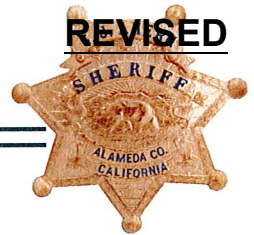


Alameda County Sheriff's Office

Lakeside Plaza, 1401 Lakeside Drive, 12th Floor, Oakland, CA 94612-4305

REVISED



Gregory J. Ahern, Sheriff

Director of Emergency Services
Coroner - Marshal

AGENDA _____ April 9, 2019

March 19, 2019

Honorable Board of Supervisors
County Administration Building
1221 Oak Street
Oakland, CA 94612

SUBJECT: APPROVE AN AGREEMENT WITH THE CITY OF OAKLAND FOR THE SHERIFF'S WORK ALTERNATIVE PROGRAM

Dear Board Members:

RECOMMENDATION:

1. Approve an agreement with the City of Oakland (Principal: Jason Mitchell, Director of Oakland Public Works; Location: Oakland), for City of Oakland to participate in the Alameda County Sheriff's Work Alternative Program for the contract period 1/1/2019 – 1/1/2024 with zero cost; and
2. Authorize the President of the Board to sign said agreement upon review and approval by County Counsel.

DISCUSSION/SUMMARY:

The Alameda County Sheriff's Work Alternative Program (SWAP) started in October 1987, pursuant to Penal Code Section 4024.2 and 4024.3 with the authorization of the Board of Supervisors. It is the intent of the Alameda County Sheriff's Office (ACSO) to maintain the highest standards of public confidence, credibility and public safety when implementing alternatives to confinement programs. The ACSO will determine which individuals are eligible to participate in the SWAP. Eligible individuals will have no known record of violent assaults or sex offenses.

The SWAP program is an alternative to confinement where participants perform eight to ten hours of work in-lieu of one day of confinement in jail. The intent of the program is to provide qualified, low risk offenders an alternative to incarceration. The sentences may not be over 365 days. Participants are assigned to work at one of thirty contracted public agency work sites within Alameda County. Through this agreement, ACSO may place program eligible individuals with the City of Oakland. All individuals placed with the City of Oakland will be under the direct supervision, care, custody and control of the City of Oakland during the course of their placement.

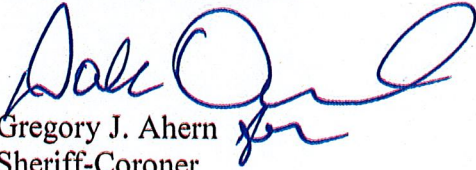
FINANCING:

No additional appropriations are required. There is no increase in net County cost as a result of your approval.

VISION 2026 GOAL:

The Sheriff's Work Alternative Program meets the 10X goal pathway of **Crime Free County** in support of our shared vision of **Safe and Livable Communities**.

Respectfully submitted,



Gregory J. Ahern
Sheriff-Coroner

GJA:ALY:aly

**AGREEMENT FOR PARTICIPATION IN
SHERIFF'S WORK ALTERNATIVE PROGRAM (S.W.A.P.)**

THIS AGREEMENT is made and entered into this 1st day of January 2019, by and between the County of Alameda, a political subdivision of the State of California ("County"), through the Alameda County Sheriff's Office ("ACSO") and the City of Oakland ("City") (collectively, the "Parties").

RECITALS

WHEREAS, Penal Code sections 4024.2 and 4024.3 provide that the Board of Supervisors may authorize ACSO to offer a voluntary "work release program" (the Sheriff's Work Alternative Program or "SWAP") to eligible persons in lieu of confinement or fine; and

WHEREAS, the Alameda County Board of Supervisors has authorized such a program; and

WHEREAS, ACSO administers SWAP and the eligible individuals who have been referred to the program; and

WHEREAS, the City wishes to participate in the program by receiving, directing, and supervising SWAP placements; and

WHEREAS, pursuant to Resolution No. 87375 C.M.S. the Oakland City Council authorized the City to execute an agreement with Alameda County to participate in the Sheriff's Work Alternative Program;

NOW, THEREFORE, based on the foregoing recitals, the Parties agree as follows:

1. **Eligibility.** ACSO will determine which individuals are eligible to participate in SWAP. Eligible individuals will have no known record of violent assaults or sex offenses. ACSO may place SWAP-eligible individuals with the City.
2. **Number of Placements.** The number of individuals placed with the City will be determined by ACSO. This Agreement does not obligate ACSO to place any minimum number of individuals or to guarantee the duration of any particular placement.
3. **Supervision.** All individuals placed with the City will be under the direct supervision, care, custody, and control of the City during the course of their placement. ACSO will not provide any security or supervision of individuals referred through SWAP to the City. The City will not physically restrain SWAP individuals that seek to leave the work area, but will immediately notify ACSO via email or telephone. Such notification must occur no later than twenty-four (24) hours following the incident.

The City's employees will provide safety instructions, explain work to be done and direct the SWAP individuals in the performance of their work duties.

The City shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local

C-2019-29

governing bodies having jurisdiction over the scope of services or any part thereof, including all provisions of the California Occupational Safety and Health Act of 1973 and all amendments thereto, and all applicable federal, state, municipal, and local safety regulations. All services performed by the City must be in accordance with these laws, ordinances, codes and regulations. The City shall indemnify and hold ACSO and the County of Alameda harmless from any and all liability, fines, penalties and consequences from any noncompliance or violations of such laws, ordinances, codes and regulations. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this contract, the City shall immediately notify ACSO and shall submit a written report, in such form as may be required by the County of Alameda, of all accidents which occur in connection with this contract within six (6) hours. This report must include the following information: (1) name and address of the injured or deceased person (s); (2) name and address of the City's liability insurance carrier; and (3) a detailed description of accident and whether any of County's equipment, tools, material, or staff was involved.

4. **Work Limitations.** The work to be performed pursuant to this Agreement shall be limited and defined by Penal Code section 4024.2(b)(1). SWAP individuals may:

- a. Improve or maintain levees or public facilities, including, but not limited to, streets, parks, and schools.
- b. Perform manual labor in support of nonprofit organizations;
- c. Conduct graffiti cleanup for local governmental entities, including participation in a graffiti abatement program;
- d. Abate weed and rubbish on public and private property; and
- e. Perform house repairs or yard services for senior citizens and the performance of repairs to senior centers through contact with local senior service organizations.

Any manual labor must not involve the SWAP individual's use of, or handling of, machinery, vehicles or power tools. Manual labor may include using simple hand tools, raking grass, weed pulling, cleaning animal pens, feeding animals, emptying trash cans, general sweeping and litter clean-up, and may require lifting up to forty (40) pounds. Equipment operation will be performed only by qualified City employees. Where appropriate, the City will provide SWAP individuals with well-maintained safety equipment including, but not limited to, signs, hard hats and safety vests.

5. **SWAP Guidelines.** The City agrees to comply in full with the "Sheriff's Work Alternative Program Guidelines for Supervision of Inmate Workers," which Guidelines are attached hereto as Exhibit A and incorporated in full into this Agreement by this reference.
6. **Injuries.** In the event that a claim for industrial injury is filed by an individual referred under this Agreement, the City shall be responsible for the administration and payment of the claim. The City shall indemnify and hold the County of

Alameda and ACSO harmless for all costs related to or incurred in the administration of such claims including any settlement costs, attorneys' fees, and/or penalties to the fullest extent permitted under California law.

7. **Insurance.** The City shall at all times during the terms of this Agreement maintain in force those insurance policies and bond as attached hereto as Exhibit B and shall comply with all those requirements as stated therein.
8. **Indemnity.** To the fullest extent permitted by law, the City shall hold harmless, defend and indemnify the County of Alameda, its Board of Supervisors, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from the any act or omission by the City in connection with or to relation to this Agreement, provided that any such claim, loss, damage, liability or expense is attributable to bodily injury, sickness, disease, death or to injury to or destruction of property, including the loss therefrom, or to any violation of federal, state or municipal law or regulation, which arises out of or is any way connected with the performance of this agreement (collectively "Liabilities") except where such Liabilities are caused solely by the negligence or willful misconduct of any indemnitee. The County may participate in the defense of any such claim without relieving the City of any obligation hereunder. The obligations of this indemnity shall be for the full amount of all damage to County, including defense costs, and shall not be limited by any insurance limits.
9. **Notices.** All notices required or permitted hereunder shall be deemed sufficiently given if delivered by hand or mailed, by United States mail, postage prepaid, certified or registered mail, addressed to the Parties at the addresses set forth below or to such other address as may be, from time to time, designated in writing. Courtesy copies may also be sent via email.

CITY OF OAKLAND INFORMATION

Public Works Department
David Ferguson, Assistant Director
250 Frank H. Ogawa Plaza, Suite 4314
Oakland, CA 94612

COUNTY OF ALAMEDA INFORMATION

Alameda County Sheriff's Office
Lieutenant John Johnson, Inmate Services Manager
5325 Broder Boulevard
Dublin, CA 94568


10. **Term.** The term of this contract is from the effective date January 1, 2019 until January 1, 2024, unless sooner terminated in accordance with the provisions herein.
11. **Termination without Cause.** This Agreement may be terminated upon 30 days written notice by either party, without cause. Should the City elect to serve notice of termination without cause, those individuals who had commenced working at the City's facilities prior to the date of said notice shall be permitted, at ACSO's discretion, to complete their commitments even if it extends the work in progress beyond the date the termination takes effect. ACSO may, in its sole discretion, assign additional individuals to perform labor after it has received a termination notice. Those individuals assigned after receipt of a notice of termination may perform labor until the date the termination takes effect.

12. **Termination with Cause.** If ACSO determines that the City may have violated the terms of this Agreement, ACSO shall have the right to immediately suspend the operation of this Agreement pending investigation of the possible violation and shall give prompt notice of the suspension to the City. In the event that an individual reports to perform labor after the suspension is communicated, the City shall advise ACSO and instruct the individual as directed by ACSO.
13. **Conflicts of Interest.** No officer, member, or employee of the County of Alameda or ACSO and no member of their governing bodies shall have any pecuniary interest, direct or indirect, in this Agreement or any proceeds thereof. No person employed by the City nor any member of such employee's family shall serve on a County of Alameda board, committee or hold any such position which either by rule, practice or action nominates, recommends, supervises the City's operations, or authorizes funding to the City.
14. **Relationship of the parties.** Nothing herein shall be construed to create the relationship of employer and employee, partners, principal and agent, or joint-venture partners between the Parties; it being understood and agreed that the City is an independent contractor. The City is not the agent or employee of the County in any capacity whatsoever, and County shall not be liable for any acts or omissions by the City nor for any obligations or liabilities incurred by the City.
15. **Drug-Free Workplace.** The City and its employees shall comply with the County's policy of maintaining a drug-free workplace. Neither the City nor its employees shall unlawfully manufacture, distribute, dispense possess or use controlled substances, included but not limited to heroin, cocaine, and amphetamines, at any County Facility or work site. If the City or any employee of the City is convicted of or pleads nolo contendere to a criminal drug statute violation occurring at a County facility or work site, the City shall notify ACSO within five days. Violation of this provision shall constitute a material breach of this agreement.
16. **Non-Discrimination.** The City assures that it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color disability, sex, sexual orientation or national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factors be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.
17. **Entire Agreement.** This contract contains the entire agreement between the Parties and neither is relying on representations not contained herein.
18. **Survival of Indemnity.** The indemnity provisions and repayment provisions of this Agreement shall survive termination or expiration.
19. **Amendment.** This Agreement may be supplemented, amended or modified only by a writing signed by both parties.

20. **Assignment.** Nothing contained in this agreement shall be construed to permit assignment or transfer of any rights or delegation of duties by the City under this agreement, and such assignment, transfer, or delegation is expressly prohibited and void.
21. **Additional Notice Requirements.** The following situations will require notification to Sheriffs Work Alternative Program and may require immediate notification of the local police: 1) use or possession of alcohol beverages on work site; 2) acts of violence; 3) disruptive or uncooperative participants; 4) any other hazardous situation.
22. **No Third-Party Beneficiary Rights.** The City and ACSO agree that this Agreement is only for the benefit of the Parties hereto and is not intended to confer any rights or benefits on any third party. There are no third party beneficiaries of this Agreement or any part of any specific provision of this Agreement, and no third party shall have any right to enforce this Agreement or any provision hereof.
23. **Signatory.** By signing this agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

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

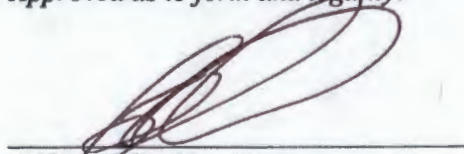
CITY OF OAKLAND
(a municipal corporation)



Jason Mitchell
Director of Oakland Public Works

Date: 12/20/18

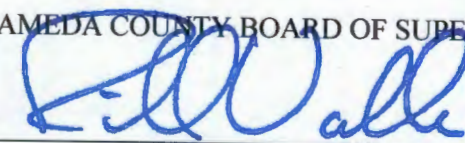
Approved as to form and legality:



Office of the City Attorney

*Council Resolution # 87375
E.M.S.*


ALAMEDA COUNTY BOARD OF SUPERVISORS

By: 

President, Board of Supervisors

Date: 4/12/19

ALAMEDA COUNTY SHERIFF'S OFFICE



Lieutenant John Johnson
Inmate Services Manager

Date: 1/10/19

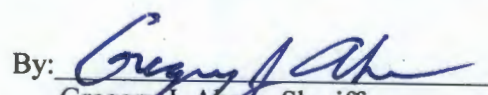
Approved as to Form:

Donna R. Ziegler, County Counsel

By: 

Eva K. Schueller Deputy County Counsel

ALAMEDA COUNTY SHERIFF'S OFFICE

By: 

Gregory J. Ahern, Sheriff

Date: 3/13/19