, source code, etc.);
- v. The service deliverables (e.g., completion of workshops, outreach, consulting, reviews, management services, training, computer or software development or programming, etc.)
- vi. Start and finish dates for each task, milestone event and critical path milestone;
- vii. Detailed description of all activities to be performed by Contractor and County;
- viii. Required or anticipated hours needed to perform and complete each task, each milestone event and each critical path milestone;
- ix. Detailed description of all third party activities, including their tasks, milestone events and critical path milestones;
- x. Dates and locations of scheduled status meetings and required or recommended attendees;
- xi. Those events, milestone events or critical path milestones which trigger payment by County;
- xii. Quality Control/Quality Assurance/Testing Measures for determining Completion, Accuracy and Thoroughness of Services and Deliverables; and,
- xiii. Identification of the Project Team, inclusive of all sub-consultants and subcontractors.

Commencement of each new SOW is contingent on receipt by Contractor of an Authorization to Proceed issued by County's Project Manager. Contractor must not commence work until Contractor receives the written Authorization to Proceed from the County's Project Manager.

Any act or event affecting any particular SOW, such as its completion, termination, acceptance, non-acceptance, continuation or modification, will not affect any other SOW or this Agreement unless specifically provided herein or agreed in writing by the parties.

**(c) General Quality Assurance/Quality Control.** Contractor represents and warrants that the work, services and deliverables under this Agreement shall be performed, completed and provided as expeditiously and as consistent with best industry standards of professional skill and care, and the prompt, orderly progress of such services and deliverables to completion based on best industry standards. Contractor shall provide sufficient organization, and qualified personnel and management so that all services and deliverables are performed, completed and provided with the professional skill and care and in accordance with the best professional practices and principles



accepted in the industry for services and deliverables of comparable scope and complexity within the geographical area contemplated by this Agreement (i.e. within the County of Santa Clara, State of California).

Contractor represents and warrants that it has the necessary skill, training, experience and expertise to perform the contemplated in the Request for Proposal in a first class and professional manner. Therefore, Contractor agrees and acknowledges that it shall be solely responsible for any and damages or delays related to unforeseen conditions encountered in carrying out and performing the services contemplated herein.

Contractor must perform the services and deliverables in compliance with all applicable federal, state and local codes, statutes, laws, regulations and ordinances, including environmental, energy conservation, and disabled access requirements.

Contractor must use best efforts to apply reasonably accurate interpretations of applicable law, codes, regulations, and ordinances from the appropriate governmental agencies and authorities having jurisdiction over the services and deliverables. Such efforts will be undertaken in accordance with the industry acceptable standard of care and best industry practices for the type of service or deliverable performed within the County of Santa Clara.

**(d) Errors and Omissions.** Contractor must correct errors and omissions in all deliverables attributable to Contractor or to any of Contractor's employees, agents, representatives, consultants or contractors, without cost to County. County may pursue all available legal remedies for such errors or omissions.

**11. Security and Personnel.**

**(a) Security Policies.** Contractor agrees that its employees, contractors, subcontractors, consultants, agents, representatives and affiliates, while working at or visiting the premises or properties of County, shall comply with all the internal rules and regulations of County, including security procedures, and all applicable federal, state, and local laws and regulations applicable to such location.

**(b) Contractor Personnel.** Contractor warrants and represents that all employees, agents, representatives, contractors, subcontractors and consultants (the "personnel") (a) are authorized to work in the jurisdiction in which they are assigned to perform the services and complete the deliverables; (b) have not been convicted of a felony and are not proven substance abusers; and (c) are not otherwise disqualified from performing the services or providing the deliverables under applicable laws. Where requested by County and where allowed by applicable law, Contractor will conduct appropriate background checks on such personnel to confirm compliance with this Section. A failure to pass a background check or to fail to conform to the requirements of this Section is adequate justification for County to request that Contractor replace said personnel with qualified personnel for performance under this Agreement. County's request shall not be unreasonably denied by Contractor. Any personnel who fail to comply with County security or other facility use policies or procedures (including the no smoking policy) shall be immediately removed by Contractor from



County properties and premises upon request.

**(c) Approval of Subcontractors.** Only contractors, subcontractors and consultants identified in this Agreement or in a County-approved SOW shall be authorized to perform or provide any of the services or deliverables under this Agreement or any SOW. If any obligation is performed for or on behalf of Contractor through a contractor, consultant or subcontractor, Contractor will remain fully responsible and liable for the performance of all obligations under this Agreement and Contractor will be solely responsible for all payments due to its contractors, consultants and subcontractors. No contract, subcontract or other agreement entered into by Contractor with any third party in connection with this Agreement will provide for any indemnity, guarantee or assumption of liability by, or other obligation of, County with respect to such arrangement. No contractor, consultants or subcontractor will be deemed a third party beneficiary for any purposes under or to this Agreement.

There are no third party beneficiaries under, for or in relation to this Agreement.

**12. Other SOW Requirements.**

**(a) Printing & Reproduction.** Contractor must pay for all printing and reproduction costs incurred in the performance of its services or providing the deliverables.

**(b) Meetings.** In addition to meetings specifically identified in any applicable SOW, Contractor must attend meetings as needed or required with:

i. County's officials, staff, commissions and user groups as required for the performance of Contractor's services or provision of deliverables pursuant to this Agreement and all SOWs. This requirement includes meetings with County and user groups to develop, explain and refine and deliverables or services and for Contractor to present design solutions for acceptance. This also includes a pre-design kickoff meeting with the County's organization, as applicable.

ii. County-sponsored advisory groups and local officials to present the Project to the public.

iii. Governmental agencies having jurisdiction related to the services or deliverables or any part of thereof. Contractor must schedule and participate in preliminary meetings with all governmental agencies with permitting authority for any of the deliverables or services as needed or required by County.

iv. If requested by the County, Contractor must prepare agendas for and take minutes of all meetings conducted/attended by Contractor. This includes meetings that are chaired by the County's Project Manager. In meetings with facility personnel, all discussions that involve scope, a significant design element, or project cost must be documented by Contractor in the meeting minutes.

v. Contractor's fee for attendance at and preparation of minutes for all meetings



specifically identified in this Agreement or any SOW will be considered included in the overall fee identified in each SOW.

vi. County's Project Manager will coordinate all meetings between Contractor, County's user groups, and the public.

(c) **Timing/Scheduling.** Contractor will perform all services and deliverables within the time and project schedule stated in the SOW, including milestones, if any. Contractor shall perform its services and provide the deliverables as expeditiously as is consistent with such professional skill and care and the orderly progress of the services. Time is of the essence in performing and carrying out Contractor responsibilities under this Agreement.

Contractor must provide and maintain staffing levels as necessary to perform the services and complete the deliverables within the time provided in the applicable SOW schedule.

13. **Assignment and Subcontracting.** It is recognized and acknowledged by the Parties hereto that a substantial inducement to County for entering into this Agreement was, and is, the professional reputation and competence of Contractor. Neither this Agreement nor any interest therein may be assigned by Contractor without the prior written approval of the County.

14. **Other Representations and Warranties.** Contractor representations, warranties and covenants that the following is true and correct and shall be true and correct at all times during the Term:

(a) Contractor is a tax-exempt charitable organization and in good standing under the laws of the State of California and is authorized to carry on its business in California as such business is now conducted and to perform its obligations under this Agreement.

(b) Contractor has the full right, power and lawful authority to enter into this Agreement and its execution and delivery of this Agreement has been fully authorized by all requisite actions.

(c) Contractor has provided County with true and correct copies of documentation reasonably acceptable to County designating the parties authorized to execute this Agreement on its behalf.

(d) Contractor's execution, delivery and performance of its obligations under this Agreement will not violate any applicable laws, regulations, or rules nor to its knowledge after due inquiry, constitute a breach or default under any contract, agreement, or instrument to which it is a party, or any judicial or regulatory decree or order to which it is a party or by which it is bound.

(e) Contractor has not made an assignment for the benefit of creditors, filed a petition in bankruptcy, been adjudicated insolvent or bankrupt, petitioned a court for the appointment of any receiver of or trustee for it or any substantial part of its property, or commenced any proceeding relating it under any reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or later in effect. There has not been commenced nor is



there pending against it any proceeding of the nature described in the first sentence of this subsection. No order for relief has been entered with respect to it under the Federal Bankruptcy Code.

(f) All documents, instruments, and other information delivered by Contractor to the County pursuant to this Agreement are true, accurate, correct and complete unless otherwise indicated in writing delivered concurrently with such delivery. Each party shall be entitled to rely upon the accuracy and completeness of the information, surveys, and reports provided by any other party or any of such party's subcontractors or consultants.

(g) This Agreement, when executed by it and delivered, shall constitute its legal, valid and binding obligation. No consent, approval, or authorization of any third person to its execution, delivery, and performance of this Agreement is required, other than consents, approvals, and authorizations which have already been unconditionally given.

(h) Upon its receipt of knowledge that any fact or condition which would cause any warranty or representation made by it pursuant to this Section is not true, promptly give written notice of such fact or conditions to the County. Each of the foregoing items (a) to (h), inclusive shall be deemed to be ongoing representations, warranties and covenants and shall survive termination, expiration or cancellation of this Agreement and any SOW.

**15. County Reliance and Consequential Damages.** Acceptance by County of the work performed under this Agreement does not operate as a release of the Contractor from such professional responsibility for the work performed. It is further understood and agreed that Contractor is apprised of the scope(s) of the work to be performed under this agreement and Contractor agrees that the work can and shall be performed in a fully competent manner.

Contractor recognizes that the timely and competent completion of the services and deliverables is an important inducement to enter into this Agreement, and that the failure of Contractor to timely and competently perform may result in substantial negative financial consequences to the County. County and Contractor agree that, in addition to any and all other sums which Contractor may be obligated to pay to County for a breach, if any, of this Agreement, Contractor hereby acknowledges that damages, including those set forth above, which are a consequence of Contractor's failure to timely, safely and/or properly complete the services and deliverables herein with professional quality and skill are presently known and foreseeable by the Parties hereto.

**16. Ownership of Deliverables.**

(a) **Ownership of Deliverables/Documents.** All drawings, plans, specifications, calculations, reports and other documents prepared by or on behalf of Contractor and delivered to the County pursuant to this Agreement or any SOW shall become the sole and exclusive property of County, without condition. Whether or not protected or capable of protection under the law of copyrights, trademarks, patents or trade secrets, the results of all activities performed or deliverables provided by or on behalf of Contractor (collectively referred to herein as the "Work Product") shall upon delivery to the County become the sole and exclusive property of County, and all evidence thereof shall, without any compensation to Contractor or any other third party (expressed as otherwise



expressly authorized), become the sole and exclusive property of County, without condition. County shall have full and complete ownership rights to use, license and sell any and all of the Work Product in any manner determined by County in County's sole and exclusive discretion anywhere and everywhere in the world.

**(b) Additional Documents.** Should County desire to apply for or secure any copyright, trademark or trade name registration(s) or patent(s) on or related to any part(s) or all of the Work Product, Contractor will assist in securing such protection without any further compensation to Contractor or any third party. To such end or for the purpose of assigning, transferring, granting, conveying and confirming all or any part(s) of the Work Product to County, Contractor shall execute such further assignments of rights, affidavits or other documents as County deems appropriate or necessary. All of the Work Product capable of copyright protection as services made for hire is hereby deemed to be such for County solely. If by law any or all of the Work Product is not work made for hire, Contractor agrees to assign and transfer and does hereby assign and transfer all right, title and interest in and to the copyright(s) in such Work Product to County.

**17. Budget Contingency.** This Agreement is contingent upon the appropriation of sufficient funding by the County for the services and deliverables covered by this Agreement. Notwithstanding the termination provisions above, if funding is reduced, depleted or deleted by the County for services or deliverables covered by this Agreement, the County has the option to either terminate this Agreement without notice (except that necessary to transition any projects in the discretion of the County) and with no liability occurring to the County, or to offer an amendment to this Agreement indicating the reduced amount.

**18. Assignment of Clayton Act, Cartwright Act Claims.** Contractor hereby assigns to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by Contractor for sale to the County pursuant to this Agreement.

**19. Further Assurances.** Contractor covenants and agrees that it will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out this Agreement.

**20. Insurance.** In addition to the insurance requirements of the attached Exhibit C which is incorporated into and made a part of this Agreement by this reference, Contractor shall maintain (i) commercial general liability insurance for all Contractor's activities directly or indirectly relating to this Agreement in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence, and Four Million Dollars (\$4,000,000.00) annual aggregate; (ii) insurance against claims arising out of the errors or omissions of Contractor in an amount not less than Two Million Dollars (\$2,000,000); and, (iii) insurance against claims arising out of the performance of professional services caused by any acts of Contractor in an amount not less than Two Million Dollars per claim (\$2,000,000) and Four Million Dollars in the aggregate (\$4,000,000.00). Contractor shall submit certificates of such insurance to County upon the execution of this Agreement. Certificates evidencing renewal or replacement of insurance policies must be submitted to County at least thirty (30) days prior to



termination of existing policies. County shall be a named additional insured under all policies required to be carried pursuant to this Section, and Contractor shall provide County with certificates and endorsements evidencing such coverage prior to the commencement of any work under this Agreement or any SOW. No policy required hereunder shall be cancelable without thirty (30) days' prior written notice to County. All insurance policies required hereunder must be placed with insurers qualified to do business in the State of California and reasonably satisfactory to County.

**21. Indemnity.**

**(a) Contractor Indemnity.** Contractor shall indemnify, defend, and save harmless County and County's employees, agents, representatives, Board of Supervisors, officers, directors, attorneys and contractors (each individually and collectively the "County Representatives") and hold County and the County Representatives harmless from for and against any and all losses, damages (whether general, punitive or otherwise), liabilities, actions, administrative proceedings, claims, loss, demands, causes of action, judgments, and other costs and expenses, settlement amounts, mediation costs, including attorneys' fees and court costs (collectively and each a "Claim" or "Claims"), which County or any of the County Representatives may suffer or incur as a consequence of, relating to or arising out of:

- i. Contractor's failure to perform any of Contractor's obligations as and when required hereunder, including any failure of any representation or warranty of Contractor to be true and correct and any errors, omissions or negligent acts committed by Contractor, its agents, officers, directors, affiliates, assigns, consultants, contractors or employees;
- ii. any claim or cause of action to the effect that County or any of the County Representatives is in any way responsible or liable for any act or omission of Contractor; or
- iii. any act or omission by Contractor or any person or entity hired or employed by Contractor to perform any services or provide any deliverables relating to the subject matter of this Agreement.

Contractor shall pay any indebtedness arising under this indemnity to County or the County Representatives immediately upon demand by County together with interest thereon from the date such indebtedness arises until paid at the rate equal to the greater of 15 percent per annum or the highest lawful rate. Contractor's duty to indemnify County shall survive the termination, expiration or cancellation of this Agreement or any SOW.

**(b) County Indemnity.** County shall indemnify, defend and hold harmless Contractor for, from and against any Claim directly and solely caused by the active gross negligence or willful misconduct of County or County's employees, officers, directors or Board of Supervisors.

**(c) Indemnification Procedures.** In connection with any Claim for which a party seeks indemnification from the other party in accordance with this Agreement, the party seeking indemnification: (a) shall give the indemnifying party prompt written notice of the Claim; provided, however, that failure to provide such notice shall not relieve the indemnifying party from its liability



or obligation hereunder, except to the extent of any material prejudice as a direct result of such failure; (b) shall cooperate with the indemnifying party, at the indemnifying party's expense, in connection with the defense and settlement of the Claim; and (c) shall permit the indemnifying party to control the defense and settlement of the Claim; provided, however, that the indemnifying party may not settle the Claim without the indemnified party's prior written consent, which shall not be unreasonably withheld or delayed, in the event such settlement materially adversely impacts the indemnified party's rights or obligations. Further, the indemnified party, at its cost, may participate in the defense of the Claim through counsel of its own choosing. This Section shall survive the expiration, cancellation or termination of this Agreement or any SOW.

**22. Additional Commitments.** Contractor represents, warrants and agrees that: (1) Contractor owns or controls or will own or control the necessary and legal rights to offer, provide and perform any and all of the services and deliverables contemplated to be performed under this Agreement or advertised or marketed as being performed by Contractor (including all intellectual property rights); (2) Any such services or deliverables provided to County by or through Contractor (including any and all intellectual property rights used in, as a part of, with, or in relation thereto) do not and will not violate, misappropriate, or infringe any third party intellectual property rights, privacy, publicity, legal or other rights; and (3) there are no existing or threatened claims or proceedings by any entity against Contractor or any of its officers, directors, agents, employees, representatives, contractors, consultants, subcontractors, subconsultants or other affiliates (collectively and each individually the "Contractor Affiliates") that would impair Contractor's ability to perform under this Agreement or would create liability for the County or County Affiliates (as defined below).

**23. County Data, Security and Ownership.**

**(a) Definitions.**

i. "County Intellectual Property" as used in this Agreement, means, collectively and singularly, with respect to any information, programming, object code, material, website, publication, source code, document, technology, metadata, data, device, or other asset of any kind, all copyright, trade name, trade dress, domain name, patent, trade secret, moral, termination, ownership, authorship and other proprietary rights of County including, without limitation, all goodwill, all information and materials provided by or on behalf of County to Contractor or any of the Contractor Affiliates, and all rights necessary for any and all local, national, or worldwide development, manufacture, modification, enhancement, sale, licensing, use, reproduction, publication or display.

ii. "County Confidential Information" shall mean all confidential or proprietary information and documentation of County, whether or not marked as such. County Confidential Information shall not include: (1) information which is or becomes publicly available (other than by, through or as a result of Contractor's or its Affiliates breach of any of the Agreement terms or conditions); (2) information independently developed by Contractor or any of the Contractor Affiliates without the benefit, knowledge or use of any of the County Confidential Information; or (3) information received from a third party not under a confidentiality obligation to County or to any of County's officers, members of the board of supervisors, employees, agents, assigns, representatives, consultants or contractors (the "County Affiliates"). Notwithstanding anything to the contrary above,



without the prior written consent of County; Contractor SHALL NOT join any name, mark or logo with any of the County Intellectual Property so as to form a composite trade name or mark, without obtaining the prior written consent of County; Contractor shall refrain from using any other name or mark that is confusingly similar to the County Intellectual Property; and, Contractor will not directly or indirectly do anything to compromise County's Intellectual Property. Contractor agrees to notify County promptly if it becomes aware of any actual, suspected or threatened infringement, misuse, imitation, dilution, misappropriation or other unauthorized use, access or conduct in derogation of the County Intellectual Property. County shall have the sole right to bring any action to remedy the foregoing, and Contractor and Contractor Affiliates shall cooperate with County in exercising such right. Any and all recoveries resulting from such actions initiated by County shall be retained by County. EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, COUNTY DISCLAIMS ALL WARRANTIES REGARDING THE COUNTY INTELLECTUAL PROPERTY AND ANY OTHER INFORMATION OR ASSISTANCE PROVIDED INCLUDING WARRANTIES OF NON-INFRINGEMENT. IN NO EVENT SHALL COUNTY BE LIABLE TO CONSULTANT OR OTHERS FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, COLLATERAL OR PUNITIVE DAMAGES OR LOST PROFITS OR FAILURE TO REALIZE EXPECTED SAVINGS OR OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND, ARISING FROM, OUT OF OR RELATED TO THIS AGREEMENT, CONSULTANT'S USE OF OR RELIANCE ON THE COUNTY INTELLECTUAL PROPERTY OR ANY INFORMATION OR ASSISTANCE PROVIDED TO CONSULTANT BY OR ON BEHALF OF COUNTY.

**(d) Data Security.** Contractor warrants, represents and agrees for itself and each of Contractor's Affiliates that it shall establish and maintain an information security program that is designed to:

- i. Ensure the security and confidentiality of County Confidential Information;
- ii. Protect against any anticipated threats or hazards to the security or integrity of County Confidential Information;
- iii. Protect against unauthorized access to or use of County Confidential Information that could result in harm or inconvenience to County or any end users, patients, employees or customers;
- iv. Ensure the secure and proper disposal of County Confidential Information in its custody or control;
- v. Take all appropriate action to address any incident of unauthorized access to County Confidential Information, including addressing and/or remedying the issue that resulted in such unauthorized access;
- vi. Notify County immediately of any incident or threat of unauthorized access to County Confidential Information or any other breach in its security; and,
- vii. Be responsible for ensuring compliance by all Contractor Affiliates with the confidentiality provisions of this Agreement.

**(e) Unauthorized Disclosure.**

- i. Should Contractor or any of the Contractor Affiliates divulge to unauthorized third parties County Intellectual Property or County Confidential Information in its reasonable control or



possession or in the reasonable control or possession of any of the Contractor Affiliates (as defined below), Contractor shall expeditiously and in good faith comply with all applicable federal, state and local laws and regulations, including but not limited to California Civil Code Sections 1798.29 and 1798.82 at its sole expense and liability. Contractor shall not charge the County for any fees, costs or expenses associated with its compliance with the obligations set forth in this paragraph.

ii. If any County Intellectual Property or Confidential Information is lost or damaged due to the acts or omissions of Contractor ( or Contractor's parent or subsidiary companies, assigns, agents, employees, officers, directors, representatives, contractors or subcontractors (collectively, its "Contractor Affiliates"), Contractor shall use commercially reasonable best efforts to assist in replacing or regenerating such County Intellectual Property and Confidential Information.

iii. In addition, within ten (10) business days of termination of the Agreement, and upon request by the County, Contractor shall return all County Intellectual Property and Confidential Information in its possession or control to the County in a format acceptable to County. At County's option, said information may be destroyed rather than returned.

**24. Limitation of Liability and Liquidated Damages.** In the event that County is in material and substantial breach of any material term or condition of this Agreement resulting in the direct financial detriment of Contractor, then Contractor shall have as Contractor's sole and exclusive remedy the right to terminate this Agreement in its entirety and to obtain, as "Liquidated Damages", the full amount of all payments that would have been due and payable to Contractor under this Agreement and all SOWs. Contractor agrees to look solely to such Liquidated Damages for satisfaction of any liability and Claims and shall not look to other assets of County nor seek recourse against such assets of the County (both real or personal) or its County Board of Supervisors, officers, directors, attorneys, employees, affiliates or assigns (collectively (inclusive of the County) and each the "County Parties"). It is County's and Contractor's intent that the County Parties shall not in any event or circumstance be personally liable, in any manner whatsoever, for any judgment or deficiency hereunder or with respect to this Agreement or any SOW, with the exception of any criminal conduct resulting in a final determination and ruling by a court of competent jurisdiction, after exhaustion of all appeal rights, that a criminal violation of law has occurred by such County Parties. Notwithstanding the foregoing, if County or any of the County Parties is or are adjudged or ordered to pay Contractor a money judgment because of County's default or breach under this Agreement or a default or breach directly and solely caused by the gross negligence or willful act of any of the County Parties, then Contractor's sole remedy to satisfy the money judgment shall be limited to the Liquidated Damages identified herein. All of Contractor's remedies shall be limited to money judgments, if any. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671 AND 1677. LICENSEE HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. UPON MATERIAL BREACH BY COUNTY, THIS AGREEMENT SHALL TERMINATE UPON WRITTEN NOTICE FROM CONSULTANT TO COUNTY, AND NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER, EACH TO THE OTHER, EXCEPT FOR THE RIGHT OF CONSULTANT TO COLLECT SUCH LIQUIDATED



DAMAGES FROM COUNTY, AND EXCEPTING THOSE TERMS AND CONDITIONS WHICH SURVIVE TERMINATION, EXPIRATION OR CANCELLATION OF THIS LICENSE AS STATED IN SECTION 52 BELOW. IN ADDITION, EXCEPT AS OTHERWISE PROVIDED IN THE AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER THE CLAIM GIVING RISE TO SUCH DAMAGES IS BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT OR NEGLIGENCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

25. **Remedies Not Exclusive.** Except as otherwise expressly provided herein, the rights and remedies set forth in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement. Notwithstanding the foregoing and anything contained herein to the contrary, Vendor expressly waives and disclaims any right or remedy it may have to de-install, disable or repossess any Software without due process of law.

26. **Bankruptcy.** In the event Contractor voluntarily or involuntarily becomes subject to the protection of the United States bankruptcy code and Contractor or the trustee in bankruptcy rejects this Agreement under Section 365 of the Bankruptcy Code, County shall have the right to: (a) treat this Agreement as terminated; or (b) retain County's rights under this Agreement.

27. **Intent.** This Agreement (and any extension of the Term) shall not obligate either party to enter into any other agreement on any particular terms. Nothing in the foregoing is intended to diminish or impair the obligations of Contractor under this Agreement or any SOW.

28. **Representation by Counsel.** The parties to this Agreement were represented by their respective counsel in the negotiation and execution of this Agreement. The parties are aware of the provisions set forth in California Civil Code §1717 and intend this paragraph of the Agreement to meet said statutory requirements so that the reference to attorneys' fees in Section 20 "Insurance", applies only in the indemnification context in Section 20, "Insurance."

29. **California Public Records Act.** All documents and records provided to or made available to County under this Agreement or any SOW become the property of the County, which is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If proprietary information is contained in documents submitted by Contractor to County, and Contractor expressly claims that such information falls within one or more CPRA exemptions, Contractor must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the confidential information. In the event of a request for such information, the County will make reasonable efforts to provide notice to Contractor prior to such disclosure. If Contractor contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required at its own cost, liability and expense to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County at least two (2) days before the County deadline to respond to the CPRA request. If Contractor fails to obtain such a remedy before the County responds to the CPRA request, County will disclose the requested information and shall not be liable or responsible for such disclosure.



Contractor agrees that it shall defend, indemnify and hold County harmless for, from and against any and all Claims that may or do result from denial by County of a CPRA request for any information arising from any representation, or any action (or inaction), by Contractor or Contractor's contractors, consultants, employees, agents or representatives.

**30. Conflict of Interest.** Contractor shall comply, and each shall require its respective contractors, employees, agents, representatives, subcontractors and consultants to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so will constitute a material breach of this Agreement and is grounds for immediate termination of this Agreement by the County.

(a) In accepting this Agreement, Contractor covenants, warrants, represents and agrees that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. Contractor further covenants that, in the performance of this Agreement, it will not employ any contractor, consultant or person having such an interest. Contractor, including but not limited to its employees, contractors, subcontractors and consultants, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

(b) If the disclosure provisions of the Political Reform Act are applicable to any individual employed or engaged by Contractor providing service or deliverables under this Agreement, Contractor shall ensure that such individual understands that he or she is subject to the Act and shall conform to all requirements of the Act and other applicable laws and regulations including, as required, filing of Statements of Economic Interests within 30 days of commencing any work pursuant to this Agreement, annually by April 1, and within 30 days of their termination or cessation of work pursuant to this Agreement.

(c) Contractor shall disclose to County any financial or other interests, whether adverse or otherwise, which Contractor may have or propose to have in any company, organization, individual, asset or activity which may have a bearing on the subject matter of this Agreement.

**31. Integration.** This Agreement supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.

**32. Notice.** Any notice, request, demand, consent, approval or other communication provided or permitted hereunder shall be writing, signed by the party giving such notice, and shall be given by personal delivery or courier service to the other party or by United States certified or registered mail, postage pre-paid, addressed to the party for whom it is intended at its address set forth below. Notice



shall be deemed given when received, but if delivery is not accepted, notice shall be deemed given on the earlier of the date delivery is refused or the third day after such notice is deposited in any official United States Postal Depository. Either party may, from time to time, by notice to the other party given as above set forth, change its address for purposes of notices hereunder.

County: Leslie Harper, Sr. Management Analyst  
2310 N. First Street, Suite 200  
San Jose, CA 95131

Contractor: Mari Ellen Loijens, Chief Business, Development and Brand Officer  
Silicon Valley Community Foundation  
2440 West El Camino Real, Suite 300  
Mountain View, CA 94040

**33. Modification.** No agreement, amendment, modification, understanding or waiver of or with respect to this Agreement or any term, provision, covenant or condition hereof, nor any approval or consent given under or with respect to this Agreement, shall be effective for any purpose unless agreed to in writing and signed by both Parties to this Agreement.

**34. Mechanics Liens.** If, because of any act or omission of Contractor or any of the Contractor Representatives, any mechanic's lien or other lien, charge or order for the payment of money are filed against any portion of the Property or against County or any of County's assets (either real or personal), Contractor shall at its own expense, cause the same to be discharged of record within thirty (30) days after written notice from County; and Contractor shall indemnify, defend and save harmless County from, for and against all resulting costs, liabilities, suits, claims and demands, including legal fees and court costs, resulting.

**35. Prohibition of Alcohol and Smoking.** Sale, distribution, promotion, advertising and use of any type of alcohol or tobacco product on, in or about the Property is strictly prohibited. Contractor shall enforce and shall ensure that all Contractor Representatives enforce and comply with the requirements of this Section 35 at all times during the Term.

**36. Nutrition Guidelines.** The Project contemplated and authorized under this Agreement does not include the right to sell, offer for sale or distribute (even if free of charge) any food or beverage of any kind, including coupons, discounts or other reference materials in relation to food, food services or beverages.

**37. Waiver of Jury Trial.** The parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way related to this Agreement, the relationship of County and Contractor, Contractor's use or occupancy of the Property and/or any claim of injury, loss or damage.

**38. Construction.** This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it.



**39. Relationship of Parties.** The Parties acknowledge and agree that nothing set forth in this Agreement shall be deemed or construed to render the Parties as affiliates, joint-venturers, partners, associations, master-servant, agents, representatives, a joint enterprise, employer-employee, lender-borrower or contractor. Contractor shall have no authority to employ any person as employee, agent or representative on behalf of County for any purpose. Neither Contractor nor any person using or involved in or participating in any actions or inactions relating to the Agreement, the Property, the Project, the Hazardous Waste or any Release shall be deemed an affiliate, employee, representative or agent of County, nor shall any such person or entity represent himself, herself or itself to others as an employee, affiliate, agent or representative of County.

Contractor's status, as well as the status of its officers, agents or employees, including personnel in administration and performance under this Agreement, shall be in an independent capacity and not as an employee, affiliate, representative or agent of the County.

**40. No Third Party Rights.** The Parties do not intend to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, covenant, obligation, or undertaking established herein. This Agreement shall not be construed as nor deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action herein for any cause whatsoever.

**41. OFAC.** Contractor represents and warrants to County that: (i) Contractor and the Contractor Representatives are not acting, and shall not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation enforced or administered by the federal Office of Foreign Assets Control; and (ii) Contractor and its Contractor Representatives are not engaged in the Project or entering into this Agreement, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation.

**42. Non-Discrimination.** Contractor and Contractor Representatives shall each comply with all applicable Federal, State and local laws and regulations including the County of Santa Clara's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964, as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code Sections 12900 et sea.); California Labor Code sections 1101 and 1102. Contractor and each of the Contractor Representatives shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organization affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Contractor or any of the Contractor Representatives discriminate in the fulfillment of any of the Agreement terms because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability,



43. **Headings.** The captions appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this Agreement or in any way affect this Agreement. Any gender used shall be deemed to refer to any other gender more grammatically applicable to the party to whom such use of gender relates. The use of singular shall be deemed to include the plural and, conversely, the plural shall be deemed to include the singular.

44. **No Permitted Use of Santa Clara County Name.** Except as allowed herein or by another written agreement entered into by and between the Parties, Contractor shall not publicize or use, or allow anyone else to use, the name, trade name, trade dress, seal, logo or other proprietary information of County in any manner except for the express and limited purpose of seeking donations as authorized under the terms herein.

45. **Time.** Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

46. **Cumulative Remedies.** The rights and remedies of the parties to this Agreement, whether pursuant to this Agreement or in accordance with law, shall be construed as cumulative, and the exercise of any single right or remedy shall constitute neither a bar to the exercise of nor the waiver of any other available right or remedy.

47. **Construction and Severability.** This Agreement shall not be construed more strongly against either party regardless of who is more responsible for its preparation. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable any other part of this Agreement, but the Agreement shall be construed as not containing the particular provision or provisions held to be invalid or unenforceable.

48. **Waiver.** No delay or omission by either party hereto to exercise any right occurring upon any noncompliance or default by the other party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained.

49. **Governing Law; Exclusive Jurisdiction.** This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the law of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this Agreement, including arbitration proceedings, shall be brought only in Santa Clara County, California. EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN SANTA CLARA COUNTY, CALIFORNIA.



50. **Counterparts.** This Agreement and the SOWs may be executed in several counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an original. Facsimile or electronic signatures shall have the same legal effect as original or manual signatures if followed by mailing of a fully executed original to both Parties.

51. **Joint and Several.** If Contractor consists of more than one person or entity, the obligations of all such persons or entities shall be joint and several. Each provision to be performed by Contractor hereunder shall be deemed to be both a covenant and a condition.

52. **Wage Theft Prevention.** It is the policy of the County that all parties contracting with the County must comply with all applicable federal, state, and local wage and hour laws, including, but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any Minimum Wage Ordinance enacted by the County or any city within the County of Santa Clara. A potential contractor that has submitted a formal or informal bid to provide goods and/or services to the County may be disqualified if the potential contractor has been found, by a court or by final administrative action of an investigatory government agency, to have violated applicable wage and hour laws in the five years prior to the submission of a bid to provide goods and/or services. A current contractor found by a court or by final administrative action of an investigatory government agency to have violated applicable wage and hour laws, in the five years prior to or during the term of the contract with the County, may be in material breach of its contract with the County if the violation is not fully disclosed and/or satisfied per County guidelines and contract requirements. Such breach may serve as a basis for contract termination and/or any other remedies available under law, including a stipulated remediation plan.

53. **Warranty of Authority.** Each person executing this Agreement on behalf of a Party represents and warrants that (i) such person is duly and validly authorized to do so on behalf of the entity it purports to so bind, and (ii) if such Party is a limited liability company, partnership, corporation or trustee, that such limited liability company, partnership, corporation or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder. Each Party hereby warrants that this Agreement is binding upon such Party and enforceable against such Party in accordance with its terms.

54. **Survival.** Those provisions which by their nature should survive termination, expiration or cancellation of this Agreement, shall so survive, including but not limited to Sections 1; 3; 4; 5; 6; 7; 8; 10(c), (d), (e), (f) and (g); 11; 13; 14; 15; and, 16 through and including 52, and Exhibit C.

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**IN WITNESS WHEREOF**, effective as of the last date signed by all parties below (“Effective Date”), the parties hereto have each caused this Agreement to be executed by its duly authorized representative as follows:

COUNTY OF SANTA CLARA:

  
\_\_\_\_\_  
Dave Cortese  
President Board of Supervisors

Date: APR 12 2016

CONTRACTOR:

  
\_\_\_\_\_  
Mari Ellen R. Loijens  
Chief Business Officer

Date: 3-21-2016

ATTEST:

  
\_\_\_\_\_  
Megan Doyle, Clerk Board of Supervisors

Date: APR 12 2016

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
Shirley R. Edwards, Deputy County Counsel



## EXHIBIT A STATEMENT OF WORK

### Contractor Responsibilities:

Contractor will fulfill the responsibilities and criteria identified in the most current Santa Clara County Catastrophic Earthquake Donations Management Plan as may be amended from time-to-time (the "Plan"), for carrying out effective, timely and responsive Disaster Related Donations Management Services, including but not limited to the following:

Contractor shall serve as a leading member of the Monetary Donations Coordination Team ("MDCT") and related functions or titles, as assigned and as provided in Chapter 5 of the attached Plan.

Immediately upon notification by duly authorized County officials, Contractor shall follow the procedure for authorizing and initiating the monetary donations management plan in compliance with the most current Plan.

Contractor shall maintain a website at all times for management and receipt of donations, and update appropriate language upon initiation of the Plan. Contractor shall include in all relevant communications with individuals, media, and partner organizations the website as the primary source of information for monetary donations in response to the disaster. Contractor shall structure website to allow for secure, online electronic monetary donation receipt function.

Contractor shall initiate the process to create a dedicated toll-free number within 24 hours of initiation of the Plan; when toll-free number is established, update website and notify Santa Clara County Office of Emergency Service ("SCCOES") for inclusion in all donation related communications. Contractor shall include, in all relevant communications with individuals, media, and partner organizations, the toll free number, when it is established.

Contractor shall maintain trained staff team and technical infrastructure in sufficient force to be in a position to accept online monetary donations within 24 hours of a declared disaster, and phone donations immediately upon the establishment of the toll-free number.

A separate fund deposited into a bank account for this purpose (which shall not be commingled with any other funds) shall be maintained by Contractor at all times which will be dedicated solely as the Santa Clara County Disaster Relief Fund.

Contractor shall supply donors with a receipt for qualified donations.

A list of qualified regional organizations shall be established, maintained and annually updated by Contractor, and approved by the County, to assist after a declared disaster; Contractor shall share listed organizations' contact information with SCCOES. Contractor shall be prepared to distribute monetary grants to these organizations within 72 hours of initiation of the Plan.



Contractor shall communicate the established procedure for this Santa Clara County Disaster Relief Fund if local governments, individuals, organizations, and other interested parties that propose establishing competing funds or wish to restrict funds in any fashion.

Contractor shall submit no less than weekly reports to SCCOES on funds received and grants distributed for at least the first eight weeks post-disaster, and no less than monthly reports during subsequent months, until state of disaster has been proclaimed concluded.



### **Exhibit B - Cost Summary Compensation Plan and Payment Schedule**

Contractor will retain 3.5% from each donation received and processed, as the Contractor's sole and only form of compensation for all work, services and deliverables performed under this Agreement (the "Compensation"). No other form or amount of compensation, reimbursement, fee or payment will be made or accepted by Contractor for work, services and deliverables performed under this Agreement.

In addition, all third party transaction fees (e.g. credit cards) and all liquidation fees associated with any donations shall be deducted from the donation amount before Contractor deducts its 3.5% from the donation received and processed.

By way of example, but not limitation, all credit card transaction initiated by a donor through PayPal, (Contractor's current credit card processor), are charged at 2.2% + \$0.30. Donations sent from a donor using money they have in PayPal are charged the same fee. Another example is when Contractor uses its virtual terminal (when contractor staff runs the credit card), in which case the following fees apply: 2.2% + \$0.30 fee for all credit cards that are **not** American Express and 3.5% with no additional processing fees for American Express.

**Records Review:**

Contractor will submit monthly transaction reports to County itemizing each donation received and all deductions made using Generally Accepted Accounting Standards



### **Exhibit C – Indemnity and Insurance Requirements**

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.

#### **Insurance**

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverage's and provisions:

#### **A. Evidence of Coverage**

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

#### **B. Qualifying Insurers**

All coverage, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

#### **C. Notice of Cancellation**

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

#### **D. Insurance Required**

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:



- a. Each occurrence -\$1,000,000
- b. General aggregate -\$2,000,000
- c. Personal Injury -\$1,000,000

2. General liability coverage shall include:

- a. Premises and Operations
- b. Personal Injury liability
- c. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to owned, non-owned and hired vehicles.

4a. Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

6. Professional Errors and Omissions Liability Insurance

- a. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence/aggregate.
- b. If coverage contains a deductible or self-retention, it shall not be greater than fifty thousand dollars (\$50,000) per occurrence/event.



c. Coverage as required herein shall be maintained for a minimum of two years following termination or completion of this Agreement.

**7. Claims Made Coverage**

If coverage is written on a claim made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the Consultant's start of work (including subsequent policies purchased as renewals or replacements).
- b. Policy allows for reporting of circumstances or incidents that might give rise to future claim.

**E. Special Provisions**

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.

2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractor's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.

3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.

4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

**F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)**

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.



**Exhibit D – Key Personnel Project Roles and Contact Information**

1. Mari Ellen Loijens, Chief Business, Development and Brand Officer  
Cell Phone: 650.450.2913  
Direct Office Line: 650.450.5477  
Email: [mrloijens@siliconvalleycf.org](mailto:mrloijens@siliconvalleycf.org)
2. Erica Wood, Chief Community Impact Officer  
Cell Phone: 650.966.4101  
Direct Office Line: 650.450.5536  
Email: [ekwood@siliconvalleycf.org](mailto:ekwood@siliconvalleycf.org)
3. D. Lea Rauscher, Vice President, Grants, Gifts and Compliance  
Cell Phone: 408.391.1416  
Direct Office Line: 650.450.5547  
Email: [dlauscher@siliconvalleycf.org](mailto:dlauscher@siliconvalleycf.org)



**Exhibit E – The Santa Clara County Operational Area Emergency Operations Plan, as amended by the County from time to time**



# APPENDIX B

## STATE PRIVATE NON-PROFIT ORGANIZATIONS ASSISTANCE PROGRAM (AB903)



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## APPENDIX B – STATE PRIVATE NON-PROFIT ORGANIZATIONS ASSISTANCE PROGRAM (AB903)

### State of California Office of Administrative Law

In re:  
California Emergency Management Agency

Regulatory Action:

Title 19, California Code of Regulations

Adopt sections: 2991, 2992, 2993, 2993.1,  
2994, 2994.1, 2995, 2995.1,  
2996, 2996.1, 2997, 2998,  
2999

Amend sections:  
Repeal sections:

NOTICE OF APPROVAL OF CERTIFICATE OF COMPLIANCE

Government Code Section 11349.1 and 11349.6(d)

OAL File No. 2011-0401-01 C

The California Emergency Management Agency submitted this action as the Certificate of Compliance action for OAL File No. 2011-0214-03E to make permanent the emergency regulations and to add several modifications made after the emergency regulations were adopted. The regulations implement AB 903 (Stats. 2007, ch. 400), which was enacted to provide reimbursement to private nonprofit (PNP) organizations that incur extraordinary costs as a result of providing supplies and other disaster or emergency assistance activities if a state emergency is proclaimed by the Governor. The regulations also allow for reimbursement to intermediary PNPs, which are PNPs that coordinate the activities of other PNPs in providing disaster or emergency assistance activities.

OAL approves this regulatory action pursuant to section 11349.6(d) of the Government Code.

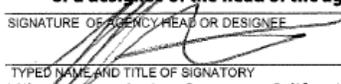
Date: 5/12/2011

Richard L. Smith  
Staff Counsel

For: DEBRA M. CORNEZ  
Assistant Chief Counsel/  
Acting Director

Original: Matthew Bettenhausen  
Copy: Catherine Bernstein



STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW <b>NOTICE PUBLICATION/REGULATIONS SUBMISSION</b> <span style="float: right;">(See instructions on reverse)</span>				For use by Secretary of State only	
STD. 400 (REV. 01-09) OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-2010-0413-01</b>	REGULATORY ACTION NUMBER <b>2011-0401-01C</b>	EMERGENCY NUMBER	2010 APR 12 PM 10:07 IN THE OFFICE OF 2011 MAY 12 PM 2:19  Janna Bowen CLERK-TOWEN SECRETARY OF STATE	
For use by Office of Administrative Law (OAL) only					
NOTICE				REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY California Emergency Management Agency				AGENCY FILE NUMBER (if any) Z-2010-0413-01	
<b>A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)</b>					
1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	
<b>OAL USE ONLY</b> <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER <b>2010-0413-01</b>	PUBLICATION DATE <b>4-23-2010</b>	
<b>B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)</b>					
1a. SUBJECT OF REGULATION(S) State Private Nonprofit Organizations Assistance Program			1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2011-0214-03 E		
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)					
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT 2991, 2992, 2993, 2993.1, 2994, 2994.1, 2995, 2995.1, 2996, 2996.1, 2997, 2998, 2999			
TITLE(S) 19, Division 2, Chapter 6		REPEAL			
3. TYPE OF FILING					
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn non-emergency filing (Gov. Code §511349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input checked="" type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)		<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____	
				<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs. title 1, §100) <input type="checkbox"/> Print Only	
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1) <del>4/23/2010-6/28/2010</del> ; 2/1/2011-2/16/2011; 2/23/2011-3/9/2011					
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) <input checked="" type="checkbox"/> Effective 30th day after filing with Secretary of State <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____					
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY <input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____					
7. CONTACT PERSON Catherine Bernstein		TELEPHONE NUMBER 916-322-1742	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) catherine.bernstein@calema.ca.gov	
8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.				For use by Office of Administrative Law (OAL) only ENDORSED APPROVED MAY 12 2011 Office of Administrative Law	
SIGNATURE OF AGENCY HEAD OR DESIGNEE 			DATE 5/29/11		
TYPED NAME AND TITLE OF SIGNATORY Mike Dayton, Acting Secretary California Emergency Management Agency					



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Add to Title 19, Division 2, Chapter 6:

**Article 1. State Public Assistance Program**

**§ 2900. Definitions**

**The following definitions apply to this article:**

(a)...

**Article 2. State Private Nonprofit Organizations Assistance Program**

**§2991. Definitions**

**The following definitions apply to this article:**

(a) Essential Community Services: Providing governmental type direct services to the community affected by an emergency or disaster, through the distribution of supplies and other disaster or emergency assistance activities. Private Nonprofit (PNP) activities are those that provide essential services including but not limited to food, water, and shelter.

(b) Hazard Mitigation: Any cost-effective measure which will reduce the potential for damage to a facility from a future disaster event.

(c) Intermediary Private Nonprofit (Intermediary PNP): Any private not for profit organization as defined in Section 2991(e) that, through written agreement with a local agency, is responsible for the coordination of multiple PNPs performing essential community services within the specific jurisdiction of that local agency.

(d) Local Agency: Any city, city and county, county, county office of education, community college district, school district, or special district.

(e) Private Nonprofit (PNP): Any private not for profit organization that is compliant with 44 CFR Section 206.221(f) having:

- (1) An effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under Sections 501(c), (d), or (e) of the Internal Revenue Code of 1954, or
- (2) Satisfactory evidence from the State that the nonrevenue producing organization or entity is a nonprofit one organized or doing business under State law.

~~(f) Private Nonprofit (PNP) Activities Claim: The written claim made by the PNP or the Intermediary PNP to the Secretary shall include:~~



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- (1) applicant name;
  - (2) description and location of essential community services activities provided with the associated costs;
  - (3) if applicant is a PNP, a copy of the request for assistance;
  - (4) if applicant is an Intermediary PNP, a copy of local agency agreement, with signatures of local agency representative and authorized agent.
- (g) Private Nonprofit (PNP) Application: The written application made by the PNP or the Intermediary PNP to the Secretary which shall include:
- (1) contact information;
  - (2) authorized agent contact information;
  - (3) tax exempt identification number;
  - (4) list of essential community services provided;
  - (5) signature of authorized agent.

**NOTE**

Authority cited: Section 8692, Government Code. Reference: Section 8692, Government Code.

**§ 2992. General Provisions for Eligible Private Nonprofit (PNP) Activities**

- (a) The PNP or Intermediary PNP applicant must meet all eligibility requirements described in this section.
- (b) When a state of emergency is proclaimed by the Governor, an eligible PNP or the Intermediary PNP applicant may receive state assistance pursuant to Government Code Section 8692. This emergency regulation applies to any emergency proclaimed by the Governor on or after December 21, 2010.
- (c) An eligible PNP applicant may receive state financial assistance as reimbursement for the performance of essential community services provided such expenditures meet all of the eligibility requirements.
- (d) An eligible Intermediary PNP applicant may receive state financial assistance as reimbursement for the coordination of multiple PNPs performing essential community services provided such expenditures meet all of the eligibility requirements.
- (e) No PNP activities resulting from self-deployment will be eligible for reimbursement.
- (f) No state financial assistance shall be made available for any activity that occurs more than six (6) months from the date of the Governor's Proclamation without prior written approval from the California Emergency Management Agency (Cal EMA).



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(g) An eligible PNP applicant shall utilize the application process as described in Section ~~2999~~2996. An eligible Intermediary PNP applicant shall utilize the application process as described in Section ~~2999.1~~2996.1.

**NOTE**

Authority cited: Section 8692, Government Code. Reference: Section 8692, Government Code.

**§ 2993. PNP Applicant Eligibility**

(a) A PNP organization must meet all of the following criteria for eligibility to apply for state financial assistance:

- (1) An eligible PNP applicant must meet the definition of PNP as defined in Section 2991(e).
- (2) An eligible PNP applicant must provide essential community services as defined in Section 2991(a).

(b) A PNP organization is not eligible if it uses public funds for religious means as described in Government Code Section 8692(d) while providing emergency assistance activities.

**NOTE**

Authority cited: Section 8692, Government Code. Reference: Section 8692, Government Code.

**§29942993.1. Intermediary PNP Applicant Eligibility**

(a) An Intermediary PNP organization must meet all of the following criteria for eligibility to apply for state financial assistance:

- (1) An eligible Intermediary PNP applicant must meet the definition of an Intermediary PNP as defined in Section 2991(c).
- (2) An eligible Intermediary PNP applicant must be responsible for the coordination of multiple PNPs as described in a written agreement with the requesting local agency. The written agreement shall meet all of the following requirements:
  - (A) The written agreement shall contain a list of the PNPs performing essential community services that the Intermediary PNP is responsible for coordinating.
  - (B) The written agreement shall describe the process the requesting local agency will utilize to request the Intermediary PNP to provide the coordination of essential community services performed by the listed PNPs.



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(C) The written agreement shall be executed within 30 days of the date of the Governor's State of Emergency Proclamation issued in response to an emergency or disaster.

(D) This deadline for the execution of the written agreement may be extended by the Cal EMA Secretary only for unusual or extraordinary circumstances upon written request by the Intermediary PNP or requesting local agency.

(3) An eligible Intermediary PNP, as an applicant requesting reimbursement on behalf of the PNPs they are responsible for coordinating, must have a written agreement with these PNPs. The written agreement shall meet all of the following requirements:

(A) A description of the process for the local agency to request the performance of essential community services by the listed PNPs through the Intermediary PNP.

(B) An authorization statement with signature that the Intermediary PNP will comply with the procedures and requirements described in the agreement.

**NOTE**

Authority cited: Section 8692, Government Code. Reference: Section 8692, Government Code.

**§ 29952994. PNP Activities Eligibility**

(a) To be eligible for state financial assistance, the PNP activities must meet all the following criteria:

(1) Eligible activities must be requested by a local agency or the state and completed within a timeframe established by the requesting agency. A written agreement between an eligible PNP and the requesting local agency may replace such request if the agreement specifies the requirements of deployment and is executed prior to providing the essential community services.

(2) Eligible activities must relate directly to a state of emergency as proclaimed by the Governor and be in support of the community affected by the emergency or disaster.

(3) Consistent with Government Code Section 8692(d), eligible activities must comply with state and federal civil rights laws that prohibit discrimination, and the First Amendment to the United States Constitution with regard to the use of public funds for religious activities.

(b) Hazard mitigation, repair or permanent restoration to facilities or real property damaged by an emergency or disaster are not eligible activities under this section.

**NOTE**



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Authority cited: Section 8692, Government Code. Reference: Section 8692, Government Code.

**§ ~~2996~~2994.1. Intermediary PNP Coordination Activities Eligibility**

(a) To be eligible for state financial assistance, the Intermediary PNP coordination activities must meet all the following criteria:

- (1) Eligible coordination activities must be requested by a local agency in accordance with a written agreement between the Intermediary PNP and the local agency.
- (2) Eligible activities include the coordination of multiple PNPs listed in the written agreement in the performance of essential community services for the requesting local agency.
- (3) Consistent with Government Code Section 8692(d), eligible activities must comply with state and federal civil rights laws that prohibit discrimination, and the First Amendment to the United States Constitution with regard to the use of public funds for religious activities.
- (4) Eligible coordination activities must relate directly to a state of emergency as proclaimed by the Governor and be in support of the community affected by the emergency or disaster.

**NOTE**

Authority cited: Section 8692, Government Code. Reference: Section 8692, Government Code.

**§ ~~2997~~2995. PNP Cost Eligibility**

- (a) Eligible activities must result in documented extraordinary costs.
- (b) Reasonable equal value replacement costs for documented pre-event inventory provided to the community affected by the proclaimed emergency or disaster may be eligible for reimbursement if the inventory is necessary to the PNP's ability to provide the essential community services requested by the local agency or the state.
- (c) PNP costs as described below are ineligible for state financial assistance.
  - (1) No state financial assistance will be provided for costs or expenditures prohibited by the federal or state constitution, federal or state law, or federal or state regulation.
  - (2) No reimbursement will be provided for donated resources received by the PNP on or after the first day of the incident period as specified in the Governor's State of



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Emergency Proclamation for the emergency or disaster for which the PNP is seeking reimbursement by the state.

- (3) No reimbursement will be provided for donated or volunteer labor.
- (4) No reimbursement will be provided for vouchers, debit cards or other monetary relief provided to the community affected by an emergency or disaster.
- (5) No state financial assistance will be provided for damages caused by negligence or intentional acts.
- (6) No funds allocated shall be used to supplant state or federal funds otherwise available in the absence of state financial relief or assistance.

**NOTE**

Authority cited: Section 8692, Government Code. Reference: Section 8692, Government Code.

**§ ~~29982~~2995.1. Intermediary PNP Cost Eligibility**

- (a) Eligible coordination activities of multiple PNPs performing essential community services must result in documented extraordinary costs.
- (b) Intermediary PNP coordination costs as described below are ineligible for state financial assistance.
  - (1) No state financial assistance will be provided for costs or expenditures prohibited by the federal or state constitution, federal or state law, or federal or state regulation.
  - (2) No funds allocated shall be used to supplant state or federal funds otherwise available in the absence of state financial relief or assistance.

**NOTE**

Authority cited: Section 8692, Government Code. Reference: Section 8692, Government Code.

**§ ~~29992~~2996. PNP Application Process**

- (a) An eligible PNP applicant must submit to Cal EMA a ~~completed PNP application,~~ PNP Application (Cal EMA PNP-2011-APP, 5/2011), hereby incorporated by reference, within 60 days after the date of a Governor's Proclamation.
  - (1) The Secretary or his/her designee may extend this deadline only for unusual or extraordinary circumstances.



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(2) Prior to application approval by Cal EMA, an eligible PNP applicant shall also submit a ~~resolution designating an authorized representative~~, PNP Applicant's Authorized Agent Resolution (Cal EMA PNP-2011-AAR, 5/2011), hereby incorporated by reference.

(b) An eligible PNP applicant must submit a ~~PNP activities claim~~, PNP Activities Claim Form (Cal EMA PNP-2011-ACF, 5/2011), hereby incorporated by reference, within 60 days of the completion of all eligible activities.

(1) After receipt of the PNP Activities Claim Form, Cal EMA may schedule an onsite review of supporting documentation.

(2) The state shall provide one hundred (100) percent of the total cost of eligible PNP activities.

(3) Upon approval of eligible costs, Cal EMA will process an allocation through the State Controller's Office. The state shall make no allocation less than one thousand dollars (\$1,000).

(4) If the state allocation is less than the total costs submitted on the PNP Activities Claim Form, an eligible PNP applicant has the right to a fair hearing pursuant to Section ~~2999.2~~2997.

(c) An eligible PNP applicant providing sustained operations may submit a PNP activities claim prior to the completion of all eligible activities providing the PNP can demonstrate financial hardship.

**NOTE**

Authority cited: Section 8692, Government Code. Reference: Section 8692, Government Code.

**§ ~~2999.1~~2996.1. Intermediary PNP Application Process**

(a) An eligible Intermediary PNP applicant must submit to Cal EMA, a completed PNP Application, (Cal EMA PNP-2011-APP, 5/2011), hereby incorporated by reference, within 60 days after the date of a Governor's Proclamation.

(1) The Secretary or his/her designee may extend this deadline only for unusual or extraordinary circumstances.

(2) Prior to application approval by Cal EMA, an eligible Intermediary PNP applicant shall also submit a ~~PNP Applicant's resolution designating an authorized representative~~, Agent Resolution (Cal EMA PNP-2011-AAR, 5/2011), hereby incorporated by reference.



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(b) An eligible Intermediary PNP applicant must submit a PNP Aactivities Celaim; Form (Cal EMA PNP-2011-ACF, 5/2011), hereby incorporated by reference, within 60 days of the completion of all eligible coordination activities.

(c) The PNP Aactivities Celaim Form submitted by the Intermediary PNP may include the eligible costs for all of the PNPs listed in their agreement that provided essential community services for the local agency. The Intermediary PNP will be responsible for processing the reimbursement to those listed PNPs included on their PNP Aactivities Celaim Form.

(1) After receipt of the Intermediary PNP Aactivities Celaim Form, Cal EMA may schedule an onsite review of supporting documentation.

(2) The state shall provide the Intermediary PNP one hundred (100) percent of the total eligible cost of the coordination activities and the total eligible cost paid by the Intermediary PNP to the PNPs they are responsible for coordinating.

(3) Upon approval of eligible costs, Cal EMA will process an allocation through the State Controller's Office. The state shall make no allocation less than one thousand dollars (\$1,000).

(4) If the state allocation is less than the total costs submitted on the activities claim, an eligible Intermediary PNP applicant has the right to a fair hearing pursuant to Section ~~2999.22997~~.

**NOTE**

Authority cited: Section 8692, Government Code. Reference: Section 8692, Government Code.

**§ ~~2999.22997~~. Fair Hearing Processes**

(a) LEVEL ONE: The PNP or the Intermediary PNP shall submit a formal written description of the grievance with supporting documentation, to the Director of Statewide Operations (Director) of Cal EMA. The Director or his/her designee shall respond with a written decision within ten (10) working days from receipt. Should the PNP or the Intermediary PNP disagree with the decision, the PNP or the Intermediary PNP may appeal to the second level.

(b) LEVEL TWO: The PNP or the Intermediary PNP shall prepare a formal response disputing the decision made by the Director. The PNP or the Intermediary PNP response shall include the original description of the grievance with supporting documentation, together with a copy of the response from the Director. This response shall be sent to the Assistant Secretary of Prevention, Information Analysis and Operations (Assistant



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Secretary) of Cal EMA within thirty (30) working days from receipt of the decision of the Director. The Assistant Secretary or his/her designee shall issue a written decision to the PNP or the Intermediary PNP within sixty (60) working days of receipt of the PNP's or the Intermediary PNP's formal response. This written decision shall be deemed a final judgment for purposes of this fair hearing process.

**NOTE**

Authority cited: Section 8692, Government Code. Reference: Section 8692, Government Code.

**§ ~~2999.3~~2998. Audit**

The Secretary or his/her duly authorized representative shall conduct audits and investigations as necessary to ensure compliance with these regulations. State auditors, and the Secretary or his/her duly authorized representative, shall have the right to question any person, as appropriate, and to access all financial and program records and supporting documentation pertinent to any activity funded under these regulations. The rights of access shall last for the full length of the retention period as required under these regulations.

**NOTE**

Authority cited: Section 8692, Government Code. Reference: Section 8692, Government Code.

**§ ~~2999.4. Retention Requirements for Records.~~ 2999. Requirements for Records**

(a) The PNP or the Intermediary PNP applicant shall retain all financial and program records and supporting documentation, reasonably considered as pertinent to these regulations for three years from the starting date of the retention period. The Secretary or his/her duly authorized representative will notify each PNP or the Intermediary PNP applicant of the starting date of the retention period.

**NOTE**

Authority cited: ~~Section 8692, Government Code.~~ Reference: Section 8692, Government Code.

**§ ~~2999.5. Original Source Documentation.~~**

(b) Microfilm, microfiche, or other representations of original source documents may be accepted in lieu of original source documents, if the eligible PNP or the Intermediary



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PNP applicant provides to Cal EMA an independent or internal auditor's report attesting to the accuracy of the alternate forms of original source documents.

**NOTE**

Authority cited: Section 8692, Government Code. Reference: Section 8692, Government Code.