

AGREEMENT

THIS AGREEMENT ("Agreement") is entered into as of July 1, 2018 between the **COUNTY OF TULARE**, a political subdivision of the State of California ("COUNTY"), and **TULARE COUNTY OFFICE OF EDUCATION**, ("TCOE"). COUNTY and TCOE are each a "Party" and together are the "Parties" to this Agreement, which is made with reference to the following:

- A. TCOE 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 July 1, 2018 and expires at 11:59 PM on June 30, 2020 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 services through the Tulare County Sheriff's Office as set forth:
 - Refer to **Exhibit A** to this Agreement.
3. **COSTS OF SERVICES:** TCOE agrees to pay the COUNTY the actual cost of services to the extent allowable under the terms of the applicable grant not to exceed the \$79,831 for year one and \$102,606 for year two of the agreement for a total amount of \$182,437 for the duration of the agreement. See **Exhibit B** for a breakdown of the County's expenditures.
4. **METHOD OF PAYMENT:** COUNTY must submit itemized invoices to TCOE for the cost of the services. All submitted expenses must be ACTUAL cost incurred and back up is required for all invoicing.
5. **OFFICE SPACE:** TCOE shall provide the deputy assigned to the site locations with a private workspace at all designated school sites including a workstation, telephone, and reasonable access to TCOE office equipment and secretarial assistance.
6. **MEET AND CONFER:** The TCOE, or designated administrative officer, and the COUNTY, or designated supervising officer from the Tulare County Sheriff's Office, shall meet and confer as necessary regarding the deputy's activities and functions as they relate to TCOE.
7. **QUALIFICATIONS OF DEPUTY:** Any and all deputies assigned to TCOE 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.).

8. 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.

9. 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 TCOE 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.

10. 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 TCOE.

b. COUNTY agrees to advise everyone it assigns or hires to perform any duty under this agreement that they are not employees of TCOE. 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 TCOE shall have no right to control or exercise any supervision over COUNTY as to how the services will be performed. As COUNTY is not TCOE's employee, COUNTY is responsible for paying all required state and federal taxes. In particular, TCOE 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, TCOE shall have the right to monitor and evaluate the performance of COUNTY to assure compliance with this Agreement.

11. INDEMNIFICATION:

a. COUNTY shall indemnify and hold harmless TCOE 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 TCOE or upon use of or reliance on information supplied by TCOE or on behalf of TCOE 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. TCOE 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 TCOE or anyone acting under its direction or control or on its behalf in the course of its performance under this Agreement; provided that TCOE'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 TCOE 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 TCOE and COUNTY, the amount of such claim for which TCOE 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.

12. 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 TCOE 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 TCOE 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 TCOE designated representative and provide all information needed for resolution of this question.

13. 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. TCOE 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. TCOE 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 TCOE 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.

14. LOSS OF FUNDING: Unless there are extenuating circumstances justifying retention of the affected positions, and such positions are approved by the Tulare County Board of Supervisors, it is understood and agreed that if COUNTY's funding is either discontinued or reduced for the services to be provided hereunder, then COUNTY will have the right to terminate this Agreement under section 13 (a) ("Termination Without Cause") as of the end of the term for which funds are appropriated. Such termination shall be without penalty, liability, or expense to COUNTY of any kind, provided that TCOE shall pay COUNTY in accordance with section 13 (a) for services satisfactorily performed prior to the date of such termination and to the extent funds have been appropriated for such payment.

15. 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.

16. 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.

17. 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

TCOE:

Tulare County Office of Education
Elizabeth Sisk, Secretary

WITH A COPY TO:

County Administrative Officer
2800 W. Burrel Ave.
Visalia, CA 93291

Phone No: (559) 636-5005
Fax No: (559) 733-6318

P.O. Box 5091
Visalia, CA 93278-5091

Phone No: (559) 733-6300
Fax No: (559) 627-5219

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.

18. 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.

19. 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.

20. 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.

21. 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.

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

23. 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.

24. 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.

25. 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.

26. ASSIGNMENT/SUBCONTRACTING: Unless otherwise provided in this Agreement, TCOE is to relying on the personal skill, expertise, training and experience of COUNTY's employees and no part of this Agreement may be assigned or subcontracted by COUNTY without the prior written consent of TCOE.

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

[SIGNATURES FOLLOW ON NEXT PAGE]

COUNTY OF TULARE

By: _____

J. Steven Worthley
Chairman, Board of Supervisors of the County of Tulare

Date: _____

ATTEST: JASON T. BRITT
County Administrative Officer/Clerk of
the Board of Supervisors of the County
of Tulare

By: _____

Date: _____

TULARE COUNTY OFFICE OF EDUCATION

By: _____

Dr. Craig Wheaton
Deputy Superintendent, Business Services
Tulare County Office of Education

Date: OCT 17 2018

APPROVED AS TO FORM:
COUNTY COUNSEL

By: [Signature] 10/17/18
Deputy Matter 2018/467

**EXHIBIT A
SCOPE OF SERVICES**

1. RESPONSIBILITIES OF COUNTY: TULARE COUNTY SHERIFF'S OFFICE (TCSO) will support and assist in the facilitation of the Tobacco Law Enforcement Prop 56 Grant Program as follows:

a. TCSO will identify a Sheriff Deputy who will work with Tulare County Office of Education in providing services outlined in the grant. This deputy will report to the designated school sites and work 40-hours a week.

i. Site locations (Southwest Tulare):

- Sundale School
- Buena Vista School
- Oak Valley School
- Palo Verde School
- Waukena Joint Union Elementary

b. The deputy will provide safety and security; campus policing (including enforcement of tobacco laws); school event policing; compliance checks; enforcement of tobacco laws in coordination with Tulare County Office of Education; and work collaborate with other grant partners on tobacco related operations.

c. The deputy will facilitate the implementation and instruction of the identified prevention education curriculum (i.e. Botvins Life Skills and/or Towards No Tobacco Use).

d. The deputy will assist in the collection of evaluation data.

e. The deputy will assist and collaborate in the tobacco-related awareness/outreach activities at schools and school events (i.e. assemblies, tobacco-free presentations, after-school events, sports, etc.).

f. TCSO will assist with providing vendor/merchant scans in the 20 mile radius of the identified school sites to increase awareness of legal requirements of tobacco sales with a prevention-focused message.

g. TCSO will conduct, with the support of Tulare County Office of Education, retailer education classes focusing on the prevention of the furnishing of tobacco products to minors.

h. TCSO will invoice Tulare County Office of Education monthly (by the 10th of each month). All invoicing must be ACTUAL cost incurred and requires the necessary backup documentation (i.e. time card, payroll report or general ledger).

Tulare County Agreement No. _____

The California Tobacco Law Enforcement Prop 56 Grant can be viewed at:
<https://oag.ca.gov/sites/all/files/agweb/pdfs/tobacco/prop-56-grant-tobacco-law-handbook.pdf>

2. RESPONSIBILITIES OF TCOE: TULARE COUNTY OFFICE OF EDUCATION (TCOE) will provide:

- a. reimbursement through grant funds for (1) FTE Deputy to include salary and benefits;
- b. coordination between schools and Sheriff Deputy on location of where and when instruction is to occur;
- c. the necessary prevention education curriculum for implementation;
- d. calendar of when assessment/evaluation is to be completed as well as School Events in which services under the grant are being delivered, and;
- e. evaluation services of grant data and an annual report for all partners to see the progression of the grant program.

FEE SCHEDULE

The contract total for services to be provided shall not exceed **\$182,437.00** including contractor travel or other expenses.

Invoices shall be submitted monthly for ACTUAL cost incurred accompanied with the necessary backup documentation for payment.

Prior to payment, contractor shall submit an invoice (containing name, address, tax identification number, and amount of payment) which must be signed by the manager requesting the services to certify that services have been performed in accordance with this agreement. Unless other payment terms are specified on the fee schedule, payment terms are net 30 days from the date of receipt of correct and proper invoices.

Exhibit B

**School Resource Officer
Tulare County Office of Education
Tobacco Law Enforcement Prop 56 Grant
September 4, 2018 through June 30, 2020**

**Proposed School Resource Officer
Based on Deputy II, Step 4**

	2018 100% Full Year Expenditures	Year 1 9/4/18-6/30/19		2019 Full Year 100% Full Year Plus 15%	Year 2 8/12/19-6/30/20	
		34 Week School Year	TCOE-SRO FY 18/19 Budget		38 Week School Year	TCOE-SRO FY 19/20 Budget
Salaries and Benefits:						
Salary	69,847	0.6538	45,669	80,324	0.7308	58,698
Overtime	-	0.6538	-	-	0.7308	-
Other Pay Types	800	0.6538	523	920	0.7308	672
Health Benefits	14,190	0.6538	9,278	16,319	0.7308	11,925
Retirement	12,550	0.6538	8,206	14,433	0.7308	10,547
Social Security	6,024	0.6538	3,939	6,928	0.7308	5,062
Pension Obligation Bond	4,957	0.6538	3,241	5,701	0.7308	4,166
Worker's Compensation	6,306	0.6538	4,123	7,252	0.7308	5,299
Total Salary and Benefits:	\$ 114,674		74,979	\$ 131,875		96,370
Operating Costs:						
Cellular Phone	648.00	0.6538	424	745	0.7308	545
Radio Communications	600.00	0.6538	392	690	0.7308	504
Motor Pool Operations	6,000.00	0.6538	3,923	6,900	0.7308	5,042
Payroll Processing (ADP)	172.00	0.6538	112	198	0.7308	145
Total Agency Charges:	7,420.00		4,852	8,533.00		6,236
Total Annual Expenditures:	122,094			140,408		
Total TCOE Expenditures:			\$ 79,831			\$ 102,606

Two Year Total TCOE Expenditures: \$ 182,437
