

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 4th day of February, 2020, by and between the COUNTY OF FRESNO, a political subdivision of the State of California, ("COUNTY"), and the CITY OF FRESNO, a municipal corporation, ("CONTRACTOR").

WITNESSETH:

WHEREAS, the State of California, under Assembly Bill 109, the Public Safety Realignment Act (AB 109), has realigned responsibilities for probation, post-release community supervision (PRCS) and mandatory supervised release of offenders; and

WHEREAS, the Public Safety Realignment Act AB 109 Implementation Plan of 2011, including its updates, collectively referred to as the "AB 109 PLAN," was developed by the Fresno County Community Corrections Partnership (CCP) and approved by the Fresno County Board of Supervisors; and

WHEREAS, the AB 109 PLAN includes formation of the Adult Compliance Team (ACT) to create a cooperative unit capable of addressing public safety concerns and issues facing local law enforcement in Fresno County; and

WHEREAS, the ACT is comprised of representatives of the Fresno County Sheriff's Department, the Fresno County District Attorney's Office, the Fresno County Probation Department, and officers of the Fresno, Clovis, Selma, Kerman, Kingsburg, and Reedley Police Departments; and

WHEREAS, the State of California has provided funding to COUNTY for the purpose of implementing AB 109 services.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties agree as follows:

1. OBLIGATIONS OF THE CONTRACTOR

CONTRACTOR shall assign seven (7) Police Officers, one (1) Police Sergeant, and one (1) Crime Analyst ("Police Officers") to be responsible for fulfilling the responsibilities of an ACT member in accordance with the ACT Operating Agreement, attached as Exhibit "A" and incorporated by this reference. In the event that the AB 109 PLAN is revised by the CCP, and approved by the Fresno County Board of Supervisors, the responsibilities of the Police Officers under this Agreement may be modified accordingly.

1 2. OBLIGATIONS OF THE COUNTY

2 COUNTY shall compensate and remit to CONTRACTOR an amount equal to the cost of
3 seven (7) City of Fresno Police Officers, one (1) City of Fresno Police Sergeant, and one (1) City of Fresno
4 Crime Analyst for assignment to the ACT and the Multi-Agency Gang Enforcement Consortium (MAGEC),
5 not to exceed the maximum amount payable under this Agreement of \$1,960,653.

6 3. TERM

7 This Agreement shall become effective retroactive to July 1, 2019, and shall terminate on
8 June 30, 2020.

9 4. TERMINATION

10 A. Non-Allocation of Funds - The terms of this Agreement, and the services to be
11 provided hereunder, are contingent on the approval of funds by the appropriating government agency.
12 Should sufficient funds not be allocated, the services provided may be modified, or this Agreement
13 terminated, at any time by giving the CONTRACTOR thirty (30) days advance written notice.

14 B. Breach of Contract - The COUNTY may immediately suspend or terminate this
15 Agreement in whole or in part, where in the determination of the COUNTY there is:

- 16 1) An illegal or improper use of funds;
17 2) A failure to comply with any term of this Agreement;
18 3) A substantially incorrect or incomplete report submitted to the COUNTY;
19 4) Improperly performed service.

20 In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of any breach
21 of this Agreement or any default which may then exist on the part of the CONTRACTOR. Neither shall such
22 payment impair or prejudice any remedy available to the COUNTY with respect to the breach or default.
23 The COUNTY shall have the right to demand of the CONTRACTOR the repayment to the COUNTY of any
24 funds disbursed to the CONTRACTOR under this Agreement, which in the judgment of the COUNTY were
25 not expended in accordance with the terms of this Agreement. The CONTRACTOR shall promptly refund
26 any such funds upon demand.

27 C. Without Cause - Under circumstances other than those set forth above, this
28 Agreement may be terminated by COUNTY upon the giving of thirty (30) days advance written notice of an

1 intention to terminate to CONTRACTOR.

2 5. COMPENSATION/INVOICING: COUNTY agrees to pay CONTRACTOR and
3 CONTRACTOR agrees to receive compensation as follows:

4 CONTRACTOR shall submit quarterly invoices for actual expenditures to the County of Fresno
5 Probation Department at: ProbationInvoices@FresnoCountyCA.gov. Invoices must be submitted on or after
6 the dates of October 1, 2019, and January 1, April 1, and July 1, 2020, respectively, and include a
7 breakdown of expenses identified in the final approved budget of the CCP in the County of Fresno for use
8 in executing the mission of ACT. COUNTY shall make payment within 45 days of receipt of an approved
9 invoice.

10 Upon any termination of this Agreement, CONTRACTOR shall be compensated for costs
11 incurred under this Agreement, up to and including the date of termination.

12 In no event shall compensation paid for services performed under this Agreement exceed
13 \$1,960,653.

14 6. INDEPENDENT CONTRACTOR: In performance of the work, duties and obligations
15 assumed by CONTRACTOR under this Agreement, it is mutually understood and agreed that
16 CONTRACTOR, including any and all of the CONTRACTOR'S officers, agents, and employees will at all
17 times be acting and performing as an independent contractor, and shall act in an independent capacity and
18 not as an officer, agent, servant, employee, joint venturer, partner, or associate of the COUNTY.
19 Furthermore, COUNTY shall have no right to control or supervise or direct the manner or method by which
20 CONTRACTOR shall perform its work and function. However, COUNTY shall retain the right to administer
21 this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the
22 terms and conditions thereof.

23 CONTRACTOR and COUNTY shall comply with all applicable provisions of law and the rules and
24 regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

25 Because of its status as an independent contractor, CONTRACTOR shall have absolutely no right
26 to employment rights and benefits available to COUNTY employees. CONTRACTOR shall be solely liable
27 and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In
28 addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating

1 to payment of CONTRACTOR'S employees, including compliance with Social Security withholding and all
2 other regulations governing such matters. It is acknowledged that during the term of this Agreement,
3 CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

4 7. MODIFICATION: Any matters of this Agreement may be modified from time to time by the
5 written consent of all the parties without, in any way, affecting the remainder.

6 8. NON-ASSIGNMENT: Neither party shall assign, transfer or sub-contract this Agreement
7 nor their rights or duties under this Agreement without the prior written consent of the other party.

8 9. HOLD HARMLESS: CONTRACTOR agrees to indemnify, save, hold harmless, and at
9 COUNTY'S request, defend the COUNTY, its officers, agents, and employees from any and all costs and
10 expenses (including attorney's fees and costs), damages, liabilities, claims, and losses occurring or
11 resulting to COUNTY in connection with the performance, or failure to perform, by CONTRACTOR, its
12 officers, agents, or employees under this Agreement, and from any and all costs and expenses (including
13 attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to any person, firm,
14 or corporation who may be injured or damaged by the performance, or failure to perform, of
15 CONTRACTOR, its officers, agents, or employees under this Agreement; provided nothing herein shall
16 constitute a waiver by CONTRACTOR of governmental immunities including California Government
17 Code section 810 et seq.

18 COUNTY agrees to indemnify, save, hold harmless, and at CONTRACTOR'S request, defend the
19 CONTRACTOR, its officers, agents, and employees from any and all costs and expenses (including
20 attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to CONTRACTOR
21 in connection with the performance, or failure to perform, by COUNTY, its officers, agents, or employees
22 under this Agreement, and from any and all costs and expenses (including attorney's fees and costs),
23 damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may
24 be injured or damaged by the performance, or failure to perform, of COUNTY, its officers, agents, or
25 employees under this Agreement; provided nothing herein shall constitute a waiver by COUNTY of
26 governmental immunities including California Government Code section 810 et seq.

27 In the event of concurrent negligence on the part of COUNTY or any of its officers, agents or
28 employees, and CONTRACTOR or any of its officers, agents, or employees, the liability for any and all

1 such claims, demands and actions in law or equity for such losses, costs, expenses and damages shall be
2 apportioned under the State of California's theory of comparative negligence as presently established, or as
3 may be modified hereafter.

4 This Section 9 shall survive termination or expiration of this Agreement.

5 10. INSURANCE

6 Required Insurance. Without limiting the indemnification of each party as stated herein, it is
7 understood and agreed that COUNTY and CONTRACTOR shall each maintain, at their sole expense,
8 insurance policies or self-insurance programs including, but not limited to, an insurance pooling
9 arrangement and/or Joint Powers Agreement to fund their respective liabilities including General Liability,
10 Automotive Liability, Law Enforcement Legal Liability, Workers' Compensation and Employers Liability as
11 stated below. Evidence of Insurance, e.g., Certificates of Insurance or other similar documentation, shall be
12 provided at the request of either party under this Agreement.

13 11. AUDITS AND INSPECTIONS: The CONTRACTOR shall at any time during business
14 hours, and as often as the COUNTY may deem necessary, make available to the COUNTY for examination
15 all of its records and data with respect to the matters covered by this Agreement. The CONTRACTOR
16 shall, upon request by the COUNTY, permit the COUNTY to audit and inspect all of such records and data
17 necessary to ensure CONTRACTOR'S compliance with the terms of this Agreement.

18 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to
19 the examination and audit of the California State Auditor for a period of three (3) years after final payment
20 under contract (Government Code Section 8546.7).

21 12. NOTICES: The persons and their addresses having authority to give and receive notices
22 under this Agreement include the following:

23	<u>COUNTY</u>	<u>CONTRACTOR</u>
24	COUNTY OF FRESNO	CITY OF FRESNO
25	Chief Probation Officer	Chief of Police
26	3333 E. American Avenue, Suite B	2323 Mariposa Mall
27	Fresno, CA 93725	Fresno, CA 93721

28 All notices between the COUNTY and CONTRACTOR provided for or permitted under this
Agreement must be in writing and delivered either by personal service, by first-class United States mail, by
an overnight commercial courier service, or by telephonic facsimile transmission. A notice delivered by

1 personal service is effective upon service to the recipient. A notice delivered by first-class United States
2 mail is effective three COUNTY business days after deposit in the United States mail, postage prepaid,
3 addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one
4 COUNTY business day after deposit with the overnight commercial courier service, delivery fees prepaid,
5 with delivery instructions given for next day delivery, addressed to the recipient. A notice delivered by
6 telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is
7 completed outside of COUNTY business hours, then such delivery shall be deemed to be effective at the
8 next beginning of a COUNTY business day), provided that the sender maintains a machine record of the
9 completed transmission. For all claims arising out of or related to this Agreement, nothing in this section
10 establishes, waives, or modifies any claims presentation requirements or procedures provided by law,
11 including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code,
12 beginning with section 810).

13 13. GOVERNING LAW: Venue for any action arising out of or related to this Agreement shall
14 only be in Fresno County, California.

15 The rights and obligations of the parties and all interpretation and performance of this Agreement
16 shall be governed in all respects by the laws of the State of California.

17 14. SEVERABILITY

18 In the event any provisions of this Agreement are held by a court of competent jurisdiction to be
19 invalid, void, or unenforceable, the remaining provisions of this Agreement will nevertheless continue in
20 force and effect without being impaired or invalidated in any way.

21 15. WAIVER

22 The waiver by either party of a breach by the other of any provision of this Agreement shall not
23 constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different
24 provision of this Agreement. No waiver of a party's breach of any provision of this Agreement shall be
25 effective unless the waiver is in writing and signed by the party against whom the waiver is sought to be
26 enforced. Waiver of any one provision shall not be deemed to be a waiver of any other provision herein.

27 16. INTERPRETATION

28 The parties acknowledge that this Agreement in its final form is the result of the combined efforts

1 of the parties and that, should any provision of this Agreement be found to be ambiguous in any way,
2 such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but
3 rather by construing the terms in accordance with their generally accepted meaning.

4 17. NO THIRD-PARTY BENEFICIARIES

5 Nothing set forth in this Agreement shall create any legal rights in any person not a party to this
6 Agreement.

7 18. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the
8 CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes all previous
9 Agreement negotiations, proposals, commitments, writings, advertisements, publications, and
10 understanding of any nature whatsoever unless expressly included in this Agreement.

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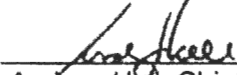
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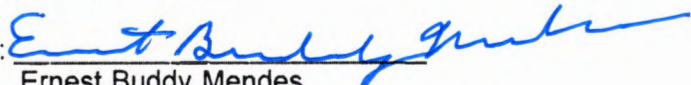
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove written.

CITY OF FRESNO

By: 
Andrew Hall, Chief of Police
Fresno Police Department

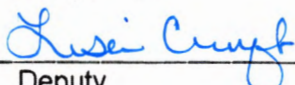
COUNTY OF FRESNO

By: 
Ernest Buddy Mendes
Chairman Board of Supervisors


ATTEST:
YVONNE SPENCE, MMC CRM
City Clerk

By: _____
Deputy

ATTEST:
BERNICE E. SEIDEL,
Clerk of the
Board of Supervisors

By: 
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  12/10/19
Kristi Costa, Esq Date
Deputy City Attorney

Address:
City of Fresno
Attn: Chief Andrew Hall
Fresno Police Department
2323 Mariposa Street
Fresno, CA 93721

FOR ACCOUNTING USE ONLY:

ORG No.: 34309999
Account No.: 7295
Fund: 0001
Subclass: 10000

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