April 12, 2024

The Honorable Liz Ortega
California State Assembly
1021 O Street, Suite 5120
Sacramento, CA 95814

Re: **AB 2557 (Ortega): Local agencies: contracts for special services and temporary help: performance reports**
As amended 4/8/24 – OPPOSE
Set for hearing 4/17/24 – Assembly Public Employment and Retirement Committee

Dear Assembly Member Ortega,

On behalf of the Urban Counties of California (UCC), the Rural County Representatives of California (RCRC), the California State Association of Counties (CSAC), the League of California Cities (CalCities), the California Special Districts Association (CSDA), the Association of California Healthcare Districts (ACHD), the California Association of Recreation and Park Districts (CARPD), the California Association of Sanitation Agencies (CASA), the County Health Executives of California (CHEAC), the County Welfare Directors Association (CWDA), and the County Behavioral Health Directors Association (CBHDA), we write to inform you of our opposition to your Assembly Bill 2557, a measure relating to contracting by local agencies. Like previous legislative efforts that attempted to curb local agency authority for contracting, our organizations believe the proposal contained in AB 2557 is overly burdensome and inflexible, likely resulting in worse outcomes for vulnerable communities and diminished local services for our residents. To be frank, AB 2557 creates a de facto prohibition on local agency service contracts due to the onerous obligations and costs associated with its requirements, creating untenable circumstances for local agencies and disastrous consequences for the communities we serve.

Specifically, AB 2557 would require local agencies – at least 10 months prior to a procurement process to contract for special services that are currently or in the past 10 years provided by a member of an employee organization – to notify the employee organization affected by the contract of its determination to begin a procurement process the governing body. The definition of special services varies by agency type, but cover a broad array of services provided by local agencies, from essential government administration services to medical and therapeutic services to legal and other technical services. This is an infeasible obligation, as local agencies often are unaware of a need for a procurement process 10 months prior. Such a situation could occur under any number of circumstances; a few examples: a labor dispute that results in a strike, a natural disaster, a global pandemic, emergency utility repairs, emergent and on-call situations, an unanticipated need to care for those crossing our southern border seeking asylum, and the list goes on. Local agencies have proven their ability to be adaptable in times of need, but the 10-month timeframe and

extensive range of services included in AB 2557 are both arbitrary and unworkable, impeding local agencies' capacity to respond to local needs.

AB 2557 would then require contractors to provide quarterly performance reports with a litany of required components, including personally identifiable information for its employees and subcontractors, that is then subject to the California Public Records Act. An entire local bureaucracy would have to be created at a considerable cost to comply with provisions that require these quarterly performance reports to be monitored to evaluate the quality of service. A particularly troubling provision would *require* the local agency to withhold payment to the contractor under any of the following circumstances that are deemed breach of contract: (1) Three or more consecutive quarterly performance reports are deemed as underperforming by a representative of the governing body *or a representative of the exclusive bargaining unit*; (2) The contractor fails to provide the quarterly reports required by this section or provides a report that is incomplete. Payment may only be made when a contractor submits a plan to achieve substantial compliance with the contract and this section, unless *the governing body, the employee organization, or assigned representatives* reject the plan as insufficient and explain the reasons for the rejection or, in the case of incomplete reports, all complete reports are provided unless *the governing body, the employee organization, or assigned representatives* reject the reports as incomplete.

These provisions would undoubtedly deter non-profit providers, community-based organizations, and other private service providers from engaging with local agencies, likely exacerbating existing demanding caseloads and workloads for our current staff and driving up costs. In addition, not only would private employee data be accessible to any member of the public via the California Public Records Act, but the measure disregards constitutional privacy rights by requiring the publication of personal financial information about private employees. Finally, these provisions elevate the employee organization to a decision-making entity for expenditure of local resources equal to that of the duly elected governing body that is directly accountable to voters. Authorizing an employee organization to decide to withhold payment to a contractor is not just an inconceivable policy proposal, but also raises serious constitutional questions about delegation of a public authority to a non-public entity. Even if a contractor were comfortable with sharing the personal information of its employees, what contractor would be willing to take the risk that they would not get paid for completed work as outlined in a contract?

Finally, in addition to the obligation of the contractor to provide quarterly performance reports every 90 days, AB 2557 requires a performance audit by an independent auditor (who would likely also be subject to the provisions of AB 2557) to determine whether performance standards are being met for contracts with terms exceeding two years *at the contractor's cost*. (It is unclear to us what is intended to be learned from this performance audit as opposed to the quarterly performance reports that are proposed for review by the governing body *and* the employee organization. Four quarterly performance reports would be provided, then a performance audit would be started, while four additional quarterly performance reports would be provided presumably prior to completion of the performance audit. That is a total of *nine* reports over a period of 24 months.) This provision fails to reflect an understanding of the practical logistics of actually achieving this reporting and review in a timely manner, not to mention the additional burden placed on contractors, which would presumably be an additional deterrent to engaging with local agencies. Because a contract renewal or extension may only occur after a review in conference with a representative of the exclusive bargaining unit, this provision also provides the opportunity to defer or delay such a renewal or extension. No matter what, the abundance of reporting obligations outlined in AB 2557 is likely to come with considerable local costs and is unlikely to facilitate effective and efficient provision of local programs and services to our mutual constituencies.

All of the above provisions also apply to temporary employees working under a contract for temporary help. Temporary employees working under a contract for temporary help are routinely used for important local

services. An example that we have previously shared with the Legislature are public and district hospitals, which often operate both hospitals and clinics, that must ensure they are adequately staffed to care for patients and meet the requirements of state law. It is no secret that California is in a statewide health care provider shortage, and as providers adjust to surges in patient volumes and fluctuations in staffing levels, they must have the tools available to them to bring on additional staffing quickly to fill gaps.

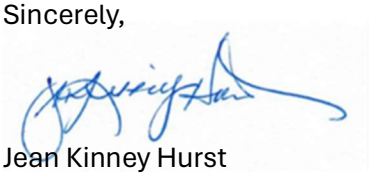
It is important to note that local agencies are already subject to the statutory provisions of the Meyers-Milias-Brown Act (MMBA) and related provisions of state law. These laws already establish that local agencies cannot contract out bargaining unit work simply to save money and most contracting-out decisions are subject to meet-and-confer requirements. There are exceptions to the meet-and-confer requirement in cases of compelling necessity (like an emergency) or when there is an established past practice of contracting out particular work. AB 2557 does not incorporate either of these limitations. Our position is that these issues are better addressed at the bargaining table where local conditions can be appropriately considered.

In recent years, the Newsom Administration and the Legislature have directed local agencies to engage more with community partners to more effectively connect with vulnerable communities. There are countless examples of programs and policies that have specified components that are directed to be delivered by entities that have direct, lived experience and/or cultural familiarity. One need only look to efforts over the last few years with the state's Homeless Housing and Prevention (HHAP) program or the significant reforms to the Medi-Cal program contained in CalAIM or various criminal justice reforms, to name just a few. These efforts explicitly include a role for non-profit, community-based, and private sector providers. Without that partnership, local agencies will be less successful in meeting the expectations and outcomes the state has directed – a consequence of which could be penalties and fines – and, in doing so, will have fallen short in meeting the needs of those that we are jointly committed to serve and undermined general trust in government.

Counties, cities, and special districts are constantly challenged by the state to do more, to be more effective and efficient, to be accountable to the public for the resources that we are responsible for managing. Efforts like AB 2557 – along with a similar measure, AB 2489 by Assembly Member Chris Ward – tie the hands of local agencies in their most basic administrative function. In doing so, the proposal sets local agencies up for failure – without reasonable tools to manage our constitutional and statutory obligations, there can be no expectation that local agencies make progress on the policy goals that the Legislature and Administration have set forth.

AB 2557 represents a sweeping change to the fundamental work of local governments, but we are unaware of a specific, current problem that this measure would resolve or prevent. We are keenly aware, though, of the very real harm that will result from this measure. AB 2557 will not improve services, reduce costs, or protect employees. As a result, we are opposed to AB 2557. Should you have any questions about our position, please reach out to us directly.

Sincerely,



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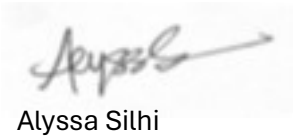

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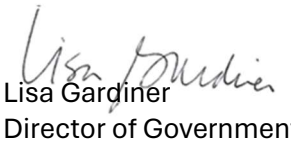

Lisa Gardiner
Director of Government Affairs
County Behavioral Health Directors Association

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cc: The Honorable Tina McKinnor, Chair, Assembly Public Employment and Retirement Committee
Members and consultants, Assembly Public Employment and Retirement Committee
The Honorable Robert Rivas, Speaker, California State Assembly
The Honorable Juan Carrillo, Chair, Assembly Local Government Committee
The Honorable Chris Ward, California State Assembly
Mary Hernandez, Deputy Legislative Secretary, Office of Governor Gavin Newsom
Katie Kolitsos, Consultant, Office of Assembly Speaker Robert Rivas