

**AGREEMENT BETWEEN COUNTY OF TULARE
AND CURATIVE MEDICAL ASSOCIATES INC. FOR CONTRACTED
CLINICAL & SUPPORT STAFF TO ADMINISTER COVID-19 VACCINES**

This Agreement ("Agreement") is entered into as of March 15, 2021 between the County of Tulare, a political subdivision of the State of California ("COUNTY"), and Curative Medical Associates Inc. ("CONTRACTOR"). COUNTY and CONTRACTOR are each a "Party" and together are the "Parties" to this Agreement, which is made with reference to the following:

WHEREAS, in response to the spread of the novel coronavirus (COVID-19) to the State of California, the Governor issued a Proclamation of State of Emergency dated March 4, 2020 and Executive Order (EO) N-25 dated March 12, 2020 (collectively, and as may be further expanded from time to time, the "State Emergency Declaration and Executive Order");

WHEREAS, in response to the spread of COVID-19 to the County of Tulare, the Health Officer issued a Declaration of Local Health Emergency dated March 11, 2020 ("Local Emergency Declaration");

WHEREAS on December 11, 2020, the United States Food and Drug Administration issued an Emergency Use Authorization for the Pfizer-BioNTech COVID-19 Vaccine for distribution throughout the United States;

WHEREAS on December 18, 2020, the United States Food and Drug Administration issued an Emergency Use Authorization for the Moderna COVID-19 Vaccine for distribution throughout the United States for individuals 18 years of age and older;

WHEREAS on February 27, 2021, the United States Food and Drug Administration issued an Emergency Use Authorization for the Janssen COVID-19 Vaccine for distribution throughout the United States;

WHEREAS, more COVID-19 Vaccines may receive Emergency Use Authorizations in 2021;

WHEREAS the State of California has stated that COVID-19 vaccination is one of the most important tools to end the COVID-19 pandemic and expects to vaccinate most Californians in all 58 counties by summer of 2021;

WHEREAS the Pfizer-BioNTech COVID-19 Vaccine, Moderna COVID-19 Vaccine and Janssen COVID-19 Vaccine (together, and in general, "COVID-19 Vaccines") have been distributed to the COUNTY for administration;

WHEREAS on March 23, 2021, the County Executed a Memorandum of Understanding with the California Government Operations Agency (CGOA) pertaining to administration of Covid-19 Vaccines (CGOA MOU), and this memorandum provides that the County, using its discretion and subject to Agency approval, may distribute portions of its vaccine allocation to County-supported sites;

TULARE COUNTY AGREEMENT NO. 30267

WHEREAS in an effort to administer COVID-19 Vaccines throughout the County of Tulare in a timely and efficient manner, the COUNTY requests the services of CONTRACTOR's clinical and support staff pursuant to Government Code section 8659; and

WHEREAS CONTRACTOR is willing to provide the services of its clinical and support staff to assist in the administration the COVID-19 Vaccine throughout Tulare County;

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises herein contained, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, COUNTY and CONTRACTOR hereby agree to all of the following:

1. TERM OF AGREEMENT AND TERMINATION

This Agreement shall be in effect until both of the following occur (a) termination of the State Emergency Declaration; and (b) termination of the Local Emergency Declaration. This Agreement may be terminated earlier pursuant to the terms set forth below.

2. DUTIES OF CONTRACTOR

The CONTRACTOR's duties and responsibilities under this Agreement are set forth in Exhibit A, "Scope of Work and Reimbursement".

3. DUTIES OF COUNTY

The COUNTY shall do all of the following:

- a. Supervise assigned contracted clinical and support staff performing the assigned work in accordance with the COUNTY's policies and, procedures,
- b. Provide contracted clinical and support staff with an orientation to the COUNTY's policies and procedures necessary for contracted clinical and support staff to meet the COUNTY's expectations,
- c. Retain responsibility for management of care of the COUNTY's clients and for ensuring that services provided by the COUNTY, including services by contracted clinical and support staff, are furnished in accordance with applicable standards,
- d. Furnish, at the cost of the COUNTY, such equipment, supplies, drugs and other items necessary for contracted clinical and support staff to perform the services provided under this Agreement,
- e. Furnish, at the cost of the COUNTY, personal protective equipment required to perform contracted clinical and support staff services under this Agreement,
- f. Notify the CONTRACTOR within 24 hours, in writing, of any of the following:
 - i. unexpected incidents, errors and sentinel events that involve contracted clinical or support staff; or

- ii. any occupational safety hazards or events that involve contracted clinical or support staff; or
- iii. unsatisfactory job performance by contracted clinical or support staff due to incompetence, negligence, or misconduct; or
- iv. Any complaint or claim raised by or against contracted clinical or support staff related to harassment, discrimination and/or retaliation under applicable state or federal laws; and

4. NO GAURANTEE OF VACCINE SUPPLY

The CGOA MOU specifically declines to provide any minimum vaccine allocation for COUNTY. Therefore, COUNTY cannot provide any guarantee to CONTRACTOR that it will have vaccine supply available for any scheduled vaccine event. COUNTY reserves the right to cancel any scheduled vaccine distribution event, with no penalty to COUNTY, in the event that COUNTY does not have adequate vaccine supplies for the event. The failure to hold a scheduled vaccine distribution event by COUNTY due to lack of vaccine supply shall not be considered a breach of this Agreement.

5. REIMBURSEMENT

In consideration for the services provided to the COUNTY under this Agreement, COUNTY shall reimburse CONTRACTOR in accordance with the provisions set forth in Exhibit A, "Scope of Work and Reimbursement."

6. STATUS OF AND RESPONSIBILITY OVER EMPLOYEES

Notwithstanding any other language in this Agreement, each Party's employees shall remain its own employees, under each Party's direction and control, with no impact on their salaries or benefits. Each Party is solely responsible to pay the salary and benefits of its own employees, including ensuring accurate timekeeping and payroll. This Agreement shall not establish any joint employer relationship between any of the Parties, nor any employment relationship between the Parties for any purposes, including, but not limited to, the application of the Fair Labor Standards Act; the California Labor Code and Industrial Welfare Commission Wage Orders; Federal Insurance Contribution Act; the Social Security Act; the Federal Unemployment Tax Act; the provisions of the Internal Revenue Code; the State Revenue and Taxation Code relating to income tax withholding; and the Workers' Compensation Insurance Code.

7. TERMINATION OF AGREEMENT

The COUNTY and the CONTRACTOR hereby agree that during the term of this Agreement and any extensions hereof, this Agreement may be terminated: (i) at will by either Party with at least 10 (ten) days prior notice specifying the effective date of termination; (ii) immediately by mutual consent of both Parties; or (iii) immediately by the COUNTY upon the occurrence of any of the following events:

- a. Suspension, revocation, cancellation, or limitation of the CONTRACTOR's right to provide any services whether because of loss of the COUNTY's license or any other reason.

- b. Failure or refusal by the CONTRACTOR to perform diligently its duties under this Agreement or to comply with the rules, regulations or other policies established by state and federal law.
- c. The termination of both the State of Emergency Declaration and the Local Emergency Declaration.

8. LOSS OF FUNDING

It is understood and agreed that if the COUNTY'S funding is either discontinued or reduced for the services to be provided hereunder, then the COUNTY will have the right to terminate this Agreement immediately. Such termination shall be without penalty, liability or expense to the COUNTY.

9. RECORDS AND AUDIT

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

10. INDEMNIFICATION

CONTRACTOR shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against third party 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 CONTRACTOR or its agents, officers and employees under this Agreement. This indemnification specifically includes, but is not limited to, 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 violations by CONTRACTOR under Government Code sections 12920 et seq. (California Fair Employment and Housing Act) and similar federal laws. 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. Except that, in no event shall anything herein be construed as indemnification to the extent the damages are (a) the proximate result of conduct or actions within the scope immunity and other protections of the PREP Act, or California Executive Orders or any other applicable law, regulation, rule or legal basis affording protection, immunity or avoidance of liability for such conduct or actions, or (b) the result of exposure to, or contraction of, COVID-19 resulting from any cause whatsoever, unless such exposure to, or contraction of, COVID-19 is the proximate result of the willful misconduct of the indemnifying party. IN NO EVENT SHALL ANY PROVISION IN THIS AGREEMENT BE CONSTRUED AS A WAIVER OF STATUTORY IMMUNITY PROVIDED TO CURATIVE UNDER THE PREP ACT ANY APPLICABLE STATE OF CALIFORNIA EXECUTIVE ORDERS.

COUNTY shall likewise hold harmless, defend and indemnify CONTRACTOR, its agents, officers and employees from and against third party liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property arising from, or in connection with, the performance by COUNTY or its agents, officers and employees under this Agreement. This indemnification specifically includes, but is not limited to, any claims that may be made against CONTRACTOR by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against CONTRACTOR alleging violations by COUNTY under Government Code sections 12920 et seq. (California Fair Employment and Housing Act) and similar federal laws. 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.

11. INSURANCE

Each Party, at its sole cost and expense, shall carry insurance or cause such insurance to be provided, or self-insure, its activities in connection with this Agreement, and obtain, keep in force and maintain, insurance or equivalent programs of self-insurance for general liability, workers' compensation, automobile liability, and professional liability coverage adequate to cover potential liabilities from the performance of its duties under this Agreement. Each Party is responsible for its own self-insured retentions and deductibles. Each Party agrees to provide the other Parties thirty (30) days' advance written notice of any cancellation, termination, or lapse of any of the insurance or self-insurance coverage described in this Agreement. Failure to maintain insurance as required in this Agreement is a material breach and grounds for termination of the Agreement.

12. NON-DISCRIMINATION CLAUSE

During the performance of this Agreement, the COUNTY shall not discriminate unlawfully against any contracted clinical or support staff because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The CONTRACTOR shall insure that the evaluation and treatment of contracted clinical and support staff are free of such discrimination.

13. INDEPENDENT RELATIONSHIP

None of the provisions of this Agreement are intended to create, nor shall they be deemed or construed to create, any relationship between the COUNTY and the CONTRACTOR other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of this Agreement. Each Party is solely responsible for its own acts or omissions to act.

14. NOTICES

All notices required or permitted to be given pursuant to this Agreement shall be sufficient if in writing and hand delivered to the COUNTY or the CONTRACTOR or if

forwarded by registered or certified mail, return receipt requested.

15. ASSIGNABILITY

Neither this Agreement nor any right or interest hereunder shall be assignable by the COUNTY or the CONTRACTOR without the prior written consent of the other Party.

16. AMENDMENT

No amendment or modification of this Agreement shall be effective unless or until executed in writing by the parties hereto.

17. WAIVER OF BREACH

The waiver by any Party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver or breach of any other provision or any subsequent breach of any Party.

18. NO THIRD PARTY BENEFICIARIES INTENDED

Unless specifically set forth in the Agreement, the Parties do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy. This Section survives the termination of the Agreement.

19. GOVERNING LAW

The construction and interpretation of this Agreement shall at all times and in all respects be governed by the laws of the State of California. The Parties agree that this Agreement is made in and will be performed in Tulare County, California. This Section survives the termination of the Agreement.

20. SEVERABILITY

If any provision of the Agreement shall be determined to be invalid, illegal or unenforceable in whole or in part, neither the validity of the remaining part of such provision nor the validity of any other provision of this Agreement shall in any way be affected thereby.

21. 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.

22. DRUG-FREE WORKPLACE POLICY

CONTRACTOR acknowledges that under the Federal Drug-Free Workplace Act of 1989 and the California Drug-Free Workplace Act of 1990, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on COUNTY premises.

23. COMPLIANCE WITH LAW

The Parties must comply with all applicable federal, state, and local laws, regulations, and directives in performing their obligations under this Agreement.

24. ENTIRE AGREEMENT

This Agreement and the exhibits and attachments to this Agreement together constitute the entire agreement and understanding by and between the COUNTY and the CONTRACTOR with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. No representations, promises, agreements or understandings, written or oral, not herein contained shall be of any force and effect. No change or modification hereof shall be valid or binding unless the same is in writing and signed by the party intended to be bound.

25. 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.

26. AUTHORITY

The Parties represent that the individual(s) signing this Agreement on its behalf are duly authorized and have legal capacity to sign this Agreement and bind CONTRACTOR to its terms. CONTRACTOR acknowledges that COUNTY has relied upon this representation and warranty in entering into this Agreement.

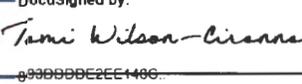
27. COUNTERPARTS

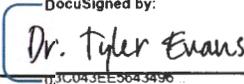
This Agreement may be executed by the Parties in any number of counterparts, which are defined as duplicate originals, including by facsimile or electronic mail in a portable document format (.pdf), all of which taken together shall be construed as one Agreement.

SIGNATURES FOLLOW ON NEXT PAGE

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their authorized representatives:

CONTRACTOR: CURATIVE MEDICAL ASSOCIATES INC.

Date: 6/3/2021 By 
DocuSigned by: Tami Wilson-Ciranna
0930990E2EE148C
 Print Name Tami Wilson-Ciranna
 Title Secretary

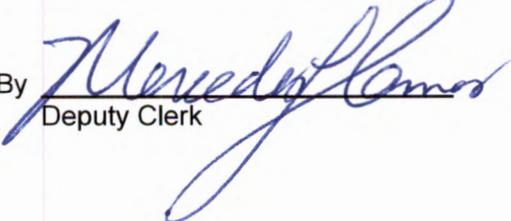
Date: 6/4/2021 By 
DocuSigned by: Dr. Tyler Evans
0730043EE5643496
 Print Name Dr. Tyler Evans
 Title CEO

[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: 6/29/2021 By 
 Chairman, Board of Supervisors

ATTEST: JASON T. BRITT
 County Administrative Officer/Clerk of the Board
 of Supervisors of the County of Tulare

By 
 Deputy Clerk



Approved as to Form:

Allison Pierce
 Deputy County Counsel
 Matter No. 2020217
 Date: 6/8/2021

EXHIBIT A

SCOPE OF WORK AND REIMBURSEMENT

1. SCOPE OF WORK and DUTIES OF CONTRACTOR

The CONTRACTOR shall do all of the following:

- a. Assign contracted clinical and support staff on a temporary as needed basis to the COUNTY for the purposes of administering COVID-19 Vaccines throughout the County of Tulare.
 - i. Assignments shall be based on the availability of contracted clinical and support staff and shall be made in the sole discretion of the CONTRACTOR, subject to acceptance by the COUNTY,
- b. Confirm that contracted clinical staff possess current, valid and unrestricted licenses or certification as applicable,
 - i. The CONTRACTOR will ensure the competency of clinical staff or provide scope of practice training for vaccination administration or other requested services prior to assignment to the COUNTY.

2. REIMBURSEMENT

- a. In consideration for the services provided to the COUNTY under this Agreement, COUNTY shall reimburse CONTRACTOR at the following rates:
 - ii. \$45.00 per administered vaccine dose through a CONTRACTOR sponsored fixed site event. CONTRACTOR sponsored fixed site events are events conducted at designated operating sites. CONTRACTOR will be paid a minimum of \$2,500 per day and \$45.00 per vaccine administration after the first 55 administered doses of vaccines during the scheduled fixed site event.
 - iii. \$55.00 per administered vaccine dose for community based targeted event or COUNTY sponsored events. Community based targeted event locations hosted by CONTRACTOR must have prior approval from COUNTY to be eligible for reimbursement under this Agreement and must conform to the COUNTY's vaccine equity plan. CONTRACTOR will be paid a minimum of \$1,500 per day and \$55.00 per administered vaccine after the first 25 administered doses of vaccines during the community based targeted event
 - iv. The total reimbursable amount allowable under this Agreement shall not exceed \$7,500,000.00.

- b. CONTRACTOR will submit invoices to the COUNTY on a schedule to be mutually determined by CONTRACTOR and the COUNTY. Full payment of invoices is due within 30 days from the date of the invoice, and COUNTY shall remit payment in the matter set forth on the invoice.
- c. Reimbursement to CONTRACTOR under this provision is subject to the requirements of Federal and/or State funding and CONTRACT agrees to abide by such requirements to the extent applicable.
- d. The reimbursement paid to CONTRACTOR under this Agreement shall be the exclusive and sole source of reimbursement to CONTRACTOR for the services rendered under this Agreement. CONTRACTOR agrees that it will not seek or accept reimbursement or payment from any other source, including private insurance, Medi-Cal, Medicare, or any other State, Federal or private source.