

AGREEMENT

THIS AGREEMENT is made and entered into this 29th day of January, 2019, by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to as "COUNTY", and Western State Design, Inc., a California corporation, whose address is 2331 Tripaldi Way, Hayward, CA 94545, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

WHEREAS, COUNTY desires to enter into an agreement to obtain maintenance services for its laundry equipment in the South Annex Jail and the Main Jail; and

WHEREAS, COUNTY sought bids for the provision of such services by issuing a Request for Quotation (RFQ) 19-027; and

WHEREAS CONTRACTOR submitted a response to RFQ 19-027 and was determined to be the most responsible respondent in terms of the conditions of RFQ 19-027 and this Agreement; and

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

1. OBLIGATIONS OF THE CONTRACTOR

A. CONTRACTOR agrees to provide all labor, materials, equipment, parts, travel, taxes, costs, etc. necessary to perform regularly scheduled maintenance on eight (8) front load washers, sixteen (16) free standing dryers, and a Wascomat washer and dryer, in the South Annex Jail and the Main Jail. Regularly scheduled maintenance shall be performed once every calendar month.

CONTRACTOR shall charge COUNTY, and COUNTY will pay CONTRACTOR, on a monthly basis for such services, at the rate identified in Section 1 of Exhibit A, which is attached hereto and fully incorporated herein by this reference. Regularly scheduled maintenance includes, but is not limited to, cleaning, repairing, examining, lubricating, and adjusting the eight (8) front load washers, sixteen (16) free standing dryers, and the Wascomat washer and dryer, in the South Annex Jail and the Main Jail, so as to ensure that all such machines are continuously operational as designed and fully functional.

B. When a machine delineated in Section 1.A of this Agreement stops working, is no longer capable of being fully operational, or is not functional as designed, and regular maintenance as

1 delineated in Section 1.A is not sufficient to correct the issue(s), CONTRACTOR shall provide repair
2 services as requested by the Sheriff-Coroner-Public Administrator (SCPA), or her/his designee.
3 CONTRACTOR shall provide a quote for such repair services, including an estimate of the total hours of
4 labor and cost of parts prior to any such repair service, and the SCPA or her/his designee, is authorized
5 to agree to the repair service. The time frame for providing repair services shall be selected and
6 identified by the SCPA or her/his designee, and CONTRACTOR shall charge labor rates based upon
7 the rates identified Section 2 of Exhibit A.

8 C. When maintenance or repairs will not or do not result in a machine being
9 operational as designed or fully functional, the SCPA or her/his designee, may, in her/his sole discretion,
10 authorize the CONTRACTOR to install any new machine(s) already purchased by COUNTY or to
11 purchase a new machine(s), as approved by the SCPA or her/his designee, on behalf of COUNTY and
12 then install such machine(s). Any installation services provided by CONTRACTOR pursuant to this
13 paragraph shall be charged at the hourly rates delineated in Section 2.a of Exhibit A. Any and all labor
14 or machinery purchased pursuant this paragraph shall be considered part of the annual maximums
15 identified in Section 4 of this Agreement.

16 D. CONTRACTOR shall provide a monthly report to the SCPA or her/his designee.
17 The monthly report shall contain information regarding scheduled repairs, upcoming repairs, necessary
18 repairs, rodent and/or insect infestations, all issues related to the upkeep and sanitation of the
19 equipment delineated in Section 1 of this Agreement, and any other information requested by the SCPA.
20 CONTRACTOR shall charge COUNTY for such monthly reports at the amount delineated in Section 3 of
21 Exhibit A.

22 2. TERM

23 The term of this Agreement shall be for a period of three (3) years, commencing on the 1st day of
24 January, 2019 through and including the last day of December 2021. This Agreement may be extended for
25 two (2) additional consecutive twelve (12) month periods upon written approval of both parties no later than
26 thirty (30) days prior to the first day of the next twelve (12) month extension period. The SCPA or her/his
27 designee is authorized to execute such written approval on behalf of COUNTY based on CONTRACTOR'S
28 satisfactory performance.

1 3. TERMINATION

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

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

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

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

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

23 4. COMPENSATION/INVOICING: COUNTY agrees to pay CONTRACTOR and
24 CONTRACTOR agrees to receive compensation based on the rates listed in EXHIBIT "A", which is
25 attached hereto and incorporated herein by this reference. CONTRACTOR shall submit monthly invoices
26 in triplicate to the County of Fresno Sheriff-Coroner's Office, at 2200 Fresno Street, Fresno, CA 93721.

27 In no event shall services performed under this Agreement be in excess of fifty thousand dollars
28 (\$50,000) per calendar year, or total more than one hundred fifty thousand dollars (\$150,000) during the

term of this Agreement from January 1, 2019, up to and including December 31, 2021. In no event shall services performed under the two one-year renewals (January 1, 2022, through December 31, 2022, and January 1, 2023, through December 31, 2023) be in excess of fifty thousand dollars (\$50,000) annually and one hundred thousand dollars (\$100,000) cumulatively. It is understood that all expenses incidental to CONTRACTOR'S performance of services under this Agreement shall be borne by CONTRACTOR. Within forty-five (45) days after receipt of the invoice, COUNTY will remit payment to CONTRACTOR. Such payment shall be sent to:

WESTERN STATE DESIGN

2331 Tripaldi Way

Hayward, CA 94545

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

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

Because of its status as an independent contractor, CONTRACTOR shall have absolutely no right to employment rights and benefits available to COUNTY employees. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating to payment of CONTRACTOR'S employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

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

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

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

13 9. INSURANCE

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

18 A. Commercial General Liability

19 Commercial General Liability Insurance with limits of not less than One Million Dollars
20 (\$1,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). This
21 policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including
22 completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal
23 liability or any other liability insurance deemed necessary because of the nature of this contract.

24 B. Automobile Liability

25 Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars
26 (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should include any auto
27 used in connection with this Agreement.
28

1 C. Professional Liability

2 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in
3 providing services, Professional Liability Insurance with limits of not less than One Million Dollars
4 (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate.

5 D. Worker's Compensation

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

8 Additional Requirements Relating to Insurance

9 CONTRACTOR shall obtain endorsements to the Commercial General Liability insurance naming
10 the County of Fresno, its officers, agents, and employees, individually and collectively, as additional
11 insured, but only insofar as the operations under this Agreement are concerned. Such coverage for
12 additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained
13 by COUNTY, its officers, agents and employees shall be excess only and not contributing with insurance
14 provided under CONTRACTOR's policies herein. This insurance shall not be cancelled or changed without
15 a minimum of thirty (30) days advance written notice given to COUNTY.

16 CONTRACTOR hereby waives its right to recover from COUNTY, its officers, agents, and
17 employees any amounts paid by the policy of worker's compensation insurance required by this
18 Agreement. CONTRACTOR is solely responsible to obtain any endorsement to such policy that may be
19 necessary to accomplish such waiver of subrogation, but CONTRACTOR's waiver of subrogation under
20 this paragraph is effective whether or not CONTRACTOR obtains such an endorsement.

21 Within Thirty (30) days from the date CONTRACTOR signs and executes this Agreement,
22 CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all of the
23 foregoing policies, as required herein, to the County of Fresno, SCPA stating that such insurance coverage
24 have been obtained and are in full force; that for such worker's compensation insurance the
25 CONTRACTOR has waived its right to recover from the COUNTY, its officers, agents, and employees any
26 amounts paid under the insurance policy and that waiver does not invalidate the insurance policy; that the
27 County of Fresno, its officers, agents and employees will not be responsible for any premiums on the
28 policies; that such Commercial General Liability insurance names the County of Fresno, its officers, agents

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

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

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

13 10. 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 Auditor General for a period of three (3) years after final payment under
20 contract (Government Code Section 8546.7).

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

23 COUNTY
24 COUNTY OF FRESNO
25 Sheriff-Coroner's Office
26 2200 Fresno Street
27 Fresno, CA 93721

23 CONTRACTOR
24 Western State Design, Inc
25 Attn: Todd Hryn
26 2331 Tripaldi Way
27 Hayward, CA 94545

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 12. 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 13. DISCLOSURE OF SELF-DEALING TRANSACTIONS

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

21 Members of the CONTRACTOR's Board of Directors shall disclose any self-dealing transactions
22 that they are a party to while CONTRACTOR is providing goods or performing services under this
23 agreement. A self-dealing transaction shall mean a transaction to which the CONTRACTOR is a party
24 and in which one or more of its directors has a material financial interest. Members of the Board of
25 Directors shall disclose any self-dealing transactions that they are a party to by completing and signing a
26 Self-Dealing Transaction Disclosure Form, attached hereto as Exhibit B and incorporated herein by
27 reference, and submitting it to the COUNTY prior to commencing with the self-dealing transaction or
28 immediately thereafter.

1 14. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the
2 CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes all previous
3 Agreement negotiations, proposals, commitments, writings, advertisements, publications, and
4 understanding of any nature whatsoever unless expressly included in this Agreement. In the event of any
5 inconsistency in interpreting the documents which constitute this Agreement, the inconsistency shall be
6 resolved by giving precedence in the following order of priority: (1) the text of this Agreement; (2) Exhibit
7 "A"; and (3) Exhibit "B".

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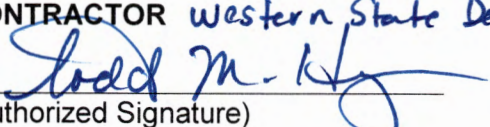
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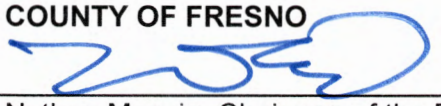
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1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year
2 first hereinabove written.

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4 **CONTRACTOR** Western State Design **COUNTY OF FRESNO**

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6 (Authorized Signature)


Nathan Magsig, Chairman of the Board of
Supervisors of the County of Fresno

7 TODD M. Hyren, Vice President
8 Print Name & Title

9 2331 TRIPALDI way

10 Hayward, CA 94545

Mailing Address

ATTEST:

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

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15 By: Susan Bishop
Deputy

16 **FOR ACCOUNTING USE ONLY:**

17 ORG No.: 31114000

18 Account No.: 7205

19 Requisition No.:
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EXHIBIT "A"

MAINTENANCE SERVICE

1. Regularly Scheduled Maintenance:

All labor, materials, equipment, parts, travel, taxes, costs, etc., necessary to perform regularly scheduled maintenance to the Laundry Machines at the South Annex Jail and the Main Jail, as delineated in Section 1.A of the Agreement.

Monthly Rate: \$1,397.55

2. Repair Service:

a. Repairs performed during normal business hours, i.e. Monday through Friday, 8:00 a.m. to 5:00 p.m., where COUNTY requires repairs to be commenced within 24 hours.

Per Hour: \$ 91.50

b. Repairs performed on federal holidays, on the weekends, or outside normal business hours, where COUNTY requires repairs to be commenced within 24 hours.

Per Hour: \$ 137.25

c. Emergency repairs, meaning any all repairs where COUNTY requires repairs to be commenced within 12 hours.

Per Hour: \$ 150.00

3. Monthly Reports:

Per Report \$ 91.50

An \$85.00 trip charge will apply to calls for Repair Service and Emergency Repair Service.

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2 **EXHIBIT "B"**

3 **SELF-DEALING TRANSACTION DISCLOSURE FORM**

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

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

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

11 **INSTRUCTIONS**

12 (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.

13 (2) Enter the board member's company/agency name and address.

14 (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the
15 County. At a minimum, include a description of the following:

16 a. The name of the agency/company with which the corporation has the transaction; and

17 b. The nature of the material financial interest in the Corporation's transaction that the
18 board member has.

19 (4) Describe in detail why the self-dealing transaction is appropriate based on applicable
20 provisions of the Corporations Code.

21 (5) Form must be signed by the board member that is involved in the self-dealing transaction
22 described in 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: