

A G R E E M E N T

THIS AGREEMENT is made and entered into this 17th day of October, 2017, by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to as "COUNTY", and **THE GARDEN OF INNOCENCE**, a non-profit corporation whose address is 156 Walker Way, Vista, CA, 92083, hereinafter referred to as "CONTRACTOR".

W I T N E S S E T H:

WHEREAS, the Sheriff-Coroner of the County of Fresno, from time to time in the performance of their official duties come into possession of the remains of a deceased fetus, infant or child 8 years of age or under; and hereinafter referred to as "deceased abandoned child".

WHEREAS, the COUNTY has a need for the humane and dignified disposition and burial of said deceased abandoned child; and

WHEREAS, CONTRACTOR, a non-profit organization, represents that it has the ability and experience to provide a humane dignified burial of said deceased abandoned child; and

WHEREAS, CONTRACTOR, has the willingness to provide said disposition and burial services as a public service at no cost to the COUNTY.

NOW, THEREFORE, in consideration of their mutual covenants and conditions, the parties hereto agree as follows:

1. **O B L I G A T I O N S O F T H E C O N T R A C T O R:**

A. CONTRACTOR will take possession of deceased abandoned child from the COUNTY and provide a dignified burial and memorial service in compliance with all applicable laws.

B. CONTRACTOR will be notified by the COUNTY with a Certificate of Abandonment stating the deceased abandoned child is ready for pick up and cremation.

C. CONTRACTOR will contract with a local mortuary to assist them in the receiving of the deceased abandoned child for cremation. Mortuary will pick up the deceased abandoned child at the request of the CONTRACTOR and cremate the deceased abandoned child. CONTRACTOR will make arrangements directly with the Mortuary for pick-up of the

1 cremains for disposition.

2 D. CONTRACTOR is expressly prohibited from using the occasion of the
3 burial of any deceased abandoned child to further any political, sectarian or publicity purpose.

4 E. CONTRACTOR warrants that it will abide with all policies set forth in the
5 mortuary guidelines established with the designated mortuary regarding the pick-up of the
6 deceased abandoned child, cremation and final disposition.

7 F. CONTRACTOR will provide a permanent place in a Fresno County
8 Cemetery for all abandoned deceased child and all future deceased abandoned child at no cost to
9 the COUNTY.

10 G. CONTRACTOR agrees to take possession of the deceased abandoned
11 child presently in our facility with a completed certificate of abandonment provided by the
12 COUNTY.

13 H. CONTRACTOR will not be involved in receiving any aborted or deceased
14 abandoned child with family ties.

15 I. CONTRACTOR agrees to provide a full memorial service, open to the
16 public to attend and participate.

17 J. CONTRACTOR agrees to keep the names of the deceased abandoned
18 child confidential, providing a given name at the time of burial.

19 K. CONTRACTOR agrees to keep a database of all deceased abandoned
20 children at their headquarters in San Diego for future reference in the event family requests
21 disposition location.

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23 2. **OBLIGATIONS OF THE COUNTY:**

24 A. Upon determination that the remains of the deceased abandoned child no
25 longer need to be retained by the COUNTY for any official purpose, the COUNTY shall contact the
26 CONTRACTOR and inform the CONTRACTOR that deceased abandoned child is available for
27 release and cremation.

28 B. The COUNTY will provide the CONTRACTOR with a Certificate of

1 Abandonment as well as the Death Certificate and burial permit at no cost to both parties.

2 3. **NO MONETARY COMPENSATION:**

3 A. The parties understand and agree that no monetary compensation will be
4 paid from one party to the other during the term of this agreement.

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6 4. **TERMS:**

7 The term of this Agreement shall be for a period of three (3) years,
8 commencing on October 17, 2017 through and including October 16, 2020. This Agreement may
9 be extended for two (2) additional consecutive twelve (12) month periods upon written approval of
10 both parties no later than thirty (30) days prior to the first day of the next twelve (12) month
11 extension period. The Sheriff-Coroner or her designee is authorized to execute such written
12 approval on behalf of COUNTY based on CONTRACTOR's satisfactory performance.

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14 5. **TERMINATION:**

15 A. Breach of Contract - The COUNTY may immediately suspend or terminate
16 this Agreement in whole or in part, where in the determination of the COUNTY the
17 CONTRACTOR has failed to perform any obligation imposed by this contract. In the event the
18 contract is terminated for breach of contract, each deceased abandoned child that has not been
19 cremated and/or buried will be returned to the COUNTY within five (5) days.

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

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25 6. **INDEPENDENT CONTRACTOR:** In performance of the work, duties and
26 obligations assumed by CONTRACTOR under this Agreement, it is mutually understood and
27 agreed that CONTRACTOR, including any and all of the CONTRACTOR'S officers, agents, and
28 employees will at all times be acting and performing as an independent contractor, and shall act in

1 an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or
2 associate of the COUNTY. Furthermore, COUNTY shall have no right to control or supervise or
3 direct the manner or method by which CONTRACTOR shall perform its work and function.

4 However, COUNTY shall retain the right to administer this Agreement so as to verify that
5 CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.

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

9 Because of its status as an independent contractor, CONTRACTOR shall have
10 absolutely no right to employment rights and benefits available to COUNTY employees.

11 CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its
12 employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely
13 responsible and save COUNTY harmless from all matters relating to payment of
14 CONTRACTOR'S employees, including compliance with Social Security withholding and all other
15 regulations governing such matters. It is acknowledged that during the term of this Agreement,
16 CONTRACTOR may be providing services to others unrelated to the COUNTY or to this
17 Agreement.

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

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

23 9. **HOLD HARMLESS:** CONTRACTOR agrees to indemnify, save, hold
24 harmless, and at COUNTY'S request, defend the COUNTY, its officers, agents, and employees
25 from any and all costs and expenses, damages, liabilities, claims, and losses occurring or
26 resulting to COUNTY in connection with the performance, or failure to perform, by
27 CONTRACTOR, its officers, agents, or employees under this Agreement, and from any and all
28 costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any person,

1 firm, or corporation who may be injured or damaged by the performance, or failure to perform,
2 of CONTRACTOR,

3 10. **INSURANCE:**

4 Without limiting the COUNTY's right to obtain indemnification from
5 CONTRACTOR or any third parties, CONTRACTOR, at its sole expense, shall maintain in full
6 force and effect, the following insurance policies or a program of self-insurance, including but not
7 limited to, an insurance pooling arrangement or Joint Powers Agreement (JPA) throughout the
8 term of the Agreement:

9 A. Automobile Liability

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

16 B. Worker's Compensation

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

19 This insurance shall not be cancelled or changed without a minimum of thirty
20 (30) days advance written notice given to COUNTY.

21 Within Thirty (30) days from the date CONTRACTOR signs and executes this
22 Agreement, CONTRACTOR shall provide certificates of insurance and endorsement as stated
23 above for all of the foregoing policies, as required herein, to the County of Fresno, (Name and
24 Address of the official who will administer this contract), stating that such insurance coverage have
25 been obtained and are in full force; that the County of Fresno, its officers, agents and employees
26 will not be responsible for any premiums on the policies; and that this insurance shall not be
27 cancelled or changed without a minimum of thirty (30) days advance, written notice given to
28 COUNTY.

1 In the event CONTRACTOR fails to keep in effect at all times insurance
2 coverage as herein provided, the COUNTY may, in addition to other remedies it may have,
3 suspend or terminate this Agreement upon the occurrence of such event.

4 All policies shall be issued by admitted insurers licensed to do business in the
5 State of California, and such insurance shall be purchased from companies possessing a current
6 A.M. Best, Inc. rating of A FSC VII or better.

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

13 12. SELF DEALING DISCLOSURE:

14 This provision is only applicable if the CONTRACTOR is operating as a corporation (a for-
15 profit or non-profit corporation) or if during the term of this Agreement, the CONTRACTOR
16 changes its status to operate as a corporation.

17 Members of the CONTRACTOR Board of Directors shall disclose any self-dealing
18 transactions that they are a party to while CONTRACTOR is providing goods or performing
19 services under this Agreement. A self-dealing transaction shall mean a transaction to which
20 CONTRACTOR is a party and in which one or more of its directors has a material financial
21 interest. This provision is only applicable if the CONTRACTOR is operating as a Corporation
22 Members of the Board of Directors shall disclose any self-dealing transactions that they are a
23 party to by completing and signing a Self-Dealing Transaction Disclosure Form (Exhibit "A") and
24 submitting it to COUNTY prior to commencing with the self-dealing transaction or immediately
25 thereafter.

26 13. NOTICES: The persons and their addresses having authority to give and
27 receive notices under this Agreement include the following:

28 COUNTY
Margaret Mims

CONTRACTOR
Garden of Innocence

Sheriff-Coroner
2200 Fresno Street
Fresno, CA 93721

Elissa Davev, Founder
156 Walker Way
Vista, CA 92083

Any and all notices between the COUNTY and the CONTRACTOR provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly served when personally delivered to one of the parties, or in lieu of such personal services, when deposited in the United States Mail, postage prepaid, addressed to such party.

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

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

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

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

3 **CONTRACTOR**

4 Elissa Davey
5 Elissa Davey, Founder
6 Garden of Innocence
156 Walker Way
Vista, CA 92083

COUNTY OF FRESNO

A. Pal
Chairman, Board of Supervisors

7 DATE: September 28, 2017

DATE: 10-17-17

8 REVIEWED & RECOMMENDED FOR APPROVAL

9 S. Wilkins
10 Margaret Mims
11 Sheriff-Coroner

11 APPROVED AS TO LEGAL FORM

12 Janelli K. Kelly
13 County Counsel

APPROVED AS TO ACCOUNTING FORM

Oscar Aguirre
Auditor-Controller/Treasurer-Tax Collector

14 FOR ACCOUNTING USE ONLY:

15 ORG No.: 31117000
16 Account No.: 7295
17 Requisition No.: NA

ATTEST:
BERNICE E. SEIDEL
Clerk to the Board of Supervisors
County of Fresno, State of California
By Susan Bishop
Deputy

18 FCMC 06/11

19 G:\ADMINISTRATION\BUSINESS\FINANCIAL REPORTING\BOS AGENDA\CONTRACTS\GARDEN OF INNOCENCE\AGREEMENT\ON FILE
20 WITH CLERK - AGREEMENT WITH GARDEN OF INNOCENCE.DOC
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1 **EXHIBIT A**

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3 **SELF-DEALING TRANSACTION DISCLOSURE FORM**

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

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

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

10 INSTRUCTIONS

- 11 (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- 12 (2) Enter the board member's company/agency name and address.
- 13 (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a
14 minimum, include a description of the following:
- 15 a. The name of the agency/company with which the corporation has the transaction; and
 - 16 b. The nature of the material financial interest in the Corporation's transaction that the board
17 member has.
- 18 (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the
19 Corporations Code.
- 20 (5) Form must be signed by the board member that is involved in the self-dealing transaction described in
21 Sections (3) and (4).
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(1) Company Board Member Information:

Name:		Date:	
Job Title:			

(2) Company/Agency Name and Address:

(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):

(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):

(5) Authorized Signature

Signature:		Date:	
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