

**COUNTY OF TULARE SHERIFF'S OFFICE
WORK ALTERNATIVE PROGRAM SERVICES AGREEMENT WITH
CITY OF PORTERVILLE**

THIS AGREEMENT ("Agreement") is entered into as of _____, between the **COUNTY OF TULARE SHERIFF'S OFFICE**, ("COUNTY"), and the **CITY OF PORTERVILLE**, ("CITY"). COUNTY and CITY are each a "Party" and together are the "Parties" to this Agreement, which is made with reference to the following:

- A. The Tulare County Board of Supervisors (BOS) has authorized the Tulare County Sheriff's Office (COUNTY) to establish a Sheriff's Work Alternative Program (SWAP) as provided in California Penal Code §4024.2. Under SWAP, qualified offenders ("Participants") committed to a County correctional facility for no more than ninety days may volunteer to work under the SWAP in lieu of confinement in a correctional facility.
- B. CITY desires to utilize Participants in accordance with California Penal Code §4024.2.
- C. Such work shall consist of labor to improve or maintain levees or public facilities, including, but not limited to, streets, parks and schools, and manual labor in support of certain nonprofit organizations as approved by the Sheriff.

THE PARTIES AGREE AS FOLLOWS:

1. **TERM:** This Agreement becomes effective as of _____ and expires at 11:59 PM on June 30, 2025 unless earlier terminated as provided below, or unless the Parties extend the term by a written amendment to this Agreement.

2. **SERVICES:** See Exhibit A

INSURANCE: The attached Exhibit B outlines the minimum scope, specifications, and limits of insurance required under this Agreement. Additional insured endorsements required as outlined in Exhibit B cannot be used to reduce limits available to COUNTY as an additional insured from CITY'S full policy limits. Insurance policies cannot be used to limit liability or to limit the indemnifications provisions and requirements of this Agreement or act in any way to reduce the policy coverage and limits available from the insurer(s). If CITY fails to maintain or renew coverage, or to provide evidence of renewal, then COUNTY may consider that failure a material breach of this Agreement and may terminate this Agreement in accordance with the provisions of paragraph 7.

4. **COMPLIANCE WITH LAW:** CITY shall comply with all applicable Federal, State, and local laws, regulations and directives.

5. **RECORDS AND AUDIT:** CITY shall maintain complete and accurate records with respect to its performance under this Agreement. All such records shall be clearly

identified, and shall be kept readily accessible. Upon request, CITY shall make such records available to the Sheriff of Tulare County and to his 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.

6. INDEMNIFICATION:

(a) To the fullest extent permitted by law, CITY must indemnify, defend (at CITY'S sole cost and expense and with legal counsel approved by COUNTY, which approval may not be unreasonably withheld), protect and hold harmless COUNTY, all subsidiaries, divisions and affiliated agencies of COUNTY, and all of their representatives, partners, designees, officers, directors, employees, consultants, agents, successors and assigns, (each, an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional expert or consultants' fees and costs and COUNTY general and administrative expenses) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") which may arise out of, pertain to, or relate (directly or indirectly) to the negligence, recklessness, or misconduct of CITY with respect to any work performed or services provided under this Agreement (including, without limitation, the acts, errors and/or omissions of CITY, its principals, officers, agents, employees, vendors, suppliers, consultants, sub-consultants, CITYs, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them). CITY'S obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, then CITY'S indemnification obligation shall be reduced in proportion to the established comparative liability.

(b) The duty to defend is a separate and distinct obligation from CITY'S duty to indemnify. CITY shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, the Indemnified Parties immediately upon tender to CITY of the Claim in any form or at any stage of an action or proceeding, whether or not liability is established. Payment to CITY by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party cannot be a condition precedent to enforcing the Indemnified Party's rights to indemnification under this Agreement. An allegation or determination that persons other than CITY are responsible for the Claim does not relieve CITY from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if CITY asserts that liability is caused in whole or in part by the negligence or willful misconduct of an Indemnified Party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an Indemnified Party, then CITY may submit a claim to the COUNTY for reimbursement of reasonable attorneys' fees and defense costs

in proportion to the established comparative liability of the Indemnified Party. CITY'S indemnification obligations under this Agreement will survive the expiration or earlier termination of this Agreement until action against the Indemnified Parties for the matter indemnified is fully and finally barred by the applicable statute of limitations or statute of repose. CITY'S liability for indemnification under this Agreement is in addition to any liability CITY may have to COUNTY for a breach by CITY of any of the provisions of this Agreement. Under no circumstances may the insurance requirements and limits set forth in this Agreement be construed to limit CITY'S indemnification obligation or other liability under this Agreement. The terms of this Agreement are contractual and the result of negotiation between the Parties.

(c) CITY must indemnify and hold COUNTY harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses, for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by COUNTY, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

7. TERMINATION: The right to terminate this Agreement under this provision may be exercised without prejudice to any other right or remedy to which the terminating party may be entitled at law or under this Agreement.

(a) Without Cause: Either party shall have the right to terminate this Agreement without cause by giving the other party THIRTY (30) days prior written notice of its intention to terminate pursuant to this provision, specifying the date of termination.

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

- (1) be adjudged bankrupt, or
- (2) become insolvent or have a receiver appointed, or
- (3) make a general assignment for the benefit of creditors, or
- (4) 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
- (5) materially breach this Agreement.

For any of the occurrences except 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 to the satisfaction of the non-defaulting party within five days of written notice specifying the breach. If the breach is not remedied within that five-day period, the non-defaulting party may terminate the agreement on further written notice specifying the date of termination.

If the nature of the breach is such that it cannot be cured within a five-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.

(c) Effects of Termination: 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.

8. ENTIRE AGREEMENT REPRESENTED: This Agreement represents the entire agreement between CITY and COUNTY 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.

9. 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.

10. NOTICES:

(a) Except as may be otherwise required by law, any notice to be given must be written and must be either personally delivered or sent by first class mail, postage prepaid and addressed as follows:

COUNTY:

Tulare County Sheriff's Office, Work Alternative Program
3600 Road 112
Visalia, CA 93291
(805)735-1931

With a copy to:

Tulare County Sheriff's Office, Detentions Division Commander
833 S. Akers Street
Visalia, CA 93277
(559) 802-9440

And

Tulare County Sheriff's Office Fiscal Manager
833 S. Akers Street
Visalia, CA 93277
(559) 802-0449

And

COUNTY ADMINISTRATIVE OFFICER
2800 W. Burrel Ave.
Visalia, CA 93291
(559) 636-5005

CITY:

City Manager
City of Porterville
291 North Main Street
Porterville, CA 93257
Phone No.: (559) 782-7499
Fax No.: (559) 791-7999

(b) Notice personally delivered is effective when delivered. Notice sent by first class mail will be deemed received on the fifth calendar day after the date of mailing. Either Party may change the above address by giving written notice under this section.

16. CONSTRUCTION: This Agreement reflects the contributions 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. 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.

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

20. 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 provision 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.

21. FURTHER ASSURANCES: Each party agrees to execute any additional documents and to perform any further acts which may be reasonably required to effect the purposes of this Agreement.

22. ASSIGNMENT /SUBCONTRACTING: Unless otherwise provided in this Agreement, no part of this Agreement may be assigned or subcontracted by CITY without the prior written consent of COUNTY.

23. ASSURANCES OF NON-DISCRIMINATION: CITY must not discriminate in employment or in the provision of services based any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation. The Parties recognize that both CITY and COUNTY have the responsibility to protect COUNTY employees and clients from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, CITY agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities. COUNTY, in its sole discretion, has the right to require CITY to replace any employee who provides services of any kind to COUNTY under this Agreement with other employees where COUNTY is concerned that its employees or clients may have been or may be the subjects of discrimination or harassment by such employees. COUNTY'S right to require replacement of employees under this section does not preclude COUNTY from terminating this Agreement with or without cause as provided for under this Agreement.

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

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

CITY OF PORTERVILLE

Date: 08/18/2020

By JOHN D. LOLLIS

Print Name: J. D. L.

Title: CITY MANAGER

Date: 8/19/2020

By [Signature]

Print Name: PATRICE HILORETH

Title: DEPUTY CITY MANAGER

[Pursuant to Corporations Code section 313, County policy requires that contracts with a Corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president (or another officer having general, operational responsibilities), and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer (or another officer having recordkeeping or financial responsibilities), unless the contract is accompanied by a certified copy of a resolution of the corporation's Board of Directors authorizing the execution of the contract. Similarly, pursuant to California Corporations Code section 17703.01, County policy requires that contracts with a Limited Liability Company be signed by at least two managers, unless the contract is accompanied by a certified copy of the articles of organization stating that the LLC is managed by only one manager.]

COUNTY OF TULARE

Date: _____

By _____

Pete Vander Poel, Chair, Board of Supervisors

ATTEST: Jason T. Britt
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By _____
Deputy Clerk

Template approved as to form by
County Counsel on July 3, 2020
Matter # 2020698

Exhibit A
Scope of Services

1. **PARTICIPATION:** Subject to availability, COUNTY shall provide Participants to perform manual labor as authorized by Penal Code §4024.2 for a minimum of 8 and a maximum of 10 hours each work day.
2. CITY and COUNTY shall comply with the Rules and Regulations of Penal Code §4024.2.
3. **SUPERVISION:** At its own expense, CITY shall be solely responsible to supervise and control all Participants provided under this Agreement. CITY shall avoid contact between Participants and members of the public, City employees and volunteers, except as may be necessary to assure safety and quality of the work to be accomplished. Participants shall only be supervised by CITY employees. CITY shall employ sufficient numbers of such individuals to permit constant and effective supervision of all Participants assigned to SWAP at any one time. SHERIFF may conduct job site inspections to verify that proper supervision is being utilized, and may immediately terminate this Agreement and suspend CITY's use of Participants if the SHERIFF finds violations of this Section or of any other term and/or condition of this Agreement. SHERIFF's determination of such a violation shall be final and binding upon CITY.
4. **MATERIALS, SUPPLIES, ETC.:** At its own expense, CITY shall supply all materials, supplies, equipment and tools that may be required to accomplish the work to be performed by Participants.
5. **SAFETY:** At its own expense, CITY shall provide necessary safety equipment, including, but not limited to, any safety equipment required by any Federal, State or local law, rule or regulation. CITY shall maintain a safe working environment at all times, which shall include placement and maintenance of appropriate safety warning signs and proper traffic control. CITY shall also provide safety instructions, whenever necessary or prudent, and shall appropriately interpret such instructions to the Participants under its supervision.
6. **TRANSPORTATION:** At its own expense, CITY shall provide appropriate, safe, and secure transportation for all Participants between job sites. Participants shall not be permitted to operate vehicular equipment at any time.
7. **WORKERS' COMPENSATION:** For purposes of Workers' Compensation laws, insofar as Participants could be considered employees under such laws, they shall be considered employees of the CITY and not of the COUNTY. CITY shall maintain workers' compensation insurance as required by law and as described in this Agreement.

Exhibit B
Insurance Requirements

CITY shall provide and maintain insurance for the duration of this Agreement against claims injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the CITY, his agents, representatives, employees and subcontractors, if applicable.

A. Minimum Scope & Limits of Insurance

1. Commercial General Liability coverage of \$1,000, per occurrence for bodily injury, personal injury and property damage (occurrence Form CG 00 01). If a general aggregate applies, either the general aggregate limit shall apply separately to the subject of this agreement (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability, (any auto) of no less than \$1,000,000 per accident for bodily injury and property damage. If an annual aggregate applies it must be no less than 2,000,000.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

B. Specific Provisions of the Certificate

1. If any of the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.
2. CITY must submit endorsements to the General Liability reflecting the following provisions:
 - a. The COUNTY OF TULARE, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operation.
 - b. For any claims related to this project, the CITY's insurance coverage shall be primary insurance as respects the COUNTY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees or volunteers shall be excess of the CITY's insurance and shall not contribute with it.

- c. Each insurance policy required by this agreement shall provide that coverage shall not be canceled, except with written notice to the COUNTY.
 - d. *CITY hereby grants to COUNTY a waiver of any right to subrogation which any insurer of the CITY may acquire against the COUNTY by virtue of the payment of any loss under such insurance. CITY agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.*
3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CITY, its employees, agents and subcontractors. CITY waives all rights against the COUNTY and its officers, agents, officials, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.
- C. Deductibles and Self-Insured Retentions
Deductibles and Self-insured retentions must be declared and any deductible or self-insured retention that exceeds \$100,000 will be reviewed by the COUNTY Risk Manager for approval.
- D. Acceptability of Insurance
Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A-:VII and a Standard & Poor's rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.
- E. Verification of Coverage
Prior to approval of this Agreement by the COUNTY, the CITY shall file with the submitting department, certificates of insurance with original endorsements effecting coverage in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.

WAIVERS:

I represent and attest that I am a person authorized to make representations on behalf of the CITY, and represent the following:

(mark X if applicable)

Automobile Exemption: I certify that _____ does not own nor use vehicles in the performance of the agreement for which this insurance requirement is attached.

Workers' Compensation Exemption: I certify that _____ is not required to carry workers' compensation coverage or has filed an exemption with the State of California as required by law.

I acknowledge and represent that we have met the insurance requirements listed above.

Print Name: _____ Date: _____

Contractor Name: _____

Signature: _____