

1 **AGREEMENT**

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3 THIS AGREEMENT ("Agreement") is made and entered into this ____ day of January, 2021, by
4 and between the COUNTY OF FRESNO, a political subdivision of the State of California ("COUNTY"), and
5 CITY OF FRESNO , a municipal corporation, whose address is 2323 Mariposa Mall, Fresno, CA 93721
6 ("CONTRACTOR").

7 WITNESSETH:

8 WHEREAS, under Assembly Bill 109, the Public Safety Realignment Act (AB 109), the State of
9 California has realigned responsibilities for probation, post release community supervision (PRCS), and
10 mandatory supervised release of offenders; and

11 WHEREAS, the AB 109 Implementation Plan of 2011, including its updates, collectively referred to
12 as the "AB 109 PLAN," was developed by the Fresno County Community Corrections Partnership (CCP),
13 and was approved by the Fresno County Board of Supervisors; and

14 WHEREAS, the AB 109 PLAN includes formation of the Adult Compliance Team (ACT) to create a
15 cooperative unit capable of addressing public safety concerns and issues facing local law enforcement in
16 Fresno County; and

17 WHEREAS, the ACT is comprised of representatives of the Fresno County Sheriff's Department,
18 the Fresno County District Attorney's Office, the Fresno County Probation Department, and officers of the
19 Fresno, Clovis, Selma, Kerman, Kingsburg, and Reedley Police Departments; and

20 WHEREAS, the State of California has provided funding to COUNTY for the purpose of
21 implementing AB 109 services; and

22 WHEREAS, CONTRACTOR desires to continue to be a member of ACT; and

23 WHEREAS, COUNTY and CONTRACTOR desire to enter into this Agreement to maintain
24 CONTRACTOR as an ACT member, and to continue to implement AB 109 services.

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

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1 1. OBLIGATIONS OF THE CONTRACTOR

2 A. CONTRACTOR shall assign five (5) Police Officers, one (1) Police sergeant, and
3 one (1) Crime Analyst ("Police Officers") to be responsible for fulfilling the responsibilities of an ACT
4 member, in accordance with the ACT Operating Agreement, attached as Exhibit "A" and incorporated by
5 this reference. In the event that the AB 109 Plan is revised by the CCP, and approved by the Fresno
6 County Board of Supervisors, the responsibilities of the Police Officers under this Agreement may be
7 modified accordingly.

8 2. OBLIGATIONS OF THE COUNTY

9 COUNTY shall compensate and remit to CONTRACTOR an amount equal to the cost of the
10 Police Officers to the ACT and the Multi-Agency Gang Enforcement Consortium (MAGEC), not
11 to exceed the maximum amount payable under this Agreement of \$1,626,444.

12 3. TERM

13 This Agreement shall be effective retroactive to July 1, 2020, and shall terminate on June 30, 2021.

14 4. TERMINATION

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

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

- 21 1) An illegal or improper use of funds;
22 2) A failure to comply with any term of this Agreement;
23 3) A substantially incorrect or incomplete report submitted to the COUNTY;
24 4) Improperly performed service.

25 In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of any breach
26 of this Agreement or any default which may then exist on the part of the CONTRACTOR. Neither shall such
27 payment impair or prejudice any remedy available to the COUNTY with respect to the breach or default.
28 The COUNTY shall have the right to demand of the CONTRACTOR the repayment to the COUNTY of any

1 funds disbursed to the CONTRACTOR under this Agreement, which in the judgment of the COUNTY were
2 not expended in accordance with the terms of this Agreement. The CONTRACTOR shall promptly refund
3 any such funds upon demand.

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

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

9 COUNTY shall compensate and remit to CONTRACTOR an amount equal to the cost of the Police
10 Officers for assignment to the ACT. In no event shall total compensation paid to CONTRACTOR for
11 services performed under this Agreement exceed \$1,626,444.

12 CONTRACTOR shall submit quarterly invoices for actual expenditures to the County of Fresno
13 Probation Department at ProbationInvoices@FresnoCountyCA.gov Invoices must be submitted on or after
14 the dates of October 1, 2020, and January 1, April 1, and July 1, 2021, respectively, and include a
15 breakdown of expenses identified in the final approved budget of the CCP for use in executing the mission
16 of ACT. COUNTY shall make payment within 45 days of receipt of an approved invoice.

17 Upon any termination of this Agreement, CONTRACTOR shall be compensated for costs incurred
18 under this Agreement, up to and including the date of termination.

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

28 CONTRACTOR and COUNTY shall comply with all applicable provisions of law and the rules and

1 regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

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

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

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

13 9. HOLD HARMLESS: CONTRACTOR agrees to indemnify, save, hold harmless, and at
14 COUNTY'S request, defend the COUNTY, its officers, agents, and employees from any and all costs and
15 expenses (including attorney's fees and costs), damages, liabilities, claims, and losses occurring or
16 resulting to COUNTY in connection with the performance, or failure to perform, by CONTRACTOR, its
17 officers, agents, or employees under this Agreement, and from any and all costs and expenses (including
18 attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to any person, firm,
19 or corporation who may be injured or damaged by the performance, or failure to perform, of
20 CONTRACTOR, its officers, agents, or employees under this Agreement; provided nothing herein shall
21 constitute a waiver by CONTRACTOR of governmental immunities including California Government Code
22 section 810 et seq.

23 COUNTY agrees to indemnify, save, hold harmless, and at CONTRACTOR'S request, defend the
24 CONTRACTOR, its officers, agents, and employees from any and all costs and expenses (including
25 attorney's fee and costs), damages, liabilities, claims, and losses occurring or resulting to CONTRACTOR
26 in connection with the performance, or failure to perform, by COUNTY, its officers, agents, or employees
27 under this Agreement, and from any and all costs and expenses (including attorney's fees and costs),
28 damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may

1 be injured or damaged by the performance, or failure to perform, of COUNTY, its officers, agents or
2 employees under this Agreement.

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

8 This Section 9 shall survive termination or expiration of this Agreement.

9 10. INSURANCE

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

14 A. Commercial General Liability

15 Commercial General Liability Insurance with limits of not less than Two Million Dollars
16 (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). This
17 policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including
18 completed operations, product liability, contractual liability, Explosion-Collapse-Underground, fire legal
19 liability or any other liability insurance deemed necessary because of the nature of this contract.

20 B. Automobile Liability Comprehensive

21 Automobile Liability with limits of not less than One Million Dollars (\$1,000,000.00) per accident for
22 both bodily injury and for property damages. Coverage should include any automobile used in connection
23 with this Agreement.

24 C. Professional Liability

25 If CONTRACTOR employees licensed staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in providing
26 services, Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per
27 occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate.

28 If any of the required policies provide claims-made coverage:

1 1. The Retroactive Date must be shown, and must be before the date of the contract or the
2 beginning of contract work.

3 2. Insurance must be maintained, and evidence of insurance must be provided for at least five
4 (5) years after the completion of the contract work.

5 3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy
6 form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended
7 reporting" coverage for a minimum of five (5) years after the completion of work.

8 D. Worker's Compensation

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

10 Additional Requirements Relating to Insurance

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

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

23 Within Thirty (30) days from the date CONTRACTOR signs and executes this Agreement,
24 CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all of the
25 foregoing policies, as required herein, to the County of Fresno, Probation Office, 3333 E. American Avenue,
26 Suite B, Fresno, CA 93725, stating that such insurance coverage have been obtained and are in full force;
27 that the County of Fresno, its officers, agents, and employees will not be responsible for any premiums on
28 the policies; that for such worker's compensation the CONTRACTOR has waived its rights to recover from

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

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

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

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

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

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

<u>COUNTY</u>	<u>CONTRACTOR</u>
COUNTY OF FRESNO	CITY OF FRESNO
Chief Probation Officer	Chief of Police
3333 E. American Avenue, Suite B	2323 Mariposa Mall
Fresno, CA 93725	Fresno, CA 93721

28 All notices between the COUNTY and CONTRACTOR provided for or permitted under this

1 Agreement must be in writing and delivered either by personal service, by first-class United States mail, by
2 an overnight commercial courier service, or by telephonic facsimile transmission. A notice delivered by
3 personal service is effective upon service to the recipient. A notice delivered by first-class United States
4 mail is effective three COUNTY business days after deposit in the United States mail, postage prepaid,
5 addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one
6 COUNTY business day after deposit with the overnight commercial courier service, delivery fees prepaid,
7 with delivery instructions given for next day delivery, addressed to the recipient. A notice delivered by
8 telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is
9 completed outside of COUNTY business hours, then such delivery shall be deemed to be effective at the
10 next beginning of a COUNTY business day), provided that the sender maintains a machine record of the
11 completed transmission. For all claims arising out of or related to this Agreement, nothing in this section
12 establishes, waives, or modifies any claims presentation requirements or procedures provided by law,
13 including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code,
14 beginning with section 810).

15 13. GOVERNING LAW: Venue for any action arising out of or related to this Agreement shall
16 only be in Fresno County, California.

17 The rights and obligations of the parties and all interpretation and performance of this Agreement
18 shall be governed in all respects by the laws of the State of California.

19 14. SEVERABILITY

20 In the event any provision of this Agreement is held by a court of competent jurisdiction to be
21 invalid, void, or unenforceable, the remaining provisions of this Agreement will nevertheless continue in
22 force and effect without being impaired or invalidated in any way.

23 15. WAIVER

24 The waiver by either party of a breach by the other of any provision of this Agreement shall not
25 constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different
26 provision of this Agreement. No waiver of a party's breach of any provision of this Agreement shall be
27 effective unless the waiver is in writing and signed by the party against whom the waiver is sought to be
28 enforced. Waiver of any one provision shall not be deemed to be a waiver of any other provision herein.

1 16. INTERPRETATION

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

6 17. NO THIRD-PARTY BENEFICIARIES

7 Nothing set forth in this Agreement shall create any legal rights in any person not party to this
8 Agreement

9 18. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the
10 CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes all previous
11 Agreement negotiations, proposals, commitments, writings, advertisements, publications, and
12 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
2 the day and year first hereinabove written.

3 CITY OF FRESNO

COUNTY OF FRESNO

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

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


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

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

11 By: _____
12 Deputy

By: _____
Deputy

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

17
18 By:  11/18/2020
19 Kristi Costa Date
Deputy City Attorney

20 Address:
21 City of Fresno
22 ATTN: Chief Andrew Hall
23 Fresno Police Department
24 2323 Mariposa Mall
Fresno, CA 93721

25 FOR ACCOUNTING USE ONLY:

26 Fund: 0001
27 Subclass: 10000
28 Org: 34309999
Account No.: 7295