

AGREEMENT FOR
LAW ENFORCEMENT HELICOPTER SERVICES
BETWEEN THE CITY OF SANTA ANA
AND THE
COUNTY OF ORANGE

This Agreement is made by and between the City of Santa Ana, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California, hereinafter referred to as "CITY", and the COUNTY OF ORANGE, a political subdivision of the State of California, hereinafter referred to as "COUNTY", based on the following:

A. COUNTY, through its SHERIFF-CORONER (hereinafter referred to as "SHERIFF"), employs, maintains, trains and equips personnel capable of responding to requests for law enforcement helicopter services from ground based law enforcement personnel.

B. CITY is responsible for providing law enforcement services within its jurisdiction, which include law enforcement helicopter services.

C. COUNTY represents that it is qualified and willing to operate said services.

TERM

This Agreement shall commence on July 1, 2017 and end on June 30, 2020 unless earlier terminated by either party.

PURPOSE

1.01 The purpose of this Agreement is to provide law enforcement helicopter services to CITY's land and residents and for CITY to pay for the cost of the services provided by COUNTY.

1.02 Nothing in this Agreement shall be interpreted to give CITY a right to services from COUNTY. COUNTY expressly retains all rights and powers to direct, manage, maintain, train, employ, equip, operate and control all equipment, facilities, properties and personnel in providing law enforcement helicopter services to CITY pursuant to this Agreement. CITY acknowledges and agrees that the efficient use of public safety helicopter services requires a timely and prioritized response of a helicopter. CITY agrees that COUNTY will have the sole discretion to determine the priority of calls for service and when an assignment of an air crew to a call will be terminated.

1.03 Notwithstanding anything in the Agreement to the contrary, the CITY expressly retains all rights and powers to direct, manage, maintain, train, employ, equip,

operate and control all equipment, facilities, properties and personnel in providing ground based public safety services to its land and residents.

COUNTY PROVIDED SERVICES

2.01 COUNTY will furnish the CITY with public safety helicopter services as more particularly set forth in Exhibit "A," attached hereto and incorporated herein by this reference. COUNTY and helicopter aircrews retain the sole and exclusive discretion as to the specific type, nature, timing and duration of the services performed pursuant to this Agreement.

2.02 In no event shall SHERIFF or the aircrew be responsible for the direction and control of ground based law enforcement personnel and equipment of CITY during the course and scope of the services performed pursuant to this Agreement.

CITY DUTIES

3.01 CITY shall pay COUNTY as determined by COUNTY pursuant to Paragraph 4.01 of this Agreement, for services provided by COUNTY under this Agreement. The services performed by the SHERIFF helicopter shall commence as of the date and time the helicopter is dispatched to, or arrives over, the airspace of the CITY, whichever occurs first. These services shall continue until the aircrew notifies the CITY that the assignment is complete or that the assignment must be terminated due to a higher priority assignment. Services performed by SHERIFF helicopter for the CITY shall be defined as:

A. A direct request for air support services by the CITY where a SHERIFF helicopter arrives over the incident as logged by the aircrew (operationally identified as Helicopter Assigned) or;

B. Any public safety call generated by the CITY and monitored by a SHERIFF aircrew in which they arrive over the incident as logged by the aircrew (operationally identified as Call Monitored and Responded) or;

C. Routine patrol over CITY's jurisdictional areas and observe an incident (operationally identified as Observation Response); or

D. Dispatched to a special assignment (operationally identified as Detailed Assignment).

The CITY may authorize its ground based public safety supervision to cancel any response by SHERIFF helicopter.

3.02 CITY agrees to comply with the Federal Aviation Regulations (FAR) Part 91 and SHERIFF's Operations Manual Section V 1.18.0 in making calls for services, which establishes priority for calls to SHERIFF.

3.03 CITY agrees to install within its communications/dispatch center any radio equipment necessary to communicate directly with SHERIFF on the designated

“SHERIFF CALL” frequency (800 MHz Talk Group). All costs associated with said installation shall be paid by CITY.

ANNUAL FLIGHT HOURS, COST AND PAYMENT

4.01 The COUNTY shall provide Three Hundred and Sixty-Five (365) flight hours to the CITY per year, with the exception of the contract period July 1, 2019 – June 30, 2020, during which the COUNTY shall provide Three Hundred and Sixty-Six (366) flight hours to the CITY. Pursuant to Government Code Section 51350, CITY agrees to pay to COUNTY the full cost of performing the services mutually agreed upon in this Agreement. CITY shall pay COUNTY the annual operating cost as set forth in Exhibit “A,” for Three Hundred and Sixty-Five (365) flight hours of service provided to CITY under this Agreement (“Contract Amount”) for the first year of this agreement (July 1, 2017 - June 30, 2018). For each subsequent year of this Agreement, a written amendment will be executed to amend the Annual Flight Hours, Cost and Payment section of the Agreement and Exhibit A. Any services in excess of the contracted flight hours per year, on an annual basis, shall be billed at the hourly rate set forth in Exhibit “A.” The Santa Ana City Council delegates authority to the City Manager to execute the subsequent amendments in year two (July 1, 2018-June 30, 2019) and year three (July 1, 2019-June 30, 2020) for the contract amount of the first year of this agreement as outlined in Exhibit “A” plus up to ten percent (10%). Any increase beyond ten percent for any amendment of this Agreement will require City Council approval.

4.02 Flight hours that are deemed countywide service will not be counted towards the contracted flight hours per year. The following type calls are deemed countywide service: Vehicle pursuits, bank robberies involving tracking systems, stolen vehicles equipped with tracking systems, riots, felonious suspects within a perimeter, assaults involving a weapon or an officer in need of assistance. CITY shall not receive a refund if the total flight hours, on an annual basis, are less than the contracted flight hours per year. Upon thirty (30) days written notice to CITY, COUNTY may adjust the hourly rate in Exhibit “A” based on COUNTY’s annual operating cost and the average time per call. COUNTY will provide CITY with a monthly invoice that is one twelfth of the annual Contract Amount. CITY shall pay COUNTY the Contract Amount set forth in Exhibit “A” in accordance with COUNTY Board of Supervisors’ approved County Billing Policy, which is attached hereto as Exhibit “B.”

4.03 COUNTY will provide the CITY with a monthly flying hour-report detailing assigned call time, patrol time and countywide service time spent over the CITY’s jurisdiction as provided by SHERIFF aircrews. The CITY shall notify the SHERIFF’s Special Enforcement Bureau Commander within ten (10) days of receipt of the monthly flying hour report of any disputed call times. The Special Enforcement Bureau Commander and the CITY Supervisor will review the service provided by SHERIFF on a monthly basis to ensure that it coincides with the service level as set forth in Exhibit “A.” The Special Enforcement Bureau Commander will be responsible for resolving disputes and adjusting service levels to coincide with Exhibit “A.”

INDEMNIFICATION

5.01 CITY agrees that COUNTY should be fully protected from any loss, injury, damage, claim, lawsuit, cost or expense arising out of, or in any way related, to the

performance of services pursuant to this Agreement. Accordingly, the provisions of this Agreement should be construed and interpreted to provide the fullest possible protection to COUNTY. CITY acknowledges that COUNTY would not provide services in the absence of the commitments of CITY as specified in this Agreement.

5.02 To the fullest extent permitted by law, CITY shall defend at its expense including attorney's fees and with counsel approved in writing by COUNTY, indemnify and hold harmless COUNTY and its officers, employees, and agents (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate directly or indirectly to any services provided under this Agreement including, but not limited to, activities that relate in any way to this Agreement including the negligent and/or willful acts, errors and/or omissions of CITY, its elected and appointed officials, officers, agents, employees, subcontractors or independent contractors. Notwithstanding the foregoing, nothing herein shall be construed to require CITY to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable.

5.03 COUNTY shall defend at its expense including attorney's fees and with counsel approved in writing by CITY, indemnify and hold harmless CITY and its officers, employees, and agents with respect to any claim, loss, liability, damage, lawsuit, cost or expense that arises out of, or is in any way related, to the sole negligence or willful misconduct by COUNTY, its elected and appointed officials, officers, agents, employees, subcontractors or independent contractors.

5.04 If judgment is entered against CITY and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of either party, CITY and COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

MISCELLANEOUS PROVISIONS

6.01 Each party to this Agreement shall immediately notify the other of any litigation or claim that is asserted by or against either party regarding this Agreement.

6.02 The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.

6.03 If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this agreement shall continue in full force and effect.

6.04 This Agreement may be modified or amended only by a written document executed by both COUNTY and CITY.

6.05 The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

6.06 This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

6.07 A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

6.08 Except as specifically authorized under this Agreement, the services to be provided under this Agreement shall not be assigned, transferred, contracted or subcontracted out without the prior written approval of COUNTY and CITY.

6.09 All notices authorized or required by this Agreement shall be effective when written and deposited in the United States mail, first class postage prepaid and addressed as follows:

CITY: CITY OF SANTA ANA – CLERK OF THE COUNCIL
20 CIVIC CENTER PLAZA (M-30)
SANTA ANA, CA 92702

CITY ATTORNEY'S OFFICE
ATTN: LAURA A. ROSSINI, SENIOR ASSISTANT CITY ATT'Y
20 CIVIC CENTER PLAZA (M-29)
SANTA ANA, CA 92702

With Courtesy Copy:

ATTN: CHIEF OF POLICE – City of Santa Ana
60 CIVIC CENTER PLAZA
SANTA ANA, CA 92702

COUNTY: ATTN: LAW ENFORCEMENT CONTRACT MANAGER
SHERIFF-CORONER DEPARTMENT
320 N. FLOWER STREET, SUITE 108
SANTA ANA, CA 92703

Termination notices shall be effective when written and deposited in the United States mail, certified, return receipt requested and addressed as above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in the County of Orange, State of California.

CITY OF SANTA ANA

COUNTY OF ORANGE

DATED: _____

DATED: _____

Robert Cortez, Acting City Manager
City of Santa Ana

BY: _____
Chairwoman of the Board of Supervisors

ATTEST:

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Resolution 79-1535

Maria D. Huizar
Clerk of the Council

Attest:

Robin Stieler
Clerk of the Board of Supervisors
Orange County, California

APPROVED AS TO FORM:
Sonia R. Carvalho, City Attorney

APPROVED AS TO FORM:

Office of the County Counsel
Orange County, California

By: Laura A. Rossini
Senior Assistant City Attorney

BY:  _____
Deputy

RECOMMENDED FOR APPROVAL:

RECOMMENDED FOR APPROVAL:

Carlos Rojas
Chief of Police

Sandra Hutchens
Sheriff-Coroner

EXHIBIT "A"**(Effective July 1, 2017)**

The fees set forth in this exhibit represent the total cost of service provided by the COUNTY, through its SHERIFF-CORONER (SHERIFF), to CITY for fiscal year 2017-18.

ANNUAL OPERATING COST**JULY 1, 2017 THROUGH JUNE 30, 2018****\$421,195.40****HOURLY RATE FOR HOURS IN EXCESS OF THREE HUNDRED AND SIXTY-FIVE (365) FLIGHT HOURS FROM JULY 1, 2017 THROUGH JUNE 30, 2018****\$1,153.96**

The annual operating cost shall be divided into twelve equal monthly payments of \$35,099.62 (\$421,195.40 divided by 12 months).

PERIOD COVERED - July 1, 2017 to June 30, 2018 (twelve-month term).

Total Contract Amount For Services	\$ 421,195.40
Contracted Hourly Rate for Hours In Excess of Three Hundred and Sixty-Five (365) Hours Annually	\$ 1,153.96
Annual Flight Hours	365
Flight Time Per Day (in minutes)	00:60

Management of flight time provided to the CITY shall be the responsibility of the SHERIFF's Special Enforcement Bureau Commander. Flight time over the CITY will be recorded and monitored daily for the purpose of providing service in accordance with the above table. The CITY will be provided with a detailed monthly flying hour report.

Flight hours that are deemed countywide service will not be counted towards the Three Hundred and Sixty-Five (365) contracted flight hours. The following type calls are deemed countywide service: Vehicle pursuits, bank robberies involving tracking systems, stolen vehicles equipped with tracking systems, riots, felonious suspects within a perimeter, assaults involving a weapon or an officer in need of assistance.

Due to the inherent unknown nature in the need for airborne law enforcement service, SHERIFF will adjust daily service levels to coincide with the above table. In recognition that it will not always be possible to meet this goal (by either exceeding or falling short), SHERIFF will compensate for variations to arrive at an appropriate "daily average," on a monthly basis.

EXHIBIT B**COUNTY BILLING POLICY
APPROVED BY BOARD MINUTE ORDER DATED OCTOBER 27, 1992****I. POLICY**

All County agencies/departments/districts (County) governed by the Board of Supervisors shall bill contracting entities for materials and/or services provided under contract in accordance with the following standardized billing and collection policy. Billing frequency is dependent on whether the contract is a fixed price or actual cost contract. Payment due date is designed to be both responsive to the County's cash flow needs and reasonable enough as to not require special processing by the contracting entity. If payments are not received by the required due dates, a late payment fee shall be computed and billed to the contracting entity in accordance with the requirements of this procedure.

Nothing herein shall affect the liability, including pre-judgment interest, of the contracting party for services or materials in as much as this is a policy to enact standard billing practices.

II. DEFINITIONS

- A. Contract for the purposes of this policy - A contract is a formal written agreement, a purchase order from the contracting entity, or any other acceptable mutual understanding between the contracting parties.
- B. Received by the County - The phrase "received by the County", as used in Section VI of this policy, refers to the date a payment is received by the County. It is defined as the date the payment is in the County's possession. It is not the date the payment is posted or deposited by the County.

III. FIXED PRICE CONTRACTS

- A. Fixed Price (One-Time/Non-Recurring Contracts) - Invoices that represent a billing for a one-time, non-recurring provision of materials and/or services shall be issued no later than five (5) working days after delivery by the County of the materials and/or services. Examples of such one-time, non-recurring provision of materials and/or services might be a city contracting with the Sheriff for security service at a parade or sporting event; or, a city purchasing a computer listing containing certain city-requested data. Payment due date shall be invoice date plus 30 days.
- B. Fixed Price (Ongoing/Recurring Contracts) - Invoices that represent a billing for an ongoing, recurring provision of materials and/or services shall be issued according to the following frequency:
 - 1. Annual Billings that total \$10,000 or less per 12-month period shall be billed via one (1) annual invoice. Annual invoices will be issued for each 12-month period of the contract, or portions thereof. Invoices shall be issued no later than five working days after the beginning of each 12-month period. Payment due date shall be invoice date plus 30 days.

2. Quarterly Billings that are greater than \$10,000 but not more than \$200,000 per 12-month period, shall be billed in quarterly installments. Quarterly invoices will be issued representing the contract amount for each 12-month period of the contract, or portions thereof, prorated into four (4) installments. Invoices shall be issued no later than 30 days after the beginning of each quarter. Payment due date shall be 60 days after the beginning of each calendar quarter.
3. Monthly Billings that are greater than \$200,000 per 12-month period shall be billed in monthly installments. Monthly invoices will be issued representing the contract amount for each 12-month period of the contract, or portions thereof, prorated into 12 installments. Invoices shall be issued on or before the first day of each service month. Payment due date shall be 30 days after the beginning of each service month.

An example of a fixed price contract for ongoing, recurring provision of materials and/or services might be a city contracting with the Sheriff for law enforcement services.

IV. ACTUAL COST CONTRACTS

- A. Actual Cost (One-Time/Non-Recurring Contracts) - Invoices that represent a billing for a one-time, non-recurring provision of materials and/or services shall be issued after delivery by the County of the materials and/or services and no later than 15 days after actual cost data is available. Payment due date shall be invoice date plus 30 days.
- B. Actual Cost (Ongoing/Recurring Contracts) - Invoices that represent a billing for an ongoing, recurring provision of materials and/or services shall be issued on a monthly basis and shall represent the cost of materials and/or services provided to the contracting entity during the previous calendar month. Such invoices shall be issued no later than 15 days after the close of the monthly billing period. If the County agency/department/district does not utilize a monthly billing cycle, the invoice shall be issued no later than 15 days after actual cost data is available. Payment due date shall be invoice date plus 30 days.

Examples of actual cost contracts for the ongoing, recurring provision of materials and/or services might be a city contracting with the County for communications equipment repair or waste disposal at a County landfill.

V. PAYMENT DUE DATES

Notwithstanding the provisions of Sections II and III above, payment due date shall be at least invoice date plus 30 days. If the County is late in issuing an invoice, the contracting entity would always have at least invoice date plus 30 days to pay. If the County is early in issuing an invoice, the contracting entity would still have a payment due date of either 60 days after the beginning of the quarter (quarterly invoices) or 30 days after the beginning of the service month (monthly invoices).

(EXAMPLES: An invoice for October service, dated and issued October 8 (late) would have a payment due date of November 7. An invoice for August service, dated and issued July 20 (early) would have a payment due date of August 30.)

VI. LATE CHARGES

The late payment of any invoiced amount by a contracting entity will cause the County to incur costs not contemplated by the County/contracting entity agreement, the exact amount of such cost will be extremely difficult to ascertain. Such costs include, but are not limited to, costs such as administrative follow-up and processing of delinquent notices, increased accounting costs, etc.

Late charges will be assessed in the following situations:

- Over-the-counter payments will be assessed a late charge if any payment is not received by the County by the payment due date.
- Payments transmitted to the County via the U.S. Mail that have the payer's postage meter mark will be assessed a late charge if any payment is not received by the County by the payment due date plus one day.
- Payments transmitted to the County via the U.S. Mail that have a U.S. Post Office postmark dated after the payment due date will be assessed a late charge.

The late charge assessed in each of these situations shall be three-quarters of one percent (0.75%) of the payment due and unpaid plus \$100.00 for late payments made within 30 days of the payment due date. An additional charge of three-quarters of one percent (0.75%) of said payment shall be added for each additional 30-day period that the payment remains unpaid. Late charges shall be added to the payment and invoiced to the contracting entity in accordance with this policy.

VII. COLLECTIONS

Any invoice remaining unpaid 90 days after the invoice date shall be referred to the Auditor-Controller for subsequent collection action, such as deduction from contracting entity moneys on deposit with the County Treasurer in accordance with Government Code Section 907 and any other applicable provision of law. Non-payment of invoices and applicable late charges will constitute a breach of contract for which the County retains all legal remedies including termination of the contract.

VIII. DISCOUNT FOR EARLY PAYMENT

Any payment received by the County from a contracting entity 20 days or more before the payment due date shall be entitled to a discount of one-quarter of one percent (0.25%). If the contracting entity takes a discount, and the payment is received by the County less than 20 days before the payment due date, County staff shall immediately notify the contracting entity by telephone that the discount should not have been taken and that the balance is due by the original payment due date.

If the balance is not received by the County in accordance with the dates as specified in Section VII, applicable late charges shall be calculated on the balance due.

IX. DEFERRED REVENUE

At fiscal year end, any portion of revenue invoiced (not necessarily received) during the fiscal year being closed out that represents charges or prepayment for materials and/or services for the upcoming fiscal year shall be reclassified from a revenue account to a deferred revenue account (liability). In the new fiscal year the deferred revenue shall be reclassified to a revenue account. (EXAMPLE: On June 1, 19X1, a city is invoiced \$48,000 which represents charges for the 12-month period June 1, 19X1 to May 31, 19X2. The amount to be reclassified to deferred revenue would be \$44,000, representing 11/12ths of the total amount. In July 19X1, the \$44,000 would be reclassified to revenue.) Reclassification entries shall be made by Auditor-Controller Agency Accounting units, or for those agencies/departments/districts without such a unit, the agency/department/district shall notify the Auditor-Controller of the amounts to be reclassified.

X. COST RECOVERY

All County agencies/department/districts shall include all costs of providing contracted services in contract rates. Including all direct costs, allocated indirect costs such as departmental and County (CWCAP) overhead, and cost of capital financing.

XI. EXISTING CONTRACTS

Billing terms and provisions contained in existing contracting entity agreements (existing as of the date this policy is approved by the Board of Supervisors) shall remain in effect for the life of the contract. However, when these existing contracts are renegotiated, they shall contain the billing provisions as set forth in this policy.

XII. DEVIATIONS FROM POLICY

Deviations from this policy shall be approved by the Board of Supervisors. Proposed deviations by agencies/departments/districts shall be submitted to the CEO for concurrence in advance of filing an Agenda Item Transmittal (AIT) with the Clerk of the Board. The CEO, or his/her designee, shall advise the agency/department/district of approval or disapproval of the proposed deviations. If a County agency/department/district submits a contract to the Board of Supervisors for approval, and the billing provisions in the contract deviate from this policy, the agency/department/district shall specifically advise the Board of Supervisors in the AIT of the deviation, the reason for the deviation, and of the CEO's recommendation relative thereto.