

**MEMORANDUM OF UNDERSTANDING
FOR TECHNOLOGY DISASTER RECOVERY SITE PARTNERSHIP
BETWEEN THE CITY OF MERCED AND THE CITY OF TULARE**

This Memorandum of Understanding (MOU) is made and entered into by and between the City of Merced ("Merced"), a California charter municipal corporation, and the City of Tulare ("Tulare"), a California charter municipal corporation of the State of California (hereinafter collectively referred to as the "Parties") with respect to the following recitals, which are a substantive part of this MOU.

RECITALS

A. This MOU is entered into by the Parties for the purpose of establishing a cooperative relationship and mutual agreement to serve as geographically redundant technology disaster recovery (DR) sites for one another.

B. This partnership is intended to enhance the resilience of each city's critical Information Technology (IT) infrastructure and to ensure continuity of operations in the event of an incident, including but not limited to natural disasters, cyberattacks, or other emergencies that significantly disrupt IT services.

C. This MOU supports interagency coordination in accordance with the principles of the National Incident Management System (NIMS) and the Incident Command System (ICS), and is intended to facilitate continuity of operations (COOP) during a Declared Incident that impacts either Party's ability to maintain essential IT services.

NOW, THEREFORE, in consideration of the promises and mutual agreements herein, City and Consultant agree as follows:

1. Definitions.

Declared Incident. A significant disruption to IT services or infrastructure formally recognized by the City Manager or their designee of either Party, which activates the provisions of this MOU.

Disaster Recovery (DR) Site. A designated facility equipped to host critical IT infrastructure and systems for the purpose of supporting continuity of operations during a Declared Incident.

Emergency Workspace. Temporary space provided per this MOU to support essential personnel in maintaining operations during a Declared Incident.

Incident. An occurrence, natural or human-caused, that requires a coordinated response to protect life, property, operations, or the environment. This includes but is not limited to cyberattacks, infrastructure failures, and natural disasters.

2. Term. This MOU shall be effective for a period of ten (10) years from September 1, 2026 to August 31st, 2036, unless otherwise amended or terminated in accordance with the terms herein.

3. Scope of Cooperation. The intent of this MOU is to provide reciprocal support for IT DR and COOP. Parties will make available a dedicated and secure data center space to accommodate the other Party's deployment and operation of its own DR equipment, and to provide limited operational support in the event of a Declared Incident that disrupts the other Party's primary data center or critical IT services.

4. Power to Act on Behalf of the other Party. Parties are not acting as an agent of the other Party and shall not have any right, power, or authority to create any obligation, express or implied, or make representations on behalf of the other Party except as may be expressly authorized in advance in writing from time to time by the other Party and then only to the extent of such authorization.

5. Mutual Hosting of Recovery Infrastructure. Each Party agrees to provide, at no cost to the other, access to designated space within its data center facilities to support the other Party's hosting of DR infrastructure.

a. Space Provided. This support shall include: rack space sufficient to support mutually agreed-upon DR technology infrastructure, not exceeding 10U, including limited secured cabinet or rack space for the storage of essential DR materials such as preprinted check stock, multi-factor authentication (MFA) tokens, DR documentation, official seals, backup media, or other critical operational items.

b. Utilities. Reliable power, including emergency backup power systems to ensure continuity during outages, and cooling infrastructure adequate to maintain safe operating temperatures for hosted equipment shall be provided by the Parties.

c. Security. Physical security measures, including but not limited to: access control systems, surveillance monitoring, and restricted access protocols shall be provided by the Parties.

d. Connectivity. The Parties will coordinate the establishment of dedicated network circuits between their respective sites, utilizing mutually agreed-upon providers. Each Party will be responsible for its own connectivity costs unless otherwise agreed upon in writing.

e. Facility-Based Technical Assistance. During normal operations, each Party agrees to provide minimal on-site support as needed, including, but not limited to: equipment power cycles, cable checks and physical inspections, visual verification of system status indicators, escorting authorized remote personnel or vendors, if required.

f. Temporary Continuity Operations Workspace. In the event of a Declared Incident (including but not limited to a natural disaster, cyberattack, infrastructure failure, or other emergency that disrupts essential IT services) each Party agrees to provide the other, upon request, with temporary workspace suitable for essential personnel to conduct critical operations for a period not to exceed seven (7) consecutive calendar days. If continued use of the workspace is required beyond the initial seven (7) days, the term may be extended for an additional period not to exceed twenty-one (21) consecutive calendar days, provided that both City Managers mutually agree in writing. Such extension shall also be provided at no cost to either Party. In connection with the provision of temporary workspace, the hosting Party will, subject to availability and operational feasibility, provide limited temporary internet connectivity to support essential governmental functions of the requesting Party. The hosting Party reserves the right to limit, restrict, or discontinue connectivity if such use materially impacts its operations, capacity, or security posture.

g. Extended Incident Support Services. During the period in which continuity workspace is being utilized, each Party further agrees to provide extended on-site support, as reasonably feasible and at no cost, to assist the requesting Party in maintaining or restoring essential IT functions. Extended support may include but is not limited to: deployment of IT personnel to assist with system setup, troubleshooting, and restoration of services; physical handling and installation of hardware or network equipment; coordination with third-party vendors or service providers on behalf of the requesting Party; and assistance with secure access to hosted systems and data. The scope and duration of such support shall be determined based on the nature of the Declared Incident and the operational needs of the requesting Party and shall not exceed the agreed-upon continuity workspace period unless otherwise authorized in writing by both City Managers.

6. Mutual Personnel Clearance and Facility Access Assurance. Given the presence of sensitive systems and restricted-access infrastructure, such as criminal justice information systems and confidential records, both Parties recognize the need for strict personnel vetting and physical access controls. Each Party is solely responsible for conducting or verifying background checks for its personnel requiring access to the other Party's facilities, in accordance with applicable local, state, and federal standards. Each Party certifies that its designated personnel have passed the required vetting and are eligible for secure access. The Parties agree to rely on each other's certification and will not require duplicate background checks unless mandated by law.

7. Continuity Coordination and Site Management. Each Party shall designate a Continuity Coordinator and an alternate who shall be responsible for overseeing the implementation and ongoing management of this IT DR partnership. The Continuity Coordinator shall serve as the primary point of contact for all matters related to: coordination of site-based support activities under this MOU, management of infrastructure access and physical security compliance, facilitation of communication between Parties during Declared Incidents, and verification of readiness and availability of designated resources and workspace.

8. Incident Declaration and Continuity Activation Procedures. The provisions of this MOU, including access to co-location services, emergency workspace, and extended on-site support, shall be activated upon the declaration of a disaster by either Party.

a. Process. Activation shall require a written declaration of a disaster or major service disruption by the City Manager or their designee of the requesting Party. The declaration shall include: a description of the nature and scope of the Declared Incident; the anticipated duration of the disruption; and the specific support being requested under this MOU.

b. Notification Procedure. The requesting Party shall notify the Continuity Coordinator of the responding Party via email and phone as soon as practicable. Written confirmation of the declaration shall follow within 48 hours of initial contact.

c. Response Coordination. Upon receipt of the declaration, the responding Party shall acknowledge the request in writing and direct the Continuity Coordinator to initiate access to facilities, systems, and personnel as outlined in this MOU.

d. Documentation. Both Parties shall maintain records of all communications, actions taken, and resources deployed during the activation period for audit and review purposes.

9. Cost. These services shall be provided solely for the purpose of supporting the mutual DR objectives outlined in this MOU and shall not be subject to rental, hosting, or service fees unless otherwise agreed to in writing by both Parties.

a. Agency-Incurred Costs. Each Party shall bear its own costs incurred under this MOU, including but not limited to: procurement, installation, and maintenance of DR infrastructure; network connectivity and telecommunications services; personnel time, travel, and related labor expenses; and routine testing and validation of hosted systems.

b. Shared Costs and Reimbursement. Any costs that may be shared between the Parties, or any reimbursement for services rendered beyond the scope of this MOU, shall: be negotiated in advance and documented in writing, include a clear description of the services or resources provided, and be supported by appropriate cost documentation in accordance with ICS resource tracking standards.

c. Resource and Cost Tracking During Declared Incidents. During a Declared Incident, each Party shall maintain accurate records of all expenditures, personnel time, and resources deployed in support of the other Party. These records shall be maintained in accordance with ICS Form 214 (Activity Log) or equivalent documentation, and be made available upon request.

10. Joint Disaster Recovery Testing. To promote preparedness and validate the effectiveness of this MOU, the Parties may conduct joint DR tests at mutually agreed intervals. These tests are intended to validate: infrastructure readiness and compatibility; network connectivity and failover capabilities; communication and coordination procedures; and physical access and support logistics. Participation in such tests shall be coordinated by the designated Continuity Coordinators. Test results should be used to improve operational readiness and inform updates to this MOU.

11. Data Privacy and Ownership.

a. Ownership of Equipment and Data. Each Party retains full ownership and control of all hardware, software, and data it installs or operates within the other Party's facilities under this MOU. The hosting Party shall not access, manage, or interfere with the colocated equipment or any data stored or processed therein, except as expressly authorized for the purpose of providing support services described in this MOU.

b. No Data Hosting or Custodial Responsibility. This MOU does not establish a data hosting relationship. The Parties acknowledge that the facilities and services provided are only those expressly identified in this MOU. The hosting Party shall not be considered a custodian or processor of the colocated Party's data for any legal, regulatory, or operational purpose.

12. Confidentiality. Parties shall not disclose or permit the disclosure of any confidential information except to those who need such confidential information in order to properly perform their duties relative to this MOU. IT DR planning documentation is not subject to disclosure under the California Public Records Act.

13. Termination. This MOU shall terminate as provided in Section 1, unless terminated earlier pursuant to the following:

a. Termination for Convenience. Either Party may, at their discretion, terminate this MOU for convenience and without cause upon ninety (90) days prior written notice to the other Party.

b. Termination for Cause. Either Party may terminate this MOU upon ten (10) days prior written notice to the other Party of a material breach, and a failure within that time period to cure or commence reasonable steps to cure the breach.

c. Effect of Termination. Upon termination of this MOU, Parties shall promptly work to remove their infrastructure from the other Party's site.

14. Indemnity and Defense. Parties hereby agree to indemnify, defend and hold the other Party, its officials, officers, employees, agents, and volunteers harmless from and against all claims, demands, causes of action, actions, damages, losses, expenses, and other liabilities, (including without limitation reasonable attorney fees and costs of litigation) of every nature arising out of or in connection with the alleged or actual acts, errors, omissions or negligence of the other Party relating to the performance of this MOU, unless the injuries or damages are the result of the other Party's sole negligence or willful misconduct, subject to any limitations imposed by law. Parties agree that said indemnity and defense obligations shall survive the expiration or termination of this MOU for any items specified herein that arose or occurred during the term of this MOU.

15. Compliance with Laws, Rules, and Regulations. Services provided by the Parties shall be performed in accordance and full compliance with all applicable federal, and state laws and any rules or regulations promulgated thereunder.

16. Assignment. Neither this MOU nor any duties or obligations hereunder shall be assignable by a Party without the prior written consent of the other Party.

17. Form and Service of Notices. Any and all notices or other communications required or permitted by this MOU or by law to be delivered to, served upon, or given to either Party to this MOU by the other Party shall be in writing and shall be deemed properly delivered, served or given by one of the following methods: a. Personally delivered to the Party to whom it is directed. Service shall be deemed the date of delivery. b. Delivered by e-mail to a known address of the Party to whom it is directed provided the e-mail is accompanied by an acknowledgment of receipt by the other Party. Service shall be deemed the date of acknowledgement. c. Delivery by a reliable overnight delivery service, receipted, addressed to the addressees set forth below the signatories to this MOU. Service shall be deemed the date of delivery. d. Delivery by deposit in the United States mail, first class, postage prepaid. Service shall be deemed delivered seventy-two (72) hours after deposit.

18. Entire MOU. This MOU, including the Exhibits and any other attachments, represents the entire agreement between Parties and supersedes all prior negotiations, representations or agreements, either written or oral with respect to the subject matter herein. This MOU may be amended only by written instrument signed by both Parties.

19. Severability. In the event any term or provision of this MOU is declared to be invalid or illegal for any reason, this MOU will remain in full force and effect and will be interpreted as

though such invalid or illegal provision were not a part of this MOU. The remaining provisions will be construed to preserve the intent and purpose of this MOU and the parties will negotiate in good faith to modify any invalidated provisions to preserve each party's anticipated benefits.

20. Applicable Law, Interpretation, and Venue. This MOU shall be interpreted in accordance with the laws of the State of California. The language of all parts of this MOU shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either Party. This MOU is entered into by the Parties in the County of Merced, California.

21. Amendments and Waiver. This MOU shall not be modified or amended in any way, and no provision shall be waived, except in writing signed by the Parties. No waiver of any provision of this MOU shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either Party to enforce any provision of this MOU shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this MOU.

22. Third Party Beneficiaries. Nothing in this MOU shall be construed to confer any rights upon any Party not a signatory to this MOU.

23. Execution in Counterparts or Electronically. This MOU may be executed in counterparts such that signatures may appear on separate signature pages. This MOU may be electronically via DocuSign, Adobe Sign, or similar means.

24. Alternative Dispute Resolution. If a dispute arises out of or relating to this MOU, or the alleged 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. 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 thirty (30) days, either Party may pursue litigation to resolve the dispute. Demand for mediation shall be in writing and delivered to the other Party to this MOU. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when commencement of legal or equitable proceedings based on such a claim, dispute or other matter in question would be barred by California statutes of limitations.

25. Force Majeure. Neither Party shall be held liable for failure to fulfill obligations under this MOU due to events beyond their reasonable control, including but not limited to natural disasters, war, or acts of terrorism.

26. Technical Contacts.

<i>City of Merced</i>			
Name	Title	Phone	Email
Jeff Bennyhoff	Director of Information Technology	209-385-6829	bennyhoffj@cityofmerced.gov
Aarin Garrison	Information Technology Manager	209-385-6961	garrisona@cityofmerced.gov
	Continuity Coordinator		
	Alternate		

<i>City of Tulare</i>			
Name	Title	Phone	Email
Jason Bowling	Deputy City Manager / Chief Technology Officer	559-684-4266	jbowling@tulare.ca.gov
Ken Wales	Computer Systems Supervisor	559-684-4228	kwales@tulare.ca.gov
	Continuity Coordinator		
	Alternate		

NOW, THEREFORE, the have executed this Agreement on the date(s) set forth below:

CITY OF MERCED

D. Scott McBride, Merced City Manager

APPROVED AS TO FORM


Craig J. Cornwell, Merced City Attorney

CITY OF TULARE

Marc Mondell, Tulare City Manager

APPROVED AS TO FORM

Mario U. Zamora, Tulare City Attorney