

AGREEMENT

This Agreement ("Agreement") is dated June 6, 2023 2023, and is between the COUNTY OF FRESNO, a political subdivision of the State of California, whose address is 1221 Fulton Street, Fresno, CA 93721, and the COUNTY OF MERCED, a political subdivision of the State of California, whose address is 260 E. 15th Street, Merced, CA 95341, together hereinafter referred to as "COUNTIES".

Recitals

A. WHEREAS, Fresno County and Merced County have each appointed a County Health Officer ("Health Officer") pursuant to Health and Safety Code Section 101000; and

B. WHEREAS, said Health Officers are appointed to carry out duties prescribed in Health and Safety Code Section 101025 et seq. and other applicable statutes; and

C. WHEREAS, each Health Officer, from time to time, is temporarily absent from his/her County or otherwise temporarily unavailable to carry out his/her duties as required by law; and

D. WHEREAS, the COUNTIES desire to provide temporary Health Officer coverage for the other County when a Health Officer is temporarily unavailable;

E. Now, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained;

The COUNTIES therefore agree as follows:

Article 1**Responsibilities**

1.1 Through this Agreement, the Health Officer of each County may be requested by the other County's Board of Supervisors, Health Officer, County Administrative or Executive Officer, or other authorized person ("Requesting County") to carry out the functions of the Requesting County's Health Officer when the Requesting County's Health Officer is temporarily unavailable ("Coverage"). The Health Officer of the County providing the Coverage is the "Covering Health Officer", and the County providing the Coverage is the "Providing County." The Covering Health Officer shall have all of the powers and duties of the Requesting County's Health Officer when providing Coverage for the Requesting County.

1.2 For the Purposes of this Agreement, the term "Health Officer" shall include a County's Deputy Health Officer. Should the Health Officer of a Providing County be unable to act as Covering Health Officer to provide Coverage, the Deputy Health Officer of the Providing County is hereby designated to provide temporary Coverage.

1.3 For the Purposes of this Agreement, the term "temporary" shall mean lasting solely for a brief or limited period of time, with the stipulation that the time period (or duration) for which Coverage is needed shall be specified by the Requesting County in advance of the Providing County's agreement to provide Coverage. Nothing in this Agreement shall be interpreted to mean that the Providing Health Officer is providing Coverage in lieu of the Requesting County securing the appointment of its own Health Officer.

1.4 A County or a County Health Officer who is requested by a Requesting County to provide Coverage may refuse to provide Coverage without penalty or liability to said County and/or its Health Officer. A Covering Health Officer may cease providing Coverage to a Requesting County at any time without penalty or liability to himself/herself or the Providing County with prior notification to the Requesting County.

Article 2

Compliance with Laws

2.1 Each County shall, at its own cost, comply with all applicable federal, state, and local laws and regulations in the performance of its obligations under this Agreement, including but not limited to workers compensation, labor and employment, and confidentiality laws and regulations.

Article 3

Compensation

3.1 COUNTIES agree that the consideration for any Providing County's Health Officer in providing Coverage for a Requesting County pursuant to this Agreement is the mutual covenants expressed herein. The Providing County shall not be entitled to reimbursement or payment of any costs of the Providing County providing the Coverage. The Coverage provided by a Providing County's Health Officer shall be part of the duties of the Providing County's

Health Officer who shall receive no additional remuneration therefore.

Article 4

Term of Agreement

4.1 **Term.** This Agreement is effective for a period of three (3) years, commencing on the 13th day of July, 2023, and terminating on the 12th day of July, 2026, except as provided in section 4.2, "Extension," or Article 6, "Termination and Suspension," below.

4.2 **Extension.** The term of this Agreement may be extended for no more than two (2), one-year periods only upon written approval of both COUNTIES at least thirty (30) days before the first day of the next one-year extension period. The Director of the Department of Public Health of Fresno County, or his or her respective designee, is authorized to sign the written approval of extension on behalf of COUNTIES based on mutual satisfactory performance and continued need.

Article 5

Notices

5.1 **Contact Information.** The persons and their addresses having authority to give and receive notices provided for or permitted under this Agreement include the following:

For the County of Fresno:

Director, County of Fresno
Department of Public Health
1221 Fulton Street
Fresno, CA 93721
Phone: (559) 600-6403; Fax: (559) 600-7687

For the County of Merced:

Director, County of Merced
Department of Public Health
260 E. 15th Street
Merced, CA 95341
Phone: (209) 381-1203; Fax: (209) 724-4008

5.2 **Change of Contact Information.** Either party may change the information in section 5.1 by giving notice as provided in section 5.3.

5.3 **Method of Delivery.** Each notice between the COUNTIES provided for or permitted under this Agreement must be in writing, state that it is a notice provided under this Agreement, and be delivered either by personal service, by first-class United States mail, by an overnight

1 commercial courier service, by telephonic facsimile transmission, or by attached documents via
2 through an email process.

3 (A) A notice delivered by personal service is effective upon service to the recipient.

4 (B) A notice delivered by first-class United States mail is effective three County
5 business days after deposit in the United States mail, postage prepaid, addressed to the
6 recipient.

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

11 (D) A notice delivered by telephonic facsimile transmission or by attached document
12 via through an email is effective when transmission to the recipient is completed (but, if
13 such transmission is completed outside of County business hours, then such delivery is
14 deemed to be effective at the next beginning of a county's business day), provided that
15 the sender maintains a machine record of the completed transmission.

16 **5.4 Claims Presentation.** For all claims arising from or related to this Agreement,
17 nothing in this Agreement establishes, waives, or modifies any claims presentation
18 requirements or procedures provided by law, including the Government Claims Act (Division 3.6
19 of Title 1 of the Government Code, beginning with section 810).

20 **Article 6**

21 **Termination and Suspension**

22 **6.1 Termination for Breach.**

23 (A) Upon determining that a breach (as defined in paragraph (C) below) has
24 occurred, either County may give written notice of the breach to the other County. The
25 written notice may suspend performance under this Agreement; and must provide at
26 least 30 days for the noticed County to cure the breach.

27 (B) If the noticed County fails to cure the breach to the noticing County's satisfaction
28 within the time stated in the written notice, the noticing County may terminate this

1 Agreement immediately upon providing written notice of said termination.

2 (C) For purposes of this section, a breach occurs when, in the determination of the
3 noticing County, the noticed County has:

4 (1) Obtained or used funds illegally or improperly;

5 (2) Failed to comply with any part of this Agreement;

6 (3) Improperly performed Coverage by the Providing County's Health Officer
7 under this Agreement.

8 6.2 **Termination without Cause.** In circumstances other than those set forth above, this
9 Agreement may be terminated by either County by giving at least 30 days advance written
10 notice of an intention to terminate to the other County.

11 6.3 **No Penalty or Further Obligation.** Any termination of this Agreement by either
12 County under this Article 6 is without penalty to or further obligation of the COUNTIES.

13 **Article 7**

14 **Confidentiality**

15 7.1 **Confidentiality.** All services performed by the COUNTIES under this Agreement
16 shall be in strict conformance with all applicable Federal, State of California, and/or local laws
17 and regulations relating to confidentiality.

18 7.2 **Survival.** This Article 7 survives the termination of this Agreement.

19 **Article 8**

20 **Mutual Indemnity and Defense**

21 8.1 **Mutual Indemnity.** Each County shall indemnify and hold harmless and defend the
22 reciprocal County (including its officers, agents, employees and volunteers) against all claims,
23 demands, injuries, damages, costs, expenses (including attorney fees and costs), fines, penalties,
24 and liabilities of any kind to the Counties, or any third party that arise from or relate to the
25 performance or failure to perform by each County (or any of its officers, agents, subcontractors, or
26 employees) under this Agreement. Each County may conduct or participate in its own defense
27 without affecting the reciprocal County's obligation to indemnify and hold harmless or defend the
28 reciprocal Counties.

1 8.2 **Survival.** This Article 8 survives the termination of this Agreement.

2 **Article 9**

3 **Insurance**

4 9.1 The COUNTIES shall comply with all the insurance requirements in Exhibit A to this
5 Agreement.

6 **Article 10**

7 **General Terms**

8 10.1 **Modification.** Except as provided in Article 6, "Termination and Suspension," this
9 Agreement may not be modified, and no waiver is effective, except by written agreement signed
10 by both COUNTIES. The COUNTIES acknowledges that County employees have no authority
11 to modify this Agreement except as expressly provided in this Agreement.

12 10.2 **Non-Assignment.** Neither County may assign its rights or delegate its obligations
13 under this Agreement without the prior written consent of the other County.

14 10.3 **Governing Law.** The rights and obligations of the COUNTIES and all interpretation
15 and performance of this Agreement shall be governed in all respects by the laws of the State of
16 California.

17 10.4 **Jurisdiction and Venue.** This Agreement is signed and performed in Fresno County
18 and Merced County, California. COUNTIES consent to California jurisdiction for actions arising
19 from or related to this Agreement, and, subject to the Government Claims Act, all such actions
20 must be brought and maintained in Fresno County.

21 10.5 **Construction.** The final form of this Agreement is the result of the COUNTIES'
22 combined efforts. If anything in this Agreement is found by a court of competent jurisdiction to
23 be ambiguous, that ambiguity shall not be resolved by construing the terms of this Agreement
24 against either COUNTY.

25 10.6 **Days.** Unless otherwise specified, "days" means calendar days.

26 10.7 **Headings.** The headings and section titles in this Agreement are for convenience
27 only and are not part of this Agreement.

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1 10.8 **Severability.** If anything in this Agreement is found by a court of competent
2 jurisdiction to be unlawful or otherwise unenforceable, the balance of this Agreement remains in
3 effect, and the COUNTIES shall make best efforts to replace the unlawful or unenforceable part
4 of this Agreement with lawful and enforceable terms intended to accomplish the COUNTIES'
5 original intent.

6 10.9 **Nondiscrimination.** During the performance of this Agreement, the COUNTIES
7 shall not unlawfully discriminate against any employee or applicant for employment, or recipient
8 of services, because of race, religious creed, color, national origin, ancestry, physical disability,
9 mental disability, medical condition, genetic information, marital status, sex, gender, gender
10 identity, gender expression, age, sexual orientation, military status or veteran status or any
11 other legally prohibited basis pursuant to all applicable State of California and federal statutes
12 and regulation.

13 10.10 **No Waiver.** Payment, waiver, or discharge by the COUNTIES of any liability or
14 obligation of the COUNTIES under this Agreement on any one or more occasions is not a
15 waiver of performance of any continuing or other obligation of the COUNTIES and does not
16 prohibit enforcement by the COUNTIES of any obligation on any other occasion.

17 10.11 **Entire Agreement.** This Agreement, including its exhibits, is the entire agreement
18 between the COUNTIES with respect to the subject matter of this Agreement, and it supersedes
19 all previous negotiations, proposals, commitments, writings, advertisements, publications, and
20 understandings of any nature unless those things are expressly included in this Agreement. If
21 there is any inconsistency between the terms of this Agreement without its exhibits and the
22 terms of the exhibits, then the inconsistency will be resolved by giving precedence first to the
23 terms of this Agreement without its exhibits, and then to the terms of the exhibits.

24 10.12 **No Third-Party Beneficiaries.** This Agreement does not and is not intended to
25 create any rights or obligations for any person or entity except for the COUNTIES.

26 10.13 **Authorized Signature.** Each County represents and warrants to the other County
27 that:

28 (A) Each County is duly authorized and empowered to sign and perform its

obligations under this Agreement.

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

10.14 **Electronic Signatures.** The COUNTIES agree that this Agreement may be executed by electronic signature as provided in this section.

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

(B) Each electronic signature affixed or attached to this Agreement (1) is deemed equivalent to a valid original handwritten signature of the person signing this Agreement for all purposes, including but not limited to evidentiary proof in any administrative or judicial proceeding, and (2) has the same force and effect as the valid original handwritten 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, Division 3, Part 2, Title 2.5, beginning with section 1633.1).

(D) Each County 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 Agreement is not conditioned upon the COUNTIES conducting the transactions under it by electronic means and either County may sign this Agreement with an original handwritten signature.

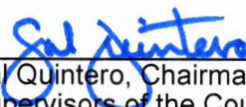
10.15 **Counterparts.** This Agreement may be signed in counterparts, each of which is an original, and all of which together constitute this Agreement.

1 IN WITNESS WHEREOF, the COUNTIES hereto have executed this Agreement as of
2 the day and year first hereinabove written.

3 COUNTY OF MERCED

COUNTY OF FRESNO

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5
6 Raul Lomeli Mendez, CEO, Merced County
Executive Officer


Sal Quintero, Chairman of the Board of
Supervisors of the County of Fresno


7 2222 M St
8 Merced, CA 95340

Attest:

9 Approved as to Legal Form
10 Merced County Counsel

Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

11 By: _____
12 Carrie Woolley,
13 Deputy County Counsel

By: 
Deputy

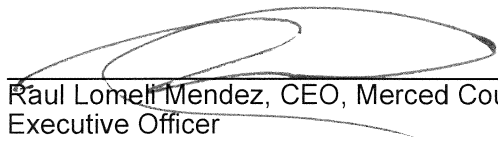
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19 For accounting use only:

20 Fresno County
21 Org No.: 56201500 (\$0)
22 Account No. 0
23 Requisition No. 0
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1 IN WITNESS WHEREOF, the COUNTIES hereto have executed this Agreement as of
2 the day and year first hereinabove written.

3 COUNTY OF MERCED

COUNTY OF FRESNO

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5 
6 Raul Lomeli Mendez, CEO, Merced County
Executive Officer

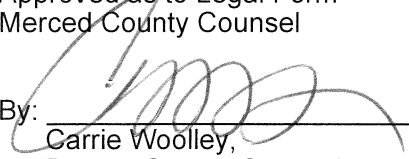
Sal Quintero, Chairman of the Board of
Supervisors of the County of Fresno

7 2222 M St
8 Merced, CA 95340

Attest:

9 Approved as to Legal Form
10 Merced County Counsel

Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

11 By: 
12 Carrie Woolley,
Deputy County Counsel

By: _____
Deputy

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19 For accounting use only:

20 Fresno County
21 Org No.: 56201500 (\$0)
22 Account No. 0
Requisition No. 0

Exhibit A

Insurance Requirements

1. Required Policies

Without limiting the indemnification of each party as stated in Article 8, it is understood that COUNTIES, at their sole expense, shall maintain in full force and effect the following insurance policies throughout the term of this Agreement.

- (A) **Commercial General Liability (CGL).** Commercial general liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000). This policy must be issued on a per occurrence basis. Coverage must include products, completed operations, property damage, bodily injury, personal injury, and advertising injury. Each County shall obtain an endorsement to this policy naming the other County, its officers, agents, employees, and volunteers, individually and collectively, as additional insureds, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insureds will apply as primary insurance and any other insurance, or self-insurance, maintained by the County is excess only and not contributing with insurance provided under the County's policy.
- (B) **Automobile Liability.** Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for property damages. Coverage must include any auto used in connection with this Agreement.
- (C) **Workers Compensation.** Workers compensation insurance as required by the laws of the State of California with statutory limits.
- (D) **Employer's Liability.** Employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for disease.
- (E) **Professional Liability.** Professional liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Three Million Dollars (\$3,000,000). If this is a claims-made policy, then (1) the retroactive date must be prior to the date on which services began under this Agreement; (2) each County shall maintain the policy and provide to the other County annual evidence of insurance for not less than five years after completion of services under this Agreement; and (3) if the policy is canceled or not renewed, and not replaced with another claims-made policy with a retroactive date prior to the date on which services begin under this Agreement, then the County shall purchase extended reporting coverage on its claims-made policy for a minimum of five years after completion of services under this Agreement.
- (F) **Molestation Liability.** Sexual abuse / molestation liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence, with an annual aggregate of Four Million Dollars (\$4,000,000). This policy must be issued on a per occurrence basis.

As the COUNTIES are governmental entities, they may satisfy the policy requirements above through a program of self-insurance, including an insurance pooling arrangement or joint exercise of powers agreement.

Exhibit A

2. Additional Requirements

- (A) **Verification of Coverage.** Within thirty (30) days after each County signs this Agreement, and at any time during the term of this Agreement as requested by either County's Risk Manager or County Administrative or Executive Office, each County shall deliver to the other, or cause its broker or producer to deliver certificates of insurance and endorsements for all of the coverages required under this Agreement. Said certificates of insurance and endorsements shall be mutually delivered to the County of Fresno, Department of Public Health, P.O. Box 11867, Fresno, CA 93775, Attention: Contracts Section – 6th Floor, or email, DPHContracts@fresnocountyca.gov, and to the County of Merced, Department of Public Health, 260 E. 15th St., Merced, CA 95341, Attention: Contracts, or email PHcontractunit@countyofmerced.com.
- (i) Each insurance certificate must state that: (1) the insurance coverage has been obtained and is in full force; and (2) the other County, its officers, agents, employees, and volunteers are not responsible for any premiums on the policy; and (3) the County that is the subject of the certificate has waived its right to recover from the other County, its officers, agents, employees, and volunteers any amounts paid under any insurance policy required by this Agreement and that waiver does not invalidate the insurance policy.
 - (ii) The commercial general liability insurance certificate must also state, and include an endorsement, that each County, its officers, agents, employees, and volunteers, individually and collectively, are additional insureds insofar as the operations under this Agreement are concerned. The commercial general liability insurance certificate must also state that the coverage shall apply as primary insurance and any other insurance, or self-insurance, maintained by the other County shall be excess only and not contributory with insurance provided under each County's individual policy.
 - (iii) The automobile liability insurance certificate must state that the policy covers any auto used in connection with this Agreement.
 - (iv) The professional liability insurance certificate, if it is a claims-made policy, must also state the retroactive date of the policy, which must be prior to the date on which services began under this Agreement.
- (B) **Acceptability of Insurers.** All insurance policies required under this Agreement must be issued by admitted insurers licensed to do business in the State of California and possessing at all times during the term of this Agreement an A.M. Best, Inc. rating of no less than A: VII.
- (C) **Notice of Cancellation or Change.** For each insurance policy required under this Agreement, each County shall provide to the other County, or ensure that the policy requires the insurer to provide to the County, written notice of any cancellation or change in the policy as required in this paragraph. For cancellation of the policy for nonpayment of premium, the County shall, or shall cause the insurer to, provide written notice to the other County not less than 10 days in advance of cancellation. For cancellation of the policy for any other reason, and for any other change to the policy, the County shall, or shall cause the insurer to, provide written notice to the other County not less than thirty

Exhibit A

(30) days in advance of cancellation or change. The other County in its sole discretion may determine that the failure of the County or its insurer to timely provide a written notice required by this paragraph is a breach of this Agreement.

- (D) **County's Entitlement to Greater Coverage.** If a County has or obtains insurance with broader coverage, higher limits, or both, than what is required under this Agreement, then the other County requires and is entitled to the broader coverage, higher limits, or both. To that end, the County shall deliver, or cause its broker or producer to deliver, to the other County's Risk Manager certificates of insurance and endorsements for all of the coverages that have such broader coverage, higher limits, or both, as required under this Agreement.
- (E) **Waiver of Subrogation.** COUNTIES waive any right to recover from the other County, its officers, agents, employees, and volunteers any amounts paid under the policy of worker's compensation insurance required by this Agreement. Each County is solely responsible to obtain any policy endorsement that may be necessary to accomplish that waiver, but the COUNTIES's waiver of subrogation under this paragraph is effective whether or not the COUNTIES obtain such an endorsement.
- (F) **County's Remedy for Contractor's Failure to Maintain.** If either County fail to keep in effect at all times any insurance coverage required under this Agreement, the other County may, in addition to any other remedies it may have, suspend or terminate this Agreement upon the occurrence of that failure.