

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF FRESNO and THE COUNTY OF FRESNO**

**FY 2021 National Sexual Assault Kit Initiative Grant Program**

This Agreement, which incorporates United State Department of Justice, Bureau of Justice Assistance project number 15PBJA-21-GG-0431-SAKI including Certifications and Assurances, is made and entered into this \_ day of \_\_\_\_\_, 2023, by and between the County of Fresno, acting by and through its governing body, County Board of Supervisors (“COUNTY”), and the City of Fresno, acting by and through its governing body, the City Council (“CITY”), witnesseth:

**WHEREAS**, each governing body finds that the performance of this Agreement is in the best interests of all parties, that the undertaking will benefit the public, and that the division of costs/allocation of funds is dictated by the 2021 National Sexual Assault Kit Initiative Grant Program (hereinafter referred to as the “Program”) award documents, and compensates the performing party for the services or functions under this Agreement; and

**WHEREAS**, the Program is intended to enhance the collaborative effort between the Fresno Police Department and the Fresno County District Attorney’s Office in the collection of lawfully owed DNA. The Prosecutor will provide legal guidance in matters of California law, the DNA collection plan, and any other required agreements with participating agencies to execute the initiative;

**WHEREAS**, the CITY, and COUNTY agree to comply with all requirements of the Program, and in accordance with all applicable statutes, regulations, OMB circulars, and guidelines.

**WHEREAS**, the CITY and COUNTY believe that implementation of the Program as described herein will further the above goal, and to this end agree to coordinate reference herein.

**NOW THEREFORE**, in consideration of the above recitals which are contractual in nature, and of the mutual promises contained herein, the COUNTY and CITY agree as follows:

**Section 1.**

The CITY and COUNTY have agreed that the CITY will act as Fiscal Agent for purposes of the FY 2021 National Sexual Assault Kit Initiative Grant Program. The CITY and COUNTY have agreed neither party will seek costs associated with administering Program funds. Contingent upon funding being available, CITY agrees to allocate funding to the COUNTY in the amount of \$51,120 each year during the performance period of the grant, not to exceed \$51,120 in grant funds allocated to the COUNTY throughout the three-year term of this Agreement. The COUNTY allocation of grant funds is further shown in Exhibit A.

### **Section 2.**

CITY and COUNTY agree to use funds for the investigation and prosecution of Sexual Assault Cold Cases until expiration of the Program term, whereupon any unused funds shall be remitted to the U.S. Department Of Justice ("DOJ"), Office of Justice Programs ("OJP"), Bureau of Justice Assistance ("BJA"), consistent with Program requirements.

### **Section 3.**

CITY shall indemnify, hold harmless and defend COUNTY 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 COUNTY, 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.

COUNTY 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, 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 from the negligent or intentional acts or omissions, or willful misconduct of COUNTY or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by COUNTY 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 COUNTY 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 section shall survive termination or expiration of this Agreement.

### **Section 4.**

The term of this Agreement shall begin on October 1, 2022, and shall end on September 30, 2024.

**Section 5.**

The CITY and COUNTY agree to comply with all requirements of the FY 2021 National Sexual Assault Kit Initiative grant program (42 U.S.C. 3751(a)), and in accordance with all applicable statutes, regulations, Office of Management and Budget (“OMB”) Circulars, and guidelines, including the OJP Financial Guide. COUNTY agrees to provide the CITY, as Fiscal Agent, with all required financial reporting within 30 days after the end of each quarter and quarterly programmatic reporting information no later than the 30 days following the end of each quarter, in a format approved by the CITY.

**Section 6.**

The parties are acting in an independent capacity. Each of the parties agrees that it, including any and all of its officers, agents, and/or employees, shall have absolutely no right to employment rights and benefits available to the other party’s employees. Each party shall be solely liable and responsible for providing to, or on behalf of, its own officers, agents, and/or employees all legally and contractually required employee benefits. In addition, each party shall be solely responsible and save the other party harmless from all matters relating to payment of each party’s employees, including, but not limited to, compliance with applicable social security withholding and all other regulations governing such matters. Further and without limitation, each party to this Agreement will be responsible for its own actions in providing services under this Agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party.

**Section 7.**

The parties to this Agreement do not intend for any third party to obtain a right by virtue of this Agreement.

**Section 8.**

By entering into this Agreement, the parties do not intend to create any obligations, express or implied, other than those set out herein. Further, this Agreement shall not create any rights in any party not a signatory hereto.

**Section 9.**

Any and all notices between the parties provided for or permitted under this Agreement or by law shall be in writing, and shall be deemed duly served when personally delivered to each party, or in lieu of such personal service, when deposited in the United States Mail, postage prepaid, addressed to each party at the address provided on the signature page of this Agreement.

**Section 10.**

Each party shall, at any time during business hours, and as often as each party may reasonably deem necessary, make available to each other for examination all of its records and data, with respect to the matters covered by this Agreement, for a period of three years following the close-out of the 2021 National Sexual Assault Kit Initiative (SAKI) grant program.

**Section 11.**

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

**Section 12.**

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 of or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

**Section 13.**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous agreements, negotiations, proposals, commitments, writing, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this Agreement.

**Section 14.**

Each party represents that it and the person signing on its behalf has full authority to execute and enter into this Agreement.

**This Agreement is subject to ratification by the approval of the Fresno City Council, and the County Board of Supervisors.**

**[SIGNATURES FOLLOW ON THE NEXT PAGE]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in Fresno County, California as of the day and year first hereinabove written.

CITY OF FRESNO  
a California municipal corporation

COUNTY OF FRESNO

By: \_\_\_\_\_  
Georgeanne A. White  
City Manager

By: \_\_\_\_\_  
Brian Pacheco, Chairman  
Board of Supervisors

APPROVED AS TO FORM:  
ANDREW JANZ  
City Attorney

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

By:  \_\_\_\_\_ 4/20/23  
Brandon M. Collet Date  
Supervising Deputy City Attorney

By: \_\_\_\_\_

ATTEST:  
TODD STERMER, CMC  
City Clerk

By: \_\_\_\_\_  
Deputy

Address:  
City of Fresno  
Attn: Chief Paco Balderrama  
Fresno Police Department  
2323 Mariposa Street  
Fresno, CA 93721

\*By law, the Fresno City Attorney's Office may only advise or approve the form of contracts or legal documents on behalf of its clients. It may not advise or approve the form of contracts or legal document on behalf of other parties. Our view of this document was conducted solely from the legal perspective of our client. Our approval as to the form of this document was offered solely for the benefit of our client. Other parties should not rely on this approval and should seek review and approval by their own respective attorney(s).

**Exhibit A**

**Fresno County District Attorney's Office**

	<b>Federal \$ - Year 1</b>	<b>Federal \$ - Year 2</b>	<b>Federal \$ - Year 3</b>	<b>Total</b>
<b>.10 FTE Deputy District Attorney Salary &amp; Fringe</b>	0	25,560	25,560	51,120
	0	25,560	25,560	51,120