

City of  
**FRESNO** REPORT TO THE CITY COUNCIL

AGENDA ITEM NO. IC  
COUNCIL MEETING 01/13/09  
APPROVED BY \_\_\_\_\_

DEPARTMENT DIRECTOR \_\_\_\_\_

CITY MANAGER \_\_\_\_\_

January 13, 2009

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

BY: TOM LABAND, Lieutenant  
Police Department

SUBJECT: APPROVE THE CONTRACT BETWEEN THE CITY OF FRESNO AND COUNTY OF  
MADERA AUTHORIZING THE CITY THE USE OF INMATE LABOR ON GOVERNMENT-  
OWNED FACILITIES AND GROUNDS

#### KEY RESULT AREA

City beautification

#### RECOMMENDATIONS

It is recommended that City Council approve the Agreement between the City of Fresno ("City") and County of Madera ("County") authorizing the City to use inmate labor, supplied by the County, to perform work on government-owned facilities and grounds.

#### EXECUTIVE SUMMARY

The City recognizes the benefits of utilizing inmate labor as a cost-effective method of conducting a variety of tasks facing a large metropolitan city. In an effort to improve the City's efficiency and to supplement our current paid workforce, staff is proposing the use of inmate labor as a low-cost alternative. Inmate labor can provide a variety of duties deemed beneficial to the City. These duties include, but are not limited to: clearing unwanted or unsightly dead brush or trees; garbage and litter clean-up; landscape and median care; and generalized city beautification projects.

Under this Agreement, the County has agreed to provide inmates to be supervised by an authorized City employee, Monday through Friday excepting holidays. The City will provide all supervision, transportation, restroom facilities and workers' compensation insurance for the inmates. Meals will be provided by the County. This agreement is set to begin on January 1, 2009, continuing for a term of three years; and either party may terminate early upon 24-hours prior notice.

#### KEY OBJECTIVE BALANCE

The Contract between the City and County balances the three key objectives of prudent financial management, employee satisfaction, and customer satisfaction by providing for use of inmate labor throughout the City providing cleaning and maintenance activities at the lowest possible cost thereby providing a clean and pleasant living and working environment.

Presented to City Council

Date 1/13/09

Disposition ALL approved

**SUBJECT TO MAYOR'S VETO**

## **BACKGROUND**

For the past three years the City has been utilizing inmate labor under a contract with the County of Fresno. The Fresno County Sheriff discontinued the availability of inmate labor to local governments during the Summer of 2008. Recognizing the value of inmate labor to the community, the City has reached an agreement with Madera County to provide inmate labor.

## **FISCAL IMPACT**

There will be a minimal impact to the City's general fund by authorizing this contract. Individual departments that participate in this program will experience an increase in administrative costs associated with the transportation and supervision of the inmates, due to the increased distance to Madera County. These costs can be absorbed within the existing budgets.

TL:pgh  
01/08/09

Attachments: Agreement between the City of Fresno and County of Madera.

**THIS AGREEMENT** is made and entered into this 27<sup>th</sup> day of JANUARY, 2009, by and between the COUNTY OF MADERA, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and the CITY OF FRESNO, a municipal corporation, located in the County of Fresno, hereinafter referred to as "CITY."

**RECITALS**

A. Pursuant to the above authority, both COUNTY and CITY desire to permit selected sentenced inmates of COUNTY Jail to perform work on State of California ("STATE") facilities and highways pursuant to any agreement CITY enters into with STATE for such work, as COUNTY and CITY find that such work is of benefit to both the residents of CITY and COUNTY.

B. Both COUNTY and CITY also desire to permit selected sentenced inmates to perform work on CITY facilities and grounds, as COUNTY and CITY find that such work is of benefit to both the residents of CITY and COUNTY.

C. CITY is willing to provide a responsible CITY employee(s), subject to COUNTY's approval, to direct and control the selected sentenced inmates during transportation to and from COUNTY Jail and during performance of work under this Agreement.

1. **OBLIGATIONS OF COUNTY.**

1.01 COUNTY will permit sentenced inmates housed in COUNTY Jail located in Madera, California to be transported, on Monday through Friday only (as further described in section 1.02 below), to (a) STATE's facilities and highways located within Madera and Fresno Counties for the purpose of

providing manual, unskilled labor on STATE's facilities and highways as may be directed by CITY's Chief of Police or his/her designee, and/or (b) to CITY's facilities and grounds in Fresno, California for the purpose of providing routine maintenance work on CITY's facilities and grounds as may be directed by the City Manager of CITY or his/her designee. Such inmates shall be only those confined in COUNTY Jail. CITY reserves the right to reject any inmate.

1.02 COUNTY Coordinator will coordinate the scheduling of inmates participating under this Agreement with the respective CITY Coordinator at least twenty-four (24) hours in advance of each workday under the Agreement.

1.03 If an inmate is injured at the job site while in CITY's custody and CITY Coordinator verbally notifies COUNTY's Corrections Department of same, the following actions shall be taken by COUNTY:

1.03.1 If the inmate is admitted to a hospital emergency room for emergency medical treatment, COUNTY shall dispatch COUNTY personnel to the hospital to take custody of the inmate.

1.03.2 If requested by the inmate, COUNTY shall assist injured inmates in returning claim forms provided to inmates or their representative by CITY following the injury. Claim forms completed by the inmate for return to CITY shall be provided to CITY in a timely manner.

1.03.3 In the event that CITY Coordinator arranges transportation of injured inmate to COUNTY Jail for treatment as provided in section 2.09 below, COUNTY shall accept custody of inmate at COUNTY Jail and provide for medical care of the inmate. COUNTY shall

arrange for transportation of the inmate to a hospital if COUNTY determines that COUNTY Jail is unable to treat the injured inmate.

1.03.4 In the event that COUNTY invoices CITY for treatment of an inmate transported to COUNTY Jail for treatment as provided in section 2.10 below, then all such invoices shall be subject to the Official Medical Fee Schedule and Utilization Review in accordance with sections 9789.10 et seq. and sections 9792.6 et seq., respectively, of Title 8 of the California Code of Regulations.

1.04 Meals provided for inmates participating under this Agreement shall be at COUNTY's sole cost and expense.

2. **OBLIGATIONS OF CITY.**

2.01 The respective CITY Coordinator will provide direct supervision and transportation of inmates while the inmates are in the custody of CITY. CITY shall provide the name and contact information of the person(s) selected by CITY as the CITY Coordinator(s) to COUNTY Director of Corrections. The CITY will ensure that the person(s) it selects as its CITY Coordinator(s) has a CPR certificate.

2.02 Transportation of the inmates from COUNTY Jail to the CITY or STATE facilities and from the CITY or STATE facilities to COUNTY Jail shall be the responsibility of CITY. CITY shall pick up inmates at COUNTY Jail not later than 8:00 a.m., and return the inmates to COUNTY Jail not later than 7:30 p.m. that same day, except where one of the following applies:

2.02.1 On days recognized as holidays by CITY ("CITY holidays"), which may or may not be the same days recognized as holidays by COUNTY;

2.02.2 On days when CITY is unable to transport the inmates or provide work for them, due to weather conditions, equipment problems, lack of supervising personnel, or for any other reason.

It is understood and agreed that in the respective CITY Coordinator's discretion, inmates may be transported to work on STATE's facilities and highways, as provided in section 1.01 above, on days recognized as holidays by STATE ("STATE holidays") that are not CITY or COUNTY holidays. In the event that the respective CITY Coordinator does not exercise his or her discretion to transport the inmates on such days to work on STATE's facilities and highways, then CITY will transport inmates for work on CITY facilities and grounds as provided in section 1.01 above; provided, however, the exceptions set forth in this subsection do not apply.

2.03 CITY shall return to COUNTY Jail any inmate participating under this Agreement who is reported by CITY to have attempted escape, suffered an injury and transported to a hospital emergency room for emergency medical treatment, inflicted an injury on another person or property, or otherwise created a disturbance.

2.04 Before CITY transports inmates under this Agreement, CITY shall provide the COUNTY Coordinator with a list of all CITY holidays and STATE holidays to occur between January 1, 2009 and December 31, 2009. On or before December 1<sup>st</sup> of each year of this Agreement, the CITY Coordinator shall provide the COUNTY Coordinator with a list of all CITY holidays and STATE holidays to occur in the following calendar year (January 1 through December 31).

- 2.05 In the event that CITY is unable to transport the inmates or provide work for them, due to weather conditions, equipment problems, lack of supervising personnel, or for any other reason, CITY shall verbally notify the COUNTY Coordinator by telephone no later than 7:00 a.m. that CITY will not be picking up inmates for work that day.
- 2.06 CITY shall not allow the inmates to work more than twelve (12) hours per day, including the time it takes to transport the inmates from COUNTY Jail to the work site and the time it takes to return the inmates from the work site to COUNTY Jail. CITY shall also give the inmates a minimum of two (2) fifteen (15) minute breaks and a thirty (30) minute lunch break each day that the inmates work for CITY. These breaks shall not count towards the twelve (12) hour time limit, noted above.
- 2.07 While in the custody of CITY, the inmates shall be under the continuous (except during any emergency transport of an injured inmate to the emergency room of a hospital and until arrival of law enforcement at the hospital to assume custody), direct supervision of a full-time CITY employee who has met all the requirements for a CITY Coordinator. COUNTY agrees that any law enforcement personnel employed by the CITY are approved by COUNTY for supervising inmates during work-release times pursuant to this Agreement.
- 2.08 CITY shall be responsible for the following:
- 2.08.1 To explain to inmates the standard of performance for each job they are assigned and to supervise them through acceptable job completion.

- 2.08.2 To provide applicable safety instruction and briefing to the inmates, and provide all tools and safety equipment required for assigned jobs.
- 2.08.3 To provide the inmates with restroom facilities and a lunch area and break area.
- 2.08.4 To comply with all applicable safety, health codes and regulations related to the type of labor the inmates will be doing under this Agreement.
- 2.09 CITY further agrees to verbally notify COUNTY Department of Corrections by telephone immediately of any escape or attempted escape by any inmate participating under this Agreement, any injury to person or property suffered by an inmate or inflicted by an inmate participating under this Agreement, or any other urgent incident.
- 2.10 If an inmate is injured at the job site while in CITY's custody under this Agreement, the following actions shall be taken by CITY:
- 2.10.1 CITY shall record the inmate's injuries by completing a County Accident Investigation Report which will be provided by COUNTY. This form is to be completed for all injuries whether or not the inmate requires medical attention.
- 2.10.2 CITY will arrange for medical care by either (a) returning the inmate to COUNTY Jail for treatment by jail medical staff, or (b) arranging for emergency transportation to the emergency room of a hospital where custody of the inmate will be transferred to the County. If CITY arranges for emergency transportation to a hospital emergency room, CITY shall refer the inmate to Community

Regional Medical Center ("CRMC"), Saint Agnes Medical Center ("SAMC"), or other authorized medical provider as agreed to by both COUNTY and CITY. If the inmate is taken to CRMC, SAMC, or other such medical provider for treatment; the treatment authorization needs to note that the treatment billing will be CITY's responsibility. CITY will dispatch CITY law enforcement personnel to the respective hospital to standby until the arrival of COUNTY law enforcement personnel.

2.10.3 CITY shall issue, receive, complete and forward a DWC 1 Form (Employee's Claim for Worker's Compensation Benefits) to the COUNTY within twenty-four (24) hours of notice of the injury, or receipt of the DWC 1 Form, from the inmate.

2.10.4 CITY shall notify COUNTY telephonically within twenty-four (24) hours following the injury to the inmate. CITY will also forward copies of the County Accident Investigation Report and completed DWC 1, if necessary, to both COUNTY Department of Corrections and COUNTY Risk Management within twenty-four (24) hours.

3. **COMPENSATION/INVOICING.** There shall be no monetary consideration paid by any party to the other under the Agreement. The parties' mutual promises to perform shall be the consideration of this Agreement.

4. **TERM AND TERMINATION.**

4.01 This Agreement shall be for a term of three (3) years, beginning January 1, 2009 and ending January 1, 2012, unless and until terminated earlier by either party in accordance with this Agreement.

4.02 This Agreement may be terminated by either party for any reason by giving written notice to the other party at least twenty-four (24) hours in advance of the effective date of such termination. The Director of Corrections shall have authority to terminate this Agreement pursuant to this paragraph on behalf of the COUNTY. CITY's City Manager shall have authority to terminate this Agreement pursuant to this paragraph on behalf of the CITY.

5. **NOTICES.** Except as otherwise expressly provided in this Agreement, any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

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

**County of Madera**

Department of Corrections  
Attn: Doug Papagni  
14191 Road 28  
Madera, CA 93638  
Phone (559) 675-7951  
FAX (559) 488-3982

**City of Fresno**

Andrew T. Souza  
City Manager  
2600 Fresno St.  
Fresno, CA 93721  
Phone (559) 621-7770  
FAX (559) 621-7776

**With copy to**

Tanna G. Boyd, Chief Clerk  
Madera County Board of Supervisors  
200 West 4<sup>th</sup> Street  
Madera, CA 93637  
Phone (559) 675-7700  
FAX (559) 673-3302

COUNTY and CITY both agree to notify the other of any change of identity of any of its Coordinator(s), or contact person(s) named above, for this Agreement.

6. **MUTUAL HOLD HARMLESS**. CITY agrees to indemnify, save, hold harmless, and at COUNTY'S request, defend COUNTY, its officers, agents, and employees from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to COUNTY in connection with the performance, or failure to perform, by CITY, its officers, agents, or employees under this Agreement, and from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the performance, or failure to perform, of CITY, its officers, agents, or employees under this Agreement.

COUNTY agrees to indemnify, save, hold harmless, and at CITY's request, defend CITY, its officers, agents, and employees from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to CITY in connection with the performance, or failure to perform, by COUNTY, its officers, agents, or employees under this Agreement, and from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the performance, or failure to perform, of COUNTY, its officers, agents, or employees under this Agreement.

In the event of concurrent negligence on the part of COUNTY or any of its officers, agents or employees, and CITY or any of its officers, agents, or employees, 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.

This section shall survive termination or expiration of this Agreement.

7. **INDEPENDENT CONTRACTOR.** In performance of the work, duties and obligations assumed by CITY under this Agreement, it is mutually understood and agreed that CITY, including any and all of the CITY officers, agents, and employees will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of COUNTY. Furthermore, COUNTY shall have no right to control or supervise or direct the manner or method by which CITY shall perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify that CITY is performing its obligations in accordance with the terms and conditions thereof.

CITY and COUNTY shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

Because of its status as an independent contractor, CITY shall have absolutely no right to employment rights and benefits available to COUNTY employees. CITY shall be solely liable and responsible for providing to, or on behalf of, its employees all legally required employee benefits. In addition, CITY shall be solely responsible and save COUNTY harmless from all matters relating to payment of CITY's employees,

including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CITY may be providing services to others unrelated to the COUNTY or to this Agreement.

8. **MODIFICATION**. Any matter of this Agreement may be modified from time to time by the written consent of all the parties without, in any way, affecting the remainder.

9. **NON-ASSIGNMENT**. Neither party shall assign, transfer or sub-contract their rights or duties under this Agreement without the written consent of the other party.

10. **GOVERNING LAW**. Venue for any action arising out of or relating to this Agreement shall only be in Madera County, California. The rights and obligations of the parties and all interpretation and performance of this Agreement shall be governed in all respects by the laws of the State of California.

11. **INSURANCE**.

11.01 CITY shall provide Workers' Compensation Insurance for all inmates deemed to be employees of CITY. For the sole purpose of this paragraph and Workers' Compensation, inmates are "deemed to be employees of CITY" during transportation to and from the job site by CITY and performance of the work under this Agreement.

11.02 It is understood and agreed that COUNTY and CITY maintain insurance policies or self-insurance programs to fund their respective liabilities. The parties agree that such respective programs or policy coverage for Workers' Compensation shall contain a waiver of subrogation as to the other party and each of its officers, agents and employees. Evidence of

Insurance, Certificates of Insurance or other similar documentation shall not be required of either party under this Agreement.

12. **NON-DISCRIMINATION**. During the performance of this Agreement, COUNTY and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, denial of family and medical care leave, and denial of pregnancy disability leave. COUNTY and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. COUNTY and sub-contractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

13. **SEVERABILITY**. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

14. **NO THIRD PARTY BENEFICIARIES**. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. It is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

15. **ENTIRE AGREEMENT**. This Agreement constitutes the entire agreement between the CITY and COUNTY with respect to the subject matter hereof and supersedes all previous negotiations, proposals, commitments, writings, advertisements, publications, agreements, and understandings of any nature whatsoever, whether written or oral, unless expressly included in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above-written.

CITY OF FRESNO

  
Andrew T. Souza, City Manager

COUNTY OF MADERA

  
Chairman, Board of Supervisors

ATTEST:

  
Clerk, City of Fresno 2/17/09

ATTEST:

  
Clerk, Board of Supervisors



Approved as to Legal Form:  
James C. Sanchez, City Attorney

Approved as to Legal Form:  
COUNTY COUNSEL

By:   
Laurie A. Avedisian

By: 

REVIEWED & RECOMMENDED  
FOR APPROVAL:

By:   
Douglas Papagni,  
Director of Corrections

January 13, 2009

Council Adoption: 1/13/09

TO: MAYOR ASHLEY SWEARENGIN

RECEIVED

Mayor Approval:

FROM: REBECCA E. KLISCH, CMC  
City Clerk

REK  
2009 JAN 15 AM 8:55  
CITY CLERK, FRESNO CA

Mayor Veto:

Override Request:

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 1/13/09, Council took legislative action entitled **Appv contract btwn City of Fresno & County of Madera authorizing the City the use of inmate labor on gov't-owned facilities & grounds**, Item No. 1C, by the following vote:

Ayes	:	Borgeas, Brand, Caprioglio, Dages, Perea, Xiong, Sterling
Noes	:	None
Absent	:	None
Abstain	:	None

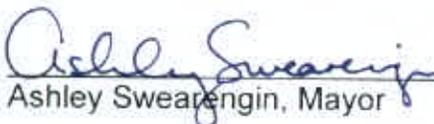
Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before January 23, 2009. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10<sup>th</sup> day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

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**APPROVED:**

**VETOED** for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

  
Ashley Swearengin, Mayor

Date: 1/15/09

**COUNCIL OVERRIDE ACTION:**

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

Ayes	:	
Noes	:	
Absent	:	
Abstain	:	