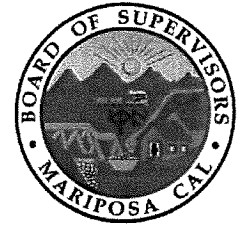


# MARIPOSA COUNTY

Agricultural Commissioner • 966-3222



## RESOLUTION - ACTION REQUESTED 2018-280

MEETING: June 12, 2018  
TO: The Board of Supervisors  
FROM: Dallin Kimble, County Administrative Officer  
RE: Agreement for Agricultural Commissioner / Sealer Services with Merced County

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### RECOMMENDATION AND JUSTIFICATION:

Approve an Agreement with Merced County to Provide Agricultural Commissioner / Sealer of Weights and Measures Services (\$139,200); and Authorize the Board of Supervisors Chair to Sign the Agreement.

The Mariposa County Department of Agriculture/Weights and Measures is responsible for several vital county functions including monitoring, maintaining and enforcing standards for agricultural plant health, weed prevention and management, pest prevention, animal health, food safety and measurement standards. The agricultural commissioner position is one of a small handful mandated by state code and held to strict state licensing requirements.

Our most recent county agricultural commissioner/sealer of weights and measures retired on December 31, 2016. The County began recruiting a replacement several months prior to this date and continued that effort through May 2018 with limited success. At the same time, the County pursued several other options including the possibility of contracting with adjoining jurisdiction for the needed licensing and coverage.

This agreement effectively appoints the agricultural commissioner/sealer of weights and measures in Merced County to perform the same function in Mariposa County. This arrangement meets all state requirements and can be done for a cost approximately equal to hiring an individual for the position. Through the agreement, a licensed commissioner or deputy will be present in Mariposa County an average of three times per week and no less than twice in any given week.

Staff recommends approval of this agreement as it allows for both satisfaction of state requirements and an opportunity to modernize and advance our local office. Additional, specialized expertise will be more readily available for addressing community needs through this agreement and the current commissioner in Merced is

## Resolution - Action Requested 2018-280

committed to leveraging his office to implement best management practices in Mariposa.

### **BACKGROUND AND HISTORY OF BOARD ACTIONS:**

Mariposa County contracted for many years with the commissioners in Stanislaus or Madera Counties for agricultural commissioner / sealer of weights and measures services. Doing so provided an opportunity for an internal candidate to achieve the appropriate licensing and eventually be appointed as the commissioner and sealer for the County.

That agricultural commissioner retired on December 31, 2016.

### **ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Do not approve the agreement. Staff will continue recruiting for an agricultural commissioner / sealer of weights and measures.

### **FINANCIAL IMPACT:**

**Appropriate funds are included in the Agricultural Commissioner account of the General Fund requested budget for FY19**

### **ATTACHMENTS:**

**MOU Mariposa-Merced Ag FY18-19 (DOC)**  
**Ag Commissioner Salary / Benefits (PDF)**

**RESULT: ADOPTED [UNANIMOUS]**

**MOVER:** Marshall Long, District III Supervisor

**SECONDER:** Merlin Jones, District II Supervisor

**AYES:** Smallcombe, Jones, Long, Cann, Menetrey

**MEMORANDUM OF UNDERSTANDING FOR AGRICULTURAL  
COMMISSIONER/SEALER OF WEIGHTS AND MEASURES SERVICES**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into this 5th day of June, 2018, by and between the County of Mariposa, a political subdivision of the State of California, (“MARIPOSA”), and the County of Merced, a political subdivision of the State of California, (“MERCED”), is made upon the following considerations:

WHEREAS, the Agricultural Commissioner/Sealer of Weights and Measures for MARIPOSA has retired and MARIPOSA has previously conducted recruitments for the position without success; and

WHEREAS, MERCED and MARIPOSA desire a mutually beneficial relationship for MERCED to provide additional Commissioner/Sealer services to MARIPOSA on a temporary basis in order for MARIPOSA to meet the requirements of the California Department of Food and Agriculture (CDFA);

NOW, THEREFORE, MERCED AND MARIPOSA mutually agree to the following:

**1. TERM**

The term of this MOU shall commence on July 1, 2018, and terminate on June 30, 2019, unless extended as provided by this MOU.

**2. SERVICES**

MERCED shall perform Commissioner/Sealer services as described in Exhibit A, “Scope of Work,” which is attached hereto and incorporated herein by reference.

**3. COMPENSATION**

- a. MARIPOSA shall pay MERCED as compensation for Commissioner/Sealer services a flat rate payment of \$11,600.00 per month for each month and any part of which the services described herein are provided. This amount will be paid no later than the last business day of the month following the month in which the services were provided.
- b. The total payments to be made by MARIPOSA to MERCED under this MOU shall not exceed \$139,200, unless extended as provided by this MOU.

**4. RELATIONSHIP OF PARTIES**

MERCED and MARIPOSA are separate subdivisions of the State of California and are independent contractors with respect to each other. This MOU is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture, or any other similar association. Nothing in this MOU shall be construed to create an employment relationship between MARIPOSA and any employee of MERCED, or between MERCED and any employee of MARIPOSA. Each Party shall be solely responsible for the

acts or omissions of its officers, agents, employees, and subcontractors. Neither Party's employees shall be entitled to any employee benefits from the other Party.

## **5. AUTHORITY OVER PERSONS PROVIDING SERVICES**

Authority to direct the duties and functions of MERCED employees providing services, supplies and information to MARIPOSA as required by this MOU shall continue to reside with MERCED. It is mutually understood and agreed that MERCED employees assigned to provide services, supplies or information to MARIPOSA as required by this MOU shall be acting as MERCED employees. MERCED agrees to require its department heads and employees to respond in a timely manner to requests from MARIPOSA for services and information related to this MOU.

## **6. MUTUAL INDEMNIFICATION**

- a. Merced agrees to indemnify, defend and hold harmless Mariposa, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with services rendered to Merced County. Mariposa agrees to indemnify, defend and hold harmless Merced, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with services rendered to Mariposa County.
- b. Each Party shall indemnify, defend, and hold harmless the other Party for the payment of any employee and/or employer contributions for CalPERS benefits, or the payment of any penalties and interest on such contributions, on behalf of the other or any employees, agents, or subcontractors required to perform tasks pursuant to this MOU.

## **7. INSURANCE COVERAGE**

Without limiting the Parties' indemnification obligations provided for herein, each Party will maintain in full force and effect, at its own expense, comprehensive general liability and property damage insurance, comprehensive automobile insurance, workers' compensation and professional liability insurance throughout the term of this MOU.

## **8. DISPUTE RESOLUTION**

Disputes between MERCED and MARIPOSA in connection with any matter relating to the terms or provisions of this MOU shall first be considered jointly by the County Executive Officer of MERCED and the County Administrative Officer of MARIPOSA.

Prior to taking any judicial action to interpret or enforce provisions of this MOU, the Parties agree to first submit the matter to a mediator, to be mutually agreed upon by the Parties hereto, in concert with a representative of each Party.

However, pending resolution, the existence of any dispute (except for disputed charges for which notice was timely provided as required herein) will not absolve either Party of the responsibility for making timely payments for provided services nor will such disputes absolve either Party of the responsibility for timely performance of its agreed upon services to the other.

## **9. RECORD RETENTION AND INSPECTION**

- a. Each Party agrees to timely prepare accurate and complete financial and performance records relating to the services provided hereunder, and to maintain and preserve said records for at least three (3) years from the date of final payment under this MOU, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom.
- b. Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of either Party, related to the services provided hereunder, shall be subject to the examination and audit of the California State Auditor and other duly authorized agents of the State of California for a period of three (3) years after final payment under this MOU. Each Party hereby agrees to make such records available during normal business hours for inspection, audit and reproduction by any duly authorized agents of the State of California or the federal government. Each Party further agrees to allow interviews of any of its employees who might reasonably have information related to such records by any duly authorized agents of the State of California or the federal government. All examinations and audits conducted under this section shall be strictly confined to those matters connected with the performance of this MOU, including the costs of administering this MOU.

## **10. DISCONTINUANCE OF SERVICES**

In the event notice is given by MERCED that a service, in whole or in part, will no longer be provided, or notice is given by MARIPOSA that a certain service will no longer be utilized, MARIPOSA shall pay for all services utilized up to the date of termination of the services.

## **11. STRICT COMPLIANCE**

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

## **12. COMPLIANCE WITH LAWS**

Both Parties hereto agree to observe and comply with all applicable local, state, and federal laws and regulations. Both parties further agree to comply with all applicable local, state and federal licensure and certification requirements at all times during the term of this MOU.

## **13. SEVERABILITY**

This MOU is subject to all applicable laws and regulations. If any provision of this MOU is found by any court or other legal authority, or is agreed upon by the Parties to be in conflict with any code or regulation, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of this MOU to either Party is lost, this MOU may be terminated at the option of the affected Party. In all other instances, the remainder of this MOU shall remain in full force and effect.

## **14. TERMINATION AND RIGHTS UPON TERMINATION**

This MOU may be terminated upon mutual written consent of the parties, or as a remedy available at law or in equity. In the event of the termination of this MOU, MERCED shall immediately be paid all fees earned as of the effective date of termination.

Either party may terminate this MOU for convenience upon thirty (30) calendar days' written notice to the other party. Upon termination for convenience, MERCED shall be entitled to compensation for services performed acceptably up to the effective date of termination.

Should MERCED default in the performance of this MOU or materially breach any of its provisions, MARIPOSA, at its option, may terminate this MOU by giving written notification to MERCED. The termination date shall be the effective date of the notice. For the purposes of this subsection, default or material breach of this MOU shall include, but not be limited to, any of the following: failure to perform required services in a timely manner, willful destruction of MARIPOSA property, dishonesty, or theft.

## **15. NOTICES**

Any notice required to be given pursuant to the terms and provisions herein shall be in writing and shall be sent by First Class Mail to:

County of Merced  
County Executive Officer  
2222 M Street  
Merced, CA 95340

County of Mariposa  
County Administrative Officer  
5100 Bullion Street, 2<sup>nd</sup> Floor  
Post Office Box 784  
Mariposa, CA 95338

**16. AMENDMENT**

No addition to, or alteration of, the terms of this MOU shall be valid unless made in writing and signed by the Parties.

**17. BINDING EFFECT**

All provisions of this MOU shall be fully binding upon, and inure to the benefit of, the Parties and to each of their heirs, executors, administrators, successors and assigns.

**18. INTERPRETATION**

This MOU, as well as its individual provisions, shall be deemed to have been prepared equally by both of the Parties hereto, and shall not be construed or interpreted more favorably for one Party on the basis that the other Party prepared it.

**18. FORCE MAJEURE**

Neither Party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such Party and without fault or negligence of such Party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

**19. ENTIRE AGREEMENT**

This MOU shall constitute the entire agreement between the Parties regarding the subject matter of this MOU, and shall supersede any previous agreements, promises, representations, understandings or negotiations, whether oral or written, concerning the same subject matter.

**20. AUTHORITY TO EXECUTE**

Each person executing this MOU represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this MOU. Each Party represents and warrants to the other that the execution of delivery of this MOU and the performance of such Party's obligations hereunder have been duly authorized.

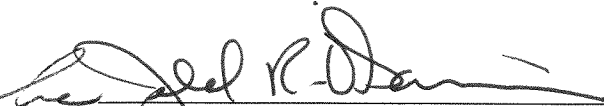
IN WITNESS WHEREOF, the Parties hereto have entered into this MOU as of the day and year first written above:

COUNTY OF MARIPOSA

COUNTY OF MERCED



Rosemarie Smallcombe, Chair  
Board of Supervisors

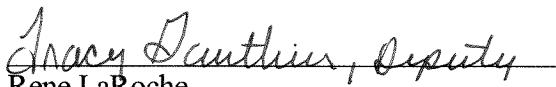


Jerald R. O'Banion, Chairman  
Board of Supervisors

JUN 5 2018

ATTEST:

APPROVED AS TO LEGAL FORM:



Tracy Daulton, Deputy  
Rene LaRoche  
Clerk of the Board



Janinda Gunawardene  
County Counsel

APPROVED AS TO FORM:



Steven W. Dahlem  
County Counsel



**Exhibit A**  
**SCOPE OF WORK**

MERCED agrees to provide Agricultural Commissioner/Sealer of Weights & Measures services sufficient to meet the requirements of the California Department of Food and Agriculture (CDFA). These services include, but are not limited to, the following:

- a. Supervisory and administrative oversight of the Mariposa County Department of Agriculture/Weights & Measures including the planning, organization and administration of all department operations; general oversight, guidance, mentoring, and direction to County staff in the performance of both agricultural and weights & measures program activities; and recommendations to the Board of Supervisors on issues related to agriculture and/or the advancement of the department.
- b. Perform all field work including required reports, invoicing, budgets and work plans as required. Provide guidance and answer questions for the completion of tasks assigned to County staff.
- c. Review and evaluate the work of County staff.
- d. Review and sign payroll certificates, monthly claim forms and other documents requiring a department head signature.
- e. Serve as the Mariposa County representative to the local farm bureau, for contracts and agreements with CDFA, and to other relevant agencies.
- f. Provide a licensed deputy agricultural commissioner or agricultural commissioner to be present in the Mariposa County Agricultural Department office to direct staff and address community issues an average of three (3) times per week and no less than twice (2) in any given week.
- g. All other duties commonly required of a county agricultural commissioner.

MARIPOSA agrees to facilitate appropriate purchasing and other county processes and to provide sufficient resources to complete the tasks required herein.

TO: BOARD OF SUPERVISORS
THROUGH: COUNTY EXECUTIVE OFFICER
FROM: DAVID A. ROBINSON, COUNTY AGRICULTURAL COMMISSIONER

VENDOR OR CONTRACTOR Mariposa County
PRODUCT OR SERVICE Licensed Management and Oversight of the Mariposa County
Department of Agriculture/Weights and Measures

TYPE MOU ACTION New No.
Process Other Date of last Competitive Process None
Original Contract Date N/A Date of last Board Action N/A

SCOPE OF SERVICES/SUMMARY

The Agricultural Commissioner has been approached by Mariposa County to provide State Licensed Management and Oversight for the Mariposa County Department of Agriculture/Weights and Measures. Mariposa's Agricultural Commissioner retired in December 2016 and the County has conducted an ongoing recruitment to fill the position, without success. After reviewing the Scope of Work (MOU Exhibit A), the Agricultural Commissioner's management team believes the requested services will be beneficial in providing valuable management and program experience for Merced's Deputy Agriculture Commissioners. To meet Mariposa's need, the Agricultural Commissioner will assume State License responsibility, using his individual license to fulfill California Food and Agricultural Code mandates. In addition, the Assistant Agricultural Commissioner and Deputy Agricultural Commissioners will take turns providing on-site supervision 2 to 3 days per week. Approximately, 1424 work hours have been allocated to accomplish Mariposa's Scope of Work.

REQUIRED REVIEW:

- Checked boxes for Auditor-Controller, CEO, Counsel, Admin Services, Human Resources, Risk.

Department Contact/Phone David Robinson (385-7431 x4701)

REQUEST/RECOMMENDATION/ACTION NEEDED:

- 1.) Authorize the approval of the MOU (total contract amount of \$139,200.00) with the Mariposa County, providing Licensed Oversight and Supervision of the Mariposa County Department of Agriculture, from 7/1/18 through 6/30/19, and authorize the Chairman to sign all necessary documents.
2.) Authorize a temporary Commissioner pay differential up to seven and one half percent (7.5%) for the term of the memorandum of understanding with Mariposa County, subject to the approval of the County Executive Officer.

**Page 2**

Mariposa County

Licensed Management and Oversight of the Mariposa County Department of Ag/Weights and Measures

<b>Budget Unit</b>	27000	<b>Account Number</b>	96730
<b>Contract Period Beginning</b>	7/1/2018	<b>Ending</b>	6/30/2019 <b>Months</b> 12
<b>Total Contract Amount</b>	\$139,200	<b>Prior Contract Amount</b>	N/A
<b>Difference</b>	N/A	<b>Actual Expenditures</b>	N/A
<b>Budgeted Amount</b>	\$139,200 (anticipated)	<b>Budget Transfer Attached</b>	No

**Funding Source** Mariposa County funding. The seven and one half percent (7.5%) Commissioners pay differential amounts to \$10,648.80 over the term of the MOU, and will be fully funded by the MOU with Mariposa County. The appropriations and associated revenue is anticipated to be adopted as part of FY 2018/19.

**Staffing Impact** Approximately, 1424 management work hours have been allocated to accomplish Mariposa's Scope of Work.

An additional Deputy Agricultural Commissioner will be requested as part of the FY 2018/19 budget and 100% of the cost will be offset by Mariposa County funding and Unclaimed Gax Taxes.

**Additional information**

The California Food and Agricultural Code (Division 2) states that in each county government there is a county department of agriculture and that county department of agriculture is under the control of the county agricultural commissioner. The commissioner shall be appointed by the board of supervisors of the county. A person shall not be appointed to the office of commissioner or deputy commissioner unless he or she has a license issued by the Secretary of the California Department of Food and Agriculture.

If the board of supervisors of such adjoining county consents, the board of supervisors of any county in which there is no commissioner may employ a qualified commissioner or a qualified deputy commissioner of the adjoining county to perform the duties of commissioner in the employing county.

A commissioner or deputy commissioner who is so employed shall have such authority and powers as are conferred upon a commissioner by this code. He is not required to comply with residence or other qualifications for office within the employing county.