



AGENDA ITEM NO. 1A  
 COUNCIL MEETING 03/07/2013  
 APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

March 7, 2013

FROM: JERRY P. DYER, Chief of Police  
 Police Department

BY: SHARON SHAFFER, Deputy Chief  
 Police Department – Support & Special Services Division

SUBJECT: AUTHORIZE THE CHIEF OF POLICE TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE FRESNO COUNTY ECONOMIC OPPORTUNITIES COMMISSION FOR \$50,000 FOR THE REMOVAL OF TATTOOS FROM GANG AFFILIATED INDIVIDUALS CHOOSING TO ABANDON THE GANG LIFESTYLE

#### RECOMMENDATIONS

It is recommended that the City Council authorize the Chief of Police to sign a Memorandum of Understanding with Fresno County Economic Opportunities Commission for the removal of tattoos from gang affiliated individuals who choose to abandon the gang lifestyle.

#### EXECUTIVE SUMMARY

The Police Department negotiated an agreement with the Fresno County Economic Opportunities Commission (FCEOC) for tattoo removal services. The City agrees to reimburse FCEOC from allocated grant funds for eligible costs incurred by FCEOC in an amount not to exceed \$50,000 and in accordance with tattoo removal program (TRP) budget submitted by the City. The Memorandum of Understanding (MOU) will begin June 1, 2012 and expire December 31, 2014. FCEOC will provide part-time clinic facilities and medical staff (physicians and nurses) to remove tattoos from participants referred by the Mayor's Gang Prevention Initiative (MGPI). There is no cost to MGPI participants.

#### BACKGROUND

This request will continue tattoo removal services. The Police Department had purchased a tattoo removal medical device (Medlite C6 Q-Switched Laser) using 2007 California Gang Reduction, Intervention and Prevention (CalGRIP) funds. This is a renewal of an existing MOU between the City of Fresno and FCEOC for tattoo removal services using the city owned device.

The council is now asked to approve an updated agreement with FCEOC for tattoo removal services using 2012 CalGRIP funds.

In an attempt to reduce the number of gang-related crimes, the Fresno Police Department created MGPI, a process for assisting gang-affiliated individuals to leave the gang lifestyle. The MGPI process incorporates five core components: Prevention, Intervention, Suppression, Rehabilitation, and Economic Development. The MGPI creates a successful and effective means of assisting both validated gang members wishing to leave the lifestyle, as well as preventing associates and "wannabe's" from escalating into full gang membership.

**REPORT TO THE CITY COUNCIL**

2012 CALGRIP Program

Page 2 OF 2

The removal of gang tattoos that hinders employability falls under the intervention component of the MGPI. To qualify for the tattoo removal program, participants agree to perform at least 20 community service approved hours, per month, and for the duration of the treatment period. The average duration of the physical removal of tattoos is approximately five to ten months - depending on total area to be treated. Therefore, participants will perform an average of 100 community service hours.

Council approval of the 2012 CalGRIP will continue tattoo removal services. Funding includes FCEOC medical supplies, laser training, and required clinical office supplies. The Department's negotiated agreement with FCEOC. The City agrees to reimburse FCEOC for eligible costs incurred by FCEOC in an amount not to exceed \$50,000 and in accordance with Tattoo Removal Program budget. The MOU begins June 1, 2012 and expires December 31, 2014. FCEOC will provide part-time clinic facilities, operating costs, and staff (physicians and nurses) to remove tattoos from participants referred to MGPI. There is no cost to MGPI participants.

Per contractual agreement, the laser tattoo removal machine is available for FCEOC's use and for the benefit of FCEOC clients when not being used to remove gang tattoos. The laser remains the property of the City of Fresno.

**FISCAL IMPACT**

There will be no impact to the general fund.

JPD:SS:mn

02/20/13

Attachment:           Memorandum of Understanding

**MEMORANDUM OF UNDERSTANDING**  
**City of Fresno Mayor's Gang Prevention Initiative Tattoo Removal Program**

This Memorandum of Understanding (MOU) is entered into effective on June 1, 2012 by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "City") and the FRESNO COUNTY ECONOMIC OPPORTUNITIES COMMISSION, a California nonprofit corporation (hereinafter referred to as "FCEOC").

**RECITALS**

WHEREAS, City submitted an application to Board of State and Community Corrections (BSCC), formerly known as California's Management Agency ("CalEMA"), for \$50,000, in grant funds through the 2011 Grant Funding Cycle – California Gang Reduction, Intervention and Prevention ("CalGRIP") Program for Cities funded by the CALGRIP Initiative - hereinafter referred to as the "Program," incorporated by reference herein; and

WHEREAS, the Program is intended to fund gang prevention, intervention, reentry, education, job training and skills development, family and community services and suppression activities; and

WHEREAS, upon award of grant funds and entry by City into a grant agreement ("Grant") with the State of California consistent with the Program, the City intends through its Police Department ("FPD") to work with FCEOC for the purpose of providing a tattoo removal program ("TRP") to assist qualified participants of the City's "Mayor's Gang Prevention Initiative" ("MGPI") program who would benefit from removal of visible tattoos that are determined to be an obstacle to employment, career development, education and successful transition to a healthy productive lifestyle; and

WHEREAS, the City and the FCEOC believe that implementation of the Grant funded TRP as described herein will further the above goals and to this end 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 consideration as is hereby acknowledged, and subject to the terms and conditions and provisions of the TRP and this MOU the parties mutually agree as follows:

**1. PARTICIPATING AGENCIES AND DESIGNATED CONTACT PERSONS**

City:  
Fresno Police Department  
Lieutenant David Newton  
2326 Fresno St.  
Fresno, CA 93721

FCEOC:  
Fresno County Economic Opportunities Commission  
Brian Angus  
Executive Director  
1920 Mariposa Mall, Suite 300  
Fresno, CA 93721

## 2. ROLES AND RESPONSIBILITIES

FPD, acting as City representative, subject to all applicable constitutional and local law requirements, shall act as the lead agency in coordinating the activities of the TRP to target qualified participants in the City of Fresno who would benefit from removal of visible tattoos.

1. City is the owner of the Medlite C-6 tattoo removal laser system equipment and laser cooling machine (collectively, the "Equipment").
2. City will refer qualified and eligible participants of the MGPI program to the TRP and FCEOC for tattoo removal services. A participant's eligibility will be determined by City staff after a screening and assessment interview with the qualified MGPI participant.
3. City will be responsible for providing each participant of the TRP ("Participant") detailed information of the MGPI program requirements for TRP services and an explanation of the laser removal procedure, photographing and preparing paper and electronic copies of all tattoos authorized to be removed, and coordinating the agreement and TRP forms with Participant.
4. City will complete and forward the tattoo removal referral form and photographs to FCEOC within one week of initial scheduled appointment for tattoo removal. The referral form will include a detailed description of all tattoos authorized for removal.
5. City retains the discretion to terminate tattoo removal services for any Participant due to non-compliance by Participant or FCEOC.
6. City will meet quarterly or as often as needed with FCEOC staff on TRP service coordination, resolution of problems and issues, information sharing, and to monitor tattoo removal services performed.
7. As additional funding is secured for tattoo removal program the City will provide an addendum to FCEOC of itemized funding source, objectives and award specific to the infrastructure of the tattoo removal program.

FCEOC shall comply with the TRP and, as the "TRP Service Provider," the TRP Internal Process & Procedures, attached as Attachment A and incorporated herein by reference.

1. FCEOC will utilize the Equipment during the term of the MOU to provide tattoo removal services to Participants referred by City.
2. FCEOC shall refer any persons known to FCEOC as appropriate candidates for tattoo removal under the TRP to the MGPI program for consideration of tattoo removal services. FCEOC may use the Equipment to provide tattoo removal services for any person determined by City to be a qualified and eligible MGPI program participant and referred by City to TRP and FCEOC for such services.
3. In consideration for providing tattoo removal services to eligible participants referred by City, at no cost FCEOC may use the Medlite C-6 laser system equipment and laser cooling machine to provide additional assorted laser treatment services for FCEOC participants when City participants are not scheduled.
4. FCEOC will schedule a minimum of one day per week to accommodate City referrals and coordinate the schedule with FPD. FCEOC shall prepare patient treatment plans which shall include scheduling, consultation and tattoo removal treatment of Participants to ensure optimal service provision and utilization of the Equipment during the City designated time period. FCEOC will make a good faith effort to accommodate any Participant unable to attend during the daytime schedule.
5. FCEOC will perform tattoo removal services at a certified medical facility according to recommended American National Standards Institute (ANSI) and Safe Use of Lasers safety standards. FCEOC will ensure Equipment is kept in a locked, secure room when

not in use and used properly per manufacturer's regulations. Any damages incurred by misuse or negligence will be at the sole cost of FCEOC.

6. FCEOC will provide a supervising physician to provide oversight to the TRP tattoo removal services. Only trained and licensed individuals will be authorized to operate the Equipment.
7. FCEOC shall ensure the certified medical facility, the attending physician and those individuals who operate the equipment to maintain medical malpractice insurance throughout the life of this agreement.
8. FCEOC will meet monthly or as often as needed with FPD staff on TRP service coordination, resolution of problems and issues, information sharing, schedules and to monitor tattoo removal services performed.

City and FCEOC will cooperate in seeking additional grant funding for the TRP.

### 3. EQUIPMENT LICENSE, MAINTENANCE AND RETURN

City grants FCEOC a license to use the Equipment "AS IS" at its certified medical facility for the purpose of providing TRP tattoo removal services and additional laser treatments services for FCEOC participants when city participants are not scheduled in accordance with the terms and conditions of this MOU. FCEOC is responsible for maintenance and repair of the Equipment in accordance with respective manufacturer's warranty or instructions. Upon termination or expiration of this MOU, FCEOC shall return the Equipment to City in the same condition as originally received except for normal wear and tear.

### 4. REIMBURSEMENT FOR PROGRAM ACTIVITIES

For the aforementioned services, the City agrees to reimburse FCEOC solely from allocated and available Grant funds for eligible costs incurred by FCEOC in pursuit hereof, in an amount not to exceed \$50,000 in accordance with the TRP budget submitted by City.

Payment shall be contingent on City's receipt of an undisputed invoice and any reports and substantiation materials required by the City.

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

Payment shall be contingent upon receipt and appropriation by City of Grant funding. Nothing in this MOU shall commit the taxing authority or general fund of the City.

In the event that FCEOC directly obtains additional funding for tattoo removal related services, then FCEOC shall utilize said funding in conjunction with its terms, including any reimbursement of City for staffing, supplies, Equipment, training and travel.

In the event that City directly obtains additional funding for tattoo removal related services (i.e., through CalGRIP or other program), then City shall utilize said funding in conjunction with its terms, including any reimbursement of FCEOC for staffing, supplies, training and travel.

### 5. MOU EFFECTIVENESS, TERM AND TERMINATION

The effectiveness of this MOU is contingent upon City receiving the Grant award and City's continuation of the MGPI program and TRP. The parties shall be committed to the Grant

Program for the balance of the entire funding cycle commencing January 1, 2011 and ending December 31, 2013. FCEOC acknowledges and agrees that funding through the life of the Grant is dependent upon satisfactory performance by FCEOC, availability of funds and continuation by City of the MGPI program and TRP.

Subject to the foregoing, the term of the MOU shall begin June 1, 2012 and end on December 31, 2014.

Notwithstanding the foregoing, this MOU shall automatically suspend or terminate upon City's written notice therefore to FCEOC of any of the following events: (i) Program, Grant, MGPI program, or TRP termination, (ii) any non-appropriation or non-allocation of Grant funding required in pursuit hereof, (iii) FCEOC's illegal or improper use of funds of Equipment, (iv) FCEOC's failure to comply with any term of this MOU, or (v) FCEOC's submittal of any substantially incorrect or incomplete itemized invoice required for reimbursement.

FCEOC may terminate this MOU upon 30 days' written notice to City of any of the following events: (i) insufficient funding secured by FCEOC which renders FCEOC unable to compensate tattoo removal service providers; or (ii) City's non-compliance with any term of this MOU.

#### 6. TARGET POPULATION

Tattoo removal services will be provided to Participants residing in the City of Fresno who would benefit from removal of visible tattoos, determined to be an obstacle to employment, career development, education and successful transition to a healthy and productive lifestyle.

#### 7. RESOURCES

FPD will provide:

- Use of the Equipment; and
- Referrals of Participants to FCEOC for tattoo removal services.

FCEOC will provide:

- A certified medical facility supervising physician to provide oversight to tattoo removal services; and
- Trained and licensed individuals authorized to operate the Equipment.

#### 8. RECORDKEEPING AND PERFORMANCE DATA

FCEOC shall monitor all procedures so that all records relating to the TRP will be handled and safeguarded according to the privacy provisions of the Health Insurance Portability and Accountability Act (45 U.S.C. Section 1171 et seq.) and the regulations promulgated thereunder (hereafter collectively referred to as "HIPAA") for all medical records and in conformity with the laws of the State of California relating to the confidentiality of health information.

FCEOC shall document all services provided to Participants and maintain individual Participant's service records and case files in a secure location with access limited to appropriate staff to ensure that confidentiality and safety is maintained and protected. FCEOC shall ensure compliance with HIPAA requirements.

FCEOC shall submit to the City each month the following data:

Referred participant initiated treatment plan, number of treatments, special instructions given to participants, treatment attendance records, progress of each treatment session, changes in treatment and post treatment pictures.

FCEOC shall provide any monthly and quarterly reports, and any certifications as required by the City.

In the event of termination, the non-confidential reports prepared by FCEOC shall be immediately turned over to the City by FCEOC.

#### 9. FINANCIAL REPORTING, AUDITING AND DOCUMENT RETENTION

FCEOC shall submit a monthly bill to FPD for the eligible expenses incurred in providing the tattoo removal services. Billing documentation shall include the following:

- A breakdown of expenditures by cost category; and
- Copies of all purchase orders, requisitions and or receipts.

FCEOC shall maintain accurate, complete, orderly and separate records for the TRP. Records of FCEOC expenses pertaining to the TRP shall be kept on a generally recognized accounting basis. All records shall be available to City, CalEMA, or any of their authorized representatives upon request during regular business hours throughout the life of this MOU and for a period of three years after final payment or, if longer, for any period required by law or the Grant. In addition, all books, documents, papers, and records of FCEOC pertaining to the TRP shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This paragraph shall survive expiration or termination of this MOU.

#### 10. COMPLIANCE WITH GOVERNING LAW AND GRANT

FCEOC shall at all times comply with all applicable laws of the United States (including, but not limited to, HIPAA), the State of California and City, 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. FCEOC acknowledges receipt of a copy of the Grant and City's TRP and agrees to comply with all applicable provisions thereof and cooperate with City in meeting the requirements thereunder.

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*.

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

By signing this MOU, FCEOC certifies under penalty of perjury under the laws of the State of California that (i) FCEOC will comply with the Drug-Free Workplace Act of 1990 (California Government Code sections 8350-8357); and (ii) FCEOC is not listed on any federal or state list of individuals or organization debarred from receiving a contract or grant, or having its contract

or grant cancelled due to failure to comply with respective contract or grant provisions. FCEOC shall complete and submit to City all applicable forms required by the Grant.

#### 11. CAPACITY OF AGENCY AND FCEOC

In the furnishing of the services provided for herein, FCEOC is acting solely as an independent contractor. Neither FCEOC, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of City for any purpose. City shall have no right to control or supervise or direct the manner or method by which FCEOC shall perform its work and functions. However, City shall retain the right to administer this MOU so as to verify that FCEOC is performing its obligations in accordance with the terms and conditions thereof.

This MOU does not evidence a partnership or joint venture between FCEOC and City. FCEOC shall have no authority to bind City absent City's express written consent. Except to the extent otherwise provided in this MOU, FCEOC shall bear its own costs and expenses in pursuit thereof.

Because of its status as an independent contractor, FCEOC and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to City employees. FCEOC shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this MOU, FCEOC shall be solely responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding for and payment of FCEOC's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of City whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this MOU, FCEOC may be providing services to others unrelated to City or to this MOU.

#### 12. INSURANCE

Throughout the life of this Agreement, FCEOC shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VI" in Best's Insurance Rating Guide, or (ii) authorized by City's Risk Management Division. The following policies of insurance are required:

- (i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as Insurance Services Office (ISO) form CG 00 01 and shall include insurance for "bodily injury", "property damage" and "personal and advertising injury", including premises and operation, products and completed operations and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury and \$2,000,000 aggregate for products and completed operations.

- (ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) form CA 00 01 and shall include coverage for "any auto" with limits of liability of not less than \$1,000,000 per accident for bodily and property damage.
- (iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.
- (iv) EMPLOYERS' LIABILITY insurance (if FCEOC has employee(s) or at such time as he/she employs such person(s) during the life of this Agreement) with minimum limits of \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

Defense costs shall be provided as an additional benefit and not included within the above limits of liability. FCEOC shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and FCEOC shall also be responsible for payment of any self-insured retentions.

The above described policies of insurance shall be endorsed to provide an unrestricted 30 calendar day written notice in favor of City of policy cancellation of coverage, except for the Workers' Compensation policy which shall provide a 10 calendar day written notice of such cancellation of coverage. In the event any policies are due to expire during the term of this Agreement, FCEOC shall provide a new certificate evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, FCEOC shall file with City a new certificate and all applicable endorsements for such policy(ies).

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City and each of their officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so FCEOC's insurance shall be primary and no contribution shall be required of City. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City and each of their officers, officials, employees, agents and volunteers. FCEOC shall have furnished City with the certificate(s) and applicable endorsements for ALL required insurance prior to City execution of the Agreement. FCEOC shall furnish City with copies of the actual policies upon the request of City Risk Manager and this requirement shall survive termination or expiration of this Agreement.

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

If at any time during the life of the Agreement or any extension, FCEOC fails to maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to FCEOC shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement.

If FCEOC should subcontract all or any portion of the services to be performed under this Agreement, FCEOC shall require each subcontractor to provide insurance protection in favor of City and each of their officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with FCEOC and City prior to the commencement of any work by the subcontractor.

It is understood and agreed that City maintain insurance policies or self-insurance programs to fund their respective liabilities in amounts similarly required of FCEOC.

### 13. INDEMNIFICATION

FCEOC 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, medical malpractice and property damage) incurred by City, FCEOC 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 FCEOC or any of its officers, officials, employees, agents or volunteers in the performance of this MOU.

Except to the extent of the California statutory tort immunities afforded the City as a governmental agency, City shall indemnify, hold harmless and defend FCEOC 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 the FCEOC, City 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 City or any of its officers, officials, employees, agents or volunteers in the performance of this MOU.

In the event of concurrent negligence on the part of FCEOC or any of its officers, officials, employees, agents or volunteers, City or any of its officers, officials, employees, agents or volunteers or any of its officers, officials, employees, agents or volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

FCEOC agrees that this Agreement shall in no way act to abrogate or waive any immunities available to City under the Tort Claims Act of the State of California.

If FCEOC should subcontract all or any portion of the services to be performed under this Agreement, FCEOC shall require each subcontractor to indemnify, hold harmless and defend

City and each of their 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.

14. 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.

15. PRECEDENCE 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.

16. 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.

17. BINDING

Subject to Section 18 below, 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.

18. 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.

19. 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.

20. GOVERNING LAW AND VENUE

This MOU shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law

of another jurisdiction. 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.

21. 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.

22. 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.

23. 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.

24. CUMULATIVE REMEDIES

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

25. NO THIRD PARTY BENEFICIARIES

The rights, interests, duties and obligations defined within this MOU are intended for the specific parties hereto as identified in the preamble of this MOU. Notwithstanding anything stated to the contrary in this MOU, it is not intended that any rights or interests in this MOU benefit or flow to the interest of any third parties.

26. ENTIRE AGREEMENT

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.

***THIS MOU IS SUBJECT TO RATIFICATION BY COUNCIL ACTION.***

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

CITY OF FRESNO,  
a California municipal corporation

FRESNO COUNTY ECONOMIC  
OPPORTUNITIES COMMISSION,  
a California non-profit corporation

BY: \_\_\_\_\_  
Jerry Dyer, Chief of Police  
City of Fresno Police Department

BY: \_\_\_\_\_  
Brian Angus,  
Executive Director

ATTEST:  
Yvonne Spence, CMC  
City Clerk, City of Fresno

TAXPAYER FEDERAL I.D. # 94-1606519

BY: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
FRANCINE M. KANNE  
Interim City Attorney

BY: \_\_\_\_\_  
Karen J. Ray                      Date  
Deputy City Attorney

Attachments:

Attachment A - TRP Internal Process & Procedures

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