

## AGREEMENT

**THIS AGREEMENT** ("Agreement") is entered into as of \_\_\_\_\_ between the **COUNTY OF TULARE**, a political subdivision of the State of California ("COUNTY"), and **EARLIMART SCHOOL DISTRICT**, ("DISTRICT"). COUNTY and DISTRICT are each a "Party" and together are the "Parties" to this Agreement, which is made with reference to the following:

- A. DISTRICT desires that the COUNTY provide the FTE deputy sheriff in accordance with the terms and conditions of this agreement.
- B. COUNTY is willing to provide such services.

### **THE PARTIES AGREE AS FOLLOWS:**

**1. TERM:** This Agreement becomes effective as of August 8, 2018 and expires at 11:59 PM on May 31, 2019 unless earlier terminated as provided below, or unless the Parties extend the term by a written amendment to this Agreement.

**2. SERVICES:** COUNTY shall provide to DISTRICT one Full-Time Equivalent ("FTE") Deputy Sheriff position. "Full-Time" shall be deemed to be the employee's normal work hours for 40 hours per week, including employee leave and training hours. The Deputy Sheriff shall be employed by the Tulare County Sheriff and shall be under the Sheriff's exclusive direction and control. DISTRICT duties shall be assigned and carried out after consultation with, and approval from, the Sheriff or his authorized representative. DISTRICT related duties may include, but are not limited to:

- a) Providing a visible law enforcement presence on the campuses of the DISTRICT and at school-related functions such as athletic events, school dances, and other extracurricular activities.
- b) Assisting the DISTRICT in enforcement of attendance laws through counseling with students and parents, and making home calls.
- c) Acting as a resource deputy for DISTRICT personnel, providing law enforcement information and responding to law enforcement needs of the site administrators.
- d) Utilizing intervention and prevention skills with students that are involved in criminal activity or who have been identified by the deputy or DISTRICT personnel as in need of attention.
- e) Attending and participating in DISTRICT meetings as requested.
- f) Providing classroom instruction on law enforcement issues, such as gang awareness, drug avoidance and other related subjects.

**3. REIMBURSEMENT FOR EXTENDED SERVICES:** DISTRICT agrees to pay the COUNTY for the costs on the FTE (including salary, benefits and training) in accordance with the description and amounts indicated in Exhibit "A". Payment of such costs shall be paid by DISTRICT to COUNTY on a quarterly basis. The COUNTY shall

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invoice the cost for services on a quarterly basis. Upon receipt, DISTRICT shall provide payment to COUNTY within 30 days.

**4. OFFICE SPACE:** The DISTRICT shall provide the deputy assigned to the DISTRICT with a private work space, including work station, telephone, and reasonable access to DISTRICT office equipment and secretarial assistance.

**5. MEET AND CONFER:** The DISTRICT Superintendent or designated administrative officer and the designated supervising officer from the Sheriff's Office shall meet and confer as necessary regarding the deputy's activities and functions as they relate to the DISTRICT.

**6. QUALIFICATIONS OF DEPUTY:** Any and all deputies assigned to the DISTRICT under this Agreement shall be required to meet the same standards of selection and training required of other deputies in the COUNTY's Sheriff's Office, including, without limitation, meeting all of the requirements of the State commission on Peace Officers' Standards and Training (P.O.S.T.).

**7. COMPLIANCE WITH LAW:** COUNTY shall provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to COUNTY's employees, COUNTY shall comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

**8. RECORDS AND AUDIT:** COUNTY shall maintain complete and accurate records with respect to the services rendered and the costs incurred under the Agreement. In addition, COUNTY shall maintain complete and accurate records with respect to any payments to employees or subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, COUNTY shall make such records available within Tulare County to the DISTRICT and to its agents and representatives, for the purpose of auditing and/or copying such records for a period of five (5) years from the date of final payment under this Agreement.

**9. INDEPENDENT CONTRACTOR STATUS:**

a. This Agreement is entered into by both parties with the express understanding that COUNTY will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement shall be construed to constitute the COUNTY or any of its agents, employees or officers as an agent, employee or officer of DISTRICT.

b. COUNTY agrees to advise everyone it assigns or hires to perform any duty under this agreement that they are not employees of DISTRICT. Subject to any performance criteria contained in this Agreement, COUNTY shall be solely responsible

for determining the means and methods of performing the specified services and DISTRICT shall have no right to control or exercise any supervision over COUNTY as to how the services will be performed. As COUNTY is not DISTRICTS's employee, COUNTY is responsible for paying all required state and federal taxes. In particular, DISTRICT will not:

- i. Withhold FICA (Social Security) from COUNTY's payment.
- ii. Make state or federal unemployment insurance contributions on COUNTY'S behalf.
- iii. Withhold state or federal income tax from payment to COUNTY.
- iv. Make disability insurance contributions on behalf of COUNTY.

c. Notwithstanding this independent contractor relationship, DISTRICT shall have the right to monitor and evaluate the performance of COUNTY to assure compliance with this Agreement.

#### **10. INDEMNIFICATION:**

a. COUNTY shall indemnify and hold harmless DISTRICT from and against all claims and actions, and all expenses, including but not limited to reasonable attorney fees, incidental to such claims or actions, based upon or arising out of damages or injuries to persons or property to the extent that such claims or actions are caused by the negligence, gross negligence or willful misconduct by COUNTY or anyone acting under its direction or control or on its behalf in the course of its performance under this Agreement; provided that COUNTY's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability based upon willful acts or negligence of DISTRICT or upon use of or reliance on information supplied by DISTRICT or on behalf of DISTRICT to COUNTY in preparation of any report, study or other written document; and further provided, however, in no event shall COUNTY be responsible for any form of consequential damages, including, but not limited to loss of sales, loss of profits, and attorney fees thereon.

b. DISTRICT shall indemnify and hold harmless COUNTY from and against all claims and actions, and all expenses, including but not limited to reasonable attorney fees, incidental to such claims or actions, based upon or arising out of damages or injuries to persons or property caused by the negligence, gross negligence, willful misconduct or breach of any provision of this Agreement by DISTRICT or anyone acting under its direction or control or on its behalf in the course of its performance under this Agreement; provided that DISTRICT's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability based upon the willful acts or active negligence of COUNTY and upon use of or reliance on information supplied by COUNTY in any report, study or other written document; and further provided, however, in no event shall DISTRICT be responsible for any form of consequential damages, including, but not limited to loss of sales, loss of profits and attorney fees thereon.

c. Where any claim results from the joint negligence, gross negligence, willful misconduct or breach of any provision of this Agreement by DISTRICT and COUNTY,

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the amount of such claim for which DISTRICT or COUNTY is liable as indemnitor under this Article 10 shall equal (i) the proportionate part that the amount of such claim attributable to indemnitor's negligence, gross negligence, or willful misconduct bears to (ii) the proportionate part of the amount of the total claim that is attributable to the joint negligence, gross negligence, or willful misconduct at issue.

#### **11. CONFLICT OF INTEREST:**

a. COUNTY agrees at all times in performance of this Agreement to comply with the law of the State of California regarding conflicts of interests or appearance of conflicts of interests, including, but not limited to Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commissions. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including COUNTY for this purpose, from the making of any decision on behalf of DISTRICT in which such officer, employee or COUNTY has a direct or indirect financial interest. A violation can occur if the public officer, employee or COUNTY participates in or influences any DISTRICT decisions which has the potential to confer any pecuniary benefit on COUNTY or any business firm in which COUNTY has an interest, with certain narrow exceptions.

b. COUNTY agrees that if any facts come to its attention which raises any questions as to the applicability of conflicts of interest laws, it will immediately inform the DISTRICT designated representative and provide all information needed for resolution of this question.

#### **12. TERMINATION:**

a. Without Cause: Either party will have the right to terminate this Agreement without cause by giving thirty (30) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination. DISTRICT will pay to COUNTY the compensation earned for work performed and not previously paid for to the date of termination.

b. With Cause: This Agreement may be terminated by either party should the other party:

- i. be adjudged a bankrupt, or
- ii. become insolvent or have a receiver appointed, or
- iii. make a general assignment for the benefit of creditors, or
- iv. suffer any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- v. materially breach this Agreement.

For any of the occurrences expect in item (5), termination may be effected upon written notice by the terminating party specifying the date of the termination. Upon a material breach, the Agreement may be terminated following the failure of the defaulting party to remedy the breach of the satisfaction of the non-defaulting party within FIVE (5)

days of written notice specifying the breach. If the breach is not remedied within that FIVE (5) day period, the defaulting party may, submit a written proposal within that period which sets forth a specific means to resolve the default. If the non-defaulting party consents to that proposal in writing, which consent shall not be unreasonably withheld, the defaulting party shall immediately embark on its plan to cure. If the default is not cured within the time agreed, the non-defaulting party may terminate upon written notice specifying the date of termination. DISTRICT will pay to the COUNTY the compensation earned for work performed and not previously paid for to the date of termination.

c. Effects of Termination: Expiration or termination of this Agreement shall not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities.

d. Suspension of Performance: Independent of any right to terminate this Agreement, the authorized representative of DISTRICT for which COUNTY's services are to be performed, may immediately suspend performance by COUNTY, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by COUNTY to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

**13. ENTIRE AGREEMENT REPRESENTED:** This Agreement represents the entire agreement between the parties as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.

**14. HEADINGS:** Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

**15. NOTICES:**

a. Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and address as follows:

**COUNTY:**

Tulare County Sheriff's Office  
Attn: Fiscal Manager  
833 S. Akers Street  
Visalia, CA 93277

Phone No: (559) 802-9450  
Fax No: (559) 737-4283

**DISTRICT:**

Earlimart School District  
785 E. Center Avenue  
Earlimart, CA 93219

Phone No: (559) 849-3386  
Fax No: (559) 849-2352

b. Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

**16. CONSTRUCTION:** This Agreement reflects the contribution of both parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any uncertainty.

**17. NO THIRD PARTY BENEFICIARIES INTENDED:** Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

**18. GOVERNING LAW:** This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in Tulare County California.

**19. WAIVERS:** The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

**20. EXHIBITS AND RECITALS:** The Recitals and the Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

**21. CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY:** This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provisions shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.

**22. FURTHER ASSURANCES:** Each party will execute any additional documents and perform any further acts which may be reasonably required to affect the purposes of this Agreement.

**23. ASSURANCES OF NON-DISCRIMINATION:** COUNTY shall not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.



**THE PARTIES**, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

**COUNTY OF TULARE**

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

J. Steven Worthley

Chairman, Board of Supervisors of the County of Tulare

Date: \_\_\_\_\_

ATTEST: MICHAEL C. SPATA  
County Administrative Officer/Clerk of  
the Board of Supervisors of the County  
of Tulare

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

Date: \_\_\_\_\_

**EARLIMART SCHOOL DISTRICT**

By: Philip Nystrom

Printed Name: Mr. Philip Nystrom

Title: Earlimart Superintendent

Date: May 16, 2018



**Exhibit A**

**Earlimart School District  
School Resource Officer  
August 8, 2018 through May 31, 2019  
Expenditures based on 38 weeks**

<u>DEPUTY II:</u>	<b>100%</b>		
	<b>Full Year</b>	<b>38 Week</b>	<b>Earlimart School District</b>
	<b>Expenditures</b>	<b>School Year</b>	<b>FY 18/19 Budget</b>
<b><i>Salaries and Benefits:</i></b>			
Salary	69,845 x	0.73	50,987
Overtime	500 x	0.73	365
Other Pay Types	800 x	0.73	584
Health Benefits	14,190 x	0.73	10,359
Retirement	16,428 x	0.73	11,992
Social Security	5,443 x	0.73	3,973
Worker's Compensation	6,306 x	0.73	4,603
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Total Salary and Benefits:	\$ 113,512		\$ 82,863
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<b><i>Operating Costs:</i></b>			
Cellular Phone	648 x	0.73	473
Radio Communications	600 x	0.73	438
Motor Pool Operations	6,000 x	0.73	4,380
Payrolls Processing (ADP)	172 x	0.73	126
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Total Agency Charges:	\$ 7,420		\$ 5,417
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<b>Total All Expenditures:</b>	<b>\$ 120,932</b>		<b>\$ 88,280</b>
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Based on the above, DISTRICT will pay up to \$88,280 to COUNTY for services equivalent to one FTE Deputy for the period of August 8, 2018 through May 31, 2019.