

1 **AGREEMENT**

2 This Service Agreement ("Agreement") is dated January 24, 2023 and is between  
3 Garden of Innocence, a California nonprofit corporation, ("Contractor"), and the County of  
4 Fresno, a political subdivision of the State of California ("County").

5 **Recitals**

6 A. WHEREAS, from time to time, staff of the County's Sheriff's Office comes into  
7 possession of the remains of a deceased fetus, infant or child 8 years of age or under  
8 ("deceased abandoned child") in the performance of their official duties.

9 B. WHEREAS, the County has a need for the humane and dignified disposition and burial  
10 of deceased abandoned children; and

11 C. WHEREAS, Contractor represents that it has the ability and experience to provide humane  
12 and dignified burials for deceased abandoned children; and

13 D. WHEREAS, Contractor, has the willingness to provide said disposition and burial  
14 services as a public service at no cost to the County.

15 The parties therefore agree as follows:

16 **Article 1**

17 **Contractor's Services**

18 1.1 **Scope of Services.** The Contractor shall perform all of the services provided in  
19 Exhibit A to this Agreement, titled "Scope of Services".

20 1.2 **Representation.** The Contractor represents that it is qualified, ready, willing, and  
21 able to perform all of the services provided in this Agreement.

22 1.3 **Compliance with Laws.** The Contractor shall, at its own cost, comply with all  
23 applicable federal, state, and local laws and regulations in the performance of its obligations  
24 under this Agreement, including but not limited to workers compensation, labor, and  
25 confidentiality laws and regulations.  
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1 **Article 2**

2 **County's Responsibilities**

3 2.1 Upon determination that the remains of an abandoned deceased child no longer  
4 need to be retained by the County for any official purpose, the County shall contact the  
5 Contractor and inform the Contractor that a deceased abandoned child is available for release  
6 and cremation.

7 2.2 The County will provide the Contractor with a Certificate of Abandonment, as well as  
8 the Death Certificate for the deceased abandoned child, and burial permit at no cost to both  
9 parties.

10 **Article 3**

11 **Compensation, Invoices, and Payments**

12 3.1 The County and the Contractor understand and agree that no monetary  
13 compensation will be paid from one party to the other during the term of this Agreement, as  
14 explained in Exhibit B. The consideration to both parties for this Agreement shall be the public  
15 benefit realized by providing for the humane and dignified disposition and burial of deceased  
16 abandoned children.

17 **Article 4**

18 **Term of Agreement**

19 4.1 **Term.** This Agreement is effective October 17, 2022, and terminates on October 16,  
20 2025, except as provided in section 4.2, "Extension," or Article 6, "Termination and Suspension,"  
21 below.

22 4.2 **Extension.** The term of this Agreement may be extended for no more than two, one-  
23 year periods only upon written approval of both parties at least 30 days before the first day of  
24 the next one-year extension period. The Sheriff or his or her designee is authorized to sign the  
25 written approval on behalf of the County based on the Contractor's satisfactory performance.  
26 The extension of this Agreement by the County is not a waiver or compromise of any default or  
27 breach of this Agreement by the Contractor existing at the time of the extension whether or not  
28 known to the County.

1 **Article 5**

2 **Notices**

3 5.1 **Contact Information.** The persons and their addresses having authority to give and  
4 receive notices provided for or permitted under this Agreement include the following:

5  
6 **For the County:**  
7 Sheriff's Office  
8 Sheriff  
9 County of Fresno  
10 2200 Fresno Street  
11 Fresno, CA 93721

12 **For the Contractor:**  
13 Garden of Innocence  
14 Elissa Davey, Chief Executive Officer  
15 156 Walker Way  
16 Vista, CA 92083

17 5.2 **Change of Contact Information.** Either party may change the information in section  
18 5.1 by giving notice as provided in section 5.3.

19 5.3 **Method of Delivery.** Each notice between the County and the Contractor provided  
20 for or permitted under this Agreement must be in writing, state that it is a notice provided under  
21 this Agreement, and be delivered either by personal service, by first-class United States mail, by  
22 an overnight commercial courier service, or by telephonic facsimile transmission.

23 (A) A notice delivered by personal service is effective upon service to the recipient.

24 (B) A notice delivered by first-class United States mail is effective three County  
25 business days after deposit in the United States mail, postage prepaid, addressed to the  
26 recipient.

27 (C) A notice delivered by an overnight commercial courier service is effective one  
28 County business day after deposit with the overnight commercial courier service,  
delivery fees prepaid, with delivery instructions given for next day delivery, addressed to  
the recipient.

(D) A notice delivered by telephonic facsimile transmission is effective when  
transmission to the recipient is completed (but, if such transmission is completed outside

1 of County business hours, then such delivery is deemed to be effective at the next  
2 beginning of a County business day), provided that the sender maintains a machine  
3 record of the completed transmission.

4 **5.4 Claims Presentation.** For all claims arising from or related to this Agreement,  
5 nothing in this Agreement establishes, waives, or modifies any claims presentation  
6 requirements or procedures provided by law, including the Government Claims Act (Division 3.6  
7 of Title 1 of the Government Code, beginning with section 810).

8 **Article 6**

9 **Termination and Suspension**

10 **6.1 Termination for Breach.**

11 (A) Upon determining that a breach (as defined in paragraph (C) below) has  
12 occurred, the County may give written notice of the breach to the Contractor. The written  
13 notice may suspend performance under this Agreement, and must provide at least 30  
14 days for the Contractor to cure the breach.

15 (B) If the Contractor fails to cure the breach to the County's satisfaction within the  
16 time stated in the written notice, the County may terminate this Agreement immediately.

17 (C) For purposes of this section, a breach occurs when, in the determination of the  
18 County, the Contractor has:

- 19 (1) Failed to comply with any part of this Agreement.
- 20 (2) Submitted a substantially incorrect or incomplete report to the County; or
- 21 (3) Improperly performed any of its obligations under this Agreement.

22 **6.2 Termination without Cause.** In circumstances other than those set forth above, the  
23 County may terminate this Agreement by giving at least 30 days advance written notice to the  
24 Contractor.

25 **6.3 No Penalty or Further Obligation.** Any termination of this Agreement by the County  
26 under this Article 6 is without penalty to or further obligation of the County.

27 **6.4 County's Rights upon Termination.** Upon termination for breach under this Article  
28 6, the County may demand repayment by the Contractor of any monies disbursed to the

1 Contractor under this Agreement that, in the County's sole judgment, were not expended in  
2 compliance with this Agreement. The Contractor shall promptly refund all such monies upon  
3 demand. This section survives the termination of this Agreement.

4 **Article 7**

5 **Independent Contractor**

6 7.1 **Status.** In performing under this Agreement, the Contractor, including its officers,  
7 agents, employees, and volunteers, is at all times acting and performing as an independent  
8 contractor, in an independent capacity, and not as an officer, agent, servant, employee, joint  
9 venturer, partner, or associate of the County.

10 7.2 **Verifying Performance.** The County has no right to control, supervise, or direct the  
11 manner or method of the Contractor's performance under this Agreement, but the County may  
12 verify that the Contractor is performing according to the terms of this Agreement.

13 7.3 **Benefits.** Because of its status as an independent contractor, the Contractor has no  
14 right to employment rights or benefits available to County employees. The Contractor is solely  
15 responsible for providing to its own employees all employee benefits required by law. The  
16 Contractor shall save the County harmless from all matters relating to the payment of  
17 Contractor's employees, including compliance with Social Security withholding and all related  
18 regulations.

19 7.4 **Services to Others.** The parties acknowledge that, during the term of this  
20 Agreement, the Contractor may provide services to others unrelated to the County.

21 **Article 8**

22 **Indemnity and Defense**

23 8.1 **Indemnity.** The Contractor shall indemnify and hold harmless and defend the  
24 County (including its officers, agents, employees, and volunteers) against all claims, demands,  
25 injuries, damages, costs, expenses (including attorney fees and costs), fines, penalties, and  
26 liabilities of any kind to the County, the Contractor, or any third party that arise from or relate to  
27 the performance or failure to perform by the Contractor (or any of its officers, agents,  
28 subcontractors, or employees) under this Agreement. The County may conduct or participate in

1 its own defense without affecting the Contractor's obligation to indemnify and hold harmless or  
2 defend the County.

3 8.2 **Survival.** This Article 8 survives the termination or expiration of this Agreement.

4 **Article 9**

5 **Insurance**

6 9.1 No insurance is required under this Agreement.

7 **Article 10**

8 **Inspections, Audits, and Public Records**

9 10.1 **Inspection of Documents.** The Contractor shall make available to the County, and  
10 the County may examine at any time during business hours and as often as the County deems  
11 necessary, all of the Contractor's records and data with respect to the matters covered by this  
12 Agreement, excluding attorney-client privileged communications. The Contractor shall, upon  
13 request by the County, permit the County to audit and inspect all of such records and data to  
14 ensure the Contractor's compliance with the terms of this Agreement.

15 10.2 **State Audit Requirements.** If the compensation to be paid by the County under this  
16 Agreement exceeds \$10,000, the Contractor is subject to the examination and audit of the  
17 California State Auditor, as provided in Government Code section 8546.7, for a period of three  
18 years after final payment under this Agreement. This section survives the termination of this  
19 Agreement.

20 10.3 **Public Records.** The County is not limited in any manner with respect to its public  
21 disclosure of this Agreement or any record or data that the Contractor may provide to the  
22 County. The County's public disclosure of this Agreement or any record or data that the  
23 Contractor may provide to the County may include but is not limited to the following:

24 (A) The County may voluntarily, or upon request by any member of the public or  
25 governmental agency, disclose this Agreement to the public or such governmental  
26 agency.

27 (B) The County may voluntarily, or upon request by any member of the public or  
28 governmental agency, disclose to the public or such governmental agency any record or

1 data that the Contractor may provide to the County, unless such disclosure is prohibited  
2 by court order.

3 (C) This Agreement, and any record or data that the Contractor may provide to the  
4 County, is subject to public disclosure under the Ralph M. Brown Act (California  
5 Government Code, Title 5, Division 2, Part 1, Chapter 9, beginning with section 54950).

6 (D) This Agreement, and any record or data that the Contractor may provide to the  
7 County, is subject to public disclosure as a public record under the California Public  
8 Records Act (California Government Code, Title 1, Division 7, Chapter 3.5, beginning  
9 with section 6250) ("CPRA").

10 (E) This Agreement, and any record or data that the Contractor may provide to the  
11 County, is subject to public disclosure as information concerning the conduct of the  
12 people's business of the State of California under California Constitution, Article 1,  
13 section 3, subdivision (b).

14 (F) Any marking of confidentiality or restricted access upon or otherwise made with  
15 respect to any record or data that the Contractor may provide to the County shall be  
16 disregarded and have no effect on the County's right or duty to disclose to the public or  
17 governmental agency any such record or data.

18 **10.4 Public Records Act Requests.** If the County receives a written or oral request  
19 under the CPRA to publicly disclose any record that is in the Contractor's possession or control,  
20 and which the County has a right, under any provision of this Agreement or applicable law, to  
21 possess or control, then the County may demand, in writing, that the Contractor deliver to the  
22 County, for purposes of public disclosure, the requested records that may be in the possession  
23 or control of the Contractor. Within five business days after the County's demand, the  
24 Contractor shall (a) deliver to the County all of the requested records that are in the Contractor's  
25 possession or control, together with a written statement that the Contractor, after conducting a  
26 diligent search, has produced all requested records that are in the Contractor's possession or  
27 control, or (b) provide to the County a written statement that the Contractor, after conducting a  
28 diligent search, does not possess or control any of the requested records. The Contractor shall

1 cooperate with the County with respect to any County demand for such records. If the  
2 Contractor wishes to assert that any specific record or data is exempt from disclosure under the  
3 CPRA or other applicable law, it must deliver the record or data to the County and assert the  
4 exemption by citation to specific legal authority within the written statement that it provides to  
5 the County under this section. The Contractor's assertion of any exemption from disclosure is  
6 not binding on the County, but the County will give at least 10 days' advance written notice to  
7 the Contractor before disclosing any record subject to the Contractor's assertion of exemption  
8 from disclosure. The Contractor shall indemnify the County for any court-ordered award of costs  
9 or attorney's fees under the CPRA that results from the Contractor's delay, claim of exemption,  
10 failure to produce any such records, or failure to cooperate with the County with respect to any  
11 County demand for any such records.

## 12 **Article 11**

### 13 **Disclosure of Self-Dealing Transactions**

14 11.1 **Applicability.** This Article 11 applies if the Contractor is operating as a corporation,  
15 or changes its status to operate as a corporation.

16 11.2 **Duty to Disclose.** If any member of the Contractor's board of directors is party to a  
17 self-dealing transaction, he or she shall disclose the transaction by completing and signing a  
18 "Self-Dealing Transaction Disclosure Form" (Exhibit C to this Agreement) and submitting it to  
19 the County before commencing the transaction or immediately after.

20 11.3 **Definition.** "Self-dealing transaction" means a transaction to which the Contractor is  
21 a party and in which one or more of its directors, as an individual, has a material financial  
22 interest.

## 23 **Article 12**

### 24 **General Terms**

25 12.1 **Modification.** Except as provided in Article 6, "Termination and Suspension," this  
26 Agreement may not be modified, and no waiver is effective, except by written agreement signed  
27 by both parties. The Contractor acknowledges that County employees have no authority to  
28 modify this Agreement except as expressly provided in this Agreement.



1       12.2 **Non-Assignment.** Neither party may assign its rights or delegate its obligations  
2 under this Agreement without the prior written consent of the other party.

3       12.3 **Governing Law.** The laws of the State of California govern all matters arising from  
4 or related to this Agreement.

5       12.4 **Jurisdiction and Venue.** This Agreement is signed and performed in Fresno  
6 County, California. Contractor consents to California jurisdiction for actions arising from or  
7 related to this Agreement, and, subject to the Government Claims Act, all such actions must be  
8 brought and maintained in Fresno County.

9       12.5 **Construction.** The final form of this Agreement is the result of the parties' combined  
10 efforts. If anything in this Agreement is found by a court of competent jurisdiction to be  
11 ambiguous, that ambiguity shall not be resolved by construing the terms of this Agreement  
12 against either party.

13       12.6 **Days.** Unless otherwise specified, "days" means calendar days.

14       12.7 **Headings.** The headings and section titles in this Agreement are for convenience  
15 only and are not part of this Agreement.

16       12.8 **Severability.** If anything in this Agreement is found by a court of competent  
17 jurisdiction to be unlawful or otherwise unenforceable, the balance of this Agreement remains in  
18 effect, and the parties shall make best efforts to replace the unlawful or unenforceable part of  
19 this Agreement with lawful and enforceable terms intended to accomplish the parties' original  
20 intent.

21       12.9 **Nondiscrimination.** During the performance of this Agreement, the Contractor shall  
22 not unlawfully discriminate against any employee or applicant for employment, or recipient of  
23 services, because of race, religious creed, color, national origin, ancestry, physical disability,  
24 mental disability, medical condition, genetic information, marital status, sex, gender, gender  
25 identity, gender expression, age, sexual orientation, military status or veteran status pursuant to  
26 all applicable State of California and federal statutes and regulation.

27       12.10 **No Waiver.** Payment, waiver, or discharge by the County of any liability or obligation  
28 of the Contractor under this Agreement on any one or more occasions is not a waiver of

1 performance of any continuing or other obligation of the Contractor and does not prohibit  
2 enforcement by the County of any obligation on any other occasion.

3       **12.11 Entire Agreement.** This Agreement, including its exhibits, is the entire agreement  
4 between the Contractor and the County with respect to the subject matter of this Agreement,  
5 and it supersedes all previous negotiations, proposals, commitments, writings, advertisements,  
6 publications, and understandings of any nature unless those things are expressly included in  
7 this Agreement. If there is any inconsistency between the terms of this Agreement without its  
8 exhibits and the terms of the exhibits, then the inconsistency will be resolved by giving  
9 precedence first to the terms of this Agreement without its exhibits, and then to the terms of the  
10 exhibits.

11       **12.12 No Third-Party Beneficiaries.** This Agreement does not and is not intended to  
12 create any rights or obligations for any person or entity except for the parties.

13       **12.13 Authorized Signature.** The Contractor represents and warrants to the County that:

14               (A) The Contractor is duly authorized and empowered to sign and perform its  
15 obligations under this Agreement.

16               (B) The individual signing this Agreement on behalf of the Contractor is duly  
17 authorized to do so and his or her signature on this Agreement legally binds the  
18 Contractor to the terms of this Agreement.

19       **12.14 Electronic Signatures.** The parties agree that this Agreement may be executed by  
20 electronic signature as provided in this section.

21               (A) An "electronic signature" means any symbol or process intended by an individual  
22 signing this Agreement to represent their signature, including but not limited to (1) a  
23 digital signature; (2) a faxed version of an original handwritten signature; or (3) an  
24 electronically scanned and transmitted (for example by PDF document) version of an  
25 original handwritten signature.

26               (B) Each electronic signature affixed or attached to this Agreement (1) is deemed  
27 equivalent to a valid original handwritten signature of the person signing this Agreement  
28 for all purposes, including but not limited to evidentiary proof in any administrative or

1 judicial proceeding, and (2) has the same force and effect as the valid original  
2 handwritten signature of that person.

3 (C) The provisions of this section satisfy the requirements of Civil Code section  
4 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3,  
5 Part 2, Title 2.5, beginning with section 1633.1).

6 (D) Each party using a digital signature represents that it has undertaken and  
7 satisfied the requirements of Government Code section 16.5, subdivision (a),  
8 paragraphs (1) through (5), and agrees that each other party may rely upon that  
9 representation.

10 (E) This Agreement is not conditioned upon the parties conducting the transactions  
11 under it by electronic means and either party may sign this Agreement with an original  
12 handwritten signature.

13 12.15 **Counterparts.** This Agreement may be signed in counterparts, each of which is an  
14 original, and all of which together constitute this Agreement.

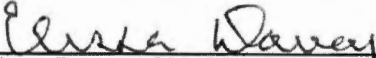
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The parties are signing this Agreement on the date stated in the introductory clause.

GARDEN OF INNOCENCE

COUNTY OF FRESNO

  
Elissa Davey, Chief Executive Officer  
Garden of Innocence  
156 Walker Way  
Vista, CA 92083

  
Sal Quintero, Chairman of the Board of  
Supervisors of the County of Fresno

**Attest:**  
Bernice E. Seidel  
Clerk of the Board of Supervisors  
County of Fresno, State of California

By:   
Deputy

For accounting use only:

Org No.: 31117000  
Account No.: 7295  
Fund No.:0001  
Subclass No.:  
10000

## Exhibit A

### Scope of Services

1  
2 Contractor will take possession of the remains of a deceased abandoned child from the  
3 County and provide a dignified burial and memorial service in compliance with all applicable  
4 laws. Contractor will be notified by the County with a certificate of Abandonment stating the  
5 deceased abandoned child is ready for pick up and cremation. Contractor agrees to take  
6 possession of the deceased abandoned child presently in County's facility with a completed  
7 certificate of abandonment provided by the County. Contractor will coordinate with a local  
8 mortuary ("Mortuary") to assist Contractor in the receiving of the deceased abandoned child for  
9 cremation. Mortuary will pick up the deceased abandoned child at the request of the Contractor  
10 and cremate the deceased abandoned child. County will not be responsible for any costs  
11 incurred by the Mortuary. Contractor will make arrangements directly with the Mortuary for  
12 pickup of the remains for disposition.

13 Contractor is expressly prohibited from using the occasion of the burial of any deceased  
14 abandoned child to further any political, sectarian or publicity purpose. Contractor warrants that  
15 it will abide with all policies set forth in the Mortuary guidelines established with the designated  
16 Mortuary regarding the pickup of the deceased abandoned child, cremation, and final  
17 disposition. Contractor will provide a permanent place in a Fresno County Cemetery for all  
18 abandoned deceased children and all future deceased abandoned children at no cost to the  
19 County. Contractor will not be involved in receiving any aborted or deceased abandoned child  
20 with family ties. For each deceased abandoned child received by Contractor pursuant to this  
21 Agreement, Contractor agrees to provide a full memorial service, open to the public to attend  
22 and participate. Contractor agrees to keep the name of each deceased abandoned child  
23 confidential, providing each deceased child at the time of burial, to maintain the child's  
24 anonymity. Contractor agrees to keep a database of all deceased abandoned children at their  
25 headquarters in San Diego for future reference in the event family requests disposition location.

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## Exhibit B

### Compensation

The County and the Contractor understand and agree that no monetary compensation will be paid from one party to the other during the term of this Agreement.

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## Exhibit C

### Self-Dealing Transaction Disclosure Form

In order to conduct business with the County of Fresno ("County"), members of a contractor's board of directors ("County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest."

The definition above will be used for purposes of completing this disclosure form.

#### Instructions

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
  - a. The name of the agency/company with which the corporation has the transaction; and
  - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.

The form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

## Exhibit C

<b>(1) Company Board Member Information:</b>			
<b>Name:</b>		<b>Date:</b>	
<b>Job Title:</b>			
<b>(2) Company/Agency Name and Address:</b>			
<b>(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to)</b>			
<b>(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code § 5233 (a)</b>			
<b>(5) Authorized Signature</b>			
<b>Signature:</b>		<b>Date:</b>	