

NAPA COUNTY CONTRACT NO.
EMPLOYMENT CONTRACT
(County Executive Officer)

THIS EMPLOYMENT CONTRACT (“Agreement”) is made and entered into as of this 5th day of December, 2017, by and between the County of Napa, a political subdivision of the State of California (hereinafter referred to as “Employer,”) and Minh C. Tran, whose mailing address is Post Office Box 10678, Napa, CA 94581 (hereinafter referred to as “Employee”).

RECITALS

WHEREAS, Employee has served as Napa County Counsel since May 15, 2012; and

WHEREAS, as Napa County Counsel, Employee has a statutory four year employment contract with Employer, with the current term of this existing contract, as required by California Government Code section 27641, commencing on September 1, 2016 and ending on August 31, 2020 (See Napa County Contract No 7756, Amendment No. 1); and

WHEREAS, on May 16, 2017, Employee was appointed Interim County Executive Officer by the Napa County Board of Supervisors (“Board”) while concurrently serving as Napa County Counsel; and

WHEREAS, on October 24, 2017, the County of Napa, acting through its duly elected Board, appointed Employee as Napa County Executive Officer; and

WHEREAS, Employee is willing to serve as the Napa County Executive Officer subject to the employment benefits and terms and conditions set forth below; and

WHEREAS, Employer desires to provide Employee with job security and employment benefits pursuant to all of the terms and conditions set forth below:

TERMS

NOW, THEREFORE, in consideration of the mutual covenants set forth below Employer hereby engages the services of Employee, and Employee agrees to serve as the Napa County Executive Officer:

Appointment of County Executive Officer. Employer hereby appoints Employee as the County Executive Officer effective October 24, 2017 and Employee accepts the appointment.

1. **Scope of Services.** The Employee hereby agrees to perform the functions and duties of the County Executive Officer as specified in Chapter 2.08 of the Napa County Code and to perform other legally permissible and proper duties and functions consistent with the office of the County Executive Officer of the County of Napa as the Board shall from time to time assign.

1.1 **Hours of Work.** It is recognized by the Parties that the duties of the Executive Officer require work outside of normal office hours and Employee agrees to devote such time as may be needed to carry out those duties.

1.2 **Outside Activities.** Employee shall not engage in any outside employment, as a consultant or otherwise, without the prior written approval of the Board. Notwithstanding the preceding sentence, Employer agrees that teaching (not to exceed eight hours a week), and occasional writing intended for use in conjunction with any teaching responsibilities Employee may assume, may be performed by Employee on Employee's time off, without first obtaining the written approval of the board, provided that such activities do not interfere with Employee's ability to faithfully, promptly and to the best of Employee's ability, experience and talent, perform all of Employee's obligations under this Agreement, express or implied, to the satisfaction of Employer. In no event shall any outside activity create a conflict of interest with the Employee's duties as the County Executive Officer or give rise to a reasonable perception of such a conflict.

1.3 **Other Terms and Conditions of Employment.** Employer shall have the right, by Resolution, to fix such other terms and conditions of employment relating to the duties, responsibilities and performance of Employee acting as the Napa County Executive Officer as may be appropriate provided such terms and conditions are not inconsistent with, or in conflict with, the provisions of this Employment Contract or any other applicable law.

2. **Term of the Agreement.**

2.1 **Initial Term.** The term of this Agreement shall be for a period of four years commencing on October 24, 2017, and ending on October 24, 2021, subject to early termination pursuant to the provisions of Sections 4 and 5 (hereafter the "Term").

2.2 **Automatic Renewal.** Notwithstanding subsection 2.1, unless the Board, pursuant to subsection 4.1 of this Agreement, notifies Employee in writing on or before the Anniversary Date that no extensions of this Employment Agreement shall occur (hereafter the "Notice of Non-renewal), the term of this Agreement shall be automatically renewed upon the Anniversary Date of Employee for an additional year and continue in effect thereafter on the same terms and conditions as set forth in this Agreement. Thereafter, each year on the Anniversary Date of Employee the Employment Contract shall be extended for an additional year so that the term remains four years, unless, prior to that Anniversary Date, the Board has notified Employee in writing that no further extensions of the Employment Agreement shall occur. For example, if the Board gives no written notice of non-renewal to Employee on or before October 24, 2018, then the new termination date of the Employment Agreement will be automatically extended to October 24, 2022; and if the Board gives no written notice of non-renewal to Employee on or before October 24, 2019, then the new termination date of the Employment Agreement will be automatically extended to October 24, 2023.

2.3 **Salary and Benefits to Continue For Duration of Term.** In the event a Notice of Non-Renewal is issued, all compensation, benefits and requirements of the Agreement shall

remain in effect until the expiration of the term of the Agreement subject however to early termination pursuant to the provisions of Sections 4 and 5.

2.4 Termination Date. As used herein, the term "Termination Date" means the date on which Employee's employment by Employer terminates under any provision of this Agreement.

2.5 Anniversary Date. As used herein, the term "Anniversary Date" shall mean the day and month Employee was first appointed as the County Executive Officer, which is October 24th.

3. Compensation and Performance Review.

3.1 Salary. Employer agrees to pay Employee a flat annual salary of \$127.40 per hour (\$265,000 annually and hereafter referred to as the "Base Salary"), payable in equal installments at the same time as other employees of the Employer are paid. The salary of Employee during the period October 24, 2017, through October 24, 2021 is subject to increases at the discretion of the County through its Board of Supervisors. In addition, Employer agrees to automatically adjust the Base Salary or other benefits of the Employee, or both the Base Salary and other benefits of the Employee, in such amounts, and in the same manner, as such changes are made to the base salary (due to cost of living increases applicable to all employees and equity adjustments applicable to all Non-Classified Employees other than elected officials) and benefits of other Management Non-Classified Employees (other than elected officials) employed by the Employer. In addition to the increases contemplated by subsection 3.1, Employer agrees the Base Salary may be increased by the Board at any time following each annual performance review to whatever higher level the Board in its sole discretion deems appropriate based upon Employee's performance. Such increases shall occur not more frequently than annually

3.1.1 Amendments to Agreement. Notwithstanding subsection 14.3, following any annual evaluation at which an increase in compensation is ordered, the increase may be approved by the Board. Any such Board action, which is attached to this Agreement shall be deemed an amendment to this Agreement without further action being required by the parties.

3.2 Salary Until Successor Appointed. Following the expiration of the term on October 24, 2021, Employee shall continue to serve as the Napa County Executive Officer and continue to receive the salary and benefits set forth in this Agreement, until reappointment or a successor is appointed in the manner required by law.

3.3 Performance Review. Reviews of the performance of Employee shall take place as often as the Employer deems appropriate. Employer's review and evaluation shall be in accordance with specific criteria developed by Employer, from time to time, in its sole discretion.

3.4 **Vacation, Sick Leave and Other Benefits.**

In General. Employee shall be entitled to the various benefits set forth in the Management Compensation Plan that is applicable to Non-Classified Management Employees excluding however elected officials (hereafter the “Non-Classified Management Plan”) as they now exist or may hereafter be adopted or amended. Except for those benefits having been vested or already earned (such as Life Time Health Benefits, Deferred Compensation Employer Contribution and the Severance), Employee understands and agrees that the Non-Classified Management Plan may, in the sole discretion of the Employer, be changed or revoked at any time and Employee’s benefits will be adjusted to be consistent with the changes to said Plan.

3.4.1 **Vacation.** Vacation will accrue in the manner set forth in the MOU (Public Services Employee Supervisory Unit) 2017-2020, or any successor MOU, as supplemented by the Non-Classified Management Plan. Employee shall only take such vacation days at such time or times as will not affect his duties under this Contract or the quality of services rendered pursuant to this Contract.

3.4.2 **Car and Cell Phone Allowance.** Employee shall receive the same automobile allowance and the same cell phone allowance as are provided to other Management Non-Classified Employees of the Employer as of this contract; provided, however, that these benefits are subject to increases or decreases during the term of this Contract at the discretion of the County through its Board of Supervisors.

3.4.3 **Pension; Life Insurance; Health Benefits.** County agrees to continue Employee as a member of the Public Employee Retirement System and will pay for the Employee’s portion of the contribution into the Public Employee Retirement System to the same extent as other Management Non-Classified Employees. Employer agrees to provide the Employee with the same life, health, dental and optical insurance coverage as is provided to other Management Non-Classified Employees of the Employer (including but not limited to supplemental life insurance made available to all Management Non-Classified Employees of the Employer at the Employee’s cost). In addition, Employee, having already served as a department head for more than five years, is entitled to Life Time Health Benefits for himself and his spouse as set forth in the Management Compensation Plan.

3.4.4 **Deferred Compensation Employer Contribution.** Employee shall be entitled to participate in and receive any Employer Matching contributions that may be made available to the 401(a) pre-tax sub-accounts of those employees who are eligible to participate in the 401(a) Plan the County has established for the benefit of all Management Non-Classified Employees of the County. Employee shall also be entitled to receive Non-Matching Employer contributions; provided however that Employee understands and recognizes that Non-Matching contributions, as well as Matching Contributions, are not guaranteed and shall be at the sole discretion of the Employer. Employer agrees to provide Employee a one-time Non-Matching contribution for calendar year 2018 in the amount of \$50,000.

3.4.5 **Dues and Expenses for Professional Development.** Employer agrees to budget and to pay a reasonable amount for the professional dues and subscriptions of

Employee necessary for his continued full participation in up to five (5) national, regional, state or local associations/organizations deemed necessary and desirable by Employee for the effective and professional performance of Employee's duties under this Contract. Employer further agrees to budget for and to pay the travel and subsistence expenses of Employee for short courses and seminars or conferences deemed necessary or desirable by Employee for the effective and professional performance of Employee's duties under this Contract, if prior approval is given by Employer for such expenses by including same in the Office of the County Executive Officer's budget during budget hearings. In addition, Employer also agrees to pay annual California Bar dues and Minimum Continued Legal Education (MCLE) up to a maximum of \$5,000 per calendar year.

3.4.6 **Limited Reduction of Benefits.** Employer shall not at any time during the term of this Contract reduce the Base Salary of the Employee, except to the extent of an across-the-board reduction of the base salaries of all Management Non-Classified Employees of the Employer, which reduction Employer shall have the right to make, in its sole discretion, notwithstanding any provision in this Contract to the contrary.

3.5 **Records.** Employee shall keep receipts and accurate records of all expenses and charges claimed to be reimbursable under this Contract, which records shall be suitable in form and content both for Employer's records and for Internal Revenue Service purposes.

3.6 **Tax Withholding.** All amounts of Base Salary and other compensation payable to Employee under this Contract shall be reduced by any amounts that Employer is required to withhold with respect to such payments under the then applicable provisions of any state, federal or local income or other tax laws, regulations or statutes of a like nature, or any and all other state, federal or local laws of any kind or nature.

4. **Early Termination by Employer.** Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to terminate the automatic extensions of this Agreement, by delivery of written notice of such termination to Employee in the manner required by section 2.08.050 of the Napa County Code and to provide such advance notice as may be required by section 2.08.050 of the Napa County Code, if any, unless the Parties otherwise agree in writing. Notwithstanding the foregoing, if the termination is, in the sole and unfettered judgment of the Board, for Cause as defined in subsections (c), (d) or (e) of Section 9 of this Agreement, the Board, by majority vote, may terminate Employee immediately.

4.1 **Termination of Automatic Renewal Provision of Agreement.** The automatic renewal provisions of this Agreement may be terminated by either party for any reason; provided, however, that no such termination of the automatic renewal provision may be effected by Employer unless an opportunity for consultation is provided to Employee prior to issuing the Notice of Non-renewal. Any such notification of non-renewal issued subsequent to the Employee's Anniversary Date shall be deemed effective the day before the next Anniversary Date of Employee. Any such notice of non-renewal must be given in the manner set forth in subsection 14.15 of this Agreement. Except for the consultation requirement, no advance notice of the issuance of a notice of non-renewal is required.

4.2 **Termination at Convenience of Employer; Severance.** In the event Employee is terminated pursuant to this section without Cause, as defined in Section 10 of this Agreement, while Employee is still willing and able to perform the duties of the Napa County Executive Officer, Employer shall pay to Employee, in full and complete payment of all compensation due to Employee under this Agreement, that severance set forth in the Management Compensation Plan and, in addition, any severance required to be paid by Section 2.08.050 of the Napa County Code. Such severance shall be paid in conjunction with any final salary payment that may be made to Employee; provided, however, that the severance payment is conditioned upon, and shall not be paid until, Employee executes the release described in subsection 4.4 of this Agreement. At the time of termination, payment for accrued vacation shall also be made to Employee on the terms and conditions set forth in the Management Compensation Plan.

(a) In the event Employee is terminated during the first two years (between now and October 24, 2019) pursuant to this section without cause and for the convenience of Employer (i.e. for reasons other than the reasons set forth in Section 10 of this Agreement), while Employee is still willing and able to perform the duties of the Napa County Executive Officer, Employer shall pay to Employee, in full and complete payment of all compensation due to Employee under this Agreement severance in an amount that equals Employee's monthly salary times 12. Should Employee be terminated without cause (as described here) after October 24, 2019, Employer shall pay to Employee, in full and complete payment of all compensation due to Employee under this Agreement severance in an amount that equals Employee's monthly salary times 18. Employee has the right to have severance payments be made in two installments between two calendar years to avoid high rate of income taxes.

(b) Notwithstanding subparagraph (a) the severance to be provided is subject to the limitations of section 53260 of the Government Code. Section 53260 of the Government Code provides that the maximum cash settlement that Employee may receive as severance shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the employee's agreement; provided, however, if the unexpired term of the employment agreement is greater than 18 months, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 18. Section 53260 further provides that this cash settlement formula is a maximum ceiling on the amount that may be paid by a local agency employer to an employee and is not a target or example of the amount of the cash settlement to be paid by a local agency employer to an employee in all employment agreement termination cases. Due to the existence of Section 53260, Employee understands and agrees that if the number of months remaining on his Employment Agreement at the time of termination is less than the number of months of severance Employee is entitled to pursuant to subparagraph (a) of this section, the severance Employee is entitled to pursuant to subparagraph (a) will be reduced to the extent required by, and in conformity with, Government Code section 53260.

(c) Such severance shall be paid in conjunction with any final salary payment that may be made to Employee; provided, however, that the severance payment is conditioned upon, and shall not be paid until, Employee executes the release described in subsection 4.4 of this Agreement. At the time of termination, payment for accrued vacation and similar leave shall also be made to the Employee on the terms and conditions set forth in the Management Compensation Plan.

4.3 **Termination for Cause; No Severance.** If Employee is terminated for Cause as defined by Section 10 of this Agreement, Employer shall have no obligation to pay the sums identified in this section or Section 3, other than salary and benefits which have accrued through the Termination Date.

4.4 **Release as a Pre-Condition to the Payment of Severance.** Prior to the delivery of the severance payment provided for in subsection 4.2 of this Agreement, and as a condition of Employee's receipt of such severance payment, Employee agrees to execute and deliver to Employer the release required by the Management Compensation Plan for all Management Non- Classified employees who receive severance.

5. **Early Termination by Employee.** Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time as the County Executive Officer and return to a position in the County Counsel Office with a comparable level of compensation by delivery of written notice of such termination to Employer not less than sixty (60) days in advance of the Termination Date set forth in the notice, unless the parties otherwise agree in writing. In such a case, Employer shall pay to Employee, as full and complete payment of compensation due to Employee under this Agreement, Employee's regular pay and benefits through the Termination Date, on the regular paydays of Employer, and any accrued vacation or unpaid expense reimbursement earned and attributable to any period prior to the Termination Date.

6. **Outside Practice.** The duties of the Executive Officer are so extensive that the position is required to be filled on a full-time basis.

7. **Indemnification.** In addition to any requirements imposed by state and/or local law, Employer shall defend, hold harmless, and indemnify Employee against any tort, professional liability claim or demand or other legal action (collectively the "Claim"), whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as the Napa County Executive Officer, except to the extent caused by Employee's gross negligence, recklessness or intentional misconduct or caused by actions of Employee that were outside of the course and scope of Employee's employment as the County Executive Officer. Employer shall have the right to select and employ counsel to defend the Employer as a result of the filing of any such Claim and to compromise and settle any such Claim and shall pay (directly or through insurance) the amount of any settlement or judgment rendered with respect to such Claim. Employee agrees to cooperate fully with the Employer in its efforts to defend against any such Claims as may be filed whether or not still employed by Employer.

8. **Bonding.** Employer shall bear the full cost of any fidelity or other bonds required of Employee under any law or administrative requirement. Employee shall complete all necessary applications and otherwise cooperate with Employer in applying for and obtaining such bond.

9. **Return of Property.** On the Termination Date, regardless of how or why this Agreement is terminated, or whenever otherwise reasonably requested by Employer, Employee shall immediately return to Employer any or all of Employer's property, tangible or intangible, real, personal or mixed, including, but not limited to, any such property that is in Employee's possession or under Employee's control or which is used, produced or created by Employee in

rendering services under this Agreement or otherwise, all of which Employee hereby acknowledges and agrees is and shall be the property of Employer. Notwithstanding the above, Employee may retain a copy of a reasonable amount of work product personally created, but not work product created by the County Executive Officer's staff, for Employee's records and personal use in securing future employment with another employer. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by Employee while functioning as the County Executive Officer shall be deemed a "work made for hire" for purposes of copyright or patent law and only Employer shall be entitled to claim or apply for the copyright or patent thereof.

10. Cause. The occurrence of one or more of the following acts or omissions shall constitute sufficient cause (the "Cause") to terminate Employee without payment of severance.

(a) The failure of Employee to timely perform any of Employee's duties, obligations and services under this Agreement to the reasonable satisfaction of Employer, after written notice from Employer to Employee identifying the alleged failure or failures. The notice to Employee shall identify to a reasonable degree those particular duties, obligations and services that are involved and identify the period of time within which the matter must be resolved to the satisfaction of the Board. Except in extraordinary circumstances, Employee shall be provided a minimum of (90) ninety days to resolve such failures;

(b) Employee's neglect of duty;

(c) Employee's malfeasance or misconduct in office;

(d) Employee's gross negligence, recklessness, gross incompetence or intentional misconduct in the performance of Employee's duties;

(e) Employee: (i) embezzles, steals or misappropriates funds or property of Employer or defrauds Employer; (ii) is convicted of a felony; (iii) commits an act or omission which in the opinion of the Board brings discredit of a serious nature to Employer or Employee; or (iv) commits or is reasonably suspected of committing a violation of the provisions of Government Code section 1090, et seq. or 1125 et seq. relating to conflicts of interest, interests in contracts, incompatible activities and financial conflicts of interest of public officers and employees; or

(f) Any other substantial and material breach of any provision of this Agreement by Employee.

11. Conflict of Interest. Employee acknowledges that he is aware of the provisions of Government Code section 1090, et seq. and sections 1125 et seq. relating to conflicts of interest, interests in contracts, incompatible activities and financial conflicts of interest of public officers and employees. Employee further acknowledges that he is aware of the common law doctrine of incompatibility of offices. Employee hereby covenants that Employee presently has no interest that is known to Employee, or should be known to Employee, and which has not been disclosed to Employer. Employee further covenants that Employee shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of Employer's services hereunder, except to the extent the Employer may consent to in writing

prior to the acquisition by Employee of such interest and such acquisition is permitted by law. Employee further warrants that he is unaware of any financial or economic interest that any public officer, or employee of any public entity, may have in the execution of this Agreement. Employee agrees that if such financial interest does exist at the inception of this Agreement, Employer may terminate this Agreement immediately upon giving ten days written notice without further obligation by Employer to Employee under this Agreement. Employee further understands that engaging in activities violative of the above statutory or common law provisions will constitute a substantial and material breach in the terms and conditions of this Agreement.

12. **Statement of Economic Interest.** Employee acknowledges that he is aware of the provisions of Government Code sections 87100, et seq. Employee further acknowledges and understands that Employer has developed and approved a Conflict of Interest Code which will require Employee to file with the Elections Division of the Napa County Assessor-Clerk-Recorder "assuming office," "annual," and "leaving office" Statements of Economic Interest. Employee agrees to timely comply with all Statements of Economic Interest filing obligations required by California law and by Employer's Conflict of Interest Code during the duration of Employee's employment with the County of Napa.

13. **Non-Discrimination.** Employee agrees not to discriminate in the performance of Employee's functions and duties on the ground of, or because of, sex, race, color, ancestry, religion or religious creed, national origin or ethnic group identification, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS) or any condition related thereto. Employee further understands that engaging in such discrimination will constitute a substantial and material breach in the terms and conditions of this Agreement.

14. **General Provisions.**

14.1 **Employer Policies.** To the extent not inconsistent with the Agreement, Employee acknowledges and agrees that he is bound by all of the Employer's employment policies applying generally to Management Non-Classified Employees, as they may be adopted and/or modified by Employer from time to time in its sole discretion. In the event of an inconsistency between the Employer's employment policies applying generally to Management Non-Classified Employees, and any provision of this Agreement, the terms of this Agreement shall control.

14.2 **Binding Nature of Agreement; Assignment; 3rd Party Beneficiaries.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors and permitted assigns and the persons identified in the release provision of Section 4.4 of this Agreement. Employee acknowledges that the services to be rendered by Employee pursuant to this Agreement are unique and personal. Accordingly, Employee may not assign or transfer any of Employee's rights or obligations under this Agreement without the prior written consent of Employer (which consent may be withheld by Employer in its sole discretion) and any purported assignment of Employee's rights or obligations without such written consent shall be void and of no force or effect. Except as

expressly provided in this Agreement, no other person or entity is intended to or shall have any rights or benefits under this Agreement, whether as third party beneficiaries or otherwise.

14.3 **Amendment.** Except as specifically provided herein, this Agreement may be modified or amended only by a writing signed by both parties. Board action shall be deemed a writing signed by the Employer. Therefore, any purported oral agreement to amend any term of this Agreement must be reduced to writing before it can be given effect.

14.4 **Governing Law; Choice of Forum.** This Agreement is executed, delivered and will be performed in the State of California, and the substantive laws of the State of California (without reference to choice of law or conflicts of laws principles) shall govern its interpretation and enforcement. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court, and each of the parties irrevocably consents to jurisdiction and venue in such Court for such purposes. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation, arbitration or similar legal proceedings of any dispute arising under this Agreement.

14.5 **Relationship Created.** The relationship created by this Agreement shall be deemed and construed to be, and shall be, solely that of employer and employee and not of any other type or nature.

14.6 **Attorneys' Fees.** Should any proceeding or litigation be commenced between the parties concerning the terms of this Agreement, or the rights and duties of the parties under this Agreement, the prevailing party in such proceeding or litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for the prevailing party's attorneys' fees, to be determined by the court, and not by the jury.

14.7 **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of each such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and still be legal, valid and enforceable, and this Agreement shall be reformed accordingly.

14.8 **Further Assurances.** Employee shall execute and deliver all other instruments and documents and shall take all other actions as Employer may reasonably request from time to

time, before or after the execution of this Agreement, in order to effectuate the provisions in this Agreement.

14.9 **Construction.** This Agreement is intended to express the intent of both parties, and irrespective of the identity of the party or counsel who prepared this Agreement or any draft of this Agreement, no rule of strict construction shall be applied against any party. All words used in this Agreement are intended to refer to the appropriate number or gender, regardless of the number or gender stated. Employee acknowledges that he has been advised by Employer prior to execution of this Agreement to consult with legal counsel, should he feel the need to do so, regarding the meaning of the terms and conditions contained herein as the terms of this Agreement will not be construed to apply for or against him in the event of litigation due to the inclusion of this section in the Agreement.

14.10 **Indulgences Not Waivers.** Neither the failure nor any delay on the part of a party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such rights, remedies, powers or privileges with respect to any other occurrence.

14.11 **Costs and Expenses.** Each party shall bear its own costs, including counsel fees and accounting fees, incurred in connection with the negotiation, drafting and consummation of this Agreement and all matters incident to this Agreement.

14.12 **Headings.** The captions or headings in this Agreement are for convenience of reference only and shall not control or affect the meaning or construction of any provision hereof. The terms of the Agreement are set out in the text under the headings.

14.13 **Recitals.** The Recitals made and stated above are hereby incorporated by reference into, and made a part of, this Agreement.

14.14 **Authority to Contract.** Employee warrants that he is legally permitted and otherwise has the ability to enter into and perform this Agreement.

14.15 **Notice.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Alternatively, any notice required or desired to be given may be personally served in the same manner as is applicable to civil judicial practice as of the date such notice is given. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Any notice personally served shall be deemed given as of the date of personal service. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

EMPLOYER
Napa County Counsel
1195 3rd Street, Room 301
Napa CA 94559-3035

EMPLOYEE
Minh C. Tran
P. O. Box 10678
Napa CA 94581

Any party may alter the address or addresses to which communications or copies are to be sent to such party by giving notice of such change of address in conformity with the provisions of this sub-section for the giving of notice.

14.16 **Prior Approvals**. Unless otherwise required by law or expressly stated in this Agreement, in any case where the prior approval of Employer is required to authorize the incurrence of a job-related expense by Employee, the written approval of the Chair shall constitute approval by Employer.

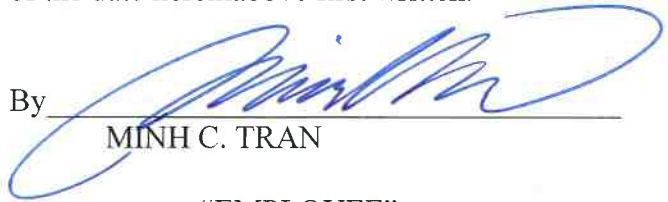
14.17 **Entire Agreement**. This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof.

15. **Counterparts**. This Contract shall be executed simultaneously in two (2) counterparts each of which shall be deemed an original, but all of which together shall constitute one and the

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same instrument.

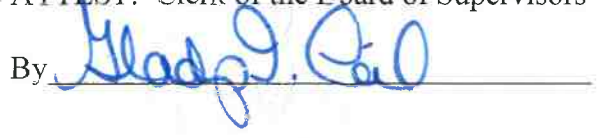
IN WITNESS WHEREOF, the Board Chair, as duly authorized by the Board and on behalf of Board, has signed and executed this Contract and Employee has signed and executed this Agreement, both in duplicate as of the date hereinabove first written.

By 
MINH C. TRAN
"EMPLOYEE"


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

By 
BELIA RAMOS,
Chair of the Board of Supervisors

"COUNTY"

ATTEST: Clerk of the Board of Supervisors
By 

APPROVED BY THE BOARD OF SUPERVISORS:
Date: 12/5/2017

APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS
Date: 12/5/2017
Processed by: 
Deputy Clerk of the Board

APPROVED AS TO FORM
Office of County Counsel
By: S. Darbinian
Date: December 1, 2017