

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU), effective as of January 1, 2018, is entered into by and between the CITY OF FRESNO, CALIFORNIA, a municipal corporation (City), and the MARJAREE MASON CENTER, INC., a California nonprofit corporation (MMC).

RECITALS

WHEREAS, the City has submitted to the California Governor's Office of Emergency Services (Cal OES), Law Enforcement Specialized Unit Program 2018 Grant Funding Cycle – Law Enforcement Specialized Unit Program (the Program), an application for \$203,143 in grant funds for Planning which is incorporated herein; and

WHEREAS, the Program is focused on enhancing the specialized unit, with emphasis on improving coordinated response to victims of domestic violence and their children, and the City's application proposes to increase the Fresno Police Department's (FPD) ability to respond to these populations; and

WHEREAS, upon award of grant funds and entry into a grant agreement with CalOES (Grant) consistent with the Program, the City intends to work in partnership with MMC for the purpose of providing additional assistance for victims of domestic violence and their children within the City of Fresno, including addressing violence against victims, using a combination of investigation, immediate response, immediate victim advocacy, and training for law enforcement officers; and

WHEREAS, the City and MMC believe implementation of the Program as described herein will further the above goals and agree to coordinate and provide the services referenced herein.

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

Fresno Police Department
Family Justice Bureau
Sgt. Chris Serrano
2323 Mariposa Mall
Fresno, CA 93721

Marjaree Mason Center, Inc.
Stacy Gomez, Project Director
1600 "M" St.
Fresno, CA 93721

2. ROLES AND RESPONSIBILITIES

A. Fresno Police Department:

The FPD, subject to all applicable federal, state, and local laws, shall:

i. Act as the lead agency in coordinating the activities of the Law Enforcement Specialized Unit Program to target domestic violence victims and their children.

ii. Identify victims and families to be served by this grant.

iii. Detectives shall provide specialized investigation into domestic violence cases to enhance the probability of successful prosecution.

iv. Provide training on police procedures, office space, office furniture, office supplies and telephones to the MMC Advocates described below.

v. Attend monthly meetings to assess progress and find solutions to problems.

B. Marjaree Mason Center, Inc.

MMC shall:

i. Recruit, hire, train and supervise three full-time Advocates, as set forth in further detail in C. below, which will be assigned to FPD and concentrating on domestic violence investigations.

a. An Advocate will be required to respond on investigations with officers Monday-Sunday, 2:00 pm – 10:30 pm, and shall coordinate with the DVU Sergeant for case follow-up and immediate call-out response after hours of normal operation.

b. 100% of the salary for three full-time Advocates are eligible costs incurred by MMC for compensation from Grant monies available to MMC in Section 3, below.

ii. MMC shall provide training to Specialized Unit Program advocates on advocacy procedures.

iii. Attend monthly meetings with FPD staff to assess progress and find solutions to problems.

iv. Cooperate with FPD and Auditor in preparation of the Program Evaluation and all reporting requirements.

C. Requirements of Advocates

i. MMC shall recruit, hire, train and supervise three Advocates. These Advocates shall serve as outreach aide for victims as identified by FPD and provide crisis intervention, advocacy, resource and referral assistance, restraining order assistance, and follow-up services.

ii. MMC shall provide referred clients with access to all appropriate MMC services including shelter, support groups, counseling, legal advocacy, twenty-four hour crisis hotline, survival skills, legal options classes, and information and referral.

iii. MMC domestic violence Advocates must meet the applicable requirements of a domestic violence counselor as defined by the Evidence Code §1037-1037.7 for domestic violence. Advocates must have training/experience in assisting victims with the paperwork necessary to obtain a restraining order.

iv. MMC victim Advocate(s) funded hereunder must meet Program Entry-Level Advocates Standards and have completed an additional forty hours of specific domestic violence and/or sexual assault training.

v. MMC victim Advocate(s) must comply with all regulations pertaining to Federal Drug/Alcohol testing.

3. REIMBURSEMENT FOR PROGRAM ACTIVITIES

For the aforementioned services, the City agrees to reimburse MMC solely from allocated and available Program Grant funds for eligible costs incurred by MMC, in an amount not to exceed \$163,246, for the first year of the grant, in accordance with the Program budget submitted by City for the 2018 Program performance period funding of this MOU (attached hereto as Exhibit A and incorporated herein by reference). The preceding two years of grant funding for MMC will be agreed upon between City, MMC and CalOES through the annual reapplication process.

Any future applications and award of funds for 2018 Program funding cycle shall be by written amendment to this MOU and signed by both parties.

Payment of said bill shall be contingent on City's receipt of any reports and substantiation materials reasonably requested by the City.

If MMC should fail to comply with any provision of the Agreement, the City shall be relieved of its obligation for further compensation.

4. EFFECTIVENESS AND DURATION

The effectiveness of this MOU is contingent upon City receiving the Grant award. The participating agency signing this MOU shall be committed to the Grant Program for the entire funding cycle commencing January 1, 2018, and ending December 31, 2020. Each twelve month period of this MOU will be for the then current Program year and annual Grant period, and will be subject to Cal OES approval, through a Grant application for continued funding. MMC acknowledges and agrees that continued funding is dependent upon satisfactory performance and availability of funds.

5. TARGET POPULATION

Services provided under this Program shall be directed to victims involved in domestic violence incidents, and their families, that are residents of the City of Fresno.

6. RESOURCES TO BE CONTRIBUTED BY EACH PARTY

Fresno City Police Department

- One domestic violence investigator;
- A Police Sergeant to provide on-site supervision of the domestic violence unit;
- Office space, telephone, vehicles for detectives, office supplies; and
- Office space, access to vehicles, computer and telephone for the advocates.

Marjaree Mason Center, Inc.

- Three Advocates;
- MMC to provide shelter and other assistance to victims;
- Supervision and training by Project Director; and
- Access for victims, as identified by FPD, to needed MMC services within existing policies and procedures.

7. RECORDKEEPING AND PERFORMANCE DATA

MMC shall keep proper records and submit to the City each quarter the following data:

Number of Victims – Proper documentation of the number of victims served, calls for service, including number of cases reported, counseled, provided shelter and other assistance and any other information required by the grantor agency.

8. FINANCIAL REPORTING, AUDITING AND DOCUMENT RETENTION

MMC shall submit a monthly bill to FPD for the eligible expenses incurred in providing the services of the advocates. Billing documentation shall include the following:

- (i) A breakdown of expenditures by cost category;
- (ii) Maintain copies of all purchase orders and requisitions; and
- (iii) Proof of payment for eligible expenditures.

MMC agrees to provide a substantiation and support for services, fees, costs and expenses upon the reasonable request of the Agency for a period of not less than three years after final closeout of the grant by the grantor agency. Records of MMC's expenses pertaining to their respective services shall be kept on a generally recognized accounting basis and shall be available to the City or its authorized representatives upon request during regular business hours throughout the life of the MOU and for a period of three years after final closeout. In addition, all books, documents, papers, and records of MMC pertaining to their respective services shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time.

9. TERMINATION

The term of the MOU is for three years, commencing January 1, 2018, and ending December 31, 2020, with years two and three contingent on the reapplication process and approval by CalOES. For purposes of this MOU, each respective Program year and Grant period will be for 12 months as follows:

<u>Program Funding Cycle</u>	<u>Program Year and Grant Period</u>
2018	January 1, 2018 – December 31, 2018
2019	January 1, 2019 – December 31, 2019
2020	January 1, 2020 – December 31, 2020

Notwithstanding the foregoing, this MOU shall automatically suspend or terminate upon City's written notice to MMC of any of the following events: (i) Program termination, (ii) any non-appropriation or non-allocation of Program funding required in pursuit hereof, (iii) MMC's illegal or improper use of funds, (iv) MMC's failure to comply with any term of this MOU, (v) MMC's submittal of any substantially incorrect or incomplete itemized invoice required for reimbursement, (vi) MMC's failure to comply with Federal Drug/Alcohol regulations, or (vii) MMC's failure to comply with any applicable provisions of the Grant. Nothing in this MOU shall commit the taxing authority or general fund of the City.

MMC may terminate this MOU upon thirty days prior written notice the City in the event of either of the following: (i) non-appropriation by MMC's governing body of sufficient funds to perform its obligations under this MOU; or (ii) substantial failure of City to comply with any term of this MOU.

In no event shall any payment by City constitute a waiver by City of any breach of this MOU or any default which may then exist on the part of MMC. Neither shall such payment impair or prejudice any remedy available to the City with respect to the breach or default. The City shall have the right to demand of MMC the repayment to the City of any funds respectively disbursed to MCC under this MOU, which in the judgment of the City were not expended in accordance with the terms of this MOU. MMC, respectively, shall promptly refund any such funds upon demand.

10. COMPLIANCE WITH GOVERNING LAW AND GRANT

The parties shall at all times comply with all applicable laws of the United States, the State of California, 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. MMC acknowledge receipt of a copy of the Grant and agrees to comply with all applicable provisions thereof and cooperate with City in meeting the requirements thereunder.

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

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*.

11. CAPACITY OF AGENCY AND MMC

Nothing in this MOU, and nothing in the course of dealings between MMC and the City shall be deemed to create any fiduciary relationship, trust, partnership, joint venture, agency or employment relationship.

12. INSURANCE AND INDEMNITY

A. INSURANCE

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Social Services Liability or Professional Liability (Abuse & Molestation) that insures against liability arising out of the bodily injury, personal injury, and third-party property damage occurring because of the wrongful or negligent acts attributable to the institution. This coverage should protect against a wide range of potential claims, including but not limited to assault, verbal and/or physical abuse, sexual molestation and other sexual misconducts.

MINIMUM LIMITS OF INSURANCE

MMC, or any party the MMC subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. COMMERCIAL GENERAL LIABILITY:

- (i) \$1,000,000 per occurrence for bodily injury and property damage;
- (ii) \$1,000,000 per occurrence for personal and advertising injury;
- (iii) \$2,000,000 aggregate for products and completed operations; and,
- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. COMMERCIAL AUTOMOBILE LIABILITY:

\$1,000,000 per accident for bodily injury and property damage.

3. WORKERS' COMPENSATION INSURANCE as required by the State of California with statutory limits.

4. EMPLOYER'S LIABILITY:

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

5. Professional Liability (Abuse & Molestation):

- (i) \$1,000,000 per claim/occurrence; and,
- (ii) \$2,000,000 policy aggregate.

6. CYBER LIABILITY insurance with limits not less than:

- (i) \$1,000,000 per claim/occurrence; and,
- (ii) \$2,000,000 policy aggregate.

UMBRELLA OR EXCESS INSURANCE

In the event MMC purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

MMC shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and MMC shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or
- (ii) MMC shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. MMC shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, MMC'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents and volunteers shall be excess of MMC'S insurance and shall not contribute with it. MMC shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.
4. Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense

costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: MMC and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

If the Professional Liability (Abuse & Molestation and Cyber) insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by MMC.
2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five year discovery period.
3. 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 Agreement or the commencement of work by MMC, MMC must purchase "extended reporting" coverage for a minimum of five years completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to CITY for review.
5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty calendar days written notice by certified mail, return receipt requested, has been given to CITY. MMC is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, MMC shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, MMC shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen calendar days prior to the expiration date of the expiring policy.

Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

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

VERIFICATION OF COVERAGE

MMC shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, MMC shall immediately furnish City 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 expiration or termination of this Agreement.

B. **INDEMNIFICATION.** To the furthest extent allowed by law MMC shall indemnify, hold harmless and defend City, and each of their 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 City, MMC 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 arise directly or indirectly from the negligent or intentional acts or omissions of MMC or any of its officers, officials, employees, agents or volunteers in the performance of this MOU.

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

This section shall survive termination or expiration of this MOU.

13. 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 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.

14. PROCEDURE 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.

15. 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.

16. BINDING

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.

17. 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.

18. 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 provisions 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. ENTIRE MOU

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

[SIGNATURE PAGE TO FOLLOW]

THIS MOU/AGREEMENT IS SUBJECT TO RATIFICATION BY COUNCIL ACTION UPON AWARD OF GRANT FUNDS.

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

CITY OF FRESNO, CALIFORNIA,
a municipal corporation

MARJAREE MASON CENTER, INC.,
a California non-profit organization

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

BY: Nicole Linder
Nicole Linder, Executive Director

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

BY: Amanda B. Freeman 12/29/17
Amanda B. Freeman Date
Deputy City Attorney

ATTEST:
YVONNE SPENCE, MMC
City Clerk

BY: _____
Deputy

TAXPAYER FEDERAL I.D. # 94-1156639

Attachments:
Exhibit A - Budget

**Exhibit A
Budget**

Personnel

Salary – 3 Advocates	3 X \$36,691	\$110,073
FICA – 3 Advocates	7.65% X \$110,073	\$8,421
SUI – 3 Advocates	3 X \$434	\$1,302
Workers Compensation	3 X \$384	\$1,152
Health Benefits (medical, dental, vision, life insur.)	3 X \$5,145	\$15,435
Overtime for Advocates	868 hrs @ \$26.46	\$22,967
	TOTAL	\$159,350

Operational

Mileage for Advocates	3 X 2,100 miles @ \$.535	\$3,371
Software Licenses for Advocates	3 X \$75	\$225
Program Supplies (pens, paper, file folders, etc)	\$300	\$300
	TOTAL	\$3,896

Total Cost for year 1 = \$163,246