

## **AGREEMENT TO DISTRIBUTE COUNTY FUNDS FOR PUBLIC PURPOSE**

**THIS AGREEMENT** (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and the City of Santa Maria with an address at 110 E. Cook Street, Santa Maria, CA 93454 (hereafter RECIPIENT) wherein RECIPIENT agrees to provide and COUNTY agrees to accept the services specified herein.

**WHEREAS**, in early 2021, Supervisor Steve Lavagnino learned about a project to build a sports complex near the intersection of Battles Road and Depot Street in the City of Santa Maria);

**WHEREAS**, the community will benefit from the new sports complex which includes four multipurpose playing fields, sports lighting, restroom buildings, and integrated space for community events.

**WHEREAS** during budget deliberations in June 2021 the Board of Supervisors approved setting aside \$1,500,000 for a future recreation opportunity in the City of Santa Maria;

**WHEREAS**, in May 2025, RECIPIENT officially broke ground on the Santa Maria Sports Complex near the intersection of Battles Road and Depot Street; and

**WHEREAS**, RECIPIENT represents that it has and will contract with qualified third-party contractors that are specially trained, skilled, experienced, and competent to complete the Project herein set forth;

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

### **1. DESIGNATED REPRESENTATIVE**

Steven Yee at phone number (805) 568-3400 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Dennis Smitherman at phone number (805) 925-0951 ext. 2263. Changes in designated representatives shall be made only after advance written notice to the other party.

### **2. NOTICES**

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To COUNTY: Steven Yee, 105 E. Anapamu St., Santa Barbara CA, 93101,

To RECIPIENT: Dennis Smitherman, 615 S. McClelland St., Santa Maria, CA 93454

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

### **3. SCOPE OF PROJECT**

RECIPIENT agrees to complete or cause to be completed the Project described in accordance with EXHIBIT A attached hereto and incorporated herein by reference. The Project may be completed by qualified third-party contractors retained by RECIPIENT and under RECIPIENT's direct supervision.

### **4. TERM**

RECIPIENT has commenced performance and shall end performance upon completing, unless earlier terminated pursuant to paragraph 19 below. If the Project described in EXHIBIT A is not completed by December 31, 2026, RECIPIENT shall return the funds within 30 days of December 31, 2026.

### **5. DISTRIBUTION OF FUNDS TO RECIPIENT**

Funds shall be distributed to RECIPIENT in accordance with the terms of EXHIBIT B attached hereto and incorporated by reference.

### **6. INDEPENDENT CONTRACTOR**

It is mutually understood and agreed that RECIPIENT (including any and all of its officers, agents, and employees), shall perform all of its Project under this Agreement as an independent contractor as to COUNTY and not as an officer, agent, servant, employee, joint venturer, partner, or associate of COUNTY. Furthermore, COUNTY shall have no right to control, supervise, or direct the manner or method by which RECIPIENT shall perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify that RECIPIENT is performing its obligations in accordance with the terms and conditions hereof. RECIPIENT understands and acknowledges that it shall not be entitled to any of the benefits of a COUNTY employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. RECIPIENT shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, RECIPIENT shall be solely responsible and save COUNTY harmless from all matters relating to payment of RECIPIENT employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, RECIPIENT may be providing services to others unrelated to the COUNTY or to this Agreement.

### **7. STANDARD OF PERFORMANCE**

RECIPIENT represents that it has the skills, expertise, and licenses/permits necessary to complete the Project required under this Agreement or will retain qualified third-party contractors to complete the Project. Accordingly, RECIPIENT shall ensure construction of the Project in the manner and according to the standards observed by a competent practitioner of the same profession in which RECIPIENT is engaged. All products of whatsoever nature, which RECIPIENT delivers pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in RECIPIENT's profession. RECIPIENT shall correct or revise any errors or omissions, at COUNTY'S request without additional compensation. Permits and/or licenses shall be obtained and maintained by RECIPIENT without additional compensation. RECIPIENT shall be liable for all work pursuant to this Agreement, even if such work is performed by a third-party contractor. RECIPIENT shall ensure that all final products meet the standards of this Agreement and shall retain sole responsibility for seeking changes or enforcement against third-party contractors.

### **8. DEBARMENT AND SUSPENSION**

RECIPIENT certifies to COUNTY that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. RECIPIENT certifies that it shall not contract with a subcontractor that is so debarred or suspended.

**9. TAXES**

RECIPIENT shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. COUNTY shall not be responsible for paying any taxes on RECIPIENT's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, RECIPIENT agrees to promptly reimburse COUNTY for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

**10. INTENTIONALLY DELETED**

**11. INTENTIONALLY DELETED**

**12. NO PUBLICITY OR ENDORSEMENT**

RECIPIENT shall not use COUNTY's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. RECIPIENT shall not use COUNTY's name or logo in any manner that would give the appearance that the COUNTY is endorsing RECIPIENT. RECIPIENT shall not in any way contract on behalf of or in the name of COUNTY. RECIPIENT shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the COUNTY or its projects, without obtaining the prior written approval of COUNTY.

**13. INTENTIONALLY DELETED**

**14. RECORDS, AUDIT, AND REVIEW**

RECIPIENT shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of RECIPIENT'S profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. COUNTY shall have the right to audit and review all such documents and records at any time during RECIPIENT'S regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), RECIPIENT shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY or as part of any audit of the COUNTY, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). RECIPIENT shall participate in any audits and reviews, whether by COUNTY or the State, at no charge to COUNTY.

If federal, state or COUNTY audit exceptions are made relating to this Agreement, RECIPIENT shall reimburse all costs incurred by federal, state, and/or COUNTY governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from COUNTY, RECIPIENT shall reimburse the amount of the audit exceptions and any other related costs directly to COUNTY as specified by COUNTY in the notification.

**15. INDEMNIFICATION AND INSURANCE**

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to California Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead all parties agree that pursuant to California Government Code Section 895.4, RECIPIENT agrees to the indemnification and insurance provisions as set forth in EXHIBIT C attached hereto and incorporated herein by reference.

**16. NONDISCRIMINATION**

COUNTY hereby notifies RECIPIENT that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and RECIPIENT agrees to comply with said ordinance.

**17. INTENTIONALLY DELETED**

**18. NON-ASSIGNMENT**

RECIPIENT shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of COUNTY and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. COUNTY acknowledges that third-party contractors may perform some of the work under this Agreement. .

**19. TERMINATION**

A. By COUNTY. COUNTY may, by written notice to RECIPIENT, terminate this Agreement in whole or in part at any time, for non-appropriation of funds, or because of the failure of RECIPIENT to fulfill the obligations herein.

1. **For Cause.** Should RECIPIENT materially default in the performance of this Agreement or materially breach any of its provisions, COUNTY may, at COUNTY's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, RECIPIENT shall immediately discontinue all services affected (unless the notice directs otherwise) and notify COUNTY as to the status of its performance. The date of termination shall be the date the notice is received by RECIPIENT, unless the notice directs otherwise.

B. By RECIPIENT. Should COUNTY fail to pay RECIPIENT all or any part of the payment set forth in EXHIBIT B, RECIPIENT may, at RECIPIENT option terminate this Agreement if such failure is not remedied by COUNTY within thirty (30) days of written notice to COUNTY of such late payment.

**20. SECTION HEADINGS**

The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

**21. SEVERABILITY**

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**22. REMEDIES NOT EXCLUSIVE**

No remedy herein conferred upon or reserved to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

**23. TIME IS OF THE ESSENCE**

Time is of the essence in this Agreement and each covenant and term is a condition herein.

**24. NO WAIVER OF DEFAULT**

No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

**25. ENTIRE AGREEMENT AND AMENDMENT**

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties as to the matters expressly set forth herein and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

**26. SUCCESSORS AND ASSIGNS**

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

**27. COMPLIANCE WITH LAW**

RECIPIENT shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of RECIPIENT in any action or proceeding against RECIPIENT, whether COUNTY is a party thereto or not, that RECIPIENT has violated any such ordinance or statute, shall be conclusive of that fact as between RECIPIENT and COUNTY.

**28. CALIFORNIA LAW AND JURISDICTION**

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

**29. EXECUTION OF COUNTERPARTS**

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

**30. AUTHORITY**

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, RECIPIENT hereby warrants that it shall not have

breached the terms or conditions of any other contract or agreement to which RECIPIENT is obligated, which breach would have a material effect hereon.

**31. SURVIVAL**

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

**32. PRECEDENCE**

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

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Agreement to Distribute County Funds for Public Purpose between the **County of Santa Barbara** and the City of Santa Maria.

**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective on the date executed by COUNTY.

**ATTEST:**

Mona Miyasato  
County Executive Officer  
Clerk of the Board

**COUNTY OF SANTA BARBARA:**

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chair, Board of Supervisors

Date: \_\_\_\_\_

**RECOMMENDED FOR APPROVAL:**

Steven Yee County Executive Office

**CONTRACTOR:**

City of Santa Maria

By: \_\_\_\_\_  
Sr. Fiscal & Policy Analyst

By:  \_\_\_\_\_  
Authorized Representative

Name: David Rowlands

Title: City Manager

**APPROVED AS TO FORM:**

Rachel Van Mullem  
County Counsel

**APPROVED AS TO ACCOUNTING FORM:**

Betsy M. Schaffer, CPA  
Auditor-Controller

By: \_\_\_\_\_  
Deputy County Counsel

By: \_\_\_\_\_  
Deputy

**APPROVED AS TO FORM:**

Risk Management

By: \_\_\_\_\_  
Risk Management



## **EXHIBIT A**

### **STATEMENT OF WORK**

RECIPIENT shall complete the following capital construction projects in conformance with this agreement:

- Santa Maria Sports Complex near the corner of Stowell Road and Depot Street. The project will consist of grading, irrigation, landscaping, electrical improvements, hardscape, and restroom and playground installation. The community will benefit from the new sports complex which includes four multipurpose playing fields, restroom buildings, and integrated space for community events.



## **EXHIBIT B**

### **PAYMENT ARRANGEMENTS**

- A. RECIPIENT shall be paid a total contract amount, not to exceed \$ 1,500,000.
- B. Payment shall be made within 30 days of execution of this Agreement, based upon the scope contained in **EXHIBIT A** as determined by COUNTY.

## **EXHIBIT C**

### **Indemnification and Insurance**

#### **INDEMNIFICATION**

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law. CONTRACTOR'S indemnification obligation applies to COUNTY'S active as well as passive negligence but does not apply to COUNTY'S sole negligence or willful misconduct.

#### **NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS**

CONTRACTOR shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

#### **INSURANCE**

Each party shall maintain its own insurance coverage, through commercial insurance, self-insurance or a combination thereof, against any claim, expense, cost, damage, or liability arising out of the performance of its responsibilities pursuant to this Agreement.