

MUTUAL AID AGREEMENT for the COVID-19 Vaccination Effort

This Mutual Aid Agreement (“AGREEMENT”) between the County of Orange, a political subdivision of the State of California, (“COUNTY” or “LEAD AGENCY”) and _____ (“MUTUAL AID PARTNER” or “PROVIDING JURISDICTION”) pertaining to mutual aid assistance provided under the Orange County Operational Area Agreement (“OAA”) is made and entered into as of _____, 2021. COUNTY and MUTUAL AID PARTNER are individually referred to as “PARTY” and collectively referred to as “PARTIES.”

NOTE: Use of such an agreement does not guarantee state or federal reimbursement.

WHEREAS, this event and associated conditions will collectively be referred to as the Novel Coronavirus COVID-19 Vaccination Effort (“COVID-19 Vaccination Effort”); and

WHEREAS, COVID-19 is a world-wide pandemic resulting in significant health and economic impacts across the globe;

WHEREAS, on February 26, 2020, the Orange County Health Officer declared a Health Emergency;

WHEREAS, on February 26, 2020, the Chair of the Emergency Management Council issued a Proclamation of Local Emergency pursuant to the requirements of the California Emergency Services Act, which was ratified by the Board of Supervisors on March 2, 2020;

WHEREAS, on March 4, 2020, the Governor of the State of California proclaimed a state of emergency in response to the COVID-19 pandemic pursuant to the California Emergency Services Act;

WHEREAS, on March 13, 2020, the President of the United States issued a Major Disaster Declaration for California (FEMA-4482-DR-CA) in response to the COVID-19 pandemic pursuant to section 501 (b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the “Stafford Act”). This action made the State of California, local and Indian tribal governments and certain private non-profit (PNP) organizations eligible to apply for reimbursement from the Federal Emergency Management Agency (FEMA) Public Assistance (PA) Program¹.

WHEREAS, the COUNTY has implemented a vaccination effort (“COVID-19 Vaccination Effort”) intended to vaccinate all eligible community members free-of-charge to curtail the impacts of COVID-19 on residents throughout the County;

¹ See <https://www.fema.gov/assistance/public/program-overview> for more information.

WHEREAS, residents in County unincorporated areas and those residing within the boundaries of incorporated cities within the County of Orange are equally impacted by COVID-19 and will equally benefit from receipt of COVID-19 vaccinations;

WHEREAS, implementation of the COVID-19 Vaccination Effort is an intensive effort requiring significant resources and coordination across jurisdictions on a day-to-day basis;

WHEREAS, the County formed the Operation Independence Incident Management Team (IMT) to coordinate the planning and operation of COVID-19 regional vaccination sites and mobile clinics, including all staffing scheduling and obtaining services and supplies, equipment and facilities.

WHEREAS, COUNTY is seeking resources including but not limited to staffing, services and supplies, equipment and facilities to ensure the safe, expeditious and effective operation of COVID-19 Vaccination Effort vaccination sites;

WHEREAS, MUTUAL AID PARTNER is interested in providing staff to assist in the COVID-19 Vaccination Effort;

WHEREAS, COUNTY and MUTUAL AID PARTNER wish to clarify the terms by which Mutual Aid assistance and reimbursement will be provided by the Parties in implementing the COVID-19 Vaccination Effort;

WHEREAS, COUNTY and MUTUAL AID PARTNER are members of the Orange County Operational Area (OA) for the coordination of Mutual Aid Emergency Response as provided for under the California Emergency Services Act. The Orange County Operational Area Agreement describes the cooperative and mutual handling of duties and responsibilities within Orange County related to disaster preparedness, response and recovery, including the coordination of the emergency functions of the Operational Area with all other public agencies, corporations, organizations, and affected private persons within the Operational Area;

NOW, THEREFORE, COUNTY and MUTUAL AID PARTNER agree to the following terms to guide their dealings as they pertain to participation in the COVID-19 Vaccination Effort.

A. Limitation of Liability

1. Indemnification

- i. By MUTUAL AID PARTNER: MUTUAL AID PARTNER agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies which COUNTY’S Board of Supervisors acts as the governing Board (“COUNTY Indemnitees”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by MUTUAL AID PARTNER pursuant to this Agreement. If judgment is entered against MUTUAL AID PARTNER and COUNTY by a court

of competent jurisdiction because of the concurrent active negligence of COUNTY or COUNTY Indemnitees, MUTUAL AID PARTNER and COUNTY agree that liability will be apportioned as determined by the court. Neither PARTY shall request a jury apportionment.

- ii. By COUNTY: COUNTY agrees to indemnify MUTUAL AID PARTNER, and hold MUTUAL AID PARTNER, its elected and appointed officials, officers, employees, agents and those special districts and agencies which COUNTY's Board of Supervisors acts as the governing Board ("MUTUAL AID PARTNER Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by COUNTY pursuant to this Agreement. If judgment is entered against COUNTY and MUTUAL AID PARTNER by a court of competent jurisdiction because of the concurrent active negligence of MUTUAL AID PARTNER or MUTUAL AID PARTNER Indemnitees, COUNTY and MUTUAL AID PARTNER agree that liability will be apportioned as determined by the court. Neither PARTY shall request a jury apportionment.

2. Waiver of Claims

- i. Each PARTY hereto agrees to waive all claims against all other PARTIES hereto for any loss, damage, personal injury or death occurring in consequence of the performance of this Mutual Aid Agreement; provided, however, that such claim is not a result of gross negligence or willful misconduct by a PARTY hereto or its personnel.
- ii. Each PARTY to this Agreement waives all claims against all other PARTIES to this Agreement for compensation for any loss, damage, personal injury, or death occurring to personnel and/or equipment as a consequence of the performance of this agreement.

3. Governmental Immunity:

To the fullest extent authorized by law, all activities performed under this agreement are deemed to be governmental functions. Neither COUNTY or MUTUAL AID PARTNER, nor their employees, except in cases of willful misconduct, gross negligence, or bad faith shall be liable for the death of or injury to persons, or for damage to property when complying or attempting to comply with this Agreement.

4. Insurance:

- i. Each PARTY shall be responsible for providing insurance for its own employees and representatives.
- ii. Claims for injuries incurred while participating in the COVID-19 Vaccination Effort will be submitted under the Workers Compensation policy of the injured PARTY's employer. (i.e.,

COUNTY employees/volunteers will submit under the COUNTY's policy and MUTUAL AID PARTNER employees/volunteers will submit under the MUTUAL AID PARTNER's policy.)

B. Billing and Reimbursement

1. Reimbursement Rules

Regardless of the source of funds by which Vaccination Effort Reimbursement Requests are reimbursed, the PARTIES agree for the sake of consistency and accuracy:

- i. To abide by the principles set forth in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as Amended (Stafford Act), Title 42 of the United States Code (U.S.C.) § 5121 et seq.; Title 44 of the Code of Federal Regulations (C.F.R.), Part 206; and 2 C.F.R., Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- ii. To be guided by the concepts outlined within FEMA Public Assistance Program and Policy Guide (Exhibit 2).
- iii. To be further guided by COVID-19-specific response and recovery guidance issued by federal and state agencies related to vaccination efforts.

2. MUTUAL AID PARTNER Responsibilities:

- i. Submit Vaccination Effort Reimbursement Requests to COUNTY at a minimum of once every 30 days according to schedule provided by COUNTY.
- ii. Submit all Vaccination Effort Reimbursement Requests in the format attached to this Agreement (Exhibit 1) or as otherwise may be required by the COUNTY for services rendered by MUTUAL AID PARTNER representatives. Failure to submit timely Vaccination Effort Reimbursement Requests in the recommended format may result in a denial of reimbursement and require resubmittal of Request.
- iii. Ensure that, for each Vaccination Effort Reimbursement Request submitted, all COVID-19 Vaccination Effort direct labor expenditures (includes labor burden and excludes overhead) are documented and certified by the MUTUAL AID PARTNER to be in compliance with COUNTY requirements.
- iv. Ensure that for each Vaccination Effort Reimbursement Request submitted, all personnel resources are reconciled with COUNTY vaccination site personnel records.
- v. Exclude from each Vaccination Effort Reimbursement Request incidental expenditures such as mileage, meals, lodging, etc.

- vi. Provide any additional documentation requested by COUNTY in support of the MUTUAL AID PARTNER's Vaccination Effort Reimbursement Request.
- vii. Maintain records for audit, as described within the FEMA Public Assistance Program and Policy Guide (Exhibit 2). MUTUAL AID PARTNER shall make records available for inspection upon request of the COUNTY.
- viii. Remedy any audit finding related to Vaccination Effort Reimbursement Requests, including any audit finding identified under the Improper Payments Elimination and Recovery Improvement Act (IPERIA).
- ix. MUTUAL AID PARTNER agrees to provide sufficient documentation, as defined by the COUNTY, to ensure adequate validation of costs for reimbursement. As necessary during this public health crisis, MUTUAL AID PARTNER will assist with the COVID-19 Vaccination Effort and ensure that cost documentation is submitted to the COUNTY for review and verification to ensure County has complete cost documentation to support County reimbursement requests.

3. COUNTY Responsibilities

- i. Conduct an initial review for completeness of MUTUAL AID PARTNER Vaccination Effort Reimbursement Request and supporting documentation for consistency with Reimbursement Rules (Section B.1 herein).
- ii. Submit MUTUAL AID PARTNER Vaccination Effort Reimbursement Request to third party reimbursement funding grantors within 30 days of receipt of complete request, including backup documentation, from MUTUAL AID PARTNER.
- iii. Monitor the status of the MUTUAL AID PARTNER Vaccination Effort Reimbursement Request and inform the MUTUAL AID PARTNER of progress.
- iv. Work with MUTUAL AID PARTNER to resolve any issues with Vaccination Effort Reimbursement Requests.
- v. Reimburse MUTUAL AID PARTNER when the COUNTY has determined that sufficient documentation has been received and reimbursement funds are available.
- vi. In response to auditing or monitoring requests made by third party reimbursement funding grantors, COUNTY will work with MUTUAL AID PARTNER to ensure adequate documentation is gathered to effectively respond to requests for information.

4. Modifications

This agreement is subject to program modifications that may be made to Reimbursement Rules by state and federal legislative and regulatory authorities.

C. Disputes

Any controversy or claim between the PARTIES arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the Rules of the American Arbitration Association and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

D. Termination

Any PARTY may withdraw from this Agreement upon 30 days written notice.

MUTUAL AID PARTNER:

By _____
(Signature)

Name:

Title:

Agency:

Date:

COUNTY OF ORANGE

By _____
(Signature)

Name:

Title:

Date: