

**EMERGENCY DISPATCH AND COMMUNICATION SERVICES AGREEMENT
BETWEEN THE COUNTY OF TULARE AND
THE CITY OF EXETER**

THIS AGREEMENT ("Agreement") is entered into as of June 30, 2020, between the **COUNTY OF TULARE**, a political subdivision of the State of California ("COUNTY"), and the **CITY OF EXETER**, an incorporated city within the State of California ("CITY"). COUNTY and CITY are each a "Party" and together are the "Parties" to this Agreement, which is made with reference to the following:

- A.** CITY desires to contract with COUNTY for COUNTY to provide 24-hour emergency dispatch and communication services; and
- B.** COUNTY is agreeable to rendering such emergency dispatch and communication services as herein set forth.

ACCORDINGLY, THE PARTIES AGREE AS FOLLOWS:

1. TERM: This Agreement becomes effective as of July 1, 2020 and expires at 11:59 p.m. on June 30, 2021 unless earlier terminated in accordance with the provisions of this Agreement, or unless the Parties extend the term by a written amendment to this Agreement.

2. SCOPE OF SERVICES: See attached **Exhibit A**.

3. PAYMENT FOR SERVICES: See attached **Exhibit B**.

4. INSURANCE: COUNTY and CITY, each at their sole cost and expense, to protect against liability arising from any and all negligent acts or incidents caused by their employees, 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.

5. GENERAL TERMS AND CONDITIONS: See attached **Exhibit C**.

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

COUNTY:
Tulare County Sheriff's Office
Business Office, Fiscal Manager
833 S. Akers Street
Visalia, CA 93277

With a Copy to:
COUNTY ADMINISTRATIVE OFFICER
2800 W. Burrel Ave.
Visalia, CA 93291
Phone No.: 559-636-5005

Phone No.: (559) 802-9449
Fax No.: (559) 737-4283

Fax No.: 559- 733-6318

CITY:

City Administrator
City of Exeter
137 North F Street
Exeter, CA 93221
Phone No.: (559) 592-9244
Fax No.: (559) 592-3556

(b) Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail will be deemed received on the fifth calendar day after the date of mailing. Either Party may change the above address by giving written notice under this section.

7. AUTHORITY: The Parties represent and warrant that the individual(s) signing this Agreement on their behalves are duly authorized and have legal capacity to sign this Agreement and bind the Party to its terms. The Parties have each relied upon this representation and warranty in entering into this Agreement.

8. COUNTERPARTS: The Parties may sign this Agreement in counterparts, each of which is an original and all of which taken together form one single document.

[THIS SPACE LEFT BLANK INTENTIONALLY; SIGNATURES FOLLOW ON NEXT PAGE]

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

Date: 6/11/2020

CITY OF EXETER

By [Signature]

Print Name ADAM B. ENNIS

Title CITY ADMINISTRATOR

Date: 6/11/2020

By [Signature]

Print Name JOHN HALL

Title CHIEF OF POLICE

[Pursuant to Corporations Code section 313, County policy 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 a resolution of the corporation's Board of Directors authorizing the execution of the contract. Similarly, pursuant to California Corporations Code section 17703.01, County policy requires that contracts with a **Limited Liability Company** be signed by at least two managers, unless the contract is accompanied by a certified copy of the articles of organization stating that the LLC is managed by only one manager.]

COUNTY OF TULARE

Date: _____

By _____

Pete Vander Poel, Chairman, Board of Supervisors

sors

ATTEST: Jason T. Britt
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By _____
Deputy Clerk

Template approved as to form by
County Counsel on May 6, 2020
Matter # 2020440

**EXHIBIT A
SCOPE OF SERVICES
CITY OF EXETER**

- (a) COUNTY agrees to provide emergency dispatch and communication to CITY as follows:
 - i. Answer and interrogate all emergency calls and callers seven (7) days per week, 24 hours per day.
 - ii. Alert appropriate personnel, as designated by CITY, for emergency response.
 - iii. Monitor response and dispatch additional personnel and/or equipment as requested by Incident Commander.
- (b) COUNTY agrees to provide electronic access to CITY to the Sheriff's Application Data Systems (ADSI) for records/report writing application. CITY shall have full electronic access to all CITY index data. CITY access to ADSI shall be limited to law enforcement personnel including clerk and aides, as required.
- (c) CITY shall be responsible for obtaining a software license for the application. All cost incurred for the software license will be the responsibility of CITY.
- (d) Data from the programs will be stored on existing COUNTY servers and will account for a small percentage of usage on those servers.
- (e) Connectivity will be obtained via existing network infrastructure with little to no impact to the COUNTY.
- (f) There will be no cost to CITY to access the Sheriff's Application Data System records/report writing application.

**EXHIBIT B
PAYMENT FOR SERVICES
CITY OF EXETER**

1. The annual cost for all services is \$95,783.

2. Billing by COUNTY will be submitted on an annual basis for services performed during the year, July 1, 2020 to June 30, 2021. COUNTY will send CITY an invoice by July 31, 2020. Payment will be due by the CITY to the COUNTY within 30 days after receipt of the invoice.

EXHIBIT C
GENERAL TERMS AND CONDITIONS
EMERGENCY DISPATCH AND COMMUNICATIONS SERVICES AGREEMENT
CITY OF EXETER

1. LIMITATION OF LIABILITY:

(a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH 1(c), IN NO EVENT SHALL COUNTY BE LIABLE UNDER THIS AGREEMENT TO CITY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, OR LOST REVENUES, ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT CITY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

(b) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH 1(c), IN NO EVENT SHALL COUNTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID, AND AMOUNTS ACCRUED BUT NOT YET PAID, TO COUNTY PURSUANT TO THIS AGREEMENT IN THE 12-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM, OR \$95,783, WHICHEVER IS LESS.

(c) THE LIMITATIONS AND EXCLUSIONS SET FORTH IN THIS PARAGRAPH 1 SHALL NOT APPLY TO: (1) DAMAGES OR LIABILITIES ARISING FROM A MATERIAL BREACH OF PARAGRAPH 8 (CONFIDENTIALITY); (2) DAMAGES OR LIABILITIES ARISING FROM THIRD-PARTY CLAIMS THAT ARE SUBJECT TO INDEMNIFICATION UNDER PARAGRAPH 5; AND (3) DAMAGES OR LIABILITIES ARISING FROM WILLFUL MISCONDUCT.

2. INDEPENDENT CONTRACTOR STATUS: The Parties enter into this Agreement with the express understanding that COUNTY will perform all services required under this Agreement as an independent contractor. The Parties agree that the COUNTY and any of its agents, employees, or officers cannot be considered agents, employees, or officers of CITY. Subject to any performance criteria contained in this Agreement, COUNTY will be solely responsible for determining the means and methods of performing the specified services and CITY will have no right to control or exercise any supervision over COUNTY as to how the COUNTY will perform the services.

3. GOVERNING LAW: The laws of the State of California, without reference to California conflict of laws principles, govern this Agreement and its interpretation. The Parties agree that this Agreement is made in and will be performed in Tulare County, California.

4. CONFLICT OF INTEREST:

(a) At all times during the performance of this Agreement, the Parties must 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 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, from making any decision on behalf of the public entity in which the officer, employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influences any decision that has the potential to confer any pecuniary benefit on the consultant/contractor or any business firm in which consultant/contractor has an interest, with certain narrow exceptions.

(b) The Parties agree that if any facts come to their attention that raise any questions as to the applicability of conflicts of interests laws, then the Party will immediately inform the other Party and provide all information needed for resolution of this question.

5. INDEMNIFICATION AND DEFENSE:

(a) To the fullest extent permitted by law, CITY shall defend, indemnify and hold COUNTY, its officers, employees, representatives, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees and costs), or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees and costs, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of CITY, its officers, employees, or agents.

(b) To the fullest extent permitted by law, COUNTY shall defend, indemnify and hold CITY, its officers, employees, representatives, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees and costs), or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees and costs, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of COUNTY, its officers, employees, or agents .

6. TERMINATION:

(a) **Without Cause:** COUNTY may terminate this Agreement without cause by giving ninety (90) days' prior written notice to CITY of its intention to terminate under this provision, specifying the date of termination.

(b) **With Cause:** Either Party may terminate this Agreement immediately, by written notice to the other 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 that remains unsatisfied for 30 days, and that would substantially 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 CITY or anyone acting on CITY'S behalf, as to any matter related in any way to subject matters of this Agreement, or

(7) Other misconduct or circumstances that, in the sole discretion of COUNTY, exposes COUNTY to an unreasonable risk of liability.

For any of the occurrences except item (5) above, termination may be effected upon written notice by the terminating Party specifying the date of the termination. Upon a material breach, the Agreement may be terminated after the failure of the defaulting Party to remedy the breach to the satisfaction of the non-defaulting Party within 5 days of written notice specifying the breach. If the breach is not remedied within that 5-day period, then the non-defaulting Party may terminate this Agreement on further written notice specifying the date of termination. If the nature of the breach is such that it cannot be cured within a 5- day period, then the defaulting Party may submit a written proposal within that period which sets forth a specific means to resolve the default. If the non-defaulting Party consents to that proposal in writing, which consent may not be unreasonably withheld, then the defaulting Party must immediately embark on its plan to cure the default or breach. If the default or breach is not cured within the time agreed, then the non-defaulting Party may terminate this Agreement upon written notice specifying the date of termination. CITY will pay to COUNTY the compensation earned for work satisfactorily 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.

(c) If this Agreement is terminated prior to the expiration of the term or any extension thereof, COUNTY will reimburse CITY for any and all payment(s) advanced, with such reimbursement prorated based on the remaining period left in the term (or extension period).

(d) **Effects of Termination:** Expiration or termination of this Agreement will 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.

7. TIME OF ESSENCE: The Parties agree that time is of the essence under this Agreement, unless they agree otherwise in writing.

8. CONFIDENTIALITY: CITY may not use or disclose any information it receives from COUNTY under this Agreement that COUNTY has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by COUNTY. Unless required to do so by law, including, but not limited to, the Ralph M. Brown Act or the California Public Records Act, COUNTY may not disclose to third parties any information it receives from CITY that CITY has previously identified as confidential. If COUNTY determines that it must disclose any information that CITY previously identified as confidential, then it shall promptly give CITY written notice of its intention to disclose such information and the authority for such disclosure. CITY shall have period of five (5) calendar days thereafter within which to seek a protective court order to prevent such disclosure or to notify COUNTY that it will not seek such an order. COUNTY shall cooperate with CITY in any efforts to seek such a court order. COUNTY shall not disclose the information until the five (5) day period has expired without a response from CITY, or CITY has notified COUNTY that it will not seek such an order, or CITY has sought and a court has declined to issue a protective order

for such information. If CITY seeks a protective order for such information, CITY shall defend and indemnify COUNTY from any and all loss, injury, or claim arising from COUNTY'S withholding of the information from the requestor. This includes any attorney's fees awarded to the requestor. The duty of COUNTY and CITY to maintain confidentiality of information under this section continues beyond the term of this Agreement.

9. DISPUTES AND DISPUTE RESOLUTION: The Parties shall continue with their responsibilities under this Agreement during any dispute. If a dispute arises out of or relating to this Agreement, or the breach of the Agreement, and if the dispute cannot be settled through negotiation, then the Parties agree first to try in good faith to settle the dispute by non-binding mediation, to be held in Tulare County, California, before resorting to litigation or some other dispute resolution procedure, unless the Parties mutually agree otherwise. The Parties must mutually select the mediator, but in case of disagreement, then the Parties will select the mediator by lot from among two nominations provided by each Party. The Parties will split equally all costs and fees required by the mediator; otherwise each Party will bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, then either Party may pursue litigation to resolve the dispute.

10. 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.

11. CONSTRUCTION: This Agreement reflects the contributions of all Parties and so the provisions of Civil Code section 1654 will not apply to address and interpret any alleged uncertainty or ambiguity.

12. 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.

13. 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.

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

15. ORDER OF PRECEDENCE: In the event of any conflict or inconsistency between or among the body of the Agreement (which includes this Exhibit C "General Terms and Conditions") and any other Exhibit, Schedule, or Attachment, then the terms and conditions of the body of the Agreement shall prevail.

16. 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 will 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, then the Agreement may be terminated at the option of the affected Party. In all other cases, the remainder of the Agreement will continue in full force and effect.

17. ENTIRE AGREEMENT: This Agreement represents the entire agreement between CITY and COUNTY as to its subject matter and no prior oral or written understanding will be of any force or effect. No part of this Agreement may be modified without the written consent of both Parties.

18. RECYCLED PAPER CONTENT: To the extent services under this Agreement include printing services, pursuant to Public Contract Code section 22153 the Parties shall use paper that meets the recycled content requirements of Public Contract Code section 12209.