

AGREEMENT

I. INTRODUCTION

THIS AGREEMENT is entered into as of July 1, 2017, between the COUNTY OF TULARE, referred to as COUNTY, and CITY OF LINDSAY, referred to as CITY, with reference to the following:

II. RECITALS

- A. The CITY maintains and operates a police and fire protection organization within its boundaries; and
- B. CITY desires to contract with the COUNTY for COUNTY to provide 24 hour emergency dispatch and communication services; and
- C. The COUNTY incurs additional operating costs to provide those services to the CITY; and
- D. The COUNTY is agreeable to rendering such emergency dispatch and communication services as herein set forth; and
- E. Such contracts are authorized by Section 51300 et seq., section 54980 et seq., and section 6500 et seq. of the Government Code; and
- F. CITY and COUNTY agree to the termination of Tulare COUNTY Agreement No. 27284, effective June 30, 2016.

ACCORDINGLY, IT IS AGREED:

III. SPECIFIC TERMS

- 1. **TERM:** This Agreement shall become effective as of July 1, 2017, unless otherwise terminated and shall expire at 11:59 PM on June 30, 2019 as provided in this Agreement.
 - a. **SERVICES TO BE PERFORMED:** COUNTY agrees to provide emergency dispatch and communication to the CITY as follows:
 - (a) Answer and interrogate all emergency calls and callers seven (7) days per week, 24 hours per day.
 - (b) Alert appropriate personnel, as designated by CITY, for emergency response.
 - (c) Monitor response and dispatch additional personnel and/or

equipment as requested by Incident Commander.

2. **PAYMENT FOR SERVICES:** See attached **EXHIBIT A.**

IV. GENERAL TERMS

3. **INDEPENDENT CONTRACTOR STATUS:**

(a) This Agreement is entered into by both parties with the express understanding that COUNTY will perform all services required under this Agreement as an independent CONTRACTOR. Nothing in this Agreement shall be construed to constitute the COUNTY or any of its agents, employees or officers as an agent, employee or officer of CITY.

(b) COUNTY agrees to advise everyone it assigns or hires to perform any duty under this agreement that they are not employees of CITY. Subject to any performance criteria contained in this Agreement, COUNTY shall be solely responsible for determining the means and methods of performing the specified services and CITY shall have no right to control or exercise any supervision over COUNTY as to how the services will be performed. As COUNTY is not CITY's employee, COUNTY is responsible for paying all required state and federal taxes. In particular, CITY will not:

1. Withhold FICA (Social Security) from COUNTY'S payments.
2. Make state or federal unemployment insurance contributions on COUNTY'S behalf.
3. Withhold state or federal income tax from payments to COUNTY.
4. Make disability insurance contributions on behalf of COUNTY.
5. Obtain unemployment compensation insurance on behalf of COUNTY.

(c) Notwithstanding this independent COUNTY relationship, CITY shall have the right to monitor and evaluate the performance of COUNTY to assure compliance with this Agreement.

4. **COMPLIANCE WITH LAW:** COUNTY shall provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to COUNTY's employees, COUNTY shall comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

5. GOVERNING LAW: This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in Tulare County, California.

6. RECORDS AND AUDIT: COUNTY shall maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, COUNTY shall maintain complete and accurate records with respect to any payments to employees or subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, COUNTY shall make such records available within Tulare County to the Auditor of City and to his or her agents and representatives, for the purpose of auditing and/or copying such records, for a period of five (5) years from the date of final payment under this Agreement.

7. CONFLICT OF INTEREST:

(a) COUNTY agrees to, at all times during the performance of this Agreement, comply with the law of the State of California regarding conflicts of interests and appearance of conflicts of interests, including, but not limited to Government Code section 1090 et seq., and the Political Reform Act, Government Code section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including COUNTY for this purpose, from making any decision on behalf of CITY in which such officer, employee or consultant/COUNTY has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/COUNTY participates in or influences any CITY decision which has the potential to confer any pecuniary benefit on COUNTY or any business firm in which COUNTY has an interest, with certain narrow exceptions.

(b) COUNTY agrees that if any facts come to its attention which raise any questions as to the applicability of conflicts of interests laws, it will immediately inform the CITY designated representative and provide all information needed for resolution of this question.

(c) **INSURANCE:** Prior to approval of this Agreement by COUNTY, CITY shall file with the submitting department evidence of required insurance as set forth in **EXHIBIT C** attached. Insurance policies shall not be used to limit CITY's liability or to limit the indemnification provisions and requirements of this contract or

act in any way to reduce the policy coverage and limits available from the insurer(s).

8. INDEMNIFICATION: Each party to this Agreement shall hold harmless, defend and indemnify any other parties or their agent from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property arising from the negligent or intentionally wrongful acts or omissions of each party's own employees or agents in the performance of this Agreement. Any damages or claims resulting from or caused by a vehicle used pursuant to the terms of this Agreement shall be the sole responsibility of the lawful owner of the vehicle. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

9. INSURANCE: COUNTY and CITY, at its sole cost and expense, to protect it against liability arising from any and all negligent acts or incidents caused by its employees, each shall maintain during the term of this agreement Commercial General Liability and Professional Liability insurance in amounts not less than one million dollars (\$1,000,000) for each occurrence and two million dollars (\$2,000,000) in the aggregate, Automobile Liability (any auto) of one million dollars (\$1,000,000) per occurrence. If an annual aggregate applies it must be no less than two million dollars (\$2,000,000). COUNTY and CITY shall maintain evidence of workers' compensation and disability coverage as required by law. Coverage under such insurance shall be obtained from a carrier rated A or better by AM Best or a qualified program of self-insurance.

10. TERMINATION:

(a) Without Cause: COUNTY will have the right to terminate this Agreement without cause by giving thirty (30) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination. CITY will pay to the COUNTY the compensation earned for work performed and not previously paid for to the date of termination. CITY will not pay lost anticipated profits or other economic loss. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from COUNTY of any and all plans, specifications and estimates, and other documents prepared by COUNTY in accordance with this Agreement. No sanctions will be imposed.

(b) With Cause: This Agreement may be terminated by either party should the other party:

- (1) be adjudged a bankrupt, or
- (2) become insolvent or have a receiver appointed, or
- (3) make a general assignment for the benefit of creditors, or
- (4) suffer any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- (5) materially breach this Agreement.

In addition, either party may terminate this Agreement based on:

- (6) any material misrepresentation, by either party or anyone acting on either party's behalf, as to any matter related in any way to services provided under this agreement, or any other misconduct or circumstances which, in the sole discretion of
- (7) the other party, either impair the ability of the other party to competently provide the services under this Agreement, or expose the other party to an unreasonable risk of liability.

CITY will pay to the COUNTY the compensation earned for work performed and not previously paid for to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from COUNTY of any and all plans, specifications and estimates, and other documents prepared by COUNTY by the date of termination in accordance with this Agreement. CITY will not pay lost anticipated profits or other economic loss, nor will the CITY pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If this Agreement is terminated and the expense of finishing the COUNTY's scope of work exceeds the unpaid balance of the agreement, the COUNTY must pay the difference to the CITY. Sanctions taken will be possible rejection of future proposals based on specific causes of non performance.

(c) **Effects of Termination:** Expiration or termination of this Agreement shall not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where COUNTY's services have been terminated by the CITY, said termination will not affect any rights of the CITY to recover damages against the COUNTY.

(d) **Suspension of Performance:** Independent of any right to terminate this Agreement, the authorized representative of CITY for which COUNTY's services are to be performed, may immediately suspend performance by COUNTY, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal

by COUNTY to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

11. INDEMNIFICATION: CITY shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including COUNTY property, arising from, or in connection with, the performance by CITY or its agents, officers and employees under this Agreement. This indemnification specifically includes any claims that may be made against COUNTY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against COUNTY alleging civil rights violations by CITY under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on COUNTY for CITY's failure to provide form DE-542, when applicable. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

12. TERMINATION:

(a) Without Cause: COUNTY will have the right to terminate this Agreement without cause by giving thirty (30) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination. CITY will pay to the COUNTY the compensation earned for work performed and not previously paid for to the date of termination. CITY will not pay lost anticipated profits or other economic loss. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from COUNTY of any and all plans, specifications and estimates, and other documents prepared by COUNTY in accordance with this Agreement. No sanctions will be imposed.

(b) With Cause: This Agreement may be terminated by either party should the other party:

- (1) be adjudged a bankrupt, or
- (2) become insolvent or have a receiver appointed, or
- (3) make a general assignment for the benefit of creditors, or
- (4) suffer any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- (5) materially breach this Agreement.

In addition, COUNTY may terminate this Agreement based on:

- (6) material misrepresentation, either by COUNTY or anyone acting on COUNTY's behalf, as to any matter related in any way to CITY's retention of COUNTY, or
- (7) other misconduct or circumstances which, in the sole discretion of the COUNTY, either impair the ability of COUNTY to competently provide the services under this Agreement, or expose the CITY to an unreasonable risk of liability.

CITY will pay to the COUNTY the compensation earned for work performed and not previously paid for to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from COUNTY of any and all plans, specifications and estimates, and other documents prepared by COUNTY by the date of termination in accordance with this Agreement. CITY will not pay lost anticipated profits or other economic loss, nor will the CITY pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If this Agreement is terminated and the expense of finishing the COUNTY's scope of work exceeds the unpaid balance of the agreement, the COUNTY must pay the difference to the CITY. Sanctions taken will be possible rejection of future proposals based on specific causes of non performance.

(c) **Effects of Termination:** Expiration or termination of this Agreement shall not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where COUNTY's services have been terminated by the CITY, said termination will not affect any rights of the CITY to recover damages against the COUNTY.

(d) **Suspension of Performance:** Independent of any right to terminate this Agreement, the authorized representative of CITY for which COUNTY's services are to be performed, may immediately suspend performance by COUNTY, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by COUNTY to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

13. LOSS OF FUNDING: It is understood and agreed that if the funding is either discontinued or reduced for this project for the CITY, that the COUNTY shall have the right to terminate this Agreement. In such event, the affected party shall provide the other party with at least thirty (30) days prior written notice of such termination.

14. NOTICES:

(a) Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered or sent by first class mail, postage prepaid and addressed as follows:

COUNTY:

TULARE COUNTY
SHERIFF'S OFFICE
ATTN: PATROL CAPTAIN
2404 W. BURREL AVE.
VISALIA, CA 93291
559-636-4625

WITH A COPY TO:

TULARE COUNTY
SHERIFF'S OFFICE
ATTN: FISCAL MANAGER
2404 W. BURREL AVE.
VISALIA, CA 93291
559-636-4635

CITY:

CITY COUNCIL
CITY OF LINDSAY
PO BOX 369
LINDSAY, CA 93247
559-592-9244

(b) Notice personally delivered is effective when delivered. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

15. ASSIGNMENT/SUBCONTRACTING: Unless otherwise provided in this Agreement, CITY is relying on the personal skill, expertise, training and experience of COUNTY and COUNTY's employees and no part of this Agreement may be assigned or subcontracted by COUNTY without the prior written consent of CITY.

16. DISPUTE RESOLUTION: If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and

fees required by the mediator shall be split equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, either party may pursue litigation to resolve the dispute.

17. FURTHER ASSURANCES: Each party will execute any additional documents and perform any further acts that may be reasonably required to effect the purposes of this Agreement.

18. CONSTRUCTION: This Agreement reflects the contributions of all undersigned parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any alleged uncertainty or ambiguity.

19. HEADINGS: Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

20. NO THIRD-PARTY BENEFICIARIES INTENDED: Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

21. WAIVERS: The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

22. EXHIBITS AND RECITALS: The recitals and the exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

23. CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY:

This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties to be in conflict with any code or regulation governing its subject matter, only the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.

24. ENTIRE AGREEMENT REPRESENTED: This Agreement represents the entire agreement between COUNTY and CITY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

COUNTY OF TULARE

Date: _____ BY _____
Chairman, Board of Supervisors

ATTEST: MICHAEL C. SPATA
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By _____
Deputy Clerk

CONTRACTOR

Date: 7/11/2018 By [Signature]
TITLE City Manager

Date: 7/10/2018 By [Signature]
TITLE City Clerk

Corporations Code section 313 requires that contracts with a corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president (or another officer having general, operational responsibilities), and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer (or another officer having recordkeeping or financial responsibilities), unless the contract is accompanied by a certified copy of the corporation's Board of Directors' resolution authorizing the execution of the contract.

Approved as to Form
County Counsel

By [Signature]
Deputy 20177421

Date 8/8/18

EXHIBIT A

Tulare County Sheriff's Office Dispatch Services City of Lindsay Lindsay, CA	
Services	Provide 24-hour emergency dispatch and communication services.
Quarterly Costs	\$19,717
Annual Costs	\$78,868
<p>NOTE: Billing will be submitted on a quarterly basis for services performed during the quarter: January-March; April-June; July-September; and October-December. The County of Tulare will send the City of Lindsay an invoice by the 30th of the month following the close of each quarter. Payment will be due by the City to the County within 30 days after receipt of each invoice.</p>	