

1 **MEMORANDUM OF UNDERSTANDING BETWEEN**
2 **THE COUNTY OF FRESNO AND [NAME OF CITY]**

3 This Memorandum of Understanding (“MOU”) is dated _____ and is
4 between [Name of City], a municipal corporation of the State of California (“City”), and the
5 County of Fresno, a political subdivision of the State of California (“County”). County and City
6 are each a “Party” to this MOU and are collectively “the Parties.”

7 **Recitals**

8 A. The Parties wish to establish a monitoring and inspection system to oversee privately
9 funded laboratories that handle infectious agents without oversight from an existing permitting
10 public agency.

11 B. The joint response between the County of Fresno and the City of Reedley in 2023,
12 dealing with an unlicensed laboratory resulted in a successful management of a potential public
13 health issue and provided both entities the ability to retain their local control while being able to
14 consistently advocate for additional state and federal resources. This incident has led the
15 County to pursue a negotiated agreement with municipalities based on the successful 2023
16 model.

17 C. The County adopted Section 1. Chapter 8.52 of the Ordinance Code of Fresno County,
18 entitled “FRESNO COUNTY INFECTIOUS MATERIALS ORDINANCE,” that applies to all non-
19 Clinical Laboratory Improvement Amendments (CLIA) regulated laboratories and research and
20 development businesses (as that term is defined in 42 USC §263a) located or operating within
21 the geographic area in which the health department enforces state and local statutes, orders,
22 quarantines, rules, regulations and ordinances relating to public health in the unincorporated
23 area of Fresno County or within the incorporated area of any city within the county, to which
24 cities have signed a memorandum of understanding that authorizes the County to conduct
25 oversight of the laboratories.

The Parties therefore agree as follows:

1 **City's Responsibilities**

2 1.1 In order to authorize the County to enforce the provisions of this public safety
3 "FRESNO COUNTY INFECTIOUS MATERIALS ORDINANCE" in the incorporated area of the
4 City, the City must adopt the provisions of this ordinance delegating enforcement authority to
5 the County and must enter into this MOU with the County.

6 1.2 The City will retain all jurisdictional authority not pertaining to items contained in the
7 "FRESNO COUNTY INFECTIOUS MATERIALS ORDINANCE."

8 1.3 The City will provide the County a list of non-CLIA sites in their jurisdiction that the
9 County will need to follow up on.

10 1.4 The City will report suspected non-CLIA sites to assess applicability to "FRESNO
11 COUNTY INFECTIOUS MATERIALS ORDINANCE."

12 **Article 2**

13 **County's Responsibilities**

14 2.1 Under the provisions of the ordinance, the County will evaluate if appropriate
15 certifications, permits, environmental controls, safety protocols and licenses are in place for the
16 handling of infectious materials and hazardous materials located at the non-CLIA site.

17 2.2 Any concerns observed by County staff will be communicated to designated City
18 staff and a joint response would be coordinated with the business owner and property owner.

19 **Article 3**

20 **Cost Reimbursement**

21 3.1 The Parties will establish appropriate cost reimbursement methods to support
22 activities in responding to the "FRESNO COUNTY INFECTIOUS MATERIALS ORDINANCE".
23 City will be responsible to obtain reimbursement of all costs incurred by the City and not
24 recouped by the fees developed by the City, other funding resources or other recovery actions.
25 County will be responsible to obtain reimbursement of all costs incurred by the County and not
recouped by the fees developed by the County, other funding resources or other recovery
actions.

1 (C) A notice delivered by an overnight commercial courier service is effective one
2 County business day after deposit with the overnight commercial courier service,
3 delivery fees prepaid, with delivery instructions given for next day delivery, addressed to
4 the recipient.

5 (D) A notice delivered by telephonic facsimile transmission or by PDF document
6 attached to an email is effective when transmission to the recipient is completed (but, if
7 such transmission is completed outside of County business hours, then such delivery is
8 deemed to be effective at the next beginning of a County business day), provided that
9 the sender maintains a machine record of the completed transmission.

10 5.4 **Claims Presentation.** For all claims arising from or related to this MOU, nothing in
11 this MOU establishes, waives, or modifies any claims presentation requirements or procedures
12 provided by law, including the Government Claims Act (Government Code, section 810 et seq.).

13 **Article 6**

14 **Termination and Suspension**

15 6.1 **Termination without Cause.** The Parties may terminate this MOU by giving at least
16 30 days advance written notice to the other Party.

17 6.2 **No Penalty or Further Obligation.** Any termination of this MOU by the County or
18 City under this Article 6 is without penalty to or further obligation of the County or City.

19 6.3 **Termination Due to Additional Federal or State Legislation.** Upon approval of
20 Federal or State legislation that regulates non-CLIA laboratories, this MOU would immediately
21 terminate.

22 **Article 7**

23 **Indemnity and Defense**

24 7.1 **Mutual Indemnity.** The City shall indemnify and hold harmless and defend the
25 County (including its officers, agents, employees, and volunteers) against all claims, demands,
injuries, damages, costs, expenses (including attorney fees and costs), fines, penalties, and
liabilities of any kind to the County, the City, or any third party that arise from or relate to the
performance or failure to perform by the City (or any of its officers, agents, subcontractors, or

1 employees) under this MOU. The County may conduct or participate in its own defense without
2 affecting the City's obligation to indemnify and hold harmless or defend the County. The County
3 shall indemnify and hold harmless and defend the City (including its officers, agents,
4 employees, and volunteers) against all claims, demands, injuries, damages, costs, expenses
5 (including attorney fees and costs), fines, penalties, and liabilities of any kind to the County, the
6 City, or any third party that arise from or relate to the performance or failure to perform by the
7 County (or any of its officers, agents, subcontractors, or employees) under this MOU. The City
8 may conduct or participate in its own defense without affecting the County's obligation to
9 indemnify and hold harmless or defend the City.

9 7.2 **Survival.** This Article 7 survives the termination of this MOU.

10 **Article 8**

11 **Public Records**

12 8.1 **Public Records.** The County is not limited in any manner with respect to its public
13 disclosure of this MOU or any record or data that the City may provide to the County. The
14 County's public disclosure of this MOU or any record or data that the City may provide to the
15 County may include but is not limited to the following:

16 (A) The County may voluntarily, or upon request by any member of the public or
17 governmental agency, disclose this MOU to the public or such governmental agency.

18 (B) The County may voluntarily, or upon request by any member of the public or
19 governmental agency, disclose to the public or such governmental agency any record or
20 data that the City may provide to the County, unless such disclosure is prohibited by
21 court order.

22 (C) This MOU, and any record or data that the City may provide to the County, is
23 subject to public disclosure under the Ralph M. Brown Act (California Government Code,
24 section 54950).

25 (D) This MOU, and any record or data that the City may provide to the County, is
subject to public disclosure as a public record under the California Public Records Act
(California Government Code, section 7920.000 et seq.) ("CPRA").

1 (E) This MOU, and any record or data that the City may provide to the County, is
2 subject to public disclosure as information concerning the conduct of the people's
3 business of the State of California under California Constitution, Article 1, section 3,
4 subdivision (b).

5 (F) Any marking of confidentiality or restricted access upon or otherwise made with
6 respect to any record or data that the City may provide to the County shall be
7 disregarded and have no effect on the County's right or duty to disclose to the public or
8 governmental agency any such record or data.

8 **8.2 Public Records Act Requests.** If the County receives a written or oral request
9 under the CPRA to publicly disclose any record that is in the City's possession or control, and
10 which the County has a right, under any provision of this MOU or applicable law, to possess or
11 control, then the County may demand, in writing, that the City deliver to the County, for
12 purposes of public disclosure, the requested records that may be in the possession or control of
13 the City. Within five business days after the County's demand, the City shall (a) deliver to the
14 County all of the requested records that are in the City's possession or control, together with a
15 written statement that the City, after conducting a diligent search, has produced all requested
16 records that are in the City's possession or control, or (b) provide to the County a written
17 statement that the City, after conducting a diligent search, does not possess or control any of
18 the requested records. The City shall cooperate with the County with respect to any County
19 demand for such records. If the City wishes to assert that any specific record or data is exempt
20 from disclosure under the CPRA or other applicable law, it must deliver the record or data to the
21 County and assert the exemption by citation to specific legal authority within the written
22 statement that it provides to the County under this section. The City's assertion of any
23 exemption from disclosure is not binding on the County, but the County will give at least 10
24 days' advance written notice to the City before disclosing any record subject to the City's
25 assertion of exemption from disclosure. The City shall indemnify the County for any court-
ordered award of costs or attorney's fees under the CPRA that results from the City's delay,

1 claim of exemption, failure to produce any such records, or failure to cooperate with the County
2 with respect to any County demand for any such records.

3 **Article 9**

4 **General Terms**

5 9.1 **Modification.** Except as provided in Article 6, "Termination and Suspension," this
6 MOU may not be modified, and no waiver is effective, except by written agreement signed by
7 both Parties. The City acknowledges that County employees have no authority to modify this
8 MOU except as expressly provided in this MOU.

9 9.2 **Non-Assignment.** Neither Party may assign its rights or delegate its obligations
10 under this MOU without the prior written consent of the other Party.

11 9.3 **Governing Law.** The laws of the State of California govern all matters arising from
12 or related to this MOU.

13 9.4 **Jurisdiction and Venue.** This MOU is signed and performed in Fresno County,
14 California. City consents to California jurisdiction for actions arising from or related to this MOU,
15 and, subject to the Government Claims Act, all such actions must be brought and maintained in
16 Fresno County.

17 9.5 **Construction.** The final form of this MOU is the result of the Parties' combined
18 efforts. If anything in this MOU is found by a court of competent jurisdiction to be ambiguous,
19 that ambiguity shall not be resolved by construing the terms of this MOU against either Party.

20 9.6 **Days.** Unless otherwise specified, "days" means calendar days.

21 9.7 **Headings.** The headings and section titles in this MOU are for convenience only and
22 are not part of this MOU.

23 9.8 **Severability.** If anything in this MOU is found by a court of competent jurisdiction to
24 be unlawful or otherwise unenforceable, the balance of this MOU remains in effect, and the
25 Parties shall make best efforts to replace the unlawful or unenforceable part of this MOU with
lawful and enforceable terms intended to accomplish the Parties' original intent.

9.9 **No Waiver.** Payment, waiver, or discharge by the County of any liability or obligation
of the City under this MOU on any one or more occasions is not a waiver of performance of any

1 continuing or other obligation of the City and does not prohibit enforcement by the County of any
2 obligation on any other occasion.

3 9.10 **Entire MOU.** This MOU is the entire agreement between the Parties with respect to
4 the subject matter of this MOU, and it supersedes all previous negotiations, proposals,
5 commitments, writings, advertisements, publications, and understandings of any nature unless
6 those things are expressly included in this MOU.

7 9.11 **No Third-Party Beneficiaries.** This MOU does not and is not intended to create any
8 rights or obligations for any person or entity except for the Parties.

9 9.12 **Authorized Signature.** The City represents and warrants to the County that:

10 (A) The City is duly authorized and empowered to sign and perform its obligations
11 under this MOU.

12 (B) The individual signing this MOU on behalf of the City is duly authorized to do so
13 and his or her signature on this MOU legally binds the City to the terms of this MOU.

14 9.13 **Electronic Signatures.** The Parties agree that this MOU may be executed by
15 electronic signature as provided in this section.

16 (A) An "electronic signature" means any symbol or process intended by an individual
17 signing this MOU to represent their signature, including but not limited to (1) a digital
18 signature; (2) a faxed version of an original handwritten signature; or (3) an electronically
19 scanned and transmitted (for example by PDF document) version of an original
20 handwritten signature.

21 (B) Each electronic signature affixed or attached to this MOU (1) is deemed
22 equivalent to a valid original handwritten signature of the person signing this MOU for all
23 purposes, including but not limited to evidentiary proof in any administrative or judicial
24 proceeding, and (2) has the same force and effect as the valid original handwritten
25 signature of that person.

(C) The provisions of this section satisfy the requirements of Civil Code section
1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, section
1633.1 et seq.).

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(D) Each Party using a digital signature represents that it has undertaken and satisfied the requirements of Government Code section 16.5, subdivision (a), paragraphs (1) through (5), and agrees that each other Party may rely upon that representation.

(E) This MOU is not conditioned upon the Parties conducting the transactions under it by electronic means and either Party may sign this MOU with an original handwritten signature.

9.14 **Counterparts.** This MOU may be signed in counterparts, each of which is an original, and all of which together constitute this MOU.

[SIGNATURE PAGE FOLLOWS]

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The Parties are signing this MOU on the date stated in the introductory clause.

[NAME OF CITY]

COUNTY OF FRESNO

[Name], [Title]

Paul Nerland, County Administrative Officer or
designee

[Street Address]
[City, State ZIP]