

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU"), effective as of January 1, 2015, as provided hereunder, is entered into by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "Agency"), and COUNTY OF FRESNO, a political subdivision of the State of California (hereinafter referred to as "COUNTY").

RECITALS

WHEREAS, Agency has submitted an application to the California Governor's Office of Emergency Services ("CalOES") for \$450,000 in grant funds through the 2014 Grant Funding Cycle – Project Safe Neighborhoods (hereinafter referred to as "PSN" or as the "Program"), incorporated by reference herein, funded by the United States Department of Justice ("DOJ"); and

WHEREAS, the Program is intended to focus special effort on creating safe neighborhoods through a sustained reduction in crime associated with gang and gun violence; and

WHEREAS, upon award of grant funds and entry by Agency into a grant agreement with CalOES ("Grant") consistent with the Program, Agency intends through its Police Department ("FPD") to work in partnership with COUNTY for the purpose of providing services through the Fresno County District Attorney's Office ("DA") and the Fresno County Sheriff's Office ("Sheriff"); and

WHEREAS, Agency, through FPD, will work in partnership with the DA to ensure prosecution goals are met through research, writing and handling motions, assisting in law enforcement training, determining strategic prosecutorial goals and objectives and preparing and litigating gang injunctions; and

WHEREAS, Agency, through FPD, will work in partnership with the Sheriff to provide three beds dedicated to PSN-related gang and gun offenders within the Fresno County Jail; and

WHEREAS, Agency, through FPD, will work in partnership with the Sheriff to provide operational support within the Multi-Agency Gang Enforcement Consortium ("MAGEC") for sworn personnel to conduct gang operations and enforcement on an overtime basis; and

WHEREAS, Agency and COUNTY believe that development and implementation of the services described herein, will further the above goals, and to this end agree to coordinate and provide such services; and

WHEREAS, performance of the services described herein by COUNTY will be of benefit to Agency, COUNTY and the public interest.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual covenants herein contained and such other and further consideration as is hereby acknowledged, and subject to the terms and conditions and provisions of the Program and this MOU, the parties mutually agree as follows:

1. PARTICIPATING AGENCIES AND DESIGNATED CONTACT PERSONS

Agency:
Fresno Police Department
Mayor's Gang Prevention Initiative
Maggie Navarro, Coordinator
2323 Mariposa Mall
Fresno, CA 93721

COUNTY:
County of Fresno
Fresno County District Attorney's Office
Steve Rusconi, Business Manager
2220 Tulare Street, Suite 1000
Fresno, CA 93721

2. ROLES AND RESPONSIBILITIES

A. FPD, acting as Agency's representative, subject to all applicable constitutional and local law requirements, shall:

1. Act as the lead agency to administer the funds from the Grant agreement with regard to this Program.
2. Assist COUNTY as needed with accessing project related information and data needed to adequately provide vertical prosecution for gang injunctions relating to Program.
3. Assist COUNTY as needed by ensuring three beds in the Fresno County Jail are available for holding Program-related gun and gang offenders.
4. Meet monthly with COUNTY, or more frequently as determined by FPD, to coordinate, resolve problems, determine timetables, discuss implementation and strategies, and address any other issues related to provision of services by COUNTY.

B. COUNTY shall provide services through the DA relating to gang injunctions and the dedication of three beds in the Fresno County Jail to house gang and gun offenders through the Sheriff during the term of this MOU.

1. In this regard, COUNTY, acting as direct provider of the services through the DA shall:
 - a. Provide a .08 full time equivalent (FTE) Supervising District Attorney for 17 months to support the Program through vertical prosecution of gang injunctions.
 - b. Assist in training all law enforcement agencies associated with gang sweeps and enforcement and determine strategic prosecutorial goals and objectives pertaining to the Program.
 - c. Provide vertical prosecution for gang injunctions to include:
 - i. Gang injunction filling determinations;
 - ii. Making general court appearances involving gang related prosecution and gang injunctions;
 - iii. Applicable research, writing and handling motions involving gang injunctions;
 - iv. Preparing and litigating gang injunctions.
 - d. Involve FPD staff when determining efficient goals and objectives relating to gang injunction prosecution.
 - e. Meet monthly with Mayor's Gang Prevention Initiative ("MGPI") staff, or more frequently as FPD determines is needed, to coordinate COUNTY's obligations under the Program, including the provision of services, the resolution of problems, determination of timetables, discussion of implementation, evaluation of effectiveness, and to address any other issues related to the Program.

- f. As applicable, procure all permits and licenses necessary to provide the services, pay all charges and fees, and give all notices necessary or incidental to the due and lawful proceeding of the work for the Program.
 - g. Ensure the Agency, CalOES, or any authorized representative, has suitable access to project activities, data collection and documents, at all reasonable times during the term of this MOU.
 - h. Immediately advise Agency of any significant problems or changes that arise during the provision of Program services.
2. In this regard, COUNTY, acting as direct provider of the services through Sheriff,, shall:
- a. Ensure that three beds are reserved at the Fresno County Jail for housing gun and gang-related offenders.
 - b. Ensure all terms and conditions for utilizing reserve jail bed space for this Agreement follow the Jail Bed Space Agreement between the City of Fresno and the County of Fresno for 2013-2015, dated October 31, 2013, attached hereto as **Exhibit C and incorporated herein by reference**.
 - c. Ensure proper documentation is submitted in accordance with this Agreement for County MAGEC personnel overtime operations relating to the Program.
 - d. Meet monthly with MGPI staff, or more frequently as FPD determines is needed, to coordinate COUNTY's obligations under the Program, including the provision of services, the resolution of problems, determination of timetables, discussion of implementation, evaluation of effectiveness, and to address any other issues related to the Program.
 - e. As applicable, procure all permits and licenses necessary to provide the Services, pay all charges and fees, and give all notices necessary or incidental to the due and lawful proceeding of the work for the Program.
 - f. Ensure the Agency, CalOES, or any authorized representative, will have suitable access to project activities, data collection and documents ay all reasonable times during the term of this MOU.
 - g. Immediately advise Agency of any significant problems or changes that arise during the provision of Program services.

3. REIMBURSEMENT FOR PROGRAM ACTIVITIES

A. Agency agrees to reimburse COUNTY solely from allocated and available Program Grant funds for eligible costs incurred by COUNTY in providing services under this MOU within the performance period of the Program and Grant period of this MOU, in an amount not to exceed \$35,553 for the DA and an amount not to exceed \$153,929 for the Sheriff, in accordance with the Program budget attached hereto as **Exhibit A** and incorporated herein by reference.

B. Any future applications and award of funds for future Program funding cycles shall be by a written amendment to this MOU signed by both parties.

C. Payment hereunder shall be contingent on Agency's receipt of an undisputed invoice, and any reports and substantiation materials required by Agency.

D. Should COUNTY fail to comply with any provision of this MOU, Agency shall be relieved of its obligation for further compensation.

E. Nothing in this MOU shall commit the taxing authority or general fund of Agency.

4. MOU EFFECTIVENESS, TERM AND TERMINATION

A. The effectiveness of this MOU is contingent upon Agency receiving the PSN Grant award. The parties signing this MOU shall be committed to the PSN Grant Program for the entire funding cycle commencing October 1, 2014, and ending July 31, 2016. COUNTY acknowledges and agrees that continued funding is dependent upon satisfactory performance by COUNTY and availability of funds.

B. Subject to the foregoing, the term of the MOU is for a 17-month funding cycle Program commencing January 1, 2015, and ending July 31, 2016.

C. Notwithstanding the foregoing, this MOU shall automatically be suspended or terminated upon Agency's written notice thereof to COUNTY upon any of the following events: (i) Program or Grant termination or suspension; (ii) any non-appropriation or non-allocation of Grant funding required in pursuit hereof; (iii) COUNTY's illegal or improper use of funds; (iv) COUNTY's failure to comply with any term of this MOU; (v) COUNTY's submittal of any substantially incorrect or incomplete itemized invoice required for reimbursement; (vi) COUNTY's failure to comply with grant guidelines in the CalOES Recipient Handbook; or (vii) COUNTY's failure to comply with any applicable provisions of the Grant.

5. RECORDKEEPING AND PERFORMANCE DATA

A. COUNTY shall keep proper records of, and submit to the Agency each quarter, all data in accordance with **Exhibit B, attached hereto and incorporated herein by reference.**

B. COUNTY shall provide any monthly and quarterly reports, and any certifications as required by Agency.

6. FINANCIAL REPORTING, AUDITING AND DOCUMENT RETENTION

A. COUNTY shall submit monthly invoices to FPD for eligible expenses incurred for the Program. Billing documentation shall include:

1. A breakdown of expenditures by cost category;
2. Supporting documentation for all costs including payroll registers, general ledgers and checks as requested by Agency; and
3. Operational documentation outlining for grant funded overtime.

B. COUNTY shall maintain accurate, complete, orderly and separate records for the Program and funding therefore, separately from all other funds, including DOJ funds awarded for the same or similar purposes or programs. COUNTY agrees that all personnel performing activities hereunder shall maintain separate timesheets to document hours worked for activities related to the Grant and this MOU. Records of COUNTY expenses pertaining to the Program shall be kept on a generally recognized accounting basis.

C. All COUNTY Program records shall be available to Agency, CalOES, the Comptroller General of the United States, DOJ (including the Office of Justice Programs and the Office of the Inspector General, and its representatives), and the Government Accountability Office

("GAO"), and any of their authorized representatives upon request, during regular business hours throughout the life of this MOU and for a period of three years after final payment or longer as required by law or the Grant. In addition, all books, documents, papers, and records of COUNTY pertaining to the Program shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This paragraph shall survive expiration or termination of this MOU.

D. COUNTY also understands and agrees that Agency, DOJ and the GAO are authorized to interview any officer or employee of COUNTY regarding transactions related to this MOU.

E. In the event of termination of this MOU, copies of all books, records, documents, and other evidence pertinent to the Program required by this MOU and collected or prepared by COUNTY, or in the possession of COUNTY agents, shall be immediately provided to Agency by COUNTY, unless otherwise specified by law.

7. COMPLIANCE WITH GOVERNING LAW AND GRANT AGREEMENT

A. COUNTY shall at all times comply with all applicable laws of the United States, the State of California and Agency, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this MOU. COUNTY acknowledges receipt of a copy of the 2014 Recipient Handbook, published by the California Governor's Office of Emergency Services, and agrees to comply with all applicable provisions thereof (including, without limitation, the CalOES Program Guidelines and the CalOES Recipient Handbook), and cooperate with Agency in meeting the requirements thereunder.

B. The services provided by COUNTY under this MOU are over and above COUNTY's budgeted positions. The parties agree that Grant funds shall not be used to replace COUNTY departmental funds, or funding for positions otherwise funded by COUNTY.

C. As applicable, costs and expenditures must be allowable in accordance with OMB Circular A-87, *Cost principles for state, local and Indian Tribal Governments*. Grant funds are subject to the Single Audit Act Amendments of 1996 and the OMB Circular, A-133, *Audits of states, local governments and non-profit organizations*.

D. COUNTY shall allow access to Agency, CalOES, and any of their representatives for any onsite assessments.

E. By signing this MOU, COUNTY certifies that (i) Grant funds shall not be used for the purpose of lobbying, as required by Section 1352, Title 31 of the U.S. Code, and implemented as 28 CFR Part 69; (ii) COUNTY will adhere to Federal Executive Order 12549, Debarment and Suspension; and (iii) neither COUNTY, nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the MOU by any Federal department or agency. COUNTY shall complete and submit to Agency all applicable forms required by the Grant agreement.

F. Drug-Free Workplace Certification: COUNTY shall comply with the Drug-Free Workplace Act of 1990 ("the Act"), California Government Code Sections 8350-8357, the Federal Drug-Free Workplace Act of 1988 (41 USC 701), and the requirements of Federal law as implemented in 28 CFR Part 67, Subpart F, Sections 615 and 620. COUNTY shall notify their employees that they are prohibited from engaging in the unlawful manufacture, distribution,

dispensation, possession or use of controlled substances. By signing the signature page of the MOU, COUNTY certifies compliance with *Government Code Section 8355* in matters relating to providing a drug-free workplace, and that COUNTY will:

- (a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by *Government Code Section 8355(a)*.
- (b) Establish a Drug-Free Awareness Program as required by *Government Code Section 8355(b)*, to inform employees about all of the following:
 - (i) The dangers of drug abuse in the workplace,
 - (ii) The person's or organization's policy of maintaining a drug-free workplace,
 - (iii) Any available counseling, rehabilitation and employee assistance programs, and
 - (iv) Penalties that may be imposed upon employees for drug abuse violations.
- (c) Provide as required by *Government Code Section 8355(c)*, that every employee providing services under this MOU:
 - (i) Will receive a copy of the company's drug-free policy statement, and
 - (ii) Will agree to abide by the terms of COUNTY's statement as a condition of employment.

G. Copyrights, Rights in Data, and Patents: All activities of COUNTY under this MOU are considered "work made for hire" as defined under Title 17 USC Section 101, and shall include but are not limited to, publications, original computer programs, writings, sound recordings, pictorial reproductions, drawings or other geographical representations and works of any similar nature. With regard to any "work made for hire," CalOES owns all rights comprised in the copyright, and therefore CalOES reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, and use such materials, in whole or in part, and to authorize others to do so. If any discovery or invention arises or is developed in the course of, or as a result of, work performed, in whole or in part, under this MOU, COUNTY must refer the discovery or invention to CalOES. Determination of rights to inventions or discoveries shall be made by CalOES, or its duly authorized representative, who shall have the sole and exclusive power to determine whether or not and where a patent application should be filed, and to determine the disposition of all rights to such inventions or discoveries, including title to and license rights under any patent application or patent which may be issued. In all cases, CalOES shall acquire at least an irrevocable, nonexclusive, and royalty-free license to practice and have practiced anywhere without limitation, for governmental purposes, any invention made with CalOES grant funds.

8. CAPACITY OF AGENCY AND COUNTY

A. In furnishing the services provided for herein, COUNTY is acting solely as an independent contractor. Neither COUNTY, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of Agency for any purpose. Agency shall have no right to control or supervise or direct the manner or method by which COUNTY shall perform its work and functions. However, Agency shall retain the right to administer this MOU so as to verify that COUNTY is performing its obligations in accordance with the terms and conditions thereof.

B. This MOU does not evidence a partnership or joint venture between COUNTY and Agency. COUNTY shall have no authority to bind Agency absent Agency's express written consent. Except to the extent otherwise provided in this MOU, COUNTY shall bear its own costs and expenses in pursuit thereof.

C. Because of its status as an independent contractor, COUNTY and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to Agency employees. COUNTY shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this MOU, COUNTY shall be solely responsible, indemnify, defend and save Agency harmless from all matters relating to employment and tax withholding for and payment of COUNTY's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in Agency employment benefits, entitlements, programs and/or funds offered employees of Agency whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this MOU, COUNTY may be providing services to others unrelated to Agency or to this MOU.

9. INSURANCE

A. Throughout the life of this MOU, COUNTY shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VI" in Best's Insurance Rating Guide, or (ii) authorized by Agency's Risk Manager. The following policies of insurance are required:

- (i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as Insurance Services Office (ISO) form CG 00 01 and shall include insurance for "bodily injury", "property damage" and "personal and advertising injury", including premises and operation, products and completed operations and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury and \$2,000,000 aggregate for products and completed operations.
- (ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) form CA 00 01 and shall include coverage for "any auto" with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.
- (iii) PROFESSIONAL LIABILITY (ERRORS AND OMISSIONS) insurance with limits of liability of not less than \$1,000,000 per claim/occurrence and \$2,000,000 aggregate.

- (iv) WORKERS' COMPENSATION insurance as required under the California Labor Code.
- (v) EMPLOYERS' LIABILITY insurance with minimum limits of \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

B. Defense costs shall be provided as an additional benefit and not included within the above limits of liability. COUNTY shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and COUNTY shall also be responsible for payment of any self-insured retentions.

C. The above described policies of insurance shall be endorsed to provide an unrestricted 30 calendar day written notice in favor of Agency of policy cancellation of coverage, except for the Workers' Compensation policy which shall provide a 10 calendar day written notice of such cancellation of coverage. In the event any policies are due to expire during the term of this Agreement, COUNTY shall provide a new certificate evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, COUNTY shall file with Agency a new certificate and all applicable endorsements for such policy(ies).

D. The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name Agency, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so COUNTY's insurance shall be primary and no contribution shall be required of Agency. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to Agency, its officers, officials, agents, employees and volunteers.

E. In the event claims made forms are used for any Professional Liability coverage, (i) the retroactive date must be shown, and must be before the effective date of the MOU or the commencement of services by COUNTY; (ii) insurance must be maintained and evidence of insurance must be provided for at least 5 years after completion of the services, or the expiration or termination of the MOU, whichever first occurs; (iii) if coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the MOU, or services commencement date, COUNTY must purchase extended reporting period coverage for a minimum of 5 years after completion of the services, or expiration or termination of the MOU, whichever first occurs; (iv) a copy of the claims reporting requirements must be submitted to Agency for review; and (v) these requirements shall survive expiration or termination of the MOU.

F. COUNTY shall have furnished Agency with the certificate(s) and applicable endorsements for ALL required insurance prior to Agency's execution of the MOU. COUNTY shall furnish Agency with copies of the actual policies upon the request of Agency's Risk Manager and this requirement shall survive termination or expiration of this MOU.

G. If at any time during the life of the MOU or any extension, COUNTY fails to maintain the required insurance in full force and effect, all work under this MOU shall be discontinued immediately, and all payments due or that become due to COUNTY shall be withheld until notice is received by Agency that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to Agency. Any

failure to maintain the required insurance shall be sufficient cause for Agency to terminate this MOU.

H. The fact that insurance is obtained by COUNTY shall not be deemed to release or diminish the liability of COUNTY, including, without limitation, liability under the indemnity provisions of this MOU. The duty to indemnify Agency shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by COUNTY. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of COUNTY, its principals, officers, agents, employees, persons under the supervision of COUNTY, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

I. Upon request of Agency, COUNTY shall immediately furnish Agency with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive termination or expiration of this MOU.

J. If COUNTY should subcontract all or any portion of the services to be performed under this MOU, COUNTY shall require each subcontractor to provide insurance protection in favor of Agency, its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with COUNTY and Agency prior to the commencement of any work by the subcontractor.

10. INDEMNIFICATION

To the furthest extent allowed by law, COUNTY shall indemnify, hold harmless and defend Agency and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by Agency, COUNTY or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this MOU. COUNTY's obligations under the preceding sentence shall apply regardless of whether Agency or any of its officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of Agency or any of its officers, officials, employees, agents or volunteers.

If COUNTY should subcontract all or any portion of the work to be performed under this MOU, COUNTY shall require each subcontractor to indemnify, hold harmless and defend Agency and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this MOU.

11. ATTORNEY'S FEES AND LEGAL EXPENSES

If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this MOU, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

12. PRECEDENCE OF DOCUMENTS

In the event of any conflict between the body of this MOU and any exhibit hereto, the terms and conditions of the body of this MOU shall control and take precedence over terms and conditions expressed within the exhibit. Furthermore, any terms or conditions contained within any exhibit hereto which purport to modify the allocation of risk between the parties, provided for within the body of this MOU, shall be null and void.

13. NOTICES

Any notice required or intended to be given to either party under the terms of this MOU shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, return receipt requested, with postage prepaid, addressed to the party to which notice is to be given at the party's address set forth in Section 1 of this MOU or at such other address as the parties may from time to time designate by written notice.

14. BINDING

Subject to Section 17 below, once this MOU is signed by the parties, it shall be binding upon, and shall inure to the benefit of, the parties, and each party's respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

15. ASSIGNMENT

There shall be no assignment by either party of its rights or obligations under this MOU without the prior written approval of the other party. Any attempted assignment by a party, its successors or assigns, shall be null and void unless approved in writing by the other party.

16. WAIVER

The waiver by either party of a breach by the other of any provision of this MOU shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this MOU. No provision of this MOU may be waived unless in writing and approved by and signed by all parties to this MOU. Waiver of any one provision herein shall not be deemed to be a waiver of any provision herein.

17. GOVERNING LAW AND VENUE

This MOU shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this MOU and any rights and duties hereunder shall be Fresno County, California.

18. HEADINGS

The section headings in this MOU are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this MOU.

19. SEVERABILITY

The provisions of this MOU are severable. The invalidity or unenforceability of any one provision in the MOU shall not affect the other provisions.

20. INTERPRETATION

The parties acknowledge that this MOU in its final form is the result of the combined efforts of the parties and that, should any provision of this MOU be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this MOU in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

21. CUMULATIVE REMEDIES

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

22. NO THIRD PARTY BENEFICIARIES

The rights, interests, duties and obligations defined within this MOU are intended for the specific parties hereto as identified in the preamble of this MOU. Notwithstanding anything stated to the contrary in this MOU, it is not intended that any rights or interests in this MOU benefit or flow to the interest of any third parties.

23. NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

A. To the extent required by controlling federal, state and local law, COUNTY shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. COUNTY shall carry out applicable requirements of 49 CFR part 26 in the award and administration of contracts hereunder. Failure by COUNTY to carry out these requirements is a material breach of this MOU, which may result in the termination of this MOU or such other remedy or sanction as may be available.

B. It is the public policy of the State of California to promote equal employment opportunity by prohibiting discrimination or harassment in employment because of race, religious creed, color, national origin, ancestry, age (over 40), mental and physical disability (including HIV and AIDS), medical condition (cancer and genetic characteristics), marital status, sex (including sexual harassment), sexual orientation (heterosexuality, homosexuality, and bisexuality), pregnancy (childbirth, or related medical conditions), political affiliation/opinion, Veteran's status or request for family medical leave. COUNTY will not discriminate in the delivery of services or benefits based on the previously identified situations. COUNTY shall comply with Executive Order 11246 as amended by Executive Order 11375 and supplemented at 41 CFR 60.

24. ENTIRE AGREEMENT

It is mutually understood and agreed that the forgoing constitutes the entire agreement between the parties. Any modifications or amendments to this MOU must be in writing signed by an authorized agent of each party.

This MOU is subject to receipt of Grant funds and ratification by the Council of the City of Fresno.

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IN WITNESS THEREOF, the parties have executed this MOU at Fresno, California on the day and year first above written.

CITY OF FRESNO,
A California municipal corporation

COUNTY OF FRESNO,
A Political Subdivision of the State of California

BY: _____
Jerry Dyer, Chief of Police
City of Fresno Police Department

BY: _____
Deborah A. Poochigian, Chairman
Board of Supervisors

ATTEST:
Yvonne Spence, CMC
City Clerk, City of Fresno
BY: _____
Deputy Date

By: _____
Margaret Mims, Sheriff

BY: _____
Lisa Sondergaard-Smittcamp
District Attorney-Public Administrator

APPROVED AS TO FORM:
Douglas Sloan
City Attorney, City of Fresno

APPROVED AS TO LEGAL FORM
Daniel Cederborg
County Counsel, County of Fresno

BY: _____
Amanda B. Freeman Date
Deputy

BY: _____

Addresses:

CITY:
Fresno Police Department
Attention: Jerry Dyer
Chief of Police
2323 Mariposa Mall
Fresno, CA 93721

COUNTY:
Fresno County District Attorney's Office
Attention: Steve Rusconi
Business Manager
2220 Tulare Street, Suite 1000
Fresno, CA 93721

Attachment:
Exhibit A – Cost Breakdown
Exhibit B – Grant Performance Measures
Exhibit C – 2014 Fresno County Jail Bed Agreement

Exhibit A
Cost Breakdown for County of Fresno regarding the
2014 Project Safe Neighborhoods (PSN) grant program
(Performance Period of October 1, 2014-July 31, 2016)

BUDGET

FRESNO DISTRICT ATTORNEY'S OFFICE

CHIEF DEPUTY DISTRICT ATTORNEY:

.08 FTE (Annual Salary \$128,414) = \$10,273 per year = Total \$20,546

.08 FTE (Annual Fringe \$93,795) = \$7,504 per year = Total \$15,007

Total Cost to the Fresno District Attorney's Office: \$35,553

FRESNO SHERIFF'S OFFICE

JAIL BED SPACE:

3 Jail Beds @ \$104.00 per day = Total \$113,880

OVERTIME FOR MAGEC PERSONNEL:

Deputy Sheriff Overtime Hours = Total \$19,600

Sheriff Sergeant Overtime Hours = Total \$13,420

Sheriff Lieutenant Overtime Hours = Total \$7,029

Total Cost to the Fresno Sheriff's Office: \$153,929

Total Cost for the Duration of this AGREEMENT: \$189,482

Exhibit B
Grant Performance Measures for County of Fresno regarding the
2014 Project Safe Neighborhoods (PSN) grant program
(Performance Period of October 1, 2014-July 31, 2016)

PERFORMANCE MEASURES

FRESNO DISTRICT ATTORNEY'S OFFICE

Goal: To create a safer neighborhood in Calwa by reducing gun violence and gun crime, and sustaining that reduction through a civil gang injunction.

- **Objectives:**
 - Draft pleadings for proposed gang injunction
 - File complaint requesting injunction with Superior Court
 - Litigate complaint for proposed injunction
 - Conduct community engagement trainings on injunction

- **Measurements:**
 - Number of services completed
 - Total PSN cases reviewed in zone
 - Total PSN cases prosecuted

FRESNO SHERIFF'S OFFICE

Goal: To create a safer neighborhood in Calwa by reducing gun violence and gun crime, and sustaining that reduction through a civil gang injunction.

- **Objectives:**
 - Assist with data collection of crime committed by target gang in community
 - Design boundaries of proposed safety zone
 - Conduct survey of resident's/business owners/employees of proposed safety zone
 - Document evidence for gang injunction litigation
 - Service of complaint on alleged gang
 - Serve injunction order on validated, active members of defendant gang
 - Complete follow-up survey of residents, business owners/employees

- **Measurements:**

- Total felony arrests in zone
- Total search warrants served in zone
- Total probation/parole searches conducted in zone
- Total firearms recovered in zone
- Number of resident/business complaints regarding target population
- Number of services completed

Goal: Reduce the occurrence of violent gang-related incidents through both reactive and proactive efforts supported by enforcement planning coordinated with federal, state and local law enforcement and informed by data and real-time intelligence.

- **Objectives:**

- Conduct assessment of data and report to PSN partners
- Respond to data driven target zones with enforcement operations on gang members, “hot spots”, and “hot people” based on data analysis by CSUF Research Team
- Develop scalable PSN Gun/Gang Violence training
- Design PSN Gun/Gang training materials
- Present scalable PSN Gun/Gang training to individual criminal justice agencies suitable.
- Present scalable PSN Gun/Gang trainings to community partners

- **Measurements:**

- Number of training planning meetings
- Number of trainings conducted
- Number of training attendees

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A G R E E M E N T

THIS AGREEMENT is made and entered into this 31ST day of October, 2013, by and between COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to as "COUNTY", and CITY OF FRESNO, a California municipal corporation, hereinafter referred to as "CITY".

WITNESSETH:

WHEREAS, COUNTY operates and maintains the Fresno County Jail ("Jail") through its Sheriff's Office ("Sheriff");

WHEREAS, CITY desires to house certain arrestees at the Jail;

WHEREAS, COUNTY is willing to reserve five bed spaces for the purpose of housing CITY's arrestees as provided herein.

NOW, THEREFORE, in respect of the mutual promises contained herein, the sufficiency of which is acknowledged, the parties hereto agree as follows:

1. TERMS AND CONDITIONS

A. Five (5) bed spaces shall be reserved by COUNTY for housing CITY's arrestees as provided herein. Unless modified pursuant to Section 6 "MODIFICATION", the total number of bed spaces shall remain at five (5) at all times this Agreement is in effect.

B. CITY shall be responsible for making timely payments to COUNTY as set forth in Section 4 "COMPENSATION/INVOICING".

C. Prior to or at the time an officer of CITY's Police Department presents an arrestee for booking at the Jail, CITY shall inform the Sheriff's Jail Watch Commander of CITY's intent to make use of one of the five (5) bed spaces for purposes of housing the arrestee. The Jail Watch Commander shall be available 24/7 at telephone number 600-8440 for this purpose.

D. Upon being informed of CITY's intent to make use of one of the five (5) bed spaces to house an arrestee, the Jail Watch Commander shall determine whether one of the bed spaces is available for such purpose. The Jail Watch Commander shall inform the officer

1 from CITY's Police Department of whether one of the five (5) bed spaces is available. If one of the
2 five (5) bed spaces is available the Jail Watch Commander shall inform Jail staff and the officer
3 from CITY's Police Department that the arrestee may be housed in one of the five (5) bed spaces.
4 In the event that bed space is unavailable for any reason other than CITY's use of all five (5) bed
5 spaces, the Jail Watch Commander shall make such bed space available for the CITY arrestee
6 after being informed of CITY's intent to make use of such bed space, or in the alternative, CITY
7 shall be refunded for those days such bed space is unavailable for use by a CITY arrestee.

8 E. The Sheriff shall not decline acceptance of an arrestee for housing in one
9 of the five (5) bed spaces, or release an arrestee from the Jail once he or she is accepted for
10 housing in one of the five (5) bed spaces, for reasons related to the Federal Court Order.

11 F. CITY may only use the five (5) bed spaces to house an arrestee who is
12 charged with and awaiting trial on a local or state offense.

13 G. The Sheriff shall provide for the secure custody, safekeeping, housing,
14 subsistence and care of CITY's arrestees housed in one of the five (5) bed spaces in accordance
15 with all state and local laws, standards, regulations, policies and court orders applicable to the
16 operation of the Jail.

17 H. If an arrestee housed in one of the five (5) bed spaces is released by the
18 Sheriff, COUNTY shall inform CITY of the arrestee's release and the reason for his or her release,
19 and CITY shall have the right to fill such vacated bed space with another CITY arrestee. Notice
20 shall be posted on the Sheriff's webpage along with other jail releases.

21 I. CITY's Police Department may inform the Jail Watch Commander at any
22 time of CITY's intent to no longer house an arrestee in one of the five (5) bed spaces. Upon the
23 Jail Watch Commander being so informed, the arrestee may be subject to immediate release for
24 reasons related to the Federal Court Order.

25 J. If an arrestee is removed from the Jail and taken to an outside facility for
26 medical treatment, the bed space used to house the arrestee under this Agreement shall remain
27 unavailable for use by another CITY arrestee at all times the arrestee remains outside the Jail for
28 medical treatment.

1 K. CITY's Police Department may inquire with the Jail Watch Commander at
2 any time to determinate the availability of bed space.

3 L. No CITY arrestee shall be housed under this Agreement at any Jail
4 facility constructed after the date this Agreement is entered into by both parties.

5 M. The terms of this Agreement shall in no way affect CITY's responsibilities
6 as the arresting agency with respect to each arrestee housed in one of the five (5) bed spaces.

7 2. TERM

8 This Agreement shall become effective on the 1st day of November, 2013, and
9 shall terminate on the 30th day of June, 2014. This Agreement may be renewed for a period of
10 one year upon agreement by both parties.

11 3. TERMINATION

12 A. Without Cause - This Agreement may be terminated by either party
13 without cause by giving written notice to the other party at least thirty (30) days in advance of
14 the effective date of such termination. CITY's Police Chief shall have authority to terminate this
15 Agreement on behalf of CITY pursuant to this paragraph. The Sheriff shall have authority to
16 terminate this Agreement on behalf of COUNTY pursuant to this paragraph.

17 B. Non Payment - COUNTY may immediately terminate this Agreement if
18 payment is not fully made by CITY pursuant to Section 4 "COMPENSATION/INVOICING",
19 Paragraphs A and B.

20 4. COMPENSATION/INVOICING:

21 A. CITY shall be charged at a rate of One Hundred and Four Dollars and
22 No/100s (\$104.00) per bed, per day. The total daily rate for the five (5) bed spaces shall be
23 Five Hundred and Twenty Dollars and 00/100s (\$520.00). CITY shall pay such rate to
24 COUNTY regardless of whether any of the five (5) bed spaces are being used or otherwise
25 occupied by a CITY arrestee. However, in the event that one or more of the five (5) bed spaces
26 is unavailable for use by a City arrestee for any reason other than CITY's use of all five (5) bed
27 spaces, CITY shall be refunded for each day such bed space is unavailable for use by a CITY
28 arrestee.

1 B. CITY shall pay COUNTY prior to the start of each month for the five (5)
2 bed spaces, at the rates set forth in Paragraph A of this section, for each and every day of the
3 upcoming month. COUNTY's Sheriff shall invoice CITY for the five (5) bed spaces in advance
4 of the start of each month. Any refund owed to CITY as a result of the unavailability of any of
5 the five (5) bed spaces pursuant to Sections 1(D) or 4(A) of this Agreement shall be applied to
6 reduce the amount owed by CITY for the upcoming month. Monthly payment by CITY is due
7 no later than the 25th day of each month preceding the month payment is due.

8 C. In the event a CITY arrestee using one of the five (5) bed spaces
9 requires medical treatment at an outside facility, COUNTY shall inform CITY of such treatment
10 and transportation within six (6) hours of transportation or as soon as possible under the
11 circumstances. CITY shall pay an hourly rate of Thirty Seven Dollars and No/100s (\$37.00) for
12 each guard assigned to a CITY arrestee when the arrestee is taken to an outside facility for
13 medical treatment. The number of guards to be assigned shall be at the sole discretion of the
14 Sheriff. Notwithstanding anything to the contrary in this Agreement, if CITY does not timely pay
15 the full amount charged by COUNTY for such guard services, the CITY arrestee will become
16 eligible for release for reasons related to the Federal Court Order. COUNTY shall submit
17 monthly invoices in arrears to CITY for such guard services. Invoices will be submitted within
18 fifteen (15) days of the end of each month. CITY shall pay COUNTY within thirty (30) days of
19 receipt of invoice for guard services.

20 D. Invoices submitted by COUNTY to CITY under this section shall be
21 addressed as follows:

22 City of Fresno Police Department
23 2323 Mariposa
24 Fresno, CA 93717
25 Attn: Business Office

26 Payments by CITY to COUNTY under this section shall be addresses as follows:

27 Fresno County Sheriff's Office
28 Attn: Business Office

1 P.O. Box 1788
2 Fresno, CA 93717

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

11 CITY agrees to indemnify, save, hold harmless, and at COUNTY's request,
12 defend COUNTY, its officers, agents, and employees from any and all costs and expenses,
13 damages, liabilities, claims, and losses occurring or resulting to COUNTY in connection with the
14 performance, or failure to perform, by CITY, its officers, agents, or employees under this
15 Agreement, and from any and all costs and expenses, damages, liabilities, claims, and losses
16 occurring or resulting to any person, firm, or corporation who may be injured or damaged by
17 the performance, or failure to perform, of CITY, its officers, agents, or employees under this
18 Agreement.

19 In the event of concurrent negligence on the part of COUNTY or any of its
20 officers, agents, or employees, and CITY or any of its officers, agents, or employees, the liability
21 for any and all such claims, demands and actions in law or equity for such losses, fines,
22 penalties, forfeitures, costs and damages shall be apportioned under the State of California's
23 theory of comparative negligence as presently established or as may be modified hereafter.

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

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

1 8. INSURANCE: Without limiting the right of either party to obtain indemnification
2 from the other party or any third parties, it is understood and agreed that CITY and COUNTY
3 shall each maintain, at their sole expense, insurance policies or self-insurance programs
4 including, but not limited to, an insurance pooling arrangement and/or Joint Powers Agreement
5 to fund their respective liabilities throughout the term of this Agreement. Coverage shall be
6 provided for comprehensive general liability, automobile liability, professional liability, and
7 workers compensation exposure. Evidence of Insurance, Certificates of Insurance or other
8 similar documentation shall not be required of either party under this Agreement.

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

11 COUNTY

12 Tom Gattie
13 Fresno County Assistant Sheriff
14 Fresno County Sheriff's Office
15 2200 Fresno Street
16 P.O. Box 1788
17 Fresno, CA 93717
18 559-600-8136

11 CITY OF FRESNO

12 Jerry Dyer
13 Chief of Police
14 Fresno Police Department
15 2323 Mariposa
16 Fresno, CA 93717
17 559-621-2000

17 Any and all notices between COUNTY and CITY provided for under this
18 Agreement shall be in writing and shall be deemed duly served when personally delivered to one
19 of the parties, or in lieu of such personal service, when deposited in the United States Mail,
20 postage prepaid, addressed to such party.

21 10. INDEPENDENT CONTRACTOR:

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

1 conditions thereof.

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

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

13 11. VENUE AND GOVERNING LAW: The parties agree that performance under this
14 Agreement shall be in Fresno County, California, for purposes of venue. The rights and
15 obligations of the parties and all interpretation and performance of this Agreement shall be
16 governed in all respects by the laws of the State of California.

17 12. SEVERABILITY: In the event any provisions of this Agreement are held by a
18 court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of
19 this Agreement will nevertheless continue in force and effect without being impaired or invalidated
20 in any way.

21 13. INTERPRETATION: The parties acknowledge that this Agreement in its final
22 form is the result of the combined efforts of the parties and that, should any provision of this
23 Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by
24 construing this Agreement in favor of or against either party, but rather by construing the terms in
25 accordance with their generally accepted meaning.

26 14. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement
27 between the CITY and COUNTY with respect to the subject matter hereof and supersedes all
28 previous agreement negotiations, proposals, commitments, writings, advertisements, publications,

1 and understanding of any nature whatsoever unless expressly included in this Agreement.

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

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4 **CITY FRESNO**

COUNTY OF FRESNO

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8 _____
9 Jerry Dyer, Chief of Police

_____ Henry Perea, Chairman, Board of Supervisors

9 ATTEST:
10 Yvonne Spence, CMC
11 City Clerk, City of Fresno


12 BY: Cindy Bruer 10/31/13
13 Deputy Date

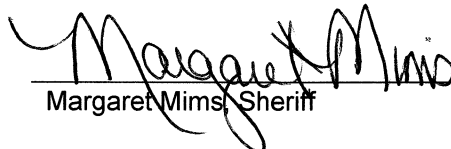
14 DATE: Oct. 24, 2013

DATE: _____

15 APPROVED AS TO LEGAL FORM

REVIEWED & RECOMMENDED FOR APPROVAL


16
17 
18 _____
19 Mary Anne Tooke, Deputy City Attorney


_____ Margaret Mims, Sheriff

APPROVED AS TO ACCOUNTING FORM

21 
22 _____
23 Vicki Crow, Auditor-Controller/Treasurer-Tax Collector

24 APPROVED AS TO LEGAL FORM

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26 
27 BY: _____ 11-7-13
28 Kevin Briggs, County Counsel

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FOR ACCOUNTING USE ONLY:

Fund No. 0001
Org. No. 31113320
Account No. 4975

FIRST AMENDMENT TO AGREEMENT

This Amendment I to Agreement ("Amendment I") is made and entered into this 17th day of June, 2014 by and between COUNTY OF FRESNO, a political subdivision of the State of California, Fresno, California ("COUNTY"), and CITY OF FRESNO, a California municipal corporation ("CITY").

WITNESSETH:

WHEREAS, COUNTY and CITY entered into an Agreement dated October 31, 2013, ("Agreement"), pursuant to which COUNTY agreed to reserve five bed spaces for the purpose of housing CITY's arrestees in COUNTY's Adult Detention Facilities; and

WHEREAS, the original Agreement provided a termination date of June 30, 2014 with an option to renew for a period of one year upon agreement by both parties; and,

WHEREAS, COUNTY and CITY now desire to amend the Agreement in order to exercise the option to renew the agreement through June 30, 2015.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, COUNTY and CITY agree to amend the Agreement as follows:

- 1. Section 2, "Term" is deleted in its entirety and replaced with the following: "This Agreement shall become effective on the 1st day of November, 2013 and shall terminate on the 30th day of June, 2015."

This Amendment I will be effective as of the date written first above. COUNTY AND CITY agree that upon execution of this Amendment I, the Agreement and this Amendment I together shall be considered the Agreement.


The Agreement, as hereby amended, is ratified and continued. All provisions, terms,

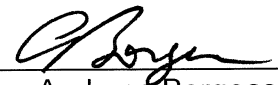
1 covenants, conditions and promises contained in the Agreement and not amended herein
2 shall remain in full force and effect.

3 IN WITNESS WHEREOF, the parties hereto have caused this Amendment I to Agreement to
4 be executed as of the day and year first above written.

5 **CITY OF FRESNO**

COUNTY OF FRESNO

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7 
8 Jerry Dyer, Chief of Police


Andreas Borgeas
Chairman, Board of Supervisors

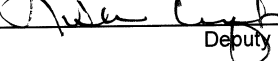
9 Print Name & Title

ATTEST:

10 JERRY DYER
11 2323 MARIPOSA

BERNICE E. SEIDEL, Clerk
Board of Supervisors

12 FRESNO CA 93721
Mailing Address

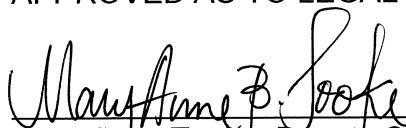
By 
Deputy

13 DATE: 5/22/14

DATE: 6/17/2014

14
15 APPROVED AS TO LEGAL FORM


REVIEWED AND RECOMMENDED
FOR APPROVAL

16
17 
18 Mary Anne Tooke, Deputy City Attorney

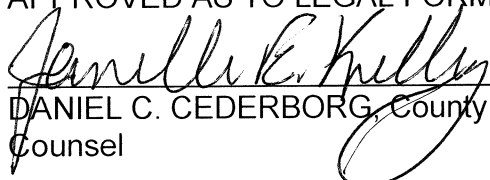

for Margaret Mims, Sheriff

19 May 22, 2014

APPROVED AS TO
ACCOUNTING FORM

20 
21 VICKI CROW, Auditor-
22 Controller/Treasurer-Tax Collector

23 APPROVED AS TO LEGAL FORM

24 
25 DANIEL C. CEDERBORG, County
Counsel

26 Budget Unit No.: 31113320
27 Account No.: 4975
28