

AGREEMENT NO. _____

INDEPENDENT CONTRACTOR'S AGREEMENT

THIS AGREEMENT is made and entered into on _____, by and between the **CITY OF PORTERVILLE**, a municipal corporation, ("CITY" herein) and **COMMUNITY SERVICES & EMPLOYMENT TRAINING INC.** ("CONTRACTOR" herein).

RECITALS

WHEREAS, CONTRACTOR represents CONTRACTOR is experienced and well qualified in the field of litter removal.

NOW, THEREFORE, incorporating the foregoing recitals herein, CITY and CONTRACTOR mutually agree as follows:

1. SCOPE OF WORK. CONTRACTOR shall, using its own trained labor force, manually gather, bag, and pile litter and debris from alongside designated roadways. One crew of four (4) people each and one (1) working supervisor from Contractor will gather, bag and pile all litter found along the roadway on a schedule as determined by CITY. CONTRACTOR'S crew will clean to a level of cleanliness as determined by CITY. CONTRACTOR will close and secure all bags of litter, and place them in a safe manner in stacks out of the roadway for removal by others. CONTRACTOR will provide transportation, portable toilets, and all personal protective equipment needed to perform the work in accordance with Caltrans safety instructions. At a minimum, CONTRACTOR'S working supervisor must be trained in Caltrans freeway litter safety instruction. Frequency and schedule of clean ups will be provided by CITY. CITY will provide supplies (bags and other supplies) that are provided by Caltrans to CONTRACTOR. Upon completion of litter pick up, CONTRACTOR will notify CITY of completion. CITY and or other parties will remove bags of litter from alongside roadway. In addition, other duties of a similar nature may be assigned as needed by the CITY. Roadways shall include ramps and shoulders.

1.1. The scope of work shall include all items and procedures necessary to properly complete the task CONTRACTOR has been hired to perform, as outlined within the schedule provided by the CITY, attached hereto as Exhibit A. In the event that the crew is not available, CONTRACTOR will communicate such with the CITY.

1.2. Caltrans will maintain responsibility for traffic control for shoulder cleanups. Ramps do not require additional Caltrans traffic control measures. In the event CONTRACTOR is requested to provide traffic control measures consistent with Caltrans safety requirements, CONTRACTOR will provide an estimate as to the cost of this additional task and upon mutual agreement with CITY, provide such control.

1.3. In the event CONTRACTOR is asked to remove collected litter from roadways to a designated location, CONTRACTOR will provide an estimate as to the cost of this additional task and upon mutual agreement with CITY, provide for said removal and disposal.

1.4. Medians are not included within the scope of work at this time. In the event some medians are added to the scope of work, the CITY will get an approved list of medians to clean from Caltrans and provide that list to CONTRACTOR. A separate crew may be identified by the CONTRACTOR at a separate cost to the CITY as explained in 2.2 below.

2. COMPENSATION. Compensation for all work, services or products called for under this Agreement shall be payable in accordance with section 3 "Payment Procedure" as stated below but in no event shall exceed an annual total of One Hundred Eighty Four Thousand Three Hundred Dollars (\$184,300.00).

2.1. The Payment by the CITY to the CONTRACTOR for actual services rendered under this Agreement shall be made upon presentation of an invoice detailing services performed under the Scope of Services, in accordance with the fee schedule set forth in Exhibit "A" attached hereto and incorporated herein by reference. The CONTRACTOR agrees to provide all services required under Section 1. Scope of Work, within the compensation amount set forth in Exhibit "A".

3. PAYMENT PROCEDURE. CONTRACTOR shall be paid for services rendered after receipt of an itemized invoice for the work completed and approved by CITY in accordance with the terms of this Agreement. Payment by CITY to CONTRACTOR shall be made within thirty (30) days after receipt and approval by CITY of CONTRACTOR's itemized invoice.

4. KEY PERSONNEL. CONTRACTOR shall name all key personnel to be assigned to the work set forth herein. All key personnel shall be properly licensed and have the experience to perform the work called for under this Agreement. CONTRACTOR shall provide background for each of the key personnel including, without limitation, resumes and work experience in the type of work called for herein. CITY reserves the right to approve key personnel.

5. STARTING WORK. CONTRACTOR shall not begin work until authorized to do so in writing by CITY. No work will be authorized until the contract has been fully executed by CONTRACTOR and CITY.

6. NO WAIVER OF DEFAULT. The failure of any party to enforce against another party any provision of this Agreement shall not constitute a waiver of that party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this Agreement.

7. MERGER AND MODIFICATION. This contract sets forth the entire Agreement between the parties and supersedes all other oral or written representations. This contract may be modified only in a writing approved by the City Council and signed by all the parties.

8. EXHIBITS. In the event of a conflict between the terms, conditions or specifications set forth in this Agreement and those in exhibits attached hereto, the terms, conditions, or

specifications set forth in this Agreement shall prevail. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached.

9. TERM. Unless terminated sooner, as set forth herein, this Agreement shall be for a one (1) year period and may be renewable annually thereafter if funding is available. Renewal options shall be exercised by written notice by the Community Development Director or his designee at the sole option and discretion of the CITY.

10. TERMINATION. This Agreement may be terminated by any party with or without cause upon Ten (10) days' written notice, served by mail or personal service, to all other parties herein.

11. COMPLIANCE WITH ALL LAWS. CONTRACTOR shall, at CONTRACTOR's sole cost, comply with all of the requirements of Municipal, State, and Federal authorities now in force, or which may hereafter be in force, pertaining to this Agreement, and shall faithfully observe in all activities relating to or growing out of this Agreement all Municipal ordinances and State and Federal statutes, rules or regulations, and permitting requirements now in force or which may hereafter be in force including, without limitation, obtaining a City of Porterville business tax certificate (Porterville Municipal Code Section 15-5) where required.

12. INDEPENDENT CONTRACTOR. This Agreement calls for the performance of the services of CONTRACTOR and its personnel/crewmembers as an independent contractor. CONTRACTOR, and its personnel/crewmembers, are not agents or employees of the CITY for any purpose and are not entitled to any of the benefits provided by CITY to its employees. This Agreement shall not be construed as forming a partnership or any other association with CONTRACTOR and its personnel/crewmembers other than that of an independent contractor.

13. DIRECTION. CONTRACTOR retains the right to control or direct the manner in which the services described herein are performed. CONTRACTOR agrees that CONTRACTOR'S personnel shall follow Federal and State safety and environmental regulations and abide by the rules of the CITY regarding safety, health, and general codes of conduct.

14. INSURANCE. In addition to any other insurance or bond required under this Agreement, the CONTRACTOR shall procure and maintain for the duration of this Agreement the following types and limits of insurance ("basic insurance requirements") herein:

14.1. Automobile liability insurance, providing coverage on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than One Million Dollars (\$2,000,000) per occurrence; and the policy shall:

14.1.1. Provide coverage for owned, non-owned and hired autos.

14.2. Broad form commercial general liability Insurance, unless otherwise approved by the CITY's Risk Manager, providing coverage for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) in aggregate and Five Million Dollars (\$5,000,000) in excess coverage; and the policy shall:

14.2.1. Provide contractual liability coverage for the terms of this Agreement.

14.2.2. Provide products and completed operations coverage.

14.2.3. Contain an additional insured endorsement naming the State of California and the CITY (including its officers, employees, agents and volunteers).

14.3. Workers' compensation insurance with statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence; and the policy shall contain a waiver of subrogation in favor of the City, its mayor, council, officers, agents, employees and volunteers.

14.4. All policies required of the CONTRACTOR shall be primary insurance as to the State of California and CITY, its mayor, council, officers, agents, employees, or designated volunteers and any insurance or self-insurance maintained by the CITY, its mayor, council, officers, agents, employees, and designated volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

14.5. Except for workers' compensation, insurance is to be placed with insurers with a Best's rating as approved by CITY's Risk Manager, but in no event less than A-:VII rating. Any deductibles, self-insured retentions or insurance in lesser amounts, or lack of certain types of insurance otherwise required by this Agreement, or insurance rated below Best's A-:VII, must be declared prior to execution of this Agreement and approved by the CITY in writing.

14.6. Unless otherwise approved by CITY's Risk Manager, all policies shall contain an endorsement providing the CITY with thirty (30) days written notice of cancellation or material change in policy language or terms. All policies shall provide that there shall be continuing liability thereon, notwithstanding any recovery on any policy. Copies of policies shall be delivered to CITY on demand.

14.7. The insurance required hereunder shall be maintained until all work required to be performed by this Agreement is satisfactorily completed as evidenced by written acceptance by the CITY.

14.8. The CONTRACTOR shall furnish the City Risk Manager with a certificate of insurance and required endorsements evidencing the insurance required. The CITY may withdraw its offer of contract or cancel this contract if certificates of insurance and endorsements required have not been provided prior to the execution of this Agreement. The required Certificates shall be attached hereto as Exhibit B.

14.9. Full compensation for all premiums which the CONTRACTOR is required to pay on all the insurance described herein shall be considered as included in the prices paid for the various items of work to be performed under the Agreement, and no additional allowance will be made therefor or for additional premiums which may be required by extensions of the policies of insurance.

14.10. It is further understood and agreed by the CONTRACTOR that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance obtained and carried by the CONTRACTOR in connection with this Agreement.

14.11. Unless otherwise approved by the CITY, if any part of the work under this Agreement is subcontracted, the "basic insurance requirements" set forth above shall be provided by, or on behalf of, all subcontractors even if the CITY has approved lesser insurance requirements for CONTRACTOR.

14.12. CONTRACTOR shall provide, when required by CITY, performance, labor and material bonds in amounts and in a form suitable to CITY. CITY shall approve in writing all such security instruments prior to commencement of any work under this Agreement.

15. THIRD PARTY CLAIMS. In the case of public works contracts, CITY will timely notify CONTRACTOR of third party claims relating to this contract. CITY shall be allowed to recover from CONTRACTOR, and CONTRACTOR shall pay on demand, all costs of notification.

16. INDEMNITY. CONTRACTOR shall indemnify, defend, and hold harmless CITY, its officers, agents, employees and volunteers ("City Indemnitees"), from and against any and all liabilities, claims, actions, causes of action, obligations, judgments, or damages, including reasonable legal counsels' fees and costs or litigation ("claims"), arising out of or connected with CONTRACTOR'S performance of its obligations under this Agreement or out of operations conducted by CONTRACTOR, including the CITY's active or passive negligence, EXCEPT for such loss or damage arising out from the sole negligence or willful misconduct of the CITY. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from CONTRACTOR's performance of this Agreement, the CONTRACTOR shall provide a defense to the City Indemnitees, or at the CITY's option, reimburse the City Indemnitees their costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims.

17. EXECUTION. This Agreement is effective upon execution. It is the product of negotiation and all parties are equally responsible for authorship of this Agreement. Section 1654 of the California Civil Code shall not apply to the interpretation of this Agreement.

18. NOTICES. All notices relative to this Agreement shall be given in writing and shall be personally served or sent by certified or registered mail and be effective upon actual personal service or depositing in the United States mail. The parties shall be addressed as follows, or at any other address designated by notice:

CITY: CITY OF PORTERVILLE
CITY HALL
291 N MAIN ST
PORTERVILLE, CA 93257

CONTRACTOR: COMMUNITY SERVICES & EMPLOYMENT TRAINING INC.
Attention:
312 NW 3RD ST
VISALIA CA 93291

19. **GOVERNING LAW.** The laws of the State of California will govern the validity of this Agreement, its interpretation and performance. This Agreement is entered into and to be performed in Tulare County, California, and any litigation arising in any way from this Agreement shall be brought in the Tulare County, California jurisdiction. To the fullest extent permitted by law, the parties waive the removal provisions specified in California Code of Civil Procedure Section 394.

20. **FURTHER ASSURANCES.** Each party shall execute and deliver such papers, documents, and instruments, and perform such acts as are necessary or appropriate, to implement the terms of this Agreement and the intent of the parties to this Agreement.

21. **ASSIGNMENT.** Neither this Agreement, nor any interest in it may be assigned or transferred by any party without the prior written consent of all the parties. Any such assignment will be subject to such terms and conditions as CITY may choose to impose.

22. **BINDING EFFECT.** The rights and obligations of this Agreement shall inure to the benefit of, and be binding upon, the parties to the contract and their heirs, administrators, executors, personal representatives, successors and assigns, and whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural. This Agreement may be executed in any number of counterparts, each of which shall be considered as an original and be effective as such.

23. **ACCOUNTING RECORDS.** CONTRACTOR shall maintain accurate accounting records and other written documentation pertaining to all costs incurred in performance of this Agreement. Such records and documentation shall be kept at CONTRACTOR's office during the term of this Agreement, and for a period of three years from the date of the final payment hereunder, and said records shall be made available to CITY representatives upon request at any time during regular business hours.

24. **CORPORATE AUTHORITY.** Each individual signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

25. **TAX NUMBERS.**

CONTRACTOR's Federal Tax ID Number: _____

CONTRACTOR is a corporation? Yes ___ No ___

26. **NON-INTEREST.** No officer or employee of the CITY shall hold any interest in this Agreement (California Government Code section 1090).

27. **RESOURCE ALLOCATION.** All obligations of CITY under the terms of this Agreement are subject to the appropriation and allocation of resources by the City Council.

28. **ATTORNEYS' FEES.** If any litigation is commenced between the parties to this Agreement concerning the Agreement or the rights and duties of either in relation to the Agreement, the party prevailing in that litigation shall be entitled, in addition to any other relief that may be granted in the litigation, to a reasonable sum as and for its attorneys' fees in the litigation, which shall be determined by the court in that litigation or in a separate action brought for that purpose.

29. **AMBIGUITIES.** Each party and its legal counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, the day and year first-above written.

"CITY"
CITY OF PORTERVILLE

"CONTRACTOR"
COMMUNITY SERVICES &
EMPLOYMENT TRAININGS, INC.

By: _____
Adrian Monte Reyes
Mayor

By: _____
Mary Alice Escarsega-Fechner
Executive Director

Formatted: Spanish (Mexico)

APPROVED AS TO FORM:

By: _____
Julia M. Lew
City Attorney

Insurance: _____

Attachment: Proposal (Exhibit A), Certificates of Insurance (Exhibit B)

Agency: CSET

Proposal: 4 participants, 4 hour shifts, half days, 5days/week

LINE ITEM	FTE's	
PERSONNEL COSTS		
Salaries (List the job title below)		
Assistant Director / Site Coordinator	0.05	\$ 3,513
Accountant / CIS	0.05	\$ 2,626
Case Manager (Corps)	0.15	\$ 3,834
Crew Supervisor/Driver	1.00	\$ 27,703
Program Coordinator	0.05	\$ 3,194
Total Salaries	1.30	\$ 40,870
Fringe Benefits Cost		\$ 21,511
Fringe Benefit Rate=	52.63%	
TOTAL PERSONNEL COSTS		\$ 62,381
EQUIPMENT PURCHASE & LEASE COSTS		
Equipment/Furniture Purchase (Estimated cost, to be purchased by City of Porterville in Yr 1)		\$ 17,000
Equipment Lease		\$ 211
TOTAL EQUIPMENT PURCHASE & LEASE COSTS		\$ 17,211
OTHER OPERATIONS COSTS		
Vehicles - fuel, insurance, maintenance, etc		\$ 5,947
Personal Protective Equipment, Job Supplies		\$ 3,642
TOTAL OTHER OPERATIONS COSTS		\$ 9,589
FACILITIES INFRASTRUCTURE COSTS		
Rent (Building Space)		\$ 796
Facility/Equipment Repair & Maintenance, Custodial, Utilities, Telephone, Security		\$ 1,694
TOTAL FACILITIES INFRASTRUCTURE COSTS		\$ 2,490
PROFESSIONAL SERVICES		
Cell Phone, Internet Access, Marketing, Outreach, Professional Fees, Membership dues		\$ 2,142
TOTAL PROFESSIONAL SERVICES		\$ 2,142
SUPPLIES COSTS / SUBSCRIPTIONS		
Office Supplies (postage, printing, copying)		\$ 2,117
TOTAL SUPPLIES COSTS		\$ 2,117
STAFF TRAVEL & TRAINING COSTS		
Travel		\$ -
Training		\$ -
TOTAL STAFF TRAVEL & TRAINING COSTS		\$ -
PARTICIPANT COSTS		
Work-based Training (OJT)		\$ -
Participant Wages		\$ 60,320
Participant Fringe Benefits		\$ 10,858
Support Services, PPE's and uniforms		\$ 2,128
TOTAL PARTICIPANT COSTS		\$ 73,306
TOTAL INDIRECT COSTS		
Indirect Costs		\$ 13,145
TOTAL INDIRECT COSTS		\$ 13,145
OTHER COSTS		
Payroll Processing		\$ 1,184
Insurance Costs		\$ 755
TOTAL OTHER COSTS		\$ 1,919
TOTAL BUDGET		\$ 184,300

Exhibit A: Proposal

Exhibit B: Certificates of Insurance

(State Insurance limits apply & State must be named as additionally insured)

DRAFT