

AGREEMENT BETWEEN CITY OF FRESNO
AND
HOUSING AUTHORITY OF THE CITY OF FRESNO

THIS AGREEMENT is entered into effective the **1st day of July, 2018**, by and between the Housing Authority of the City of Fresno, California, a public body corporate and politic (Housing Authority,) and the City of Fresno, California, a municipal corporation, (hereinafter called the City.)

RECITALS

WHEREAS, the City provides local law enforcement services within the jurisdiction of the Housing Authority; and

WHEREAS, the Housing Authority variously provides public housing services and activities for residents of City; and

WHEREAS, the Housing Authority is funding the services provided for in this Agreement through the Public Housing Operating Fund Program, referred to hereafter as "Operating Fund"; and

WHEREAS, the Housing Authority warrants that the Operating Fund makes available funding to fund local law enforcement for additional security and protection services provided in pursuit of the public housing programs supported by the Housing Authority; and

WHEREAS, on January 1, 1995, California Penal Code Section 11105.03 (Statute) became effective, allowing local law enforcement agencies to obtain State criminal history information through the California Law Enforcement Teletype System (CLETS) at the request of the local housing authorities for the purpose of screening prospective residents and prospective and current housing authority staff; and

WHEREAS, the Statute specifies that a local agency may run criminal history checks through CLETS and release to the Housing Authority a record of convictions for certain specified violent felonies that have occurred within the past ten years; and information on any offences committed by any person under 18 years of age are not reportable under the Statute; and

WHEREAS, Department of Justice guidelines require the development of a Memorandum of Understanding between the Housing Authority and the local law enforcement agency outlining each agency's responsibilities in order to allow the release of criminal history information under the Statute, and the provisions contained in Section 2 of this Agreement are intended to serve that purpose; and

WHEREAS, the parties desire to enter into this Agreement that provides terms and conditions where under the Housing Authority shall utilize the Operating Fund to reimburse the City for additional law enforcement security and protective services provided by City and related activities; and

WHEREAS, performance of the services by City will be of benefit to City and in the public interest.

AGREEMENT

NOW, THEREAFTER, in consideration of the above recitals, which recitals are contractual in nature, the mutual promises herein contained, and for other good and valuable consideration hereby acknowledged, it is mutually agreed as follows:

1. Scope of Services.

City agrees to provide the following law enforcement services in accordance with and pursuant to this Agreement, subject to all applicable Constitutional and local law requirements:

(a) Law enforcement services will be provided by one Sworn Police Officer at the following Housing Authority complexes located in southwest Fresno:

Housing Authority complexes: Sequoia Courts (CAL 6-2), Sierra Plaza (CAL 6-3), Fairview Heights Terrace (CAL 6-4), Sequoia Courts Terrace (CAL 6-5), Sierra Terrace (CAL 6-6), Yosemite Village (CAL 6-10), DeSoto Gardens 1 and 2 (CAL 28-38 and CAL 6-26); and

Law enforcement services will be provided by one Sworn Police officer at the following complex located in southeast Fresno:

1) Housing Authority complex: Monte Vista (CAL 6-7)

Hereafter collectively called the "Target Areas."

Based on patrol hours, a prorated portion consisting of \$187,012 which comprises 63% of the total contract will be billed to the Housing Authority (the remainder will be billed to Southeast Fresno RAD, LP and Viking Village RAD, LP under separate agreements).

(b) Law enforcement services will be provided through full-time assignment of one (1) sworn officer to each target area, for a total of for a total of two (2) Sworn Police Officers (for all three agreements), for the funded period not to exceed twelve months commencing **July 1, 2018** and ending **June 30, 2019**. On an as needed basis, services may be diverted to Housing

Authority complexes within the incorporated limits of the City of Fresno and outside of the "Target Areas," with the prior written approval of the Fresno Police Department's District Commander.

- (c) Specific duties for law enforcement services to be performed by each Sworn Police Officer under this Agreement for the respective designated Target Areas in paragraph (a) above, include the following:
 - (i) Enforcing laws in accordance with Fresno Police Department policies;
 - (ii) Submitting weekly crime reports to the Housing Authority District Manager;
 - (iii) Providing supplemental crime report data required for additional grant applications, funding opportunities and initiative upon a timely request by the District Manager
 - (iv) Referring resident victims to support services;
 - (v) Subject to Fresno Police Department Scheduling, each officer will provide 40 hours of law enforcement services per week, during flex work hours of Daylight Savings Time from 10:00 am – 8:00 pm. Work one Saturday or Sunday per month during the months of June-September and work one Saturday or Sunday every two months during the months of October-May. Fresno Police department shall inform the Housing Authority Property Manager in advance if the work schedule changes;
 - (vi) Submitting available Annual Crime Statistics for each complex, upon request of Housing Authority District Manager;
 - (vii) Attend the conferences with Housing Authority District Manager upon request regarding resident concerns;
 - (viii) Completing regular patrols per site; approximately two patrols in vehicle and one on foot; and
 - (ix) In accordance with the Statute providing criminal history background checks through CLETS.

2. Criminal History Background Checks through CLETS by Fresno Police Department.

- (a) The two Sworn Police Officers provided hereunder by the Fresno Police Department, through the City, are employed through the Operating Fund Program to run CLETS criminal history checks.
- (b) The Fresno Police Department will run criminal history checks on subjects submitted by the Housing Authority on an agreed upon request form, if authorized by signature of a designated Housing Authority staff member.
- (c) The Fresno Police Department will screen CLETS printouts for reportable offenses as specified in Penal Code Section 11105.03.

- (d) The Fresno Police Department will record reportable offenses on the Housing Authority request form and deliver a copy of the completed form with any reportable criminal history information to a designated Housing Authority staff member, within five (5) working days from the date of the request. (Note: If it is known that the subject of a criminal history check is on probation or on parole, the document will be delivered to the appropriate probation or parole offices with a request to forward the document to the designated Housing Authority staff member.)
- (e) The Fresno Police Department will maintain a file on all Housing Authority criminal history checks, including the request form, any CLETS printouts and a copy of any criminal history information released to the Housing Authority for a minimum of three (3) years.
- (f) Only the Chief Executive Offices of the Housing Authority and his/her designated staff member(s) of the Housing Authority, designated in writing to the Fresno Police Department by the chief executive officer, may request and receive criminal information, subject to the following paragraph.
- (g) Designated Housing Authority staff granted access to criminal history information must pass a criminal history background check, which will require submitting their fingerprints to the California Department of Justice and the Federal Bureau of Investigation (FBI), and a California Department of Motor Vehicle clearance.
- (h) Designated Housing Authority staff will review and authorize, by signature, on the request form, all requests for criminal history check under the statute.
- (i) Any information obtained from CLETS criminal history pursuant to this Agreement is confidential and the Housing Authority shall not disclose or use the information for any purpose other than that authorized in the statute.
- (j) The criminal history information released to the Housing Authority and all copies made from it shall be destroyed not more than thirty (30) days after the Housing Authority's final decision as to whether to act on the housing status of the individual to whom the information relates.
- (k) The Housing Authority shall adopt regulations governing the receipt, maintenance and use of the criminal history information. The regulations shall include provisions that require notice that the Housing Authority has access to criminal history information on applicants and employees who have access to Housing Authority residences.

(l) Use of criminal history information is to be consistent with Title 24 of the Code of Federal Regulations and current regulations adopted by the Housing Authority.

3. Office Facilities and Reimbursement to City for Grant Related Activities.

(a) Housing Authority agrees to provide a secure office at Sequoia Courts Terrace (CAL 6-5) for use by the Sworn Police Officer in the southwest district and a secure office at Southeast Fresno RAD for use by the Sworn Police Officer in the southeast district. Each office shall be equipped with a telephone, computer and access to restroom facilities for the respective officer's use. At its sole cost and expense, Housing Authority shall be responsible for providing all utilities (HVAC, phone, internet, electricity, water, sewer, garbage, etc.), repair and maintenance services at each office.

(b) For the aforementioned services, the Housing Authority agrees to reimburse City for costs incurred by City hereunder, in an amount not to exceed **\$187,012** for the period beginning **July 1, 2018**, and ending **June 30, 2019**.

(c) The amount of **\$187,012** is the Housing Authority's prorated share of the City's costs shared with Southeast Fresno RAD, LP and Viking Village RAD, LP. The aggregate cost are as follows:

- **Salary and fringe benefits for two Sworn Police Officers - \$284,406**
- **Overtime for Sworn Police Officers - \$5,000**
- **Cellular and modem ongoing costs - \$1,740**
- **Vehicle O&M costs - 2 vehicles @ 25% - \$5,000**

And other allowable costs as outlined in the OMB Circular A-87 (Revised 05/10/04).

The City will bill the Housing Authority on a monthly basis. Payment of any bill shall be contingent on receipt of the weekly reports and completion of described activities.

4. Term.

The term of this Agreement shall commence on **July 1, 2018** and shall end on **June 30, 2019**, subject to earlier termination as provided herein.

5. Termination.

Notwithstanding the foregoing, this Agreement may be terminated immediately by either the Housing Authority or City, upon the other party's default that is not cured within 30 days of receiving written notice thereof, by giving written notice to the other party of the termination. Such termination shall be subject to obligations due and owing on the date of termination.

6. Compliance with Governing Law.

The services provided by the City under this Agreement are over and above the City's budgeted positions. The parties agree that Operating Fund dollars shall not be used to replace funds of, or positions, otherwise funded by the City.

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

City agrees to provide any substantiation and support for services, fees, costs and expenses upon reasonable request of the Housing Authority for a period of not less than three (3) years after final payment. Records of City's expenses pertaining to the services shall be kept on a generally recognized accounting basis and shall be available to Housing Authority or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three (3) years after final payment. In addition, all books, documents, papers, and records of City pertaining to the services shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time.

7. Capacity of City.

In rendering the aforesaid services, it is mutually understood and agreed that the City, its agents and employees, shall at all times be acting and performing independently and not as employees of the Housing Authority. The Sworn Police Officers shall at all times be under the direction and control of and must report to the Chief of Police of the City of Fresno Police Department. Nothing in this Agreement and nothing in the course of dealings between the Housing Authority and City shall be deemed to create any fiduciary relationship, trust, partnership, joint venture, agency or employment relationship. City, and City's employees and agents, shall not be treated by the Housing Authority as employees of the Housing Authority for any purpose including, but not limited to, laws providing for Social Security taxes and benefits, state or federal unemployment compensation taxes, state or federal income tax withholdings or worker's compensation benefits. City agrees that it has sole responsibility to pay Social Security, State Disability Insurance, Worker's Compensation Insurance and all other wages and benefits

applicable to its employees. City further agrees to hold the Housing Authority harmless for any and all claims made with regard to such matters.

8. Indemnification and Insurance.

(a) To the fullest extent of the law, CITY shall indemnify, hold harmless and defend Housing Authority 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 Housing Authority, CITY 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 from the negligent or intentional acts or omissions, or willful misconduct of CITY or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by CITY of governmental immunities including California Government Code section 810 *et seq.* This paragraph shall be construed such that City will indemnify Housing Authority in the event Housing Authority is named in a lawsuit against Fresno Police Department personnel arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct, of Fresno Police Department personnel in the performance of this Agreement. Provided nothing herein shall constitute a waiver by City of governmental immunities including California Government Code section 810 *et seq.*

To the fullest extent of the law, the Housing Authority shall indemnify, hold harmless and defend CITY 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 the CITY, the Housing Authority 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 from the negligent or intentional acts or omissions, or willful misconduct of Housing Authority or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by Housing Authority of governmental immunities including California Government Code section 810 *et seq.*

In the event of concurrent negligence on the part of CITY or any of its officers, officials, employees, agents or volunteers, and Housing Authority or any of its officers, officials, employees, agents or volunteers, the liability for any and all such claims, demands and actions in law or equity for

such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

This subsection (a) shall survive termination or expiration of this Agreement.

(b) It is understood and agreed that City and the Housing Authority maintain insurance policies or self-insurance programs to fund their respective liabilities. The parties agree that such respective programs or policy coverage for Workers' Compensation shall contain a waiver of subrogation as to the other party and each of its officers, officials, agents, employees and volunteers. Evidence of Insurance, Certificates of Insurance or other similar documentation shall not be required of either party under this Agreement.

The fact that insurance is obtained by Housing Authority shall not be deemed to release or diminish the liability of Housing Authority, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY 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 Housing Authority. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Housing Authority, its principals, officers, agents.

9. Attorney's fees.

If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, 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.

10. Notices.

Any notice required or intended to be given to either party under the terms of this Agreement 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 on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice.

11. Binding.

Once this Agreement 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, assignees, transferees, agents, servants, employees and representatives.

12. Assignment.

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

13. Waiver.

The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or different provision of this Agreement.

No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

14. Governing Law and Venue.

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

15. Headings.

The section headings in this Agreement 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 Agreement.

16. Severability.

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

17. Interpretation.

The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be

ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

18. No Third Party Beneficiaries.

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

19. Exhibits.

Each exhibit and attachment referenced in this Agreement is, by reference, incorporated into and made a part of this Agreement.

20. Entire Agreement.

It is mutually understood and agreed that the foregoing constitutes the entire agreement between the parties for law enforcement services from the Fresno Police Department. There are no further portions of this agreement, whether prior or contemporaneous, express or implied, written or oral other than as set forth in the provisions of this agreement. Any modifications or amendments to this agreement must be in writing and signed by both parties.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have caused their authorized agents to execute this Agreement at Fresno, California the day and year first above written.

CITY OF FRESNO
a California municipal corporation

By: _____
Jerry Dyer, Date
Chief of Police
Fresno Police Department

HOUSING AUTHORITY OF THE CITY OF
FRESNO

By: _____
Preston Prince Date
CEO/Executive Director

APPROVED AS TO FROM:
DOUGLAS T. SLOAN
City Attorney

By: Tracy N. Parvianian Date 8.14.18
Tracy N. Parvianian Date 8.14.18
Senior Deputy City Attorney

Address:
Housing Authority of the City of Fresno
Attention: Preston Prince
Executive Director/CEO
1331 Fulton Mall
Fresno, CA 93721

ATTEST:
YVONNE SPENCE, MMC
City Clerk

By: _____
Deputy Date

Address:
City of Fresno Police Department
Attention: D.C. Lydia Carrasco
Patrol Division
P.O. Box 1271
Fresno, CA 93715-1271