

# AGREEMENT

THIS AGREEMENT is made and entered into this 24th day of March, 2020, by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to as "COUNTY", and Fresno Cremation Company, a sole proprietorship doing business as Chapel of the Light, whose address is 1620 W. Belmont Ave. Fresno, CA. 93728, hereinafter referred to as "CONTRACTOR".

## WITNESSETH:

WHEREAS, the COUNTY's Sheriff Office requires professional cremation services as described in COUNTY's Request for Quotation No. 20-010 and Addendum One made thereto (collectively, RFQ) which contained specified detailed compliance specifications and a comprehensive quotation schedule CONTRACTOR had to comply to.

WHEREAS, the bid was awarded to CONTRACTOR, i.e., the vendor that met the COUNTY's minimum compliance specifications and submitted the lowest quote out of a total of three quotes; and

WHEREAS, CONTRACTOR wishes to provide professional cremation services as described in the RFQ.

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

### 1. OBLIGATIONS OF CONTRACTOR

- A. Transportation of decedent from Morgue to CONTRACTOR's location. The deceased will not be in a cardboard container.
- B. Filing of all Death Certificates and Burial Permits for County Cremations.
- C. Cremation of decedents within state mandated timelines to perform service.
- D. Ensuring all cremated remains are properly boxed and labeled.
- E. Scattering of cremains if authorized by Coroner.
- F. Shipment of cremains to a designated location authorized by the Coroner of COUNTY with pre-printed cremation authorization forms.
- G. Provision of preprinted Cremation Authorization forms.

1 H. Provision of detailed billing to COUNTY that includes the decedent's name, date  
2 of cremation and coroner's case number.

3 I. Ensuring suitable containers for cremated remains (plastic containers/urn are  
4 sufficient).

5 J. All materials to be used shall be new and of merchantable grade, free from defect.

6 K. With the invoice or within twenty-five (25) days of delivery, CONTRACTOR must  
7 provide to COUNTY a Safety Data Sheet for each product, which contains any substance on "The List  
8 of 800 Hazardous Substances", published by the State Director of Industrial Relations.

9 L. Ensuring that the premises of COUNTY shall at all times be clean from  
10 accumulation of waste materials or rubbish caused by CONTRACTOR's employees or work and shall  
11 remove all resulting work debris from the job site.

12 2. OBLIGATIONS OF COUNTY

13 A. Use preprinted Cremation Authorization forms to be provided by CONTRACTOR.

14 B. Pick up cremated remains from CONTRACTOR (if Contractor's place of business is  
15 located within the Fresno/Clovis city limits) within thirty (30) days.

16 3. INSPECTION: All material and workmanship shall be subject to inspection, examination and  
17 test by COUNTY at any and all times during which manufacture and/or construction are carried on.  
18 COUNTY shall have the right to reject defective material and workmanship or require its correction, which  
19 shall CONTRACTOR shall do so within thirty (30) days from COUNTY's request.

20 4. STANDARD OF PERFORMANCE: All work shall be performed in a good and workmanlike  
21 manner.

22 5. TERM

23 The term of this Agreement shall be for a period of three (3) years, commencing on October 1, 2019  
24 through and including September 30, 2022. This Agreement may be extended for two (2) additional  
25 consecutive twelve (12) month periods upon written approval of both parties no later than thirty (30) days  
26 prior to the first day of the next twelve (12) month extension period. The Sheriff or his or her designee is  
27 authorized to execute such written approval on behalf of COUNTY based on CONTRACTOR'S satisfactory  
28 performance of its obligations hereunder.

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2           6.     TERMINATION

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

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

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

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

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

24           7.     COMPENSATION/INVOICING: COUNTY agrees to pay CONTRACTOR and  
25 CONTRACTOR agrees to receive compensation as follows:

26           In consideration of the services satisfactorily provided by CONTRACTOR pursuant to this  
27 Agreement, COUNTY shall compensate CONTRACTOR as set forth in Exhibit "A," which is attached  
28 hereto and incorporate herein by reference. CONTRACTOR shall submit monthly invoices to the Sheriff's

Office.

In no event shall services performed under this Agreement be in excess FIFTY-FOUR THOUSAND DOLLARS AND NO CENTS (\$54,000) for each twelve (12) month term this agreement is extended pursuant to Section 3 of this Agreement, entitled "Term". The maximum amount payable by COUNTY under this Agreement for services rendered by CONTRACTOR for October 1, 2019 to September 2022 shall not exceed ONE HUNDRED SIXTY-TWO THOUSAND DOLLARS AND NO CENTS (\$162,000). In no event shall services performed under this Agreement be in excess of TWO HUNDRED SEVENTY THOUSAND DOLLARS AND NO CENTS (\$270,000) during the term of this Agreement, inclusive of the optional extended periods.

It is understood that all expenses incidental to CONTRACTOR'S performance of services under this Agreement shall be borne by CONTRACTOR.

CONTRACTOR shall submit monthly invoices to COUNTY to Fresno County Sheriff's Office, 3333 E. American Avenue, Suite G, Fresno, California 93725. Invoices should include detailed information including decedent's name, date of cremation and coroner's case number.

8. 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 venture, partner, or associate of 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

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

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

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

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

17 12. INSURANCE

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

22 A. Commercial General Liability

23 Commercial General Liability Insurance with limits of not less than TWO MILLION DOLLARS  
24 (\$2,000,000.00) per occurrence and an annual aggregate of FOUR MILLION DOLLARS (\$4,000,000.00).  
25 This policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including  
26 completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal  
27 liability or any other liability insurance deemed necessary because of the nature of this agreement.  
28

1 B. Automobile Liability

2 Comprehensive Automobile Liability Insurance with limits of not less than ONE MILLION DOLLARS  
3 (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should include any auto  
4 used in connection with this Agreement.

5 C. Professional Liability

6 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in  
7 providing services, Professional Liability Insurance with limits of not less than ONE MILLION DOLLARS  
8 (\$1,000,000.00) per occurrence, THREE MILLION DOLLARS (\$3,000,000.00) annual aggregate.

9 D. Worker's Compensation

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

12 Additional Requirements Relating to Insurance

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

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

25 Within Thirty (30) days from the date CONTRACTOR signs and executes this Agreement,  
26 CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all of the  
27 foregoing policies, as required herein, to the County of Fresno, (Deputy Coroner, Kelly Matlock, 3333 E.  
28 American, Ste. G. Fresno, CA 93725) stating that such insurance coverage have been obtained and are in

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

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

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

15 13. HIPAA. All services performed by CONTRACTOR shall be in strict conformance with all  
16 applicable Federal, State of California and/or local laws and regulations relating to confidentiality, including,  
17 but not limited to, California Civil Code, California Welfare and Institutions Code, Health and Safety Code,  
18 California Code of Regulations, Code of Federal Regulations.

19 CONTRACTOR shall submit to COUNTY's monitoring of said compliance.

20 CONTRACTOR may be a business associate of COUNTY, as that term is defined in the "Privacy  
21 Rule" enacted by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). As a HIPAA  
22 Business Associate, CONTRACTOR may use or disclose protected health information ("PHI") to perform  
23 functions, activities or services for or on behalf of COUNTY as specified by COUNTY, provided that such  
24 use or disclosure shall not violate HIPAA and its implementing regulations. The uses and disclosures of PHI  
25 may not be more expansive than those applicable to COUNTY, as the "Covered Entity" under HIPAA's  
26 Privacy Rule, except as authorized for management, administrative or legal responsibilities of the Business  
27 Associate.

28 CONTRACTOR shall not use or further disclose PHI other than as permitted or required by

COUNTY, or as required by law without written notice to COUNTY.

CONTRACTOR shall ensure that any agent, including any subcontractor, to which CONTRACTOR provides PHI received from, or created or received by CONTRACTOR on behalf of COUNTY, shall comply with the same restrictions and conditions with respect to such information.

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

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

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

COUNTY  
COUNTY OF FRESNO  
Sheriff's Office  
333 E. American. Ste. G.  
Fresno CA 93725

CONTRACTOR  
Fresno Cremation Company  
DBA Chapel of the Light  
1620 W. Belmont Ave  
Fresno, CA 93728

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 personal service is effective upon service to the recipient. A notice delivered by first-class United States mail is effective three COUNTY business days after deposit in the United States mail, postage prepaid, addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one 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. A notice delivered by telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is completed outside of COUNTY business hours, then such delivery shall be deemed to be effective at the



next beginning of a COUNTY business day), provided that the sender maintains a machine record of the completed transmission. For all claims arising out of or related to this Agreement, nothing in this section establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

16. 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.

17. NON – ASSIGNMENT: CONTRACTOR shall not assign, transfer or subcontract this Agreement or any of its respective rights or duties hereunder, without the prior written consent of the COUNTY

18. DISCLOSURE OF SELF-DEALING TRANSACTIONS: This provision is only applicable if CONTRACTOR is operating as a corporation (a for-profit or non-profit corporation) or if during the term of this Agreement, CONTRACTOR changes its status to operate as a corporation.

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

19. 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.

20. COUNTERPARTS: This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same

1 Agreement, binding on the Parties according to its terms and conditions.

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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**

5 Michael J. Rabara

6 (Authorized Signature)

7 Michael J. Rabara, General Manager

8 Print Name & Title

9 Fresno Cremation Company

10 dba Chapel of the Light

11 1620 W. Belmont Ave, Fresno, CA 93728

12 Mailing Address

**COUNTY OF FRESNO**

Ernest Buddy Mendes

Ernest Buddy Mendes, 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

13  
14  
15 By: Susan Bishop  
16 Deputy

17 **FOR ACCOUNTING USE ONLY:**

18 Fund:0001

19 Subclass:10000

20 ORG:31117000

21 Account:7295

Exhibit "A"

## FEE SCHEULE

### METAL, FIBERGLASS, PLASTIC OR STYROFOAM CASKETS ARE NOT PERMITTED

The CONTRACTOR shall provide all labor, equipment, transportation (if out of Fresno/Clovis City limits), taxes, insurance, etc. as specified within the RFQ and this Agreement.

Weight of decedents may be as much as 400 pounds. Those over 400 pounds is rare, but could occur.

	ITEM	UNIT	Unit Price
1.	Adult (14 years – not in a cardboard container)	each	\$ 499.49
2.	Adult (14 years- over 400 pounds)	each	\$499.49
3.	Adult (Wood Casket)	each	\$1,527.75
4.	Child (2 years – 13 years)	each	\$217.11
5.	Infant (6 days – 2 years)	each	\$161.71
6.	Stillborn (to 5 days)	each	\$161.71
7.	5.5" x 5.5" x 7" Plastic Urn	each	\$20.00

Exhibit "B"

SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members of a contractor's board of directors (hereinafter referred to as "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 utilized 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.

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

(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:	