

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
HUMBOLDT COUNTY
AND MCLEAN FOUNDATION
TO PROVIDE FISCAL AGENT SERVICES TO THE
2022 DECEMBER EARTHQUAKE LONG-TERM RECOVERY GROUP**

This Memorandum of Understanding (“MOU”), entered into this _____ day of _____ 2023, by and between the Humboldt County Office of Emergency Services, hereinafter referred to as “COUNTY,” and McLean Foundation, a not-for-profit corporation, herein after referred to as FOUNDATION and collectively referred to as the “PARTIES.”

WHEREAS, on December 20, 2022, a strong 6.4 magnitude earthquake occurred in Humboldt County; and

WHEREAS, the earthquake has caused an imminent threat to public safety and significant damage to public and private property, exceeding available county resources; and

WHEREAS, hundreds aftershocks have occurred; and

WHEREAS, significant damage has been focused in the City of Rio Dell, including over 250 structures “yellow tagged” (requiring repairs), over 90 structures “red tagged” (unsafe to enter), and over 90 households displaced; and

WHEREAS, the PARTIES desire to allow FOUNDATION to act as a fiscal agent to administer and manage funds received for the 2022 December Earthquake (earthquake) on behalf of the COUNTY and Long-Term Recovery Group (LTRG); and

WHEREAS, the COUNTY has Local Assistance and Tribal Consistency Funds (LATCF) to contribute to the earthquake recovery efforts; and

WHEREAS, the FOUNDATION has the necessary experience and abilities to administer and manage these funds and any potential future philanthropic donations; and

WHEREAS, the PARTIES now desire to enter into this Memorandum of Understanding (MOU) to have FOUNDATION act as the fiscal agent for these funds.

NOW THEREFORE, the parties hereto mutually agree as follows:

1. RIGHTS AND RESPONSIBILITIES OF THE PARTIES:

- A. The fiscal agent assumes responsibility for the administration of LATCF in the amount of \$250,000 and any future philanthropic donations to end the displacement of residents who have been displaced because of the 2022 December Ferndale Earthquake and to financially support programs that will allow for the safe and timely rebuilding and/or repair of residential structures destroyed or significantly damaged (i.e. “red- or yellow-tagged”). County represents and warrants that all LATCF and future donations are allowed and qualified to be used for the purposes of this MOU.
- B. The fiscal agent will establish and operate and segregate an account to financially support programs that will end the displacement of residents who have been displaced because of the 2022 December

Ferndale Earthquake and allow for the safe and timely rebuilding and/or repair of residential structures destroyed or significantly damaged (i.e. “red- or yellow-tagged”).

- C. The fiscal agent will disburse funds from this segregated account as approved in writing by the Long-Term Recovery Group and/or Unmet Needs Committee. Disbursements will be restricted to ending the displacement of resident and to allow for the safe and timely rebuilding and/or repair of residential structures destroyed or significantly damaged (i.e. “red- or yellow-tagged”).
- D. The fiscal agent will maintain all financial records relating to the funds it administers for the 2022 December Ferndale Earthquake according to generally accepted accounting principles.
- E. In consideration of the fiscal agent’s agreement to act as the fiscal agent for this recovery, and to help defray the fiscal agent’s expenses in connection with this MOU, the fiscal agent shall receive eight percent (8%) of the LATCF and philanthropic donations. Upon FOUNDATION submitting an invoice to COUNTY and COUNTY approving the invoice, a transfer of funds the FOUNDATION possesses from the segregated account may take place.

2. TERM:

This MOU shall begin on February 28, 2023, and shall remain in full force and effect until June 30, 2026 unless sooner terminated as provided herein.

3. TERMINATION:

- A. Termination for Cause. COUNTY may, in its sole discretion, immediately terminate this MOU, if FOUNDATION fails to adequately perform the services required hereunder, fails to comply with the terms or conditions set forth herein, or violates any local, state or federal law, regulation or standard applicable to its performance hereunder.
- B. Termination Without Cause. COUNTY OR FOUNDATION may terminate this MOU without cause upon thirty (30) days advance written notice which states the effective date of the termination.
- C. Termination due to Insufficient Funding. The PARTIES obligations under this MOU are contingent upon the availability of local, state and/or federal funds. In the event such funding is reduced or eliminated, COUNTY shall, at its sole discretion, determine whether this MOU shall be terminated. COUNTY shall provide FOUNDATION seven (7) days advance written notice of its intent to terminate this MOU due to insufficient funding.
- D. Compensation Upon Termination. In the event this MOU is terminated, FOUNDATION shall be entitled to compensation for uncompensated services rendered hereunder through and including the effective date of such termination. However, this provision shall not limit or reduce any damages owed to COUNTY due to a breach of this MOU by FOUNDATION. The FOUNDATION will also return any unspent funds in the segregated account to the COUNTY.

4. NOTICES:

Any and all notices required to be given pursuant to the terms and conditions of this MOU shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

COUNTY: County Administrative Office
Att: Elishia Hayes, County Administrative Officer
825 5th Street
Eureka, CA 95501

FOUNDATION: McLean Foundation
Att: Denise Marshall
3000 Newburg Road, Ste A
Fortuna, CA 95540

5. REPORTING REQUIREMENTS:

FOUNDATION hereby agrees to prepare and submit any and all reports that may be required by local, state and/or federal agencies for compliance with this MOU. Any and all reports required hereunder shall be prepared in a format that complies with the Americans with Disabilities Act, and any other applicable local, state and federal accessibility laws, regulations and standards, and submitted in accordance with any and all applicable timeframes.

6. RECORD RETENTION AND INSPECTION:

- A. Maintenance and Preservation of Records. FOUNDATION hereby agrees to timely prepare accurate and complete records, documents and other evidence relating to its performance hereunder, and to maintain and preserve said records for a period of three (3) years after expiration or termination of this MOU, or as otherwise required by any and all applicable local, state and federal laws, regulations and standards, except that if any litigation, claim, negotiation, audit or other action is pending, such records shall be retained until completion and resolution of all issues arising therefrom.
- B. Inspection of Records. FOUNDATION hereby agrees to make any and all records, documents and other evidence relating to its performance hereunder available during normal business hours to inspection, audit and reproduction by any duly authorized local, state and/or federal agencies for a period of three (3) years after expiration or termination of this MOU, or as otherwise required by any and all local, state and federal laws, regulations or standards. FOUNDATION agrees to allow interviews of any of its employees who might reasonably have information related to such records by any duly authorized local, state and/or federal agencies. Any and all examinations and audits conducted pursuant to the terms and conditions of this MOU shall be strictly confined to those matters related to the performance of the duties and obligations set forth herein, including, without limitation, the costs associated with the administration of this MOU.
- C. Audit Costs. In the event of an audit exception or exceptions related to the services provided pursuant to the terms and conditions of this MOU, the party responsible for not meeting the requirements set forth herein shall be responsible for the deficiency and for the cost of the audit. If the allowable expenditures cannot be determined because FOUNDATION's documentation is nonexistent or inadequate, according to generally accepted accounting practices, the questionable cost shall be disallowed by COUNTY.

7. MONITORING:

FOUNDATION agrees that COUNTY has the right to monitor all activities related to this MOU, including, without limitation, the right to review and monitor FOUNDATION's records, policies, procedures, at any time, in order to ensure compliance with the terms and conditions of this MOU. FOUNDATION will cooperate with a corrective action plan, if deficiencies in FOUNDATION's

records, programs or procedures are identified by COUNTY. However, COUNTY is not responsible, and will not be held accountable, for overseeing or evaluating the adequacy of FOUNDATION's performance hereunder.

8. CONFIDENTIAL INFORMATION:

A. Disclosure of Confidential Information. In the performance of this MOU, each party may receive information that is confidential under local, state or federal law. Each party hereby agrees to protect any and all confidential information obtained pursuant to the terms and conditions of this MOU in accordance with any and all applicable local, state and federal laws, regulations, policies, procedures and standards, including, without limitation: Division 19 of the California Department of Social Services Manual of Policies and Procedures – Confidentiality of Information; California Welfare and Institutions Code Sections 827, 5328, 10850 and 14100.2; California Health and Safety Code Sections 1280.15 and 1280.18; the California Information Practices Act of 1977; the California Confidentiality of Medical Information Act (“CMIA”); the United States Health Information Technology for Economic and Clinical Health Act (“HITECH Act”); the United States Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and any current and future implementing regulations promulgated thereunder, including, but not limited to, the Federal Privacy Regulations contained in 45 C.F.R. Parts 160 and 164, the Federal Security Standards contained in 45 C.F.R. Parts 160, 162 and 164 and the Federal Standards for Electronic Transactions contained in 45 C.F.R. Parts 160 and 162, all as may be amended from time to time.

B. Continuing Compliance with Confidentiality Requirements. Each party hereby acknowledges that local, state and federal laws, regulations and standards pertaining to confidentiality, electronic data security and privacy are rapidly evolving and that amendment of this MOU may be required to ensure compliance with such developments. Each party agrees to promptly enter into negotiations concerning an amendment to this MOU embodying written assurances consistent with the requirements of HIPAA, the HITECH Act, the CMIA and any other applicable local, state and federal laws, regulations or standards.

9. NON-DISCRIMINATION COMPLIANCE:

A. Nondiscriminatory Delivery of Social Services. In connection with the execution this MOU, neither party shall unlawfully discriminate in the administration of public assistance and social services programs. Each party hereby assures that no person shall be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving local, state or federal financial assistance because of: race; religion or religious creed; color; age, over forty (40) years of age; sex, including, without limitation, gender identity and expression, pregnancy, childbirth and related medical conditions; sexual orientation, including, without limitation, heterosexuality, homosexuality and bisexuality; national origin; ancestry; marital status; medical condition, including, without limitation, cancer and genetic characteristics; mental or physical disability, including, without limitation, HIV status and AIDS; political affiliation; military service; denial of family care leave; or any other classifications protected by any and all applicable local, state or federal laws, regulations or standards, all as may be amended from time to time. COUNTY hereby reserves the right to monitor Habitat for Humanity's performance hereunder in order to ensure compliance with the requirements set forth herein.

B. Nondiscriminatory Delivery of Professional Services and Employment. In connection with the execution of this MOU, neither party shall unlawfully discriminate in the provision of professional services or against any employee or applicant for employment because of: race; religion or religious creed; color; age (over forty (40) years of age); sex, including, without limitation, gender identity and expression, pregnancy, childbirth and related medical conditions;

sexual orientation, including, without limitation, heterosexuality, homosexuality and bisexuality; national origin; ancestry; marital status; medical condition, including, without limitation, cancer and genetic characteristics; mental or physical disability, including, without limitation, HIV status and AIDS; political affiliation; military service; denial of family care leave; or any other classifications protected by any and all applicable local, state or federal laws, regulations or standards, all as may be amended from time to time. Nothing herein shall be construed to require employment of unqualified persons.

C. Compliance with Anti-Discrimination Laws. Each party further assures that it, and its subcontractors, shall abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Education Code Sections 220, *et seq.*; California Civil Code Sections 51, *et seq.*; California Government Code Sections 4450, *et seq.*; California Welfare and Institutions Code Section 10000; Division 21 of the California Department of Social Services Manual of Policies and Procedures; United States Executive Order 11246, as amended and supplemented by United States Executive Order 11375 and 41 C.F.R. Part 60; and any other applicable local, state or federal laws, regulations or standards, all as may be amended from time to time. The applicable regulations of the California Fair Employment and Housing commission implementing California Government Code Section 12990, set forth in Sections 8101, *et seq.* of Title 2 of the California Code of Regulations are incorporated into this MOU by reference as if set forth in full.

10. NUCLEAR-FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

By executing this MOU, FOUNDATION certifies that it is not a Nuclear Weapons Contractor, in that FOUNDATION is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components as defined by the Nuclear-Free Humboldt County Ordinance. FOUNDATION agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor as defined above. COUNTY may immediately terminate this MOU if it determines that the foregoing certification is false or if FOUNDATION subsequently becomes a Nuclear Weapons Contractor.

11. DRUG-FREE WORKPLACE CERTIFICATION:

By executing this MOU, each party certifies that it will provide a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1990 (California Government Code Sections 8350, *et seq.*) by doing all of the following:

A. Drug-Free Policy Statement. Publish, as required by California Government Code Section 8355(a)(1), a Drug-Free Policy Statement which notifies employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited, and specifies the actions to be taken against employees for violations.

B. Drug-Free Awareness Program. Establish, as required by California Government Code Section 8355(a)(2), a Drug-Free Awareness Program which informs employees about the following:

1. The dangers of drug abuse in the workplace;
2. The party's policy of maintaining a drug-free workplace;

3. Any available counseling, rehabilitation and employee assistance programs; and
4. Penalties that may be imposed upon employees for drug abuse violations.

C. Drug-Free Employment Agreement. Ensure, as required by California Government Code Section 8355(a)(3), that each employee responsible for carrying out the parties' duties and obligations hereunder will:

1. Receive a copy of the party's Drug-Free Policy Statement; and
2. Agree to abide by the party's Drug-Free Policy as a condition of employment.

D. Effect of Noncompliance. Failure to comply with the requirements may result in termination this MOU and/or ineligibility for award of future contracts.

12. INDEMNIFICATION:

- A. Mutual Indemnity. Each party shall hold harmless, defend and indemnify the other and its agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages, liabilities, expenses and costs of any kind or nature, including, without limitation, attorney's fees and other costs of litigation, arising out of, or in connection with, the negligent performance of, or failure to comply with, any of the duties and/or obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of the county or Foundation.
- B. Comparative Liability. Notwithstanding paragraph A above, in the event that both parties are held to be negligently or willfully responsible, each party will bear their proportionate share of liability as determined in any such proceeding. In such cases, each county will bear their own costs and attorney's fees.
- C. Effect of Insurance. Acceptance of insurance, if required by this MOU, does not relieve either party from liability under this provision. This provision shall apply to all claims for damages related to the services performed pursuant to the terms and conditions of this MOU regardless if any insurance is applicable or not. The insurance policy limits set forth herein shall not act as a limitation upon the amount of indemnification or defense to be provided by either party hereunder.

13. INSURANCE REQUIREMENTS:

This MOU shall not be executed by COUNTY, and FOUNDATION is not entitled to any rights hereunder, unless certificates of insurance, or other proof that the following provisions have been complied with, are filed with the Clerk of the Humboldt County Board of Supervisors

A. General Insurance Requirements. Without limiting FOUNDATION's indemnification obligations set forth herein, FOUNDATION, and its subcontractors, shall take out and maintain, throughout the term of this MOU, and any extensions thereof, the following policies of insurance, placed with insurers authorized to do business in the State of California with a current A.M. Bests rating of no less than A: VII or its equivalent against personal injury, death and property damage which may arise from, or in connection with, the activities of FOUNDATION and its agents, officers, directors, employees, assignees or subcontractors:

1. Comprehensive or Commercial General Liability Insurance at least as broad as

Insurance Services Office Commercial General Liability Coverage (occurrence form CG 0001), in an amount of Two Million Dollars (\$2,000,000.00) per occurrence for any one (1) incident, including, but not limited to, personal injury, death and property damage. If a general aggregate limit is used, such limit shall apply separately hereto or shall be twice the required occurrence limit.

2. Automobile/Motor Liability Insurance with a limit of liability not less than One Million Dollars (\$1,000,000.00) combined single limit coverage. Such insurance shall include coverage of all owned, hired and non-owned vehicles, and be at least as broad as Insurance Service Offices Form Code 1 (any auto)

3. Workers' Compensation Insurance, as required by the California Labor Code, with statutory limits, and Employers Liability Insurance with a limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. Said policy shall contain, or be endorsed to contain, a waiver of subrogation against COUNTY and its agents, officers, officials, employees and volunteers.

4. Professional Liability Insurance – Error and Omission Coverage including coverage in an amount no less than Two Million Dollars (\$2,000,000.00) for each occurrence (Four Million Dollars (\$4,000,000.00) general aggregate). Said insurance shall be maintained for the statutory period during which FOUNDATION may be exposed to liability regarding the services provided pursuant to the terms and conditions of this MOU. FOUNDATION shall require that such coverage be incorporated into its professional services agreements with any other entities.

B. Special Insurance Requirements. Said policies shall, unless otherwise specified herein, be endorsed with the following provisions:

1. The Comprehensive or Commercial General Liability Policy shall provide that COUNTY, and its agents, officers, officials, employees and volunteers, are covered as additional insured for liability arising out of the operations performed by, or on behalf of, FOUNDATION. The coverage shall contain no special limitations on the scope of protection afforded to COUNTY or its agents, officers, officials, employees and volunteers. Said policy shall also contain a provision stating that such coverage:

- a. Includes contractual liability.
- b. Does not contain exclusions as to property damage caused by explosion or collapse of structures or underground damage, commonly referred to as "XCU Hazards."
- c. Is the primary insurance with regard to COUNTY.
- d. Does not contain a pro-rata, excess only and/or escape clause.
- e. Contains a cross liability, severability of interest or separation of insureds clause.

2. The above-referenced policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to COUNTY in accordance with the notice requirements set forth herein. It is further understood that FOUNDATION shall not terminate such coverage until COUNTY receives adequate proof that equal or better insurance has been secured.

3. The inclusion of more than one (1) insured shall not operate to impair the rights of one (1)

insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one (1) insured shall not operate to increase the limits of the insurer's liability.

4. For claims related to this MOU, FOUNDATION's insurance is the primary coverage to COUNTY, and any insurance or self-insurance programs maintained thereby are excess to FOUNDATION's insurance and will not be used to contribute therewith.

5. Any failure to comply with the provisions of this MOU shall not affect the coverage provided to COUNTY or its agents, officers, officials, employees and volunteers.

6. FOUNDATION shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this MOU. The endorsements shall be on forms approved by the Humboldt County Risk Manager. Any deductible or self-insured retention over One Hundred Thousand Dollars (\$100,000.00) shall be disclosed to, and approved by, COUNTY. If FOUNDATION does not keep all required policies in full force and effect, COUNTY may, in addition to any other available remedies, take out the necessary insurance and deduct the cost of said insurance from the monies owed to CONTRACTOR under this MOU.

7. COUNTY is to be notified immediately if twenty-five percent (25%) or more of any required insurance aggregate limit is encumbered, and FOUNDATION shall be required to purchase additional coverage to meet the above-referenced aggregate limits.

C. Insurance Notices. Any and all insurance notices required hereunder shall be sent to the addresses set forth below in accordance with the notice provisions described herein.

COUNTY: County of Humboldt
Attention: Risk Management
825 Fifth Street, Room 131
Eureka, California 95501

FOUNDATION: McLean Foundation
Att: Denise Marshall
3000 Newburg Road, Ste A
Fortuna, CA 95540

14. RELATIONSHIP OF PARTIES:

It is understood that this MOU is by and between two (2) independent entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or any other similar association. Both parties further agree that any and all personnel responsible for carrying out the duties and obligations set forth herein shall be employees of the hiring party, and shall not be entitled to any benefits to which employees of the other party are entitled, including, without limitation, overtime, retirement, leave or workers' compensation benefits. Each party shall be solely responsible for the acts and omissions of its agents, officers, employees, licensees, invitees, assignees and subcontractors.

15. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS AND STANDARDS:

A. General Legal Requirements. Each party hereby agrees to comply with any and all local, state and federal laws, regulations, policies, procedures and standards applicable to its performance hereunder.

B. Licensure Requirements. Each party hereby agrees to comply with any and all local, state and federal licensure, certification and accreditation requirements applicable to its performance hereunder.

C. Accessibility Requirements. Each party hereby agrees to comply with any and all applicable accessibility requirements set forth in the Americans with Disabilities Act, Section 508 of the Rehabilitation Act of 1973, as amended, California Government Code Section 11135 and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, the federal accessibility standards set forth in 36 C.F.R. Section 1194.1, all as may be amended from time to time.

D. Conflict of Interest Requirements. Each party hereby agrees to comply with any and all applicable conflict of interest requirements set forth in the California Political Reform Act and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, COUNTY's Conflict of Interest Code, all as may be amended from time to time.

16. PROVISIONS REQUIRED BY LAW:

This MOU is subject to any additional local, state and federal restrictions, limitations or conditions that may affect the terms, conditions or funding of this MOU. This MOU shall be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or is incorrectly stated, the parties agree to amend the pertinent section to make such insertion or correction.

17. REFERENCE TO LAWS, REGULATIONS AND STANDARDS:

In the event any law, regulation or standard referred to herein is amended during the term of this MOU, the parties agree to comply with the amended provision as of the effective date thereof.

18. SEVERABILITY:

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

19. ASSIGNMENT:

Neither party shall delegate its duties nor assign its rights hereunder, either in whole or in part, without the other party's prior written consent. Any assignment in violation of this provision shall be void, and shall be cause for immediate termination of this MOU. This provision shall not be applicable to service agreements or other arrangements usually or customarily entered into by either party to obtain supplies, technical support or professional services.

20. AGREEMENT SHALL BIND SUCCESSORS:

All provisions of this MOU shall be fully binding upon, and shall inure to the benefit of, the parties and to each of their heirs, executors, administrators, successors and permitted assigns.

21. NO WAIVER OF DEFAULT:

The waiver by either party of any breach of this MOU shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this MOU

22. NON-LIABILITY OF OFFICIALS AND EMPLOYEES:

No official or employee of either party shall be personally liable for any default or liability under this MOU.

23. AMENDMENT:

This MOU may be amended at any time during the term hereof upon the mutual consent of both parties. No addition to, or alteration of, the terms of this MOU shall be valid unless made in writing and signed by an authorized representative of each party hereto.

24. STANDARD OF PRACTICE:

Each party warrants that it has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. Each party's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.

25. JURISDICTION AND VENUE:

This MOU shall be construed in accordance with the laws of the State of California. Any dispute relating hereto shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.

26. ADVERTISING AND MEDIA RELEASE:

Each party shall obtain the written approval of the other party before any informational material related to this MOU may be used as advertising or released to the media, including, without limitation, television, radio, newspapers and internet. Each party shall inform the other party of any and all requests for interviews by media related to this MOU before such interviews take place. Each party shall be entitled to have a representative present at any and all interviews concerning the subject matter of this MOU.

27. SUBCONTRACTS:

Each party shall obtain prior written approval from the other party, which shall not be unreasonably withheld, before subcontracting any of its duties or obligations hereunder. Any and all subcontracts shall be subject to all applicable terms and conditions of this MOU, including, without limitation, the confidentiality, licensing and certification requirements set forth herein. Each party shall remain legally responsible for the performance of all terms and conditions of this MOU, including, without limitation, any and all duties performed by third parties under subcontracts, whether approved by the other party or not. COUNTY hereby agrees to Anderson Lucas Somerville & Borges performing payroll services on behalf of FOUNDATION.

28. ATTORNEYS' FEES:

If either party shall commence any legal action, including, without limitation, an action for declaratory relief, against the other by reason of the alleged failure of the other to perform any of its

obligations hereunder, the party prevailing in said action shall be entitled to recover court costs and reasonable attorneys' fees, including, but not limited to, the reasonable value of services rendered by the Humboldt County Counsel's Office, to be fixed by the court, and such recovery shall include court costs and attorneys' fees on appeal, if applicable. As used herein, "prevailing party" means the party who dismisses an action in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

29. SURVIVAL OF PROVISIONS:

The duties and obligations of the parties set forth in Section 6 – Record Retention and Inspection, Section 8 – Confidential Information and Section 12 – Indemnification shall survive the expiration or termination of this MOU.

30. CONFLICTING TERMS OR CONDITIONS:

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the parties hereto and the terms and conditions set forth in this MOU, the terms and conditions set forth herein shall have priority.

31. INTERPRETATION:

This MOU, as well as its individual provisions, shall be deemed to have been prepared equally by each of the parties hereto, and shall not be construed or interpreted more favorably for one (1) party on the basis that the other party prepared it.

32. INDEPENDENT CONSTRUCTION:

The titles of the sections and subsections set forth herein are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this MOU.

33. FORCE MAJEURE:

No party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control, and without the fault or negligence, of such party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

34. ENTIRE AGREEMENT:

This MOU contains all of the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind any of the parties hereto. In addition, this MOU shall supersede in their entirety any and all prior agreements, promises, representations, understandings and negotiations of the parties, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms and conditions of this MOU are hereby ratified.

35. COUNTERPART EXECUTION:

This MOU, and any amendments hereto, may be executed in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to

be one (1) and the same agreement. This MOU, and any amendments hereto, may be signed by manual or electronic signatures in accordance with any and all applicable local, state and federal laws, regulations and standards, and such signatures shall constitute original signatures for all purposes. A signed copy of this MOU, and any amendments hereto, transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this MOU and any amendments hereto.

36. AUTHORITY TO EXECUTE:

Each person executing this MOU represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this MOU. Each party represents and warrants to the other that the execution and delivery of this MOU and the performance of such party's obligations hereunder have been duly authorized.

IN WITNESS WHEREOF, the parties have entered into this MOU as of the date first written above.

COUNTY OF HUMBOLDT:

By: _____
Elishia Hayes, County Administrative Officer

Date: _____

MCLEAN FOUNDATION:

DocuSigned by:
Dennis Scott
By: _____
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Dennis Scott, President

DocuSigned by:
Dennis Scott
Date: _____
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DocuSigned by:
Tiara Brown
By: _____
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Tiara Brown, Board Chair

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Tiara Brown
Date: _____
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