

1 **A G R E E M E N T**

2
3 THIS AGREEMENT ("Agreement") is made and entered into this ____ day of _____ 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 W I T N E S S E T H:

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:

27
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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 \$1,596,691.

12 3. TERM

13 This Agreement shall be effective retroactive to July 1, 2021 and shall terminate on June 30, 2022.

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 \$1,596,691.

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, 2021, and January 1, April 1, and July 1, 2022, 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. However, changes to line
11 items in the budgets, as determined by CCP Executive Committee or designee, that do not exceed ten
12 percent (10%) of the maximum compensation maybe made with the written approval of CCP Executive
13 Committee or designee and CONTRACTOR. Any changes to the budget shall not result in any change
14 to the maximum compensation payable under this Agreement. In addition, changes to this Agreement,
15 in whole or in part, which are necessary for compliance with State of California and Federal law, shall be
16 made by written amendment and executed by CCP Executive Committee or designee and
17 CONTRACTOR.

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

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

1 section 810 et seq.

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

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

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

16 10. INSURANCE

17 Without limiting the right of either party to obtain indemnification from the other party or any third
18 parties, it is understood and agreed that CONTRACTOR and COUNTY shall each maintain, at their sole
19 expense, shall maintain in full force and effect, the following insurance policies or a program of self-
20 insurance, including but not limited to, an insurance pooling arrangement or Joint Powers Agreement (JPA)
21 throughout the term of the Agreement:

22 A. Commercial General Liability

23 Commercial General Liability Insurance with limits of not less than Two Million Dollars
24 (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). This
25 policy shall be issued on a per occurrence basis. CITY and COUNTY may require specific coverages
26 including completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire
27 legal liability or any other liability insurance deemed necessary because of the nature of this contract.
28

1 B. Automobile Liability

2 Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars
3 (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should include any auto
4 used in connection with this Agreement.

5 C. Professional Liability

6 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in
7 providing services, Professional Liability Insurance with limits of not less than One Million Dollars
8 (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate.

9 D. Worker's Compensation

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

12 E. Molestation

13 Sexual abuse / molestation liability insurance with limits of not less than One Million Dollars
14 (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) annual aggregate. This policy shall be
15 issued on a per occurrence basis.

16 Additional Requirements

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

24 COUNTY shall obtain endorsements to the Commercial General Liability insurance naming the City
25 of Fresno, its officers, agents, and employees, individually and collectively, as additional insured, but only
26 insofar as the operations under this Agreement are concerned. Such coverage for additional insured shall
27 apply as primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers,
28 agents, and employees shall be excess only and not contributing with insurance provided under CITY's

1 policies herein. This insurance shall not be cancelled or changed without a minimum of thirty (30) days
2 advance written notice given to COUNTY.

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

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

13 Within Thirty (30) days from the date CONTRACTOR signs and executes this Agreement,
14 CONTRACTOR and COUNTY shall provide certificates of insurance and endorsement as stated above for
15 all of the foregoing policies, as required herein.

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

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

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

27 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to
28 the examination and audit of the California State Auditor for a period of three (3) years after final payment

under contract (Government Code Section 8546.7).

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

COUNTY

COUNTY OF FRESNO
Chief Probation Officer
3333 E. American Avenue, Suite B
Fresno, CA 93725

CONTRACTOR

CITY OF FRESNO
Chief of Police
2323 Mariposa Mall
Fresno, CA 93721

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

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

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

14. SEVERABILITY

In the event any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement will nevertheless continue in

force and effect without being impaired or invalidated in any way.

15. 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 a different provision of this Agreement. No waiver of a party's breach of any provision of this Agreement shall be effective unless the waiver is in writing and signed by the party against whom the waiver is sought to be enforced. Waiver of any one provision shall not be deemed to be a waiver of any other provision herein.

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

17. NO THIRD-PARTY BENEFICIARIES

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

18. ELECTRONIC SIGNATURES: The parties agree that this Agreement may be executed by electronic signature as provided in this section. An "electronic signature" means any symbol or process intended by an individual signing this Agreement to represent their signature, including but not limited to (1) a digital signature; (2) a faxed version of an original signature; or (3) an electronically scanned and transmitted (for example by PDF document) of a handwritten signature. Each electronic signature affixed or attached to this Agreement (1) is deemed equivalent to a valid original handwritten signature of the person signing this Agreement for all purposes, included but not limited to evidentiary proof in any administrative or judicial proceeding, and (2) has the same force and effect as the valid original handwritten signature of that person. The provisions of this section satisfy the requirements of Civil code section 1633.5 subdivision (b), in the Uniform electronic Transaction Act (Civil Code, Division 3, Part 2, title 2.5, beginning with section 1633.1). Each party using a digital signature represents that it has undertaken and satisfied the requirements of Governmental Code section 16.5, subdivision (a), paragraphs (1) through (5), and agrees that each other party may rely upon that representation. This Agreement is not conditioned upon

1 the parties conducting transactions under it by electronic means and either party may sign this Agreement
2 with an original handwritten signature.

3 19. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the
4 CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes all previous
5 Agreement negotiations, proposals, commitments, writings, advertisements, publications, and
6 understanding of any nature whatsoever unless expressly included in this Agreement.

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

9 **CONTRACTOR**

COUNTY OF FRESNO

10 _____
11 Paco Balderrama, Chief of Police
Fresno Police Department

Brian Pacheco, Chairman of the Board
of Supervisors of the County of Fresno

12
13 **ATTEST:**
14 TODD STERMER, CMC, MMC
15 City Clerk

ATTEST:
BERNICE E. SEIDEL
Clerk of the Board of Supervisors
County of Fresno, State of California

16 By: _____
17 Deputy

By: _____
Deputy

18 APPROVED AS TO FORM:
19 DOUGLAS T. SLOAN
20 City Attorney

FOR ACCOUNTING USE ONLY:
Fund: 0001
Subclass: 10000
Org: 34309999
Account No.: 7295

21 By: Pauline Brickey 11/17/21
22 Pauline Brickey Date
23 Deputy City Attorney

24 Address:
25 City of Fresno
26 ATTN: Chief Paco Balderrama
27 Fresno Police Department
28 2323 Mariposa Mall
Fresno, CA 93721