



Monterey County Board of Supervisors

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Order

Agreement No.: A-13142

Upon motion of Supervisor Potter, seconded by Supervisor Armenta and carried by those members present, the Board of Supervisors hereby:

Approved and authorized the Director of Health or Assistant Director of Health to execute an Agreement with the City of Monterey (City) for the provision of enforcement services by the County of Monterey (County) of the City's tobacco retail license ordinance, Ordinance No. 3508, commencing on June 1, 2016 terminable by either party pursuant to Section 7 of the Agreement.

PASSED AND ADOPTED on this 17th day of May 2016, by the following vote, to wit:

AYES: Supervisors Armenta, Phillips, Salinas, Parker and Potter

NOES: None

ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 79 for the meeting on May 17, 2016.

Dated: May 18, 2016
File ID: A 16-120

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By Denise Hancock
Deputy

**AGREEMENT BETWEEN
CITY OF MONTEREY AND COUNTY OF MONTEREY
FOR TOBACCO RETAIL LICENSE ADMINISTRATION SERVICES**

THIS AGREEMENT ("Agreement") is made and entered into this 1st day of June 2016 ("Effective Date"), by and between the City of Monterey, a municipal corporation of the State of California ("City"), and the County of Monterey, a political subdivision of the State of California ("County").

RECITALS

WHEREAS, the City, by Ordinance No. 3508 ("Ordinance"), has adopted a tobacco retail license program; and

WHEREAS, the City enacted the Ordinance in order to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, particularly those which prohibit or discourage the sale or distribution of tobacco products to minors; and

WHEREAS, the County agrees to assist the City in enforcing the Ordinance by providing such administrative and enforcement services as are specified under the Ordinance, on the terms and condition specified in this Agreement; and

WHEREAS, any costs borne by the County to administer and enforce the Ordinance within the City limits shall be recovered by the fees approved by the City and received by the County from tobacco retailers within the City, pursuant to the Ordinance.

AGREEMENT

NOW, THEREFORE, the City and County agree as follows:

Section 1. Incorporation of Recitals.

The above recitals, including the paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

Section 2. Responsibilities under the Agreement.

a. County Responsibilities. County shall do the following:

1. Subject to the terms of this Agreement, and provided that the terms of Section 2(b) below have been satisfied, the County shall provide all of the administrative and enforcement services specified under the Ordinance, including but not limited to: receiving, reviewing, and processing the tobacco retail application and the information contained therein; issuing the license; administering the license program, retailer education, retailer inspection and compliance checks; documenting violations; issuing and collecting penalties; and hearing any appeals ("Services").

2. Meet with the appropriate City personnel on a yearly basis, at a time and location to be chosen convenient for both parties, to assess the status of this Agreement and the Services to discuss any modifications thereto.

3. Communicate from time to time with the City, as needed or requested, regarding the administrative and enforcement services provided by the County under this Agreement.

b. City Responsibilities. City shall do the following:

1. Provide information regarding the Ordinance to any business applying for a business license under Chapter 19 of the Monterey City Code.

2. Communicate from time to time, as needed, with Tobacco Retailers (as that term is defined in the Ordinance) regarding the Ordinance.

3. Not interfere with, or in any way hinder, County's, or any of County's employees, officers, agents, or designated representatives in the performance of their duties pursuant to this Agreement.

4. Assist the County so far as reasonably appropriate in carrying out the terms of this Agreement.

5. Meet with the appropriate County personnel on a yearly basis, at the time and location chosen convenient for both parties, to assess the status of this Agreement and to discuss any modifications thereto.

c. County and City Responsibilities. The responsibilities listed hereunder shall not be construed so as to preclude existing or future County or City rights and responsibilities.

Section 3. Compensation and Fees.

The parties agree that the City will not directly compensate the County for providing the Services specified herein. The County shall be fully reimbursed for its costs through the fees it will collect from Retailers pursuant to the Ordinance, including fees charged to obtain or renew a License (as that term is defined in the Ordinance). Such fees shall be established by the City, and collected by the County, and the City shall make no claim to any portion of such fees during the term of this Agreement.

Section 4. Term.

This Agreement shall commence on the Effective Date and shall remain in effect so long as not terminated by either party pursuant to Section 7.

Section 5. Indemnification.

In lieu of and notwithstanding the pro rata risk allocation that might otherwise be imposed between the parties pursuant to Government Code section 895.6, the parties agree that any and all claims, lawsuits, consequential damages, losses or liabilities incurred by a party shall not be shared pro rata, but instead the parties agree that pursuant to Government Code Section 895.4, the City shall indemnify, defend (with counsel selected by the City and reasonably acceptable to the County) and hold harmless the County, its employees, and its elected officials from all claims (including any and all actions, causes of action, claims,

attorney's fees, costs, demands, lawsuits, liens, and liabilities of any kind and nature) that arise from or administratively challenge the City's Ordinance, the County's administration or otherwise arising out of the enforcement of the Ordinance as provided for in this Agreement, or the fee schedule as established by resolution of the City Council, pursuant to the Ordinance, provided, however:

1. The City's duty to indemnify shall not apply to any claim (including any and all actions, causes of action, claims, attorney's fees, costs, demands, lawsuit, liens, and liabilities of any kind and nature) to the extent it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted solely from the County's, County employees', or County elected officials' gross negligence or willful misconduct.
2. If it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) that the County, its employees, or its elected officials committed gross negligence or willful misconduct in the administration or enforcement of the Ordinance, the City shall be entitled to reimbursement of its defense costs.
3. The City's duty to defend shall not apply when it is clear that a County employee has committed a willful or intentional act outside of his or her employment. However, in cases where the City has failed to provide a defense to a County employee, and it is found through a final judgment by a court of competent jurisdiction, that the County employee's actions fell within the scope of his or her employment, then the City agrees to reimburse to the County the cost of defense for the County employee.
4. The City and the County shall meet and confer in good faith for the purpose of resolving any problem or dispute between the City and the County that may arise concerning the provision of a defense or indemnification to a claim, as described in this Section.

The City further agrees that it will not, without the prior consent of the County, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect to which the County seeks indemnification hereunder (whether or not the County is an actual party to such claim, action, suit or proceeding) unless such settlement, compromise, or consent includes an unconditional release of the County and its officers, agents and employees from all liabilities arising out of such claim, action, suit or proceeding. In the event that a claim or litigation against City is initiated or filed and arises from the City's Ordinance or the County's administration or enforcement of the Ordinance, County agrees to fully cooperate with City in its attempts to resolve or defend such challenge.

If any term, provision or application of Section 5 is found to be invalid, in violation of public policy or unenforceable to any extent, such finding shall not invalidate any other term or provision of this Agreement and such other terms and provisions shall continue in full force and effect. If there is any conflict between the terms, provisions or application of this Agreement and California law, the broadest indemnity protection for the County under this Agreement that is permitted by law shall be provided by City.

Section 6. Insurance.

Each party recognizes and accepts the other party is self-insured. Either party may purchase commercial insurance to cover its exposure hereunder, in whole or in part.

Section 7. Termination.

This Agreement may be terminated by either party for the following reasons:

a. Upon the termination of the Ordinance or the County's Tobacco Retail License Ordinance, or a substantial change in either one; or

b. For any reason by either party at any time during the term of this Agreement, provided that written notice is given pursuant to Section 11 at least six (6) months prior to the effective date of termination.

Section 8. Conflict between Agreement and Ordinance.

Any conflict between the terms of this Agreement and the Ordinance shall be resolved in favor of the Ordinance.

Section 9. Applicable Laws/Venue.

In the performance of the Services required by this Agreement, both parties shall comply with all applicable Federal, State, County and City statutes, ordinances, regulations, directives, and laws. The interpretation and performance of this Agreement shall be governed by the laws of the State of California. Any action or proceeding arising out of this Agreement shall be filed in the Superior Court of the County of Monterey.

Section 10. Ownership of Documents.

All reports, data, and other documents prepared by the County pursuant to this Agreement ("Reports and Other Documents") are the property of the County. In accordance with statutes specifically exempting from disclosure certain records, the County shall have the unrestricted authority to publish, disclose, distribute, and otherwise use in whole or in part, any Reports and Other Documents prepared by the County pursuant to this Agreement.

Upon termination of this Agreement, the County shall transfer copies of such Reports and Other Documents necessary for the City, should it so choose, to provide the County Responsibilities enumerated in Section 2(a).

Section 11. Notice.

All notices, consents, demands, and other communications from one party to the other given pursuant to the terms of this Agreement or under the laws of the State of California, shall be deemed to have been delivered when deposited in the United States mail, certified or registered, postage prepaid, addressed to City or County at the respective addresses specified below or to such other place as City or County may from time to time designate in a written notice to the other:

City of Monterey:

City of Monterey
City Hall
580 Pacific Street

Monterey, CA 93940
Attn: City Manager

County of Monterey:

County of Monterey
Health Department
Public Health Bureau
1270 Natividad Road
Salinas, CA 93906
Attn: Health Director

Nothing herein shall prevent service of notice by other reliable means, except to the extent required by law, including but not limited to personal service, Express Mail, or other forms of reliable mail service other than the U.S. Postal Service.

Section 12. Complete Agreement.

There are no oral agreements between City and County affecting this Agreement, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between City and County with respect to the subject matter of this Agreement. There are no representations between City and County other than those contained in this Agreement, and all reliance with respect to any representation is based solely upon the terms of this Agreement.

Section 13. Amendment.

This Agreement may be amended by the City and County only by a written agreement signed by both parties.

Section 14. Assignment.

Neither the City nor the County shall assign its rights or obligations hereunder.

Section 15. Severability.

If any provisions of this Agreement shall be determined to be illegal or unenforceable, such determination shall not affect any other provision of this Agreement, and all such other provisions shall remain in full force and effect. In the even the entire Agreement is unenforceable, then this Agreement shall immediately terminate and the revocable license described herein shall be deemed revocable.

Section 16. Attorney's Fees.

In the event that any legal action or proceeding is commenced to enforce or interpret the provisions of this Agreement or any rights arising out of this Agreement, each party in such legal action shall bear attorney's fees, including expert fees and the costs of enforcing any judgment.

Section 17. Non-liability of Officials, Employees and Agents.

No governing board member, official, employee, agent, or volunteer of either party shall be personally liable for any damages related to any default or breach by the other party, or for any obligations under the terms of this Agreement. Nothing in this Agreement shall create, or be

construed to create, the relationship of employer and employee between the County and the City, or as principal and agent; nor shall County's governing board members, officials, employees, agents, or volunteers be considered or construed to be the employees of the City for any purpose whatsoever; nor shall the City's governing board members, officials, employees, agents, or volunteers be considered or construed to be the employees of the County for any purpose whatsoever.

Section 18. Counterparts.

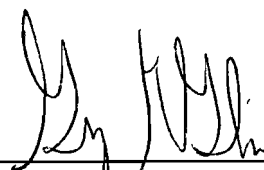
This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature page and may be executed by the affixing of the signatures of each of the parties to any one of such counterpart signature pages; and all of such counterpart signature pages shall read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

Section 19. Authorization to Execute Agreements.

The County warrants that the execution of this Agreement been approved and authorized by County, and that the person who executes this Agreement has been authorized to perform said act. The City warrants that the execution of this Agreement been approved and authorized by City, and that the person who executes this Agreement has been authorized to perform said act.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on June 1, 2016.

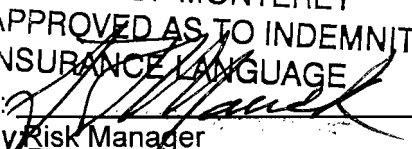
COUNTY OF MONTEREY

	By: <u></u> Chair, Board of Supervisors Date: <u>5-17-16</u>
APPROVED AS TO FORM: CHARLES J. MCKEE COUNTY COUNSEL By: <u></u> Deputy County Counsel	APPROVED AS TO FINANCIAL TERMS: MICHAEL J. MILLER C.P.A., C.I.S.A. AUDITOR-CONTROLLER By: <u></u> Chief Deputy <u>5-9-16</u>

APPROVED:
ELSA JIMENEZ
INTERIM DIRECTOR OF HEALTH
COUNTY HEALTH DEPARTMENT

By: _____
Director

APPROVED AS TO RISK:
STEVEN MAUCK
RISK MANAGER
RISK MANAGEMENT
COUNTY OF MONTEREY
APPROVED AS TO INDEMNITY/
INSURANCE LANGUAGE

By:  _____
By Risk Manager

Date: 5-6-16

CITY OF MONTEREY

By: _____
Michael McCarthy
City Manager

Date: _____