

**SERVICES AGREEMENT FOR PUBLIC SAFETY
HELICOPTER SUPPORT BETWEEN THE
CITY OF HUNTINGTON BEACH AND
THE CITY OF IRVINE**

This Services Agreement for Public Safety Helicopter Support ("Agreement") is made by and between the City of Huntington Beach, a California Municipal Corporation (the City of Huntington Beach) and the City of Irvine, a California Municipal Corporation (the City of Irvine) based on the following:

A. The City of Huntington Beach employs, maintains, trains and equips personnel capable of responding to requests for public safety helicopter services from ground based public safety personnel.

B. The City of Irvine is responsible for providing public safety services within its jurisdiction, which include public safety helicopter services.

C. The City of Irvine request the services of the City of Huntington Beach to provide public safety helicopter services within its borders and would like to enter into a three year contract starting July 1, 2018 and ending on June 30, 2021.

TERM

This Agreement shall commence upon execution by the last party and continue for 90 days. After the initial 90 day period, upon mutual written consent of both the City Manager and Chief of Police of the City of Huntington Beach and the City of Irvine, which may be informally documented, this Agreement may be extended until March 31, 2021, unless terminated earlier as set forth herein.

**I
PURPOSE**

1.01 The purpose of this Agreement is for the City of Huntington Beach to provide certain public safety helicopter services to the City of Irvine in exchange for the City of Irvine payment of an all-inclusive flat rate per hour for the cost of the services provided by the City of Huntington Beach.

1.02 Nothing in this Agreement shall be interpreted to require the City of Huntington Beach to provide helicopter services based upon a schedule or need for service from the City of Irvine. The City of Huntington Beach expressly retains all authority, right and power to direct, schedule, deploy, manage, maintain, train, employ, equip, operate and control all equipment, facilities, properties and personnel in providing public safety helicopter services pursuant to this Agreement. The City of Irvine acknowledges and agrees that the efficient use of public safety helicopter services requires a timely and prioritized response of the City of Huntington Beach's helicopter. The City of Irvine agrees that the City of Huntington Beach will have the sole

discretion to determine the use of its helicopter including the priority of calls for service and when an assignment of a helicopter air crew to a call will be acted upon by the City of Huntington Beach and the service terminated.

1.03 Notwithstanding the terms of helicopter services provided in this Agreement, the City of Irvine 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.

II **SERVICES**

2.01 The City of Huntington Beach will provide the City of Irvine with public safety helicopter services that will include the City of Huntington Beach helicopter and aircrew comprised of a pilot and tactical flight officer that are both sworn peace officers and specially trained to provide public safety helicopter services. The City of Huntington Beach Police Department retains the sole and exclusive discretion as to the specific type, nature, timing and duration of the services performed pursuant to this Agreement, including the City of Huntington Beach terminating a helicopter deployment at its sole discretion because of a higher priority assignment.

2.02 The City of Huntington Beach certifies that all helicopter aircrews providing public safety helicopter services to the City of Irvine under this Agreement currently possess, and will maintain all permits, licenses, certifications, and training required from any federal, state or local governmental entity to provide public safety helicopter services.

2.03 In no event shall the City of Huntington Beach or the helicopter aircrew be responsible for the direction and control of ground based public safety personnel and equipment of the City of Irvine during the course and scope of the public safety helicopter services performed pursuant to this Agreement.

III **COMPENSATION**

3.01 The City of Irvine shall pay the City of Huntington Beach for the public safety helicopter services provided on an hourly basis in accordance with the provisions of this Section.

3.02 The City of Huntington Beach shall provide public safety helicopter services to the City of Irvine at an all-inclusive flat rate with no other direct or indirect cost as set forth in this Agreement. The City of Huntington Beach shall bill the City of Irvine for all public safety helicopter services provided under this Agreement in tenth of an hour increments.

3.03 The City of Huntington Beach shall submit monthly invoices to the City of Irvine describing the public safety helicopter services provided in the preceding month. The City of Huntington Beach will also provide the City of Irvine with a monthly statement detailing all calls

for service over the City of Irvine. The monthly statement shall include the names of the helicopter aircrew who performed the services, a brief description of the services performed and/or the specific task performed, the date the services were performed, the number of hours spent on all services billed on an hourly basis in tenth of an hour increments.

3.04 The City of Irvine's Chief of Police, or designee, shall notify the City of Huntington Beach Air Support Unit Commander ("Unit Commander") within twenty (20) days of receipt of the monthly statement of any disputed calls for service. The Unit Commander and the City of Irvine Police Chief will review the public safety helicopter service provided by the City of Huntington Beach on an as needed basis to ensure that it coincides with the service level desired by the City of Irvine. The Unit Commander and the City of Irvine Chief of Police will be responsible for cooperatively resolving any disputes over services provided under this Agreement and adjusting any service levels to coincide with the levels and costs of the City of Irvine.

3.05 The City of Huntington Beach shall provide public safety helicopter services to the City of Irvine at an all-inclusive flat rate of Seven Hundred Seventy Dollars (\$770) per hour of service (Hourly Rate) for service as defined in Section 4 below. On July 1 of each year this Agreement is in effect, the rate for service shall increase based on the change in the "Consumer Price Index for All Urban Consumers (CPI-U), for the Los Angeles-Riverside-Orange County, California area; all items not seasonally adjusted, 1982-1984=100 reference base." The adjustment will be based on the current contract rate using the January index of the current year and the January index of the preceding year. The City of Huntington Beach Police Chief shall adjust the fees set forth in the Agreement by such percentage change and rounded to the next highest dollar amount. Should the Consumer Price Index be revised or discontinued, the Police Chief shall use the revised or a comparable index as approved by the City of Huntington Beach City Council. In no event, however, shall the amount payable under this Agreement be reduced below the Hourly Rate in effect immediately preceding such adjustment. The maximum adjustment increase to the Hourly Rate, for any year where an adjustment is made pursuant to this Section, shall not exceed five percent (5%) of the Hourly Rate in effect immediately preceding such adjustment.

IV RESPECTIVE DUTIES

4.01 The City of Irvine shall pay the City of Huntington Beach an all-inclusive flat rate per hour for the cost of the services pursuant to Paragraph 3.01 – 3.05 of this Agreement. The public safety helicopter services shall be deemed to commence as of the date and time the aircraft is dispatched to, or arrives over, the airspace of the City of Irvine, whichever occurs first. These services shall continue until the aircrew notifies the City of Irvine that the assignment is complete or that the assignment must be terminated due to a higher priority deployment. The City of Huntington Beach helicopter aircrew shall be responsible to notify the City of Irvine's dispatch center that the assignment is complete or that the assignment must be terminated due to a higher priority deployment. The City of Irvine may authorize its ground based public safety supervision to cancel a response by the City of Huntington Beach aircrew.

4.02 Services performed by the City of Huntington Beach aircraft for the City of Irvine shall be defined as:

- A. A direct request for public safety helicopter services by the City of Irvine where the City of Huntington Beach aircraft is dispatched to or arrives over the incident or;
- B. Any public safety call generated by the City of Irvine and monitored by the City of Huntington Beach helicopter aircrew in which the aircraft arrives over the incident after being requested.

4.02 The City of Irvine agrees to install within its communications/dispatch center any radio equipment necessary to communicate directly with the City of Huntington Beach on the designated frequency (800 MHz Talk Group) agreed upon by the City of Huntington Beach and the City of Irvine. All costs associated with said installation shall be paid by the City of Irvine.

V

INDEMNIFICATION AND WAIVER

5.01 The City of Irvine agrees that the City of Huntington Beach shall be fully protected and indemnified 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.

Subject to the City of Huntington Beach's requirement to carry and maintain certain policies of insurance and name the City of Irvine as an additional insured as set forth below, the provisions of this Agreement should be construed and interpreted to provide the fullest possible indemnification to the City of Huntington Beach. The City of Irvine acknowledges that the City of Huntington Beach would not provide services in the absence of the commitments of the City of Irvine as specified in this Agreement. The City of Huntington Beach acknowledges that the City of Irvine would not enter into this Agreement in the absence of the City of Huntington Beach's commitment and obligation to carry and maintain certain policies of insurance and name the City of Irvine as an additional insured.

5.02 To the fullest extent permitted by law, the City of Irvine shall indemnify, defend and hold harmless the City of Huntington Beach, its boards, officers, agents and employees (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. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable.

VI

INSURANCE

6.01 Without limiting the City of Irvine indemnification of the City of Huntington Beach, the City of Huntington Beach shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to the City of Irvine.

6.01.1 Proof of Insurance. The City of Huntington Beach shall provide certificates of insurance to the City of Irvine as evidence of the insurance coverage required herein. Insurance certificates and endorsement must be approved by the City of Irvine's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with the City of Irvine at all times during the term of this contract. The City of Irvine reserves the right to require complete, certified copies of all required insurance policies, at any time.

The City of Huntington Beach shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the services hereunder by the City of Huntington Beach, his agents, representatives, employees or subconsultants.

6.01.3 Coverage Requirements.

6.01.3.1 Aircraft Liability Coverage. The City of Huntington Beach shall maintain commercial aircraft liability insurance in an amount not less than twenty-five million dollars (\$25,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability including war risk and premises liability insurance to include property damages incidental to the operations of the named insured.

6.01.4 Other Insurance Provisions or Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

6.01.4.1 Additional Insured. Endorsement naming the City of Irvine as respects the Aircraft Liability coverage with primary non-contributory and severability of interest language.

6.01.4.2 Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against the City of Irvine, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow the City of Huntington Beach or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss.

6.01.4.3 Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

6.01.4.5 Notice of Cancellation. The City of Huntington Beach agrees to oblige its insurance agent or broker and insurers to provide to the City of Irvine with thirty (30) days notice of cancellation (except for nonpayment for which ten (10) days notice is required) or nonrenewal of coverage for each required coverage.

6.01.5 Timely Notice of Claims. The City of Huntington Beach shall give the City of Irvine prompt and timely notice of claims made or suits instituted that arise out of or result from the City of Huntington Beach's performance under this Agreement.

6.01.6 Additional Insurance. The City of Huntington Beach shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection.

VII **MISCELLANEOUS PROVISIONS**

7.01 Each of the Parties to this Agreement shall immediately notify the other of any litigation or claim that is asserted by or against either party regarding this Agreement. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.

7.02 Each of the Parties to this Agreement shall cooperate with one another in the defense of any lawsuit or claim filed against either party, arising out of, or in any way related, to this Agreement, as well as any effort of the City of Huntington Beach to collect money from persons or entities responsible for any request for public safety helicopter services.

7.03 The public safety helicopter services provided by the City of Huntington Beach under this Agreement shall not be assigned, transferred, contracted or subcontracted out without the prior written approval of the City of Irvine.

7.04 Each of the Parties to this Agreement may terminate this Agreement for any reason upon sixty (60) days prior written notice.

7.05 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.

7.06 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.

7.07 This Agreement may be modified or amended only by a written document executed by both the City of Huntington Beach and the City of Irvine.

7.08 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

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authorship of the Agreement or any other rule of construction which might otherwise apply.

7.09 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.

7.10 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.

7.11 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 the City of Huntington Beach and the City of Irvine.

7.12 This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

7.13 The Parties shall at their own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted.

7.14 The Parties each represent that they are an equal opportunity employer and they shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age.

7.15 All notices, demands, requests or approvals to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from the City of Huntington Beach to the City of Irvine shall be addressed to the City of Irvine at:

Attn: Chief Mike Hamel
The City of Irvine Police Department
1 Civic Center Plaza
The City of Irvine, CA 92606-5207
Phone: 949-724-7000

All notices, demands, requests or approvals from the City of Irvine to the City of Huntington Beach shall be addressed to the City of Huntington Beach at:

Attention: Robert Handy

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The City of Huntington Beach Police Department
2000 Main Street
P.O. Box 70
The City of Huntington Beach, CA 92648
Phone: 714-536-5903

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed
on the dates written below.

CITY OF THE CITY OF IRVINE

THE CITY OF HUNTINGTON BEACH

Date: _____

Date: _____

Chief of Police, the City of Irvine

Mayor, the City of Huntington Beach

ATTEST:

ATTEST:

Date: _____

Date: _____

City Clerk, the City of Irvine

City Clerk, the City of Huntington Beach

APPROVED AS TO FORM:

APPROVED AS TO FORM:


OFFICE OF THE CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY

Date: _____

Date: _____

City Attorney, the City of Irvine

for 

City Attorney, the City of Huntington Beach