

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE CITY OF SAN MATEO FOR THE
PURPOSE OF PROVIDING PERSONNEL SUPPORT TO THE SAN MATEO COUNTY GUN
RELINQUISHMENT TASK FORCE**

THIS AGREEMENT, is hereby entered into 12/9/2022, by and between the COUNTY OF SAN MATEO ("County") and the CITY OF SAN MATEO, which desires to be a Local Law Enforcement Agency Partner ("Partner") (together "Parties"):

W I T N E S S E T H:

WHEREAS, the San Mateo County Gun Relinquishment Task Force ("GRTF") is a unit, within the San Mateo County District Attorney's Office, led by the District Attorney Chief Inspector or Senior Inspector ("DA Inspector") comprised of law enforcement officers from the County and its cities and towns; and

WHEREAS, the purpose of the GRTF is to coordinate and share resources among the law enforcement agencies in the County to more effectively enforce unlawful firearm possession laws, in the interest of promoting safety and reducing gun violence in the County; and

WHEREAS, either Partner has assigned, or it may become necessary and desirable that Partner assign one or more peace officers ("Officer(s)") to the GRTF to staff the GRTF and support its efforts related to enforcing state and local firearm laws, firearms relinquishment, detection of armed prohibited persons, and to improve coordination among the various local law enforcement agencies within the County;

WHEREAS, the Parties believe it fair for the County to reimburse Partner for the cost of Officers assigned to the GRTF in a manner that reflects the contribution of the Officer to the GRTF's County-wide efforts, while, notwithstanding assignment to the GRTF, the Officer remains an employee solely of the Partner.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. ATTACHMENTS

The following attachment is attached hereto and incorporated into this Agreement by this reference:

Attachment I—§ 504 Compliance

Exhibit A-Services

Exhibit B-Payments

2. SERVICES TO BE PERFORMED BY PARTNER

Partner has assigned or will, upon request, assign, an Officer(s) to the GRTF on a full-time basis in consideration for the payments and other terms and conditions set forth below and in Exhibits A and B. If the Officer assigned to the GRTF ends the Officer's employment with Partner, or for any other reason can no longer be assigned to the GRTF during the term of this Agreement, Partner shall assign another officer to the GRTF as soon as possible.

3. PAYMENTS

In consideration of the services provided by Partner in accordance with all terms, conditions, and specifications set forth herein and Exhibit A and in the manner described in Exhibit B, the County shall reimburse Partner for all costs of the Officer on annual basis, prorated based on the length of time the Officer is actually assigned to the GRTF, including the cost of the Officer's salary, benefits, overtime, reimbursements, and other necessary costs associated with Partner's performance under this Agreement, but excluding any worker's compensation payments. In no event shall County's total fiscal obligation under this Agreement exceed \$700,000 (\$50,000 annually).

4. TERM AND TERMINATION

- 4.1 Subject to compliance with all terms and conditions, this agreement will commence on November 21, 2022 and remain in effect for two years, through November 20, 2024, and shall govern any assignment of an Officer to GRTF.
- 4.2 This Agreement may be terminated by either party at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.
- 4.3 In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Partner under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, Partner may make and retain a copy of such materials.

5. RELATIONSHIP OF PARTIES

- 5.1 Partner agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of the County and that neither Partner nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

- 5.2 Officer(s) assigned to GRTF shall take direction from the GRTF Chief Inspector but, as an employee of Partner, Officer(s) must comply with the rules and regulations set forth by Partner. Further, ultimate responsibility for supervision, training, and discipline of any Officer assigned to the GRTF remains with Partner. In the event of a conflict between the direction from the GRTF Chief Inspector and the rules and regulations of Partner, Officer will notify the Chief Inspector of the conflict and follow the rules and regulations of Partner.
- 5.3 If either Party learns of a personnel complaint against an Officer assigned to GRTF during the term of this Agreement, that Party shall immediately notify the other Party. Personnel complaints against the Officer will be investigated by Partner pursuant to Partner policies.
- 5.4 Any officer-involved shootings involving the Officer assigned to the GRTF and while performing work under this agreement shall be investigated by Partner consistent (to the extent feasible) with the SMPCSA OIS Protocol.
- 5.5 Any on-duty vehicle collision involving the Officer assigned to the GRTF shall be investigated and reported by Partner pursuant to Partner policies.
- 5.6 If discovery or disclosure of peace officer personnel records, or records maintained pursuant to Penal Code Section 832.5, or information from such records is sought concerning any officer assigned to the GRTF, Partner shall be responsible for responding to the discovery or disclosure request. The GRTF shall provide to Partner any of its records necessary to respond to the discovery or disclosure request to the extent permitted by law.
- 5.7 Partner will furnish standard equipment available to its other employees to the Officer assigned to the GRTF as needed, including but not limited to, safety equipment. County will supply the assigned officer a vehicle, cellular phone, and laptop computer.
- 5.8 All money received through state asset forfeiture or federal equitable sharing will remain with the County to supplement GRTF operating costs and upgrades.

6. HOLD HARMLESS

- 6.1. Partner shall defend, hold harmless and indemnify both (1) the County of San Mateo, and its officers, agents, and/or employees and (2) any other City (and its officers, agents, and/or employees) that executes an agreement assigning an officer to the GRTF and mutually indemnifies Partner in the same manner as set forth in this paragraph; from any and all claims for injuries to persons and/or damage to property, which both arise out of this Agreement and are caused by or are alleged to be caused by the acts or omissions of Partner, its officers (including any Officer assigned to the GRTF), agents and/or employees including, but not limited to, claims alleging negligence, excessive force, or violations of state or federal civil rights laws, except to the extent such claims arise out of acts performed by the County, its officers, agents and/or employees.
- 6.2. County shall defend, hold harmless and indemnify Partner, its officers, agents and/or employees from any and all claims for injuries to persons and/or damage to property, which both arise out of this Agreement and are caused by or are alleged to be caused by the acts or

omissions of County, its officers, agents and/or employees including, but not limited to, claims alleging negligence, excessive force, or violations of state or federal civil rights laws, except to the extent such claims arise out of acts performed by the Partner, its officers, agents and/or employees, including any Officers assigned to GRTF.

- 6.3. In the event of the concurrent negligence of Partner, its officers, agents and/or employees, and the County, its officers, agents and/or employees, then the liability for any and all claims for injuries or damages which arise out of this Agreement shall be apportioned under California's theory of comparative fault as presently established or as may be hereafter modified.
- 6.4 Partner will be responsible for the defense of any of its employees assigned to the GRTF in any lawsuit filed against that employee, regardless of the allegations.
- 6.5 The parties understand and agree that because the Officer assigned by Partner will be deemed to be continuing under the employment of the Partner, any damage, injury, disability, or death incurred by the Officer while working with the GRTF shall be deemed to have arisen out of, and to have been sustained in the course of, the Officer's employment with Partner. Any Officer assigned to the GRTF who sustains any damage or injury arising out of and in the course of the Officer's work with the GRTF shall be accorded by Partner all of the same benefits, including Workers Compensation Benefits, which the Officer would have received if the Officer had been acting under the immediate direction of Partner. If the Officer, or anyone on the Officer's behalf, based on Officer's injury, files against the County a claim for Workers' Compensation or files a claim against the County based on an alleged tort violation of any labor or employment laws or a claim for any other wrongful act or omission, for any damage or injury claimed to have been sustained in relation to the Officer's work with the GRTF, Partner shall indemnify, defend, and hold harmless the County, its officers, agents and employees.

7. ASSIGNABILITY, SUBCONTRACTING AND ASSIGNMENT OF OFFICER

- 7.1 Partner shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by Partner under this Agreement without the prior written consent of the County. Any such assignment or subcontract without the County's prior written consent shall give the County the right to automatically and immediately terminate this Agreement.
- 7.2 Partner has assigned or will, upon request, assign an Officer or Sergeant to the GRTF. Before Partner re-assigns that Officer and assigns a different officer to the GRTF, Partner shall meet and confer in good faith with the County to discuss the re-assignment and receive input from the County and the District Attorney Chief Inspector or District Attorney. Re-assignment inconsistent with the wishes of the County is grounds for immediate termination of this Agreement. However, the final decision regarding assignment of its personnel remains with Partner.

8. INSURANCE

Partner shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by the County's Risk Management, and Partner shall use diligence to obtain such insurance and to obtain such approval. Partner shall furnish the County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Partner's coverage to include the contractual liability assumed by Partner pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County of any pending change in the limits of liability or of any cancellation or modification of the policy. These requirements may be satisfied by a certificate of self-insurance.

- (1) Workers' Compensation and Employer's Liability Insurance. Partner shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing his Agreement, Partner certifies, as required by Section 1861 of the California Labor Code, (a) that it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) that it will comply with such provisions before commencing the performance of work under this Agreement.
- (2) Liability Insurance. Partner shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Partner and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Partner's operations under this Agreement, whether such operations be by Partner, any subcontractor, anyone directly or indirectly employed by either of them, or by an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amount specified below.

Such insurance shall include:

- (a) Comprehensive General Liability \$1,000,000
- (b) Motor Vehicle Liability Insurance \$1,000,000

The County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to the County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

9. COMPLIANCE WITH LAWS

All services to be performed by Partner pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement. Partner will timely and accurately complete, sign, and submit all necessary documentation of compliance.

10. NON-DISCRIMINATION AND OTHER REQUIREMENTS

- 10.1 General non-discrimination. No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.
- 10.2 Equal employment opportunity. Partner shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Partner's equal employment policies shall be made available to County upon request.
- 10.3 Section 504 of the Rehabilitation Act of 1973. Partner shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement. This Section applies only to Partners who are providing services to members of the public under this Agreement.
- 10.4 Discrimination against Individuals with Disabilities. The Partner shall comply fully with the nondiscrimination requirements of 41 C.F.R. 60-741.5(a), which is incorporated herein as if fully set forth.

11. RETENTION OF RECORDS, RIGHT TO MONITOR AND AUDIT

- 11.1 Partner shall maintain all required records for three (3) years after the County makes final payment and all other pending matters are closed, and Partner shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

- 11.2 Reporting and Record Keeping: Partner shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State, and local agencies, and as required by the County.
- 11.3 Partner agrees upon reasonable notice to provide to the County, to any Federal or State department having monitoring or review authority, to the County's authorized representatives, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

12. MERGER CLAUSE & AMENDMENTS

This Agreement, including the Attachments attached to this Agreement and incorporated herein by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

13. CONTROLLING LAW AND VENUE

The validity of this Agreement and of its terms or provisions, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law rules.

Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

14. NOTICES

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of GRTF, to:

Bill Massey, Chief Inspector
San Mateo County
District Attorney's Office

400 County Center Redwood City, CA
94063 Telephone: 650-363-4883
Email: bmassey@smcgov.org

In the case of Partner, to

Ed Barberini, Chief of Police
City of San Mateo
200 Franklin Parkway
San Mateo, CA 94403
Telephone: (650) 522-7600
Email: ebarberini@cityofanmateo.org

The County agrees that the District Attorney's Office will furnish to the Partner upon request any reports, summaries or other documents pertaining to the operation of the GRTF to the extent permitted by law.

15. ELECTRONIC SIGNATURE

If both County and Partner wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo, both boxes below must be checked. Any party that agrees to allow digital signature of this Agreement may revoke such agreement at any time in relation to all future documents by providing notice pursuant to this Agreement.

For County: If this box is checked by County, County consents to the use of electronic signatures in relation to this Agreement.

For Partner: If this box is checked by Partner, Partner consents to the use of electronic signatures in relation to this Agreement.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

Steve Wagstaffe

Name: Steve Wagstaffe

Title: District Attorney

Date: 12/9/2022

PARTNER

Ed Barberini

Name: Ed Barberini

Title: Chief of Police

Date: 11/22/2022

ATTACHMENT I

Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

- a. Employs fewer than 15 persons.
- b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a)), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Name of 504 Person:

Ed Barberni

Name of Contractor(s):

San Mateo Police Department

Street Address or P.O. Box:

200 Franklin Parkway

City, State, Zip Code:

San Mateo, CA 94403

I certify that the above information is complete and correct to the best of my knowledge

Signature

Ed Barberni

Title of Authorized Official:

Chief of Police

Date:

11/22/2022

*Exception: DHHS regulations state that: "If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."

Exhibit A

The San Mateo County Gun Relinquishment Task Force ("GRTF") is a unit, within the San Mateo County District Attorney's Office, led by the District Attorney, Chief Inspector or Senior Inspector. The purpose of the GRTF is to coordinate and share resources among the law enforcement agencies in the County to enforce unlawful firearm possession laws, in the interest of promoting safety and reducing gun violence throughout the County.

[CITY OF SAN MATEO POLICE DEPARTMENT] ("Partner") is a law enforcement agency.

In consideration of the payments set forth in Exhibit 3, Partner shall assign one or more of its peace officers (collectively, "Officers") to the GRTF for the entire term of this Agreement.

The County anticipates that Officers assigned to GRTF will perform the following and similar tasks, under the direction of the District Attorney's Office:

- Identify what firearms need to be seized, including from "prohibited persons," by conducting document and other information searches.
- Obtain any legal process necessary to conduct the seizure, e.g., warrants.
- Coordinate with local law enforcement agencies to effectuate seizures.
- Coordinate with the local law enforcement agency regarding storage of seized firearms.
- Provide training to local law enforcement agencies related to gun confiscation.
- Initially, work with the DA's Office to identify additional responsibilities and the scope of the GRTF.

Exhibit B

In consideration of the services provided by Partner described in Exhibit A and subject to the terms of the agreement, the County shall pay Partner based on the following fee schedule and terms:

County shall pay upfront the annual cost of Partner's assigned employee/Officer within 60 days receiving an invoice with a breakdown establishing that cost in a form reasonably deemed acceptable by the County. In the event of termination or any other event that results in Partner not provide a full year's worth of employee's time, Partner will refund to County amounts on a pro rata basis for any period, during which work was not performed.

Partner shall produce monthly invoices to County reflecting any overtime worked by employee on a form deemed acceptable by County. Any overtime must be pre-approved by Partner and pre-authorized by County before it is worked.

The total amount to be paid under this agreement shall not exceed \$700,000 (\$350,000 annually).