

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“**Agreement**”) is effective as of July 1, 2019 (“**Effective Date**”), by and between the City of Salinas, California, (“**City**”) and the County of Monterey (“**County**”) (collectively, the “**Parties**”).

RECITALS

WHEREAS, the function of the Office of Emergency Services is to coordinate all emergency preparedness, response and recovery functions and responsibilities as necessary to carry out the direction of the Board of Supervisors and the provisions of Chapter 2.68 of the County Code.

WHEREAS, The Monterey County Office of Emergency Services (OES) is responsible for ensuring all phases of emergency management are addressed in strategic planning efforts, building the core capabilities and disaster resilience within the communities of Monterey County; organizing, staffing and operating the Operational Area Emergency Operations Center; providing information and guidance to the public and elected officials including emergency warning and alerting; providing resource management inventories of critical assets, supplies and equipment necessary to support emergency response and recovery operations; reviewing and maintaining internal and external emergency operations plans and preparedness programs for the Operational Area; ensuring that emergency planning follows state and federal guidance; identifying and analyzing potential hazards and recommending appropriate mitigation measures; conduct on-going emergency preparedness and educational campaigns; and serving as the emergency management point of contact for government officials, public safety, organizations, nonprofit and community based organizations, city, county and private industry partner and stakeholders;

WHEREAS, the City of Salinas, as an independent jurisdiction, has Emergency Management and Planning needs, including the use of and Emergency Operations Center;

WHEREAS, the proximity of the City of Salinas and the County of Monterey’s Office of Emergency Services promote a sharing of services;

WHEREAS, the Office of Emergency Services has an interest in the City of Salinas performing proper planning and activation of an Emergency Operations Center during times of crisis of disaster;

WHEREAS, the Parties have concluded that having the Office of Emergency Services perform all the Emergency Management needs and allow the use of County facilities in the form of the Emergency Operations Center for the City of Salinas makes good business sense;

NOW, THEREFORE, the parties hereto agree as follows:

AGREEMENT

1. SERVICES

- 1.1. **Scope of Services.** OES shall provide to the City of Salinas, Emergency Management services to include the creation and/or review of all needed emergency plans and complete use of the County Emergency Operations Center. Additionally, OES shall, on occasion attend and participate in City emergency preparedness fairs, public education and information events to assist the City of Salinas in disaster preparedness education.
- 1.2. **Compensation for Services.** In consideration for the services provided by OES, the City agrees to reimburse the County the equivalent of the salary of a full time Emergency Services Planner at step 7 with full benefits. In the event either Party determines that a funding limitation requires a reduction or elimination of service or level of service, the Parties agree that the service and/or level of service to be reduced shall be negotiated with and agreed to by the Parties before any service reduction is made.
- 1.3. **Indirect and Overhead Costs.** The County agrees to not charge the City for any indirect or overhead costs, such as equipment or vehicle usage, except for any overtime encumbered by the Emergency Services Planner assigned to the City during an authorized activation of the County Emergency Operations Center in support of a declared City emergency or crisis.
- 1.4. **Additional Services.** Any and all charges for additional services rendered outside of this executed agreement shall be made pursuant to written amendments to this agreement. Said additional services shall only take place once the requested addendum for services has been duly authorized and executed by both parties.
- 1.5. **Manner of Payment.**

The City shall make all necessary payments in support of this agreement to the County on a monthly basis by approved standard County accounting principles.
- 1.6. **Verification.** In the event of a written request by the City for additional back-up information regarding any services performed by the County, the County shall provide such information and the supporting documentation to the Chief of the City Fire Department within fifteen (15) days of such request.

2. TERM/TERMINATION

- 2.1. **Term.** The term of this Agreement is from July 1, 2019 to June 30, 2020, with automatic one-year renewals unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both Parties and with County signing last.

22. **Termination.** Either party may terminate all or any of the services under this Agreement, by giving notice to the other Party in the manner specified in Section 9.20 below. For the purposes of this section, the terms for termination are applicable to termination of the entire agreement or any services provided hereunder.

2.2.1. Either party may terminate all or any of the services under this Agreement. Such notice shall be given in writing at least ninety (90) days prior to the end of the fiscal year and shall become effective only upon the first day of the succeeding fiscal year.

3. LIABILITY TO THIRD PARTIES; INDEMNIFICATION.

3.1 The Parties waive, pursuant to Government Code section 895.4, the pro rata (per capita) risk allocation provided by Government Code section 895.6.

3.2 Each Party shall defend, indemnify, and hold the other Party harmless, to the maximum extent permitted by law, from claims, damages, expenses, or liabilities, including attorneys' fees and costs, that arise out of its duties or obligations, or that of its officers, judicial officers, judges, subordinate judicial officers, board members, employees, representatives, or agents under this Memorandum, or its negligence or willful misconduct. The foregoing does not apply to the extent a claim, damage, expense, or liability arises out of an indemnified party's failure to perform its obligations under this Memorandum, or an indemnified party's negligence or willful misconduct. The right to be indemnified extends to an indemnified party's officers, employees, representatives, and agents, and:

- (a) in the case of County, this right extends to County's Board of Supervisors; and
- (b) in the case of City, this right extends to City's City Council, Mayor, and Administrative Officers.

4. **THIRD PARTY CLAIMS.** If any third party shall notify a Party with respect to any matter (a "**Third Party Claim**") which may give rise to a claim for indemnification against the other Party under Section 3, then the Party seeking indemnification shall promptly and timely notify the indemnifying Party in writing of the Third-Party Claim.

The indemnifying Party shall be relieved of any obligation or liability under Section 3, to the extent a delay by the Party seeking indemnification in giving notice of the receipt of the Third-Party Claim results in any damage or prejudice to the indemnified Party. If the indemnifying Party is conducting the defense of the Third-Party Claim in accordance with Section 3, the indemnifying Party shall not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim, without the prior written consent of the indemnified Party (which consent shall not be unreasonably withheld). For purposes of this Section 4, notice shall be deemed served (a) to County, if notice is delivered to the Clerk of the County Board of Supervisors, and (b) to the City, if notice is delivered to the City Council or City Manager.

5. PERFORMANCE STANDARDS

- 5.1. Parties warrant that the County's and the City's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement.
- 5.2. Parties' agents, employees and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.3. Each Party shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement.

6. RECORDS AND CONFIDENTIALITY

- 6.1. **Maintenance of Records.** Parties shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and local rules and regulations related to services performed under this Agreement. Parties shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception or other action relating to this Agreement is pending at the end of the three-year period, then the Party responsible for the records shall retain said records until such action is resolved.
 - 6.2. **Access to and Audit of Records.** Both Parties shall have the right to examine, monitor and audit all records, documents, conditions, and activities of either Party related to the provisions of services provided under this Agreement. The Parties will receive, reply to, and/or comply with any audit by an appropriate state audit agency that directly relates to this MOU or to funds to be handled or disbursed hereunder. The Parties will each maintain an accounting system and supporting fiscal records to comply with state audit requirements related to this MOU. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the either Party or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
7. **NON-DISCRIMINATION.** During the performance of this Agreement, both Parties, and their subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either Parties' employment practices or in the furnishing of services to recipients. Parties shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. Parties and Parties' subcontractors shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such

target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

8. DISPUTE RESOLUTION.

81. **Continuation of Services.** Whenever the Parties disagree on any matter governed by this Agreement, the dispute resolution process discussed in this Section 8 shall govern. Until the dispute is resolved, the Parties shall continue to provide the services and make payment for the non-disputed portion of each invoice.
82. **Request for Meeting.** If after 14 calendar days, the Parties cannot resolve a dispute, either party may give the other party a written request for a meeting between the City Manager and the CAO for the purpose of resolving a disagreement between the parties. If such meeting is requested, the meeting shall be held within ten (10) business days of the receipt of such request. If the dispute is still not resolved after the meeting, the governmental claims process shall be followed for claims against the County.
83. **Jurisdiction and Venue.** If a dispute between the Parties regarding the interpretation or performance of this Agreement is not resolved under Section 8.3 above, either Party may bring legal action to interpret or enforce this Agreement in the Superior Court of California, County of Monterey.

9. MISCELLANEOUS PROVISIONS.

91. **Conflict of Interest.** Each Party represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.
92. **Amendment.** This Agreement may be amended or modified only by an instrument in writing signed by both Parties.
93. **Further Assurances.** Each Party hereto agrees to cooperate with the other, and to execute and deliver, or cause to be executed and delivered, all such other instruments and documents, and to take all such other actions as may be reasonably requested of it from time to time, in order to effectuate the provisions and purposes of this Agreement. The Parties agree to consult with each other about other, future matters to ensure optimal services are delivered to the citizens of the City of Salinas and Monterey County balanced with the respective needs and limitations of each Party.
94. **Waiver.** Any waiver of any terms and conditions of this Agreement must be in writing and signed by both Parties. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
95. **Compliance with Applicable Law.** Parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

96. **Headings.** The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
97. **Time is of the Essence.** Time is of the essence in each and all the provisions of this Agreement.
98. **Governing Law.** This Agreement shall be governed by and interpreted under the laws of the State of California, without regard to its conflict of law provisions.
99. **Non-exclusive Agreement.** This Agreement is non-exclusive and both Parties expressly reserve the right contract with other entities for the same or similar services.
- 9.10. **Construction of Agreement.** Parties agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 9.11. **Certification of Authority to Execute this Agreement.** County and City certify that the individual(s) signing below on behalf of the Party has authority to execute this Agreement on behalf of the Party and may legally bind the Party to the terms and conditions of this Agreement, and any attachments hereto.
- 9.12. **Integration.** This Agreement, including the exhibits, represent the entire Agreement between the Parties with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the Parties as of the effective date of this Agreement, which is the date that the Parties sign the Agreement.
- 9.13. **Interpretation of Conflicting Provisions.** In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of the Exhibits, the provisions of those Exhibits that have been independently negotiated between the Court and a County department, shall prevail and control.
- 9.14. **Force Majeure.** Neither Party will be responsible for performance under this Agreement to the extent performance is prevented, hindered, or delayed by fire, flood, earthquake, elements of nature, acts of God, acts of war (declared and undeclared), riots, rebellions, revolutions, terrorism, acts of Third Parties, or court orders or proceedings, whether foreseeable or unforeseeable.
- 9.15. **Severability.** If a term of this Agreement is inconsistent with applicable Law, then on the request of either Party, the Parties will promptly meet and confer to determine how to amend the inconsistent term in a manner consistent with Law, but all parts of this Agreement not affected by the inconsistency will remain in full force and effect.
- 9.16. **Notices.** Any notices required or permitted hereunder shall be given in writing by (a) personal delivery; (b) email; (c) prepaid first-class mail; or (d) reputable overnight delivery service; addressed as follows or to such other place as each Party may designate by subsequent written notice to the other Party:

County:
County of Monterey
Attn: County Administrative
Officer
168 West Alisal Street
Salinas, CA 93901

City:
City of Salinas
Attn: City Manager
200 Lincoln Ave
Salinas, California 93901

If notice is given by personal delivery, notice is effective as of the date of personal delivery. If notice is given by email, notice is effective as of the date the email was sent. If notice is given by mail, notice is effective as of three days following the date of mailing or the date of delivery reflected upon a return receipt, whichever occurs first.

- 9.21 **Extraordinary Services.** The Parties understand that from time to time assistance may be required for extraordinary services due to either an internal or external need. The Parties agree to work cooperatively during these situations to assist each other within a reasonable period and that a cost for that assistance may be incurred by the responding Party and thus subject to reimbursement by the requesting Party. The Parties agree that the responding Party will respond within ten (10) days as to feasibility, date of delivery and time and costs estimate.

IN WITNESS WHEREOF, County and Court have executed this Agreement as of the day and year written below.

**CITY OF SALINAS, a political
subdivision of the County of Monterey
and the State of California**

By: _____
Name: Ray Corpuz, Jr.
Title: City Manager
Date: _____

ATTEST:
Valerie Ralph, Clerk of the Board

**COUNTY OF MONTEREY, a political
subdivision of the State of California**

By: _____
Deputy

By: _____
Name:
Title:
Date: _____

APPROVED AS TO FORM:
County of Monterey, Office of the County
Counsel

By: _____
Name:
Title:
Date: _____

