

1 **AGREEMENT**
2 **BETWEEN THE**
3 **STATE OF CALIFORNIA**
4 **AND THE**
5 **COUNTY OF ORANGE**
6

7 **THIS AGREEMENT** is entered into this First day of May 2020, which
8 date is enumerated for purposes of reference only, by and between the STATE OF
9 CALIFORNIA by and through the 32ND DISTRICT AGRICULTURAL
10 ASSOCIATION/OC FAIR & EVENT CENTER, hereinafter referred to as "DISTRICT",
11 and the COUNTY OF ORANGE, a political subdivision of the State of California,
12 hereinafter referred to as "COUNTY".

13 **RECITALS:**

14 **WHEREAS**, DISTRICT wishes to contract with COUNTY for
15 supplemental law enforcement services during special events held on DISTRICT
16 property within the COUNTY OF ORANGE,

17 **WHEREAS**, COUNTY is agreeable to the rendering of such services on
18 the terms and conditions hereinafter set forth,

19 **NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:**

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1 **A. TERM:**

2 The term of this Agreement shall be for one year, commencing July 1, 2020
3 and terminating June 30, 2021, or until COUNTY has provided services to
4 DISTRICT hereunder costing the full amount of the Maximum Obligation of
5 DISTRICT, as set forth in Subsection F-3, whichever is earlier. This
6 Agreement may be terminated by either party in the manner set forth herein.

7 **B. OPTIONAL TERMINATION:**

8 COUNTY or DISTRICT may terminate this Agreement, without cause, upon
9 thirty (30) days written notice to the other party.

10 **C. REGULAR SERVICES BY COUNTY:**

11 COUNTY, through its Sheriff-Coroner and deputies, officers and employees,
12 hereinafter referred to as "SHERIFF", shall be responsible for and render to
13 DISTRICT law enforcement services at all areas of the OC Fair & Event
14 Center, hereinafter referred to as "FAIRGROUNDS", as follows:

- 15 1. SHERIFF shall provide all staffing, supervision, services, supplies,
16 transportation, training and equipment necessary to deliver services, as
17 required by this Agreement.
- 18 2. During scheduled events, if DISTRICT notifies SHERIFF in the manner set
19 forth below of a scheduled event, SHERIFF shall enforce State statutes and,
20 in SHERIFF's sole discretion, the City of Costa Mesa Municipal Code during
21 said event at all areas of the FAIRGROUNDS, including the parking lots, the
22 Grandstand Arena, and Pacific Amphitheatre (hereinafter "FAIRGROUNDS
23 property"), using the number and type of personnel and equipment that
24 SHERIFF deems appropriate. SHERIFF shall have joint authority with
25 FAIRGROUNDS management to regulate the number of vehicles entering
26 the FAIRGROUNDS parking lots and shall have the same joint authority to
27 forbid vehicles from entering said lots when SHERIFF or FAIRGROUNDS
28 management determines said lots are full.

C. REGULAR SERVICES BY COUNTY: (Continued)

3. No later than ten (10) days before a scheduled event, DISTRICT representative, Chief Executive Officer (CEO), shall notify SHERIFF of the nature of the scheduled event, the size of the crowd anticipated and any other pertinent information about the event. SHERIFF shall then ascertain the number and type of law enforcement personnel and equipment needed to enforce State statutes and the City of Costa Mesa Municipal Code at the event in the absence of unforeseen circumstances and shall notify CEO, or CEO designee, of the cost of said personnel and equipment, both in projected form prior to the event and in actual form after the event.

4. SHERIFF shall provide law enforcement services at said event, using the number and type of personnel and equipment as determined necessary. If unforeseen events occur requiring more or different personnel or equipment to enforce State statutes and the City of Costa Mesa Municipal Code at the event, SHERIFF, in SHERIFF's sole discretion, may increase or decrease the number and type of personnel and equipment utilized at said event.

a. "Unforeseen events" will be defined as the following: Emergency incidents requiring a response by law enforcement personnel to mitigate the incident at any area of the FAIRGROUNDS property. DISTRICT will be responsible for the cost of said personnel from the SHERIFF only. Any other agency's personnel will be considered mutual aid. If the incident does not start on FAIRGROUNDS property, but transitions to FAIRGROUNDS property, DISTRICT will not be responsible for the cost.

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D. SPECIAL SERVICES BY COUNTY:

1. At the request of DISTRICT, SHERIFF, in SHERIFF's sole discretion, may provide investigation services for certain functions, conducted on or around FAIRGROUNDS. SHERIFF shall determine personnel and equipment needed for such special services.

If such services are in addition to the services set forth in Section C of this Agreement and are provided by SHERIFF at an additional cost to municipal recipients, DISTRICT shall reimburse COUNTY for such services at an amount computed by SHERIFF.

2. Between scheduled events, SHERIFF shall not provide security or routine patrol services on FAIRGROUNDS property, but will respond to any calls for assistance at the FAIRGROUNDS property from FAIRGROUNDS security personnel or other persons. These services will be provided by SHERIFF at an additional cost to DISTRICT. DISTRICT shall reimburse COUNTY for such additional services at an amount computed by SHERIFF.
3. SHERIFF shall invoice DISTRICT immediately after each said special service is completed.

E. MEGAN'S LAW SCREENING OF SHERIFF PERSONNEL:

SHERIFF shall ensure that SHERIFF personnel assigned to provide law enforcement services pursuant to this Agreement will comply with all Megan's Law requirements.

F. PAYMENT:

1. DISTRICT agrees to pay COUNTY the costs of performing the services mutually agreed upon in this Agreement. The costs of services described in Sections C and D of this Agreement include salaries, wages, benefits, services, supplies, equipment, transportation, and divisional, departmental and COUNTY General overhead.

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F. PAYMENT: (Continued)

2. The rates charged to DISTRICT by COUNTY shall be as follows:

a. The hourly rate charged to the DISTRICT shall be computed by the ORANGE COUNTY SHERIFF-CORONER in accordance with COUNTY's law enforcement cost study in effect at the time the services are provided. The hourly rate shall include salaries, wages, benefits, services, supplies, equipment and divisional, department and County overhead rates in effect at the time the services are provided.

b. Other costs, such as supplies, mileage, telephones and communications equipment, will be billed at COUNTY's cost.

c. Rates provided by position title to DISTRICT for use in the State of California Standard Agreement as referenced herein may not be indicative of actual deployment under Sections C and D of this Agreement.

3. The Maximum Obligation of DISTRICT for services described in Section C of this Agreement is \$250,000. This Agreement will terminate whenever said Maximum Obligation is expended or on June 30, 2021, whichever is earlier.

4. COUNTY shall monthly render to DISTRICT an invoice for services reflected in Section C of this Agreement.

5. DISTRICT shall pay COUNTY in accordance with COUNTY Billing Policy, adopted by the Board of Supervisors through Minute Order dated October 27, 1992 (Attachment A).

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G. ALTERATION OF TERMS:

This Agreement, together with the State of California Standard Agreement No. SA-132-20YR fully expresses all understanding of DISTRICT and COUNTY with respect to the subject matter of this Agreement and shall constitute the total Agreement between the parties for these purposes. No addition to, or alteration of, the terms of this Agreement shall be valid unless made in writing, formally approved and executed by duly authorized agents of both parties.

H. STATUS OF COUNTY:

COUNTY is, and shall at all times be deemed to be, an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of this Agreement. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between DISTRICT and COUNTY or any of COUNTY's agents or employees. COUNTY and its SHERIFF shall retain all authority for rendition of services, standards of performance, control of personnel, and other matters incident to the performance of services by COUNTY pursuant to this Agreement. COUNTY, its agents and employees, shall not be entitled to any rights or privileges of DISTRICT employees and shall not be considered in any manner to be DISTRICT employees.

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ATTACHMENT A**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.