

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGREEMENT

**THE CONSOLIDATED EFFORT FOR IDENTIFYING, REGISTERING,
AND MONITORING OF REGISTERED SEX OFFENDERS
COUNTY SATELLITE JAIL UTILIZATION
AS A PENAL CODE SECTION 290 - REGISTRATION FACILITY**

This Agreement (“Agreement”) is made and entered into this _____ day of _____, 2020, by and between the County of Fresno, a political subdivision of the State of California (“COUNTY”) and the City of Fresno, a California municipal corporation (“CITY”).

WHEREAS, on July 11, 2017, the COUNTY and CITY entered into an Agreement (COUNTY Agreement No. 17-373), whereby the COUNTY granted the CITY a license for the CITY’s police department to use certain identified office and parking areas located at the COUNTY’s Satellite Jail (“Facility”), located at 110 M street, Fresno, California, 93721;

WHEREAS, the COUNTY’s Sheriff’s Office (“FSO”) and the CITY’s Police Department (“FPD”) desire to continue to consolidate their efforts regarding the identification, registration, and monitoring of subjects regulated under the provisions of California Penal Code Section 290 (Sex Crime Registrants) at the Facility;

WHEREAS, the Facility was formerly used by FSO to house minimum security male inmates, but was previously shut down, and is no longer used for that purpose; and

WHEREAS, COUNTY agrees to make available for CITY’s use certain designated areas at the Facility for the purposes described herein.

NOW, THEREFORE, the parties agree as follows:

1. GRANT OF LICENSE TO SHARE USE OF FACILITY

COUNTY grants CITY a license for FPD to use the office at the south end of the Facility, four (4) on-site parking stalls on the west side of the Facility, and agrees to share with FSO the common areas of the Facility, including, without limitation, the interview area of the Facility (all collectively referred to as the “Facility Office”). FPD may use the Facility Office solely for the utilization by its investigators, and the 4 designated parking spaces for parking of FPD or FPD employee vehicles. The FSO office is located in the north end of the Facility, and the balance of other on-site parking stalls are reserved for FSO vehicles, buses, trailers, and equipment.

2. OPERATIONAL COSTS

1 A. COUNTY shall provide and pay for all janitorial services, internet, telephone, gas,
2 electricity, garbage pick-up and disposal, security alarm monitoring services, pest control,
3 water, sewer, maintenance, and repair of the Facility and site for the Project.

4 B. CITY agrees to pay COUNTY quarterly for CITY's use of the Facility Office for the
5 purposes described in this Agreement, as set forth in Exhibit A, attached and incorporated
6 by this reference. In no event shall compensation paid to COUNTY by CITY for the
7 possible five-year term of this Agreement exceed \$100,000.

8 **3. MUTUAL AGREEMENT OF PARTIES TO ADJUST PROPORTIONATE SHARE**

9 FPD shall obtain the prior written consent from the Sheriff of the FSO to add
10 any additional FPD staff beyond the 4 investigators anticipated to be assigned to the
11 Facility or to increase the total number of dedicated hours by the assigned FPD
12 investigators. FSO shall obtain the prior written consent from the FPD Chief of Police to
13 add any additional FSO staff beyond the 2 investigators anticipated to be assigned or to
14 increase the total number of dedicated hours by such FSO investigators. In the event
15 there is any proposed change which the respective Sheriff or Chief of Police determines
16 will require the modification of the proportionate share of the Monthly Operational Costs,
17 prior to providing any written consent hereunder, then such modification shall be by a
18 mutual written agreement of the parties modifying this Agreement.

19 **4. COUNTY AND CITY ACKNOWLEDGEMENTS**

20 A. COUNTY and CITY acknowledge that this Agreement is not intended
21 in any way to impact COUNTY's utilization of other parts of the Facility by FSO.

22 B. COUNTY and CITY acknowledge that this Agreement is not intended
23 to limit in any way the authority or ability of FPD to process any of its Penal Code section
24 290 registrants at other FPD sites or facilities.

25 C. COUNTY and CITY acknowledge that this joint effort by its law
26 enforcement agencies does not provide for the exclusion of any allowable booking or jail
27 access fees that might attach to the arrest and booking into the Fresno County Jail by the
28 FPD of any individual connected with this Penal Code section 290 registration operation.

D. COUNTY and CITY acknowledge that the Facility Office shall be
utilized only for the delivery of services related to Penal Code section 290.

5. INVOICING AND PAYMENT

1 A. COUNTY shall invoice CITY quarterly in accordance with Exhibit A.
2 Invoices shall be addressed to FPD as follows:

3 FRESNO POLICE DEPARTMENT
4 2323 Mariposa
5 Fresno, CA 93721
6 Attn: Business Office

7 B. All payments shall be made by the FPD within thirty (30) days of
8 receipt of the invoice. All payments shall be addressed to the FSO as follows:

9 FRESNO SHERIFF'S OFFICE
10 P.O. Box 1788
11 Fresno, CA 93717
12 Attn: Business Office

13 6. TERM, EXTENSION AND TERMINATION

14 A. The initial term of this Agreement shall be for a term of 3 years,
15 beginning on July 1, 2020, and ending on June 30, 2023, unless and until terminated
16 earlier by either party in accordance with this Agreement.

17 B. This Agreement may be extended on the same terms and conditions
18 herein for up to two (2) consecutive 1-year periods, upon written agreement by both the
19 CITY's Police Chief and the COUNTY's Sheriff prior to expiration of the then-current initial
20 term or extension period.

21 C. This Agreement may be terminated by either party with or without
22 cause by giving written notice to the other party at least thirty (30) days in advance of the
23 effective date of such termination. The CITY's Police Chief shall have authority to
24 terminate this Agreement on behalf of the CITY. The COUNTY's Sheriff shall have
25 authority to terminate this Agreement on behalf of the COUNTY.

26 D. In the event that the primary use of the Facility requires a change
27 (i.e., resumption of Facility as a jail facility or other FSO or COUNTY use) based on
28 conditions unknown to either COUNTY or the Sheriff at the time of entering into this
Agreement, COUNTY may terminate this Agreement by giving written notice to CITY at
least thirty (30) days in advance of the effective date of such termination. Upon becoming

1 aware of any conditions which may require such a change, COUNTY shall immediately
2 notify CITY of such conditions.

3 E. This Agreement is contingent on the appropriation of funds by each
4 respective governmental agency to fund their respective obligations hereunder. Should
5 funds not be appropriated, this Agreement may be terminated by the party upon thirty (30)
6 days prior written notice to the other party.

7 G. Upon expiration or termination of this Agreement, CITY shall remove
8 all personal property from, vacate, and surrender, the Facility Office on or before the
9 respective expiration date or effective date of termination.

10 7. RENDITION OF JURISDICTIONAL SERVICES

11 The rendition of law enforcement services by the respective law
12 enforcement agency, the standards of performance, the discipline of personnel, and other
13 matters incident to the performance of such services, and the control of personnel so
14 employed, shall remain with each respective party's law enforcement agency (i.e., FSO or
15 FPD).

16 8. INDEPENDENT CONTRACTOR

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

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

Because of its status as an independent contractor, COUNTY shall have
absolutely no right to employment rights and benefits available to CITY employees.
COUNTY shall be solely liable and responsible for providing to, or on behalf of, its

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

6 9. ALTERNATIVE DISPUTE PROCEDURE

7 In the event of a dispute between the parties as to any condition or issue
8 associated with this Agreement, the Sheriff of FSO and the FPD Chief of Police, or their
9 respective designees, will meet and participate in a discussion to exercise good faith
10 efforts to resolve the dispute.

11 10. NOTICES

12 The persons and their addresses having authority to give and receive
13 notices under this Agreement include the following:

| <u>County of Fresno</u> | <u>City of Fresno</u> |
|--------------------------------|--------------------------|
| Sheriff | Police Chief |
| Fresno County Sheriff's Office | Fresno Police Department |
| 2200 Fresno Street | 2323 Mariposa |
| Fresno, CA 93717 | Fresno, CA 93721 |
| Phone (559) 600-3121 | Phone (559) 621-2222 |
| FAX (559) 600-1899 | FAX (559) 498-1059 |

20 All notices between COUNTY and CITY provided for or permitted under this
21 Agreement must be in writing and delivered either by personal service, by first-class
22 United States mail, by an overnight commercial courier service, or by telephonic facsimile
23 transmission. A notice delivered by personal service is effective upon service to the
24 recipient. 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. A notice delivered by an overnight commercial courier service is effective one
27 COUNTY business day after deposit with the overnight commercial courier service,
28 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

1 the recipient is completed (but, if such transmission is completed outside of COUNTY
2 business hours, then such delivery shall be deemed to be effective at the next beginning
3 of a COUNTY business day), provided that the sender maintains a machine record of the
4 completed transmission. For all claims arising out of or related to this Agreement, nothing
5 in this section establishes, waives, or modifies any claims presentation requirements or
6 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).

7 11. INDEMNIFICATION

8 A. COUNTY shall indemnify, hold harmless and defend CITY and each of
9 its officers, officials, employees, agents and authorized volunteers from any and all loss,
10 liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict
11 liability, including but not limited to personal injury, death at any time and property
12 damage) incurred by the CITY, COUNTY or any other person, and from any and all
13 claims, demands and actions in law or equity (including attorney's fees and litigation
14 expenses), arising or alleged to have arisen directly or indirectly from the negligent or
15 intentional acts or omissions, or willful misconduct of COUNTY or any of its officers,
16 officials, employees, agents or authorized volunteers in the performance of this
17 Agreement; provided nothing herein shall constitute a waiver by COUNTY of
18 governmental immunities, including California Government Code Section 810 et seq.

19 B. CITY shall indemnify, hold harmless and defend COUNTY and each
20 of its officers, officials, employees, agents and authorized volunteers from any and all
21 loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or
22 strict liability, including but not limited to personal injury, death at any time and property
23 damage) incurred by CITY, COUNTY or any other person, and from any and all claims,
24 demands and actions in law or equity (including attorney's fees and litigation expenses),
25 arising or alleged to have arisen directly or indirectly from the negligent or intentional acts
26 or omissions, or willful misconduct of CITY or any of its officers, officials, employees,
27 agents or authorized volunteers in the performance of this Agreement; provided nothing
28 herein shall constitute a waiver by CITY of governmental immunities, including California

1 Government Code Section 810 et seq.

2 C. In the event of concurrent negligence on the part of COUNTY or any
3 of its officers, officials, employees, agents or authorized volunteers, and CITY or any of
4 its officers, officials, employees, agents or authorized volunteers, the liability for any and
5 all such claims, demands and actions in law or equity for such losses, fines, penalties,
6 forfeitures, costs and damages shall be apportioned under the State of California's theory
7 of comparative negligence as presently established, or as may be modified hereafter.

8 D. This section shall survive termination or expiration of this Agreement.

9 12. INSURANCE

10 Without limiting the indemnification duties of each party as stated in Section 11
11 herein, it is understood and agreed that CITY and COUNTY shall each maintain, at their
12 sole expense, insurance policies or self-insurance programs including, but not limited to,
13 an insurance pooling arrangement and/or Joint Powers Agreement to fund their
14 respective liabilities throughout the term of this Agreement. Coverage shall be provided
15 for general liability, automobile liability, and workers' compensation exposure. Evidence
16 of Insurance, e.g., Certificates of Insurance or other similar documentation, shall not be
17 required of either party under this Agreement.

18 13. MODIFICATION

19 Any matter of this Agreement may be modified from time to time by the
20 written mutual agreement of the parties hereto without, in any way, affecting the
21 remainder.

22 14. NON-ASSIGNMENT

23 Neither party shall assign, transfer or sub-contract their rights or duties
24 under this Agreement without the prior written consent of the other party.

25 15. GOVERNING LAW AND VENUE

26 Venue for any action arising out of or relating to this Agreement shall only
27 be in Fresno County, California. The rights and obligations of the parties and all
28 interpretation and performance of this Agreement shall be governed in all respects by the
laws of the State of California.

1 16. SEVERABILITY

2 The provisions of this Agreement are severable. The invalidity or
3 unenforceability of any one provision in this Agreement shall not affect the other
4 provisions.

5 17. NO THIRD-PARTY BENEFICIARIES

6 The rights, interests, duties and obligations defined within this Agreement
7 are intended for the specific parties hereto, as identified in the preamble of this
8 Agreement. It is not intended that any rights or interests in this Agreement benefit or flow
9 to the interest of any third parties.

10 18. ENTIRE AGREEMENT

11 This Agreement constitutes the entire agreement between the CITY and
12 COUNTY with respect to the subject matter hereof, and supersedes all previous
13 negotiations, proposals, commitments, writings, advertisements, publications,
14 agreements, and understandings of any nature whatsoever, whether written or oral,
15 unless expressly included in this Agreement.

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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

3 CITY OF FRESNO

COUNTY OF FRESNO

4 By: _____
5 Andrew J. Hall, Chief of Police
6 Fresno Police Department

By: _____
Ernest Buddy Mendes, Chairman of the
Board of Supervisors of the County of
Fresno

7
8
9 ATTEST:
10 YVONNE SPENCE, MMC CRM
City Clerk

ATTEST:
BERNICE E. SEIDEL
Clerk of the Board of Supervisors

11 By: _____
12 Deputy

By: _____
Deputy

13
14
15 APPROVED AS TO FORM:
16 DOUGLAS T. SLOAN
17 City Attorney

REVIEWED & RECOMMENDED
FOR APPROVAL:

By: _____
Margaret Mims, Sheriff

18 By:  _____ 5/28/2020
19 Kristi Costa Date
20 Deputy City Attorney

21
22
23 FOR ACCOUNTING USE ONLY:

24 ORG No.: 31114000
25 Account No.: 4841
26 Fund: 0001

27 Attachments:
28 Exhibit A – Monthly Rent Cost

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

CITY agrees to pay rent to the COUNTY for the use of the Facility Office each quarter according to the following schedule:

| Effective Date | Total Quarterly Rent | Total Annual Rent |
|----------------|----------------------|-------------------|
| July 1, 2020 | \$5,000.00 | \$20,000.00 |
| July 1, 2021 | \$5,000.00 | \$20,000.00 |
| July 1, 2022 | \$5,000.00 | \$20,000.00 |
| July 1, 2023* | \$5,000.00 | \$20,000.00 |
| July 1, 2024* | \$5,000.00 | \$20,000.00 |

*Assuming the two, one-year extensions are exercised.

For each Fiscal Year, the CITY will reimburse the COUNTY (through the Sheriff’s Office) a total of \$20,000 per year.

- 1. July – September payment due in October - \$5,000
- 2. October – December payment due in January - \$5,000
- 3. January – March payment due in April - \$5,000
- 4. April – June payment due in July - \$5,000