

# **AGREEMENT**

THIS AGREEMENT is made and entered into this 1st day of March, 2016, by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to as "COUNTY", and Lithia Ford of Fresno incorporated under the laws of the State of California, whose address is, 195 E. Auto Center Drive, Fresno, California, hereinafter referred to as "CONTRACTOR."

WHEREAS, COUNTY desires to obtain vehicle maintenance and parts for the Sheriff-Coroner, General Services Department, and Public Works Department (hereafter, sometimes referred to individually as "COUNTY Department" or collectively as "COUNTY Departments"); and

WHEREAS, COUNTY sought bids for the provision of such services by issuing a Request for Quotation (RFQ) 060-5399; and

WHEREAS, CONTRACTOR submitted a response to RFQ 060-5399 and was determined to meet the requirements and terms of the conditions of RFQ 060-5399; and

WHEREAS, CONTRACTOR is engaged in the business of furnishing such services and hereby represents that they are professionally capable of performing the services called for by this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained, to be kept and performed by the respective parties, COUNTY and CONTRACTOR agree as follows:

## 1. OBLIGATIONS OF THE CONTRACTOR

A. CONTRACTOR agrees to provide all labor, materials and equipment to perform maintenance services when requested by a COUNTY Department, as set forth in COUNTY's Request for Quotation (RFQ) No. 060-5399, including Addendum No. 1, and

1 CONTRACTOR's Response to RFQ No. 060-5399, both incorporated herein by reference  
2 and made a part of this Agreement. Nothing herein is intended nor shall it be  
3 construed as creating an exclusive arrangement with CONTRACTOR. This Agreement  
4 shall not restrict COUNTY from obtaining these same or like goods and/or services from  
5 other entities or sources.  
6

7 B. All equipment provided by CONTRACTOR must be guaranteed to  
8 operate in accordance with acceptable current industry standards.  
9

10 2. TERM:

11 The term of this Agreement shall be for a period of three (3) years, commencing  
12 on March 1, 2016 through and including February 28, 2019. This Agreement may be  
13 extended for two (2) additional consecutive twelve (12) month periods upon written  
14 approval of both parties no later than thirty (30) days prior to the first day of the next  
15 twelve (12) month extension period. The Sheriff-Coroner or her designee is authorized  
16 to execute such written approval on behalf of COUNTY based on CONTRACTOR'S  
17 satisfactory performance.

18 3. COMPENSATION RATE:

19 CONTRACTOR's sole compensation for performance of the labor and  
20 parts rendered pursuant to this Agreement is listed in Exhibit "B", attached hereto and  
21 incorporated herein by reference.

22 In no event shall services performed under this Agreement exceed Two Hundred  
23 and Forty-five Thousand Dollars and No Cents (\$245,000.00) per year or One Million Two  
24 Hundred and Twenty-five Thousand Dollars and No Cents (\$1,225,000) during the  
25 potential sixty (60) month period of this Agreement.  
26

27 4. TERMINATION:

28 A. Non-Allocation of Funds - The terms of this Agreement, and the services to

1 be provided hereunder, are contingent on the approval of funds by the appropriating  
2 government agency. Should sufficient funds not be allocated, the services provided may  
3 be modified, or this Agreement terminated, at any time by giving the CONTRACTOR thirty  
4 (30) days advance written notice.

5  
6 B. Breach of Contract - The COUNTY may immediately suspend or terminate  
7 this Agreement in whole or in part, where in the determination of the COUNTY there is:

- 8 1) An illegal or improper use of funds;  
9 2) A failure to comply with any term of this Agreement;  
10 3) A substantially incorrect or incomplete report submitted to  
11 the COUNTY;  
12  
13 4) Improperly performed service.

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

23  
24 C. Without Cause - Under circumstances other than those set forth above, this  
25 Agreement may be terminated by COUNTY upon the giving of thirty (30) days advance  
26 written notice of an intention to terminate to CONTRACTOR.

27 5. INVOICING:  
28

1 CONTRACTOR will invoice the COUNTY on a monthly basis for the services  
2 provided under this Agreement. Invoices will include the itemized description of  
3 services performed with contract billing price, purchase order/contract number, date  
4 of service, invoice number, billing period, and amount. Invoices will be mailed to the  
5 County Department which requested the services at the addresses listed below:  
6

7 Fresno County Sheriff's Office  
8 Attn: Business Office  
9 2200 Fresno Street, P.O. Box 1788  
Fresno, CA 93721

10 Fresno County  
11 Attn: Department of Public Works and Planning  
12 2220 Tulare Street, 6<sup>th</sup> Floor  
Fresno, CA 93721

13 COF – Fleet Services  
14 4551 E. Hamilton  
15 Fresno, CA 93702

16  
17 Payments will be made to CONTRACTOR within 45 days of receipt and  
18 verification of invoices.

19 Payments will be mailed to:

20 Lithia Ford of Fresno  
21 195 E. Auto Center Drive  
22 Fresno, CA 93710  
23 Email: fresnofleet@lithia.com  
Phone: (559) 436-4112

24 6. INSURANCE:

25 Without limiting the COUNTY's right to obtain indemnification from  
26 CONTRACTOR or any third parties, CONTRACTOR, at its sole expense, shall maintain in  
27 full force and effect the following insurance policies throughout the term of this  
28 Agreement:



1                                   A.     Commercial General Liability

2                                   Commercial General Liability Insurance with limits of not less than  
3 One Million Dollars (\$1,000,000.00) per occurrence and an annual aggregate of Two  
4 Million Dollars (\$2,000,000.00). This policy shall be issued on a per occurrence basis.  
5  
6 COUNTY may require specific coverage including completed operations, product  
7 liability, and contractual liability, Explosion-Collapse-Underground, fire legal liability or  
8 any other liability insurance deemed necessary because of the nature of the contract.

9                                   B.     Automobile Liability

10                                  Comprehensive Automobile Liability Insurance with limits for bodily  
11 injury of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per person, Five  
12 Hundred Thousand Dollars (\$500,000.00) per accident and for property damages of not  
13 less than Fifty Thousand Dollars (\$50,000.00), or such coverage with a combined single  
14 limit of Five Hundred Thousand Dollars (\$500,000.00). Coverage should include owned  
15 and non-owned vehicles used in connection with this Agreement.  
16  
17

18                                  C.     Professional Liability

19                                  If CONTRACTOR employs licensed professional staff, (e.g., R.N.,  
20 L.C.S.W., M.F.C.C., lab phlebotomist) in providing services, Professional Liability  
21 Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence,  
22 Three Million Dollars (\$3,000,000.00) annual aggregate.  
23

24                                  D.     Worker's Compensation

25                                  A policy of Worker's Compensation insurance as may be required  
26 by the California Labor Code.

27                                  CONTRACTOR shall obtain endorsements to the Commercial General  
28 Liability insurance naming the County of Fresno, its officers, agents, and employees,

1 individually and collectively, as additional insured, but only insofar as the operations  
2 under this Agreement are concerned. Such coverage for additional insured shall apply  
3 as primary insurance and any other insurance, or self-insurance, maintained by  
4 COUNTY, its officers, agents and employees shall be excess only and not contributing  
5 with insurance provided under CONTRACTOR's policies herein. This insurance shall not  
6 be cancelled or changed without a minimum of thirty (30) days advance written notice  
7 given to COUNTY.  
8

9           Within Thirty (30) days from the date CONTRACTOR's signs this Agreement,  
10 CONTRACTOR shall provide certificates of insurance and endorsement as stated above  
11 for all of the foregoing policies, as required herein, to the County of Fresno, (Fresno  
12 County Sheriff's Office, Business Office, 2200 Fresno Street, Fresno, CA 93721), stating  
13 that such insurance coverage have been obtained and are in full force; that the  
14 County of Fresno, its officers, agents and employees will not be responsible for any  
15 premiums on the policies; that such Commercial General Liability insurance names the  
16 County of Fresno, its officers, agents and employees, individually and collectively, as  
17 additional insured, but only insofar as the operations under this Agreement are  
18 concerned. Coverage for additional insured shall apply as primary insurance and any  
19 other insurance, or self-insurance, maintained by COUNTY, its officers, agents and  
20 employees, shall be excess only and not contributing with insurance provided under  
21 CONTRACTOR's policies herein. This insurance shall not be cancelled or changed  
22 without a minimum of thirty (30) days advance, written notice given to COUNTY.  
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26           In the event CONTRACTOR fails to keep in effect at all times insurance  
27 coverage as herein provided, the COUNTY may, in addition to other remedies it may  
28 have, suspend or terminate this Agreement upon the occurrence of such event.

1 All policies shall be with admitted insurers licensed to do business in the  
2 State of California. Insurance purchased shall be purchased from companies  
3 possessing a current A.M. Best, Inc. rating of B+ FSC VIII or better.  
4

5 7. INDEPENDENT CONTRACTOR:

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

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

21 Because of its status as an independent contractor, CONTRACTOR shall  
22 have absolutely no right to employment rights and benefits available to COUNTY  
23 employees. CONTRACTOR shall be solely liable and responsible for providing to, or on  
24 behalf of, its employees all legally-required employee benefits. In addition,  
25 CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters  
26 relating to payment of CONTRACTOR'S employees, including compliance with Social  
27 Security withholding and all other regulations governing such matters. It is  
28

acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

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

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

10. HOLD HARMLESS: CONTRACTOR agrees to indemnify, save, hold harmless, and at COUNTY'S request, defend the COUNTY, its officers, agents, and employees from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to COUNTY in connection with the performance, or failure to perform, by CONTRACTOR, its officers, agents, or employees under this Agreement, and from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the performance, or failure to perform, of CONTRACTOR, its officers, agents, or employees under this Agreement.

11. NOTICES:

Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, with postage prepaid, addressed to the party to which notice is to be given at the party's address set forth below or at such other address as the parties may from time to time designate by written notice.

COUNTY OF FRESNO  
Sheriff's Business Office  
2200 Fresno Street  
Fresno, CA 93721

CONTRACTOR  
Lithia Ford of Fresno  
195 E. Auto Center Drive  
Fresno, CA 93710



1  
2 12. DISCLOSURE OF SELF-DEALING TRANSACTIONS:

3 This provision is only applicable if the CONTRACTOR is operating as a corporation (a for-  
4 profit or non-profit corporation) or if during the term of this agreement, the CONTRACTOR  
5 changes its status to operate as a corporation.

6 Members of the CONTRACTOR's Board of Directors shall disclose any self-  
7 dealing transactions they engage in while providing goods or performing services under  
8 this agreement. A self-dealing transaction shall mean a transaction to which the  
9 CONTRACTOR is a party and in which one or more of its directors has a material financial  
10 interest. Each member of CONTRACTOR's Board of Directors shall sign a *Self-Dealing*  
11 *Transaction Disclosure Form* (Exhibit A) and submit it to the COUNTY prior to commencing  
12 the transaction or immediately after.  
13  
14

15 13. AUDITS AND INSPECTIONS:

16 The CONTRACTOR shall at any time during business hours, and as often as  
17 the COUNTY may deem necessary, make available to the COUNTY for examination all of  
18 its records and data with respect to the matters covered by this Agreement. The  
19 CONTRACTOR shall, upon request by the COUNTY, permit the COUNTY to audit and  
20 inspect all of such records and data necessary to ensure CONTRACTOR'S compliance with  
21 the terms of this Agreement.  
22

23 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall  
24 be subject to the examination and audit of the Auditor General for a period of three (3)  
25 years after final payment under contract (Government Code Section 8546.7).  
26

27 14. GOVERNING LAW:

28 Venue for any action arising out of or related to this Agreement shall only be  
in Fresno County, California.

1 The rights and obligations of the parties and all interpretation and  
2 performance of this Agreement shall be governed in all respects by the laws of the  
3 State of California.  
4

5 15. ENTIRE AGREEMENT:

6 This Agreement, including Exhibits A and B, RFQ No. 060-5399, including  
7 Addendum No. One, and CONTRACTOR's Response to RFQ No. 060-5399, constitutes the  
8 entire agreement between the CONTRACTOR and COUNTY with respect to the subject  
9 matter hereof and supersedes all previous negotiations, proposals, commitments, writings,  
10 advertisements, publications, and understanding of any nature whatsoever unless  
11 expressly included in this Agreement. In the event of any inconsistency among these  
12 documents, the inconsistency shall be resolved by giving precedence in the following  
13 order of priority: (1) to this Agreement, including all Exhibits; (2) to RFQ No. 060-5399,  
14 including Addendum No. One; and (3) to CONTRACTOR's Response to RFQ No. 060-5399.  
15 A copy of COUNTY's RFQ No. 060-5399, including Addendum No. One, and  
16 CONTRACTOR's Response thereto, shall be retained and made available during the term  
17 of this Agreement by COUNTY.  
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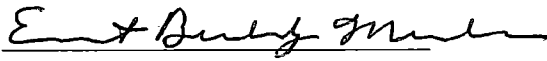
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1 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be  
2 executed as of the day and year first herein above written.  
3

4 CONTRACTOR

COUNTY OF FRESNO

5  
6 By 

By 

Ernest Buddy Mendes, Chairman  
Board of Supervisors

7  
8  
9 Print Name Christopher L. Klein

10 Title: Fleet Service Manager Date: March 1, 2016

11  
12 Date: 1/26/16

BERNICE E. SEIDEL, Clerk  
Board of Supervisors

13  
14 By \_\_\_\_\_

By Susan Bishop - Deputy

15 Print Name: \_\_\_\_\_

Date: March 1, 2016

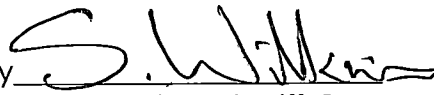
16  
17 Title: \_\_\_\_\_  
18 Secretary (of Corporation), or  
19 any Assistant Secretary, or  
20 Chief Financial Officer, or  
21 any Assistant Treasurer

ATTEST:

Clerk to the Board of Supervisors

22 Date: \_\_\_\_\_

REVIEWED & RECOMMENDED FOR APPROVAL

23 By   
24 Margaret Mims, Sheriff-Coroner

25 By   
26 Alan Weaver, Director of Public Works and  
27 Planning


28 By   
Robert W. Bash, Director of Internal Services

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APPROVED AS TO LEGAL FORM:

By   
Daniel Cederborg, County Counsel


APPROVED AS TO ACCOUNTING FORM:

By   
Vicki Crow  
Auditor-Controller/Treasurer-Tax Collector

Fund	0001
Subclass	10000
ORG	31113229, 8910, 9015, 9140
Account	7205



## EXHIBIT A

(1) Company Board Member Information:			
Name:	Christopher L Klen	Date:	1/26/16
Job Title:	Fleet Service Manager		
(2) Company/Agency Name and Address:			
Lithia Ford 195 E Auto Center Dr. Fresno CA 93710			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):			
None			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):			
None			
(5) Authorized Signature			
Signature:		Date:	1/26/16

## Exhibit "B"

### Minimum Service Level:

COUNTY agrees to pay CONTRACTOR for providing vehicle maintenance services using the following rate schedule per RFP 060-5399:

Item	Cost
Core Charge	No
Delivery:	
Local Parts	2 hrs.
Facing Depot	16 hrs.
Other	48 hrs.
Parts Purchase History	Yes
Outside Salesperson	Yes
Mfr. Number Cross Ref.	Yes
Towing	No Addl. Charge
Hourly Labor Rate	\$60.00
Parts Pricing	Cost Plus 10%