

# 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 are eligible to apply for reimbursement from the Federal emergency Management Agency (FEMA) Public Assistance (PA) Program<sup>1</sup>.

**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;

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<sup>1</sup> 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**, 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 are members of the Orange County Operational Area (OAA) for the coordination of Mutual Aid Emergency Response as provide for under the California Emergency Services Act; and

**WHEREAS**, FEMA and Cal OES have determined that staff hours expended on the COVID-19 Vaccination Program are eligible for reimbursement on straight-time and overtime rates;

**WHEREAS**, Section 6.1 of the Orange County Operational Area Agreement provides that COUNTY and each Subdivision are each individually responsible for developing, submitting, and receiving their own emergency aid, loans or grants from any source including local, state, and federal governments, and that each is individually responsible for the timeliness, accuracy, and compliance of its own expenditures submitted for reimbursement through such mechanisms;

**WHEREAS**, as related to the COVID-19 Vaccination Effort, FEMA and Cal OES have directed that the COUNTY operate as the Lead Agency and submit reimbursement claims on behalf of other jurisdictions and entities providing personnel or resources to the COVID-19 Vaccination Program vaccination sites;

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

**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. MUTUAL AID PARTNER Responsibilities:

- i. Submit Public Assistance Reimbursement Requests to COUNTY at a minimum of once every 30 days according to schedule provided by COUNTY.
- ii. Submit all Public Assistance Reimbursement Requests in the format attached to this Agreement (Exhibit 1) or as otherwise may be required by the County, FEMA or Cal OES for services rendered by MUTUAL AID PARTNER representatives. Failure to submit timely Reimbursement Requests in the recommended format may result in a denial of reimbursement and require resubmittal of Request.
- iii. Ensure that each Public Assistance Reimbursement Request complies with FEMA Public Assistance Program and Policy Guide (Exhibit 2).
- iv. Ensure that, for each Public Assistance 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, Cal OES, and FEMA requirements.
- v. Ensure that for each Public Assistance Reimbursement Request submitted, all personnel resources are reconciled with COUNTY vaccination site personnel records.
- vi. Exclude from each Public Assistance Reimbursement Request incidental expenditures such as mileage, meals, lodging, etc.
- vii. Provide any additional documentation requested by COUNTY, FEMA or Cal OES in support of the MUTUAL AID PARTNER's Public Assistance Reimbursement Request.

- viii. 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, FEMA or Cal OES.
- ix. Remedy any audit finding related to Public Assistance Reimbursement Requests disallowed by FEMA or Cal OES, including any audit finding identified under the Improper Payments Elimination and Recovery Improvement Act (IPERIA).
- x. MUTUAL AID PARTNER agrees that COUNTY shall not be directly liable for MUTUAL AID PARTNER incurred costs or expenses associated with MUTUAL AID PARTNER's participation in the COVID-19 Vaccination Effort and that reimbursement shall be based solely on what has been approved for reimbursement by FEMA and Cal OES.

## 2. COUNTY Responsibilities

- i. Conduct an initial review for completeness of MUTUAL AID PARTNER Public Assistance Reimbursement Request and supporting documentation prior to submitting the Reimbursement Request to Cal OES and FEMA.
- ii. Submit MUTUAL AID PARTNER Public Assistance Reimbursement Request within 30 days of receipt of complete request, including backup documentation, from MUTUAL AID PARTNER.
- iii. Monitor the status of the MUTUAL AID PARTNER Public Assistance Reimbursement Request and inform the MUTUAL AID PARTNER of progress.
- iv. Facilitate between FEMA, Cal OES, and MUTUAL AID PARTNER to resolve any issues with the Public Assistance Reimbursement Request.
- v. Transfer authorized Reimbursement payments to MUTUAL AID PARTNER upon receipt from Cal EOS.
- vi. Notify the MUTUAL AID PARTNER of any auditing or monitoring requests from Cal OES or FEMA and facilitate direct communication between the auditor and MUTUAL AID PARTNER.

## 3. Modifications

This agreement is subject to program modifications that may be made by FEMA or Cal OES

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:

APPROVED AS TO FORM  
OFFICE OF COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

By: **Paul Albarian**  
Deputy

Digitally signed by Paul Albarian  
DN: cn=Paul Albarian, ou=County Counsel, ou=OC, email=Paul.Albarian@occc.org, c=US  
Date: 2021.03.04 15:50:54 -0800

**COUNTY OF ORANGE**

By *Michelle Anderson*  
(Signature)

Name: Michelle Anderson

Title: Interim Director, Emergency Management Division

Date: March 10, 2021

Date: 3-4-2021