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FIRST AMENDMENT TO AGREEMENT

**BETWEEN THE
CITY OF SAN CLEMENTE
AND THE
COUNTY OF ORANGE**

THIS FIRST AMENDMENT TO AGREEMENT is entered into this First day of ~~October~~ May 2020, which date is enumerated for purposes of reference only, by and between the CITY OF SAN CLEMENTE, hereinafter referred to as "CITY", and the COUNTY OF ORANGE, a political subdivision of the State of California, hereinafter referred to as "COUNTY": to amend, effective December 15, 2020, that certain Agreement between the parties commencing July 1, 2020, hereinafter referred to as the "Agreement".

RECITALS:

~~WHEREAS, CITY wishes to contract with COUNTY for law enforcement services; and~~

~~WHEREAS, COUNTY is agreeable to the rendering of such services, as authorized in Government Code Sections 51301, 54981 and 55632, on the terms and conditions hereinafter set forth,~~

~~NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:~~

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#

1 **~~A. TERM:~~**

2 ~~The term of this Agreement shall commence July 1, 2020 and terminate June 30,~~
3 ~~2021, unless earlier terminated by either party or extended in the manner set forth~~
4 ~~herein.~~

5 **~~B. OPTIONAL TERMINATION OR EXTENSION:~~**

- 6 ~~1. COUNTY or CITY may terminate this Agreement, without cause, upon one-~~
7 ~~hundred and eighty (180) days written notice to the other party.~~
- 8 ~~2. If COUNTY and CITY have not entered into a written agreement by June~~
9 ~~30, 2021 for COUNTY to provide to CITY, during all or part of the period~~
10 ~~between July 1, 2021 and June 30, 2022, law enforcement services similar to~~
11 ~~those specified herein, then SHERIFF, on behalf of COUNTY, and CITY's~~
12 ~~Manager, on behalf of CITY, are authorized to execute a written amendment to~~
13 ~~this Agreement that provides as follows and does not materially alter other~~
14 ~~terms of the Agreement: SHERIFF shall continue to provide to CITY all or a~~
15 ~~designated part of the law enforcement services specified herein, for a~~
16 ~~specified time period between July 1, 2021 and August 31, 2021, and CITY~~
17 ~~shall pay COUNTY the full costs of providing such services. Such full costs~~
18 ~~may be greater than those listed herein for the period July 1, 2020 through~~
19 ~~June 30, 2021. SHERIFF and CITY Manager shall file copies of any such~~
20 ~~amendments to this Agreement with the Clerk of COUNTY's Board of~~
21 ~~Supervisors and CITY's Clerk.~~

22 **~~C. REGULAR SERVICES BY COUNTY:~~**

- 23 ~~1. COUNTY, through its Sheriff-Coroner and deputies, officers and~~
24 ~~employees, herein referred to as "SHERIFF", shall render to CITY law~~
25 ~~enforcement services as hereinafter provided. Such services shall include~~
26 ~~the enforcement of lawful State statutes and lawful municipal ordinances of~~
27 ~~CITY.~~

28

- ~~2. The night, day and evening patrol and supervisory shifts will be established by SHERIFF through the Chief of Police Services (Lieutenant) assigned to CITY, who will report directly to CITY Manager. Personnel of each shift may work varying and different times and may be deployed to other shifts when, in the opinion of SHERIFF and CITY Manager, the need arises. Any long-term shift deployment change will be reported to CITY's Council.~~
- ~~3. The level of service to be provided by COUNTY, for the period July 1, 2020 through June 30, 2021, is set forth in Attachment A and incorporated herein by this reference.~~
- ~~4. For any service listed in Attachment A of this Agreement that is provided to CITY at less than 100% of a full-time SHERIFF position, COUNTY retains the option to terminate such service in the event the other city or cities that contract for the balance of the time of the employee providing the service no longer pay(s) for such service and CITY does not request the Agreement be amended to provide for payment of 100% of the cost of the employee providing such service. The Maximum Obligation of CITY set forth in Subsection F-2 will be adjusted accordingly.~~
- ~~5. All services contracted for in this Agreement may not be operational on the precise date specified in this Agreement. In those instances, SHERIFF shall notify CITY Manager of the date or dates such service or services are to be implemented. COUNTY shall reduce the monthly charges to CITY, based on the actual date of implementation of the service or services. Charges shall be reduced on the next monthly billing tendered in accordance with Subsection F-3 of this Agreement.~~
- ~~6. During emergencies, such as mutual aid situations, SHERIFF will attempt to leave in CITY the Lieutenant in charge of CITY Police Services. If SHERIFF determines that the Lieutenant is needed elsewhere, SHERIFF~~

~~C. REGULAR SERVICES BY COUNTY: (Continued)~~

1 ~~7. will notify CITY's Manager within four (4) hours. SHERIFF will return the~~
2 ~~Lieutenant to CITY as soon as possible once the emergency situation is~~
3 ~~under control.~~

4 ~~7 With the limitations set forth below, SHERIFF, on behalf of COUNTY,~~
5 ~~and CITY Manager, on behalf of CITY, are authorized to execute written~~
6 ~~amendments to this Agreement to increase or decrease the level of service~~
7 ~~set forth in Attachment A, when SHERIFF and CITY Manager mutually~~
8 ~~agree that such increase or decrease in the level of service is appropriate.~~
9 ~~Any such amendment to the Agreement shall concomitantly increase or~~
10 ~~decrease the cost of services payable by CITY set forth in Attachment B~~
11 ~~and incorporated herein by this reference and the Maximum Obligation of~~
12 ~~CITY set forth in Subsection F-2, in accordance with the current year's~~
13 ~~COUNTY law enforcement cost study. SHERIFF and CITY Manager shall~~
14 ~~file copies of any such amendments to this Agreement with the Clerk of~~
15 ~~COUNTY's Board of Supervisors and CITY's Clerk. Amendments to this~~
16 ~~Agreement executed by SHERIFF and CITY Manager may not, in the~~
17 ~~aggregate, increase or decrease the cost of services payable by CITY by~~
18 ~~more than one percent (1%) of the total cost originally set forth in~~
19 ~~Attachment B and the Maximum Obligation originally set forth in Subsection~~
20 ~~F-2.~~

21 ~~Prior approval by COUNTY's Board of Supervisors and CITY's Council is~~
22 ~~required before execution of any amendment that brings the aggregate total~~
23 ~~of changes in costs payable by CITY to more than one percent (1%) of the~~
24 ~~total cost originally set forth in Attachment B and the Maximum Obligation~~
25 ~~originally set forth in Subsection F-2 of this Agreement.~~

26 1. Effective December 15, 2020, Subsection C-8 is added to read as follows:

27 "C-8. With respect to the licensing ordinances of CITY listed in Attachment H
28 hereto, which is incorporated herein by this reference, SHERIFF shall

1 receive applications for CITY licenses pursuant to said ordinances and
2 complete investigations relating to such applications. Said investigations
3 shall be forwarded to CITY Manager. COUNTY shall not provide any
4 advisory, administrative, hearing or litigation attorney support or services
5 related to licensing. COUNTY shall not provide any administrative or
6 investigative services related to the licensing ordinances listed in
7 Attachment H hereto, except the investigations relating to initial applications
8 for which this subsection provides.”

9 ~~/ENHANCED AND SUPPLEMENTAL SERVICES BY COUNTY:~~

10 ~~1. Enhanced services for events on CITY property. At the request of CITY,~~
11 ~~through its City Manager, SHERIFF may provide enhanced law~~
12 ~~enforcement services for functions, such as community events, conducted~~
13 ~~on property that is owned, leased or operated by CITY. SHERIFF shall~~
14 ~~determine personnel and equipment needed for such enhanced services.~~
15 ~~To the extent the services provided at such events are at a level greater~~
16 ~~than that specified in Attachment A of this Agreement, CITY shall~~
17 ~~reimburse COUNTY for such additional services, at an amount computed~~
18 ~~by SHERIFF, based on the current year's COUNTY law enforcement cost~~
19 ~~study. The cost of these enhanced services shall be in addition to the~~
20 ~~Maximum Obligation of CITY set forth in Subsection F-2 of this Agreement.~~
21 ~~SHERIFF shall bill CITY immediately after each such event.~~

22 ~~2. Supplemental services for occasional events operated by private individuals~~
23 ~~and entities on non-CITY property. At the request of CITY, through its City~~
24 ~~Manager, and within the limitations set forth in this Subsection D-2,~~
25 ~~SHERIFF may provide supplemental law enforcement services to preserve~~
26 ~~the peace at special events or occurrences that occur on an occasional~~
27 ~~basis and are operated by private individuals or private entities on non-CITY~~
28 ~~property. SHERIFF shall determine personnel and equipment needed for~~

1 such supplemental services, and will provide such supplemental services
2 only if SHERIFF is able to do so without reducing the normal and regular
3 ongoing services that SHERIFF otherwise would provide to CITY pursuant
4 to this Agreement. Such supplemental services shall be provided only by
5 regularly appointed full-time peace officers, at rates of pay governed by a
6 Memorandum of Understanding between COUNTY and the bargaining
7 unit(s) representing the peace officers providing the services. Such
8 supplemental services shall include only law enforcement duties and shall

9 **~~D. ENHANCED AND SUPPLEMENTAL SERVICES BY COUNTY:~~** (Continued)

10 not include services authorized to be provided by a private patrol operator,
11 as defined in Section 7582.1 of the Business and Professions Code. Law
12 enforcement support functions, including, but not limited to, clerical
13 functions and forensic science services, may be performed by non-peace
14 officer personnel if the services do not involve patrol or keeping the peace
15 and are incidental to the provision of law enforcement services. CITY shall
16 reimburse COUNTY its full, actual costs of providing such supplemental
17 services at an amount computed by SHERIFF, based on the current year's
18 COUNTY law enforcement cost study. The cost of these supplemental
19 services shall be in addition to the Maximum Obligation of CITY set forth in
20 Subsection F-2 of this Agreement. SHERIFF shall bill CITY immediately
21 after each such event.

22 3. Supplemental services for events operated by public entities on non-CITY
23 property. At the request of CITY, through its City Manager, and within the
24 limitations set forth in this Subsection D-3, SHERIFF may provide
25 supplemental law enforcement services to preserve the peace at special
26 events or occurrences that occur on an occasional basis and are operated
27 by public entities on non-CITY property. SHERIFF shall determine
28 personnel and equipment needed for such supplemental services, and will

1 provide such supplemental services only if SHERIFF is able to do so
2 without reducing services that SHERIFF otherwise would provide to CITY
3 pursuant to this Agreement. CITY shall reimburse COUNTY its full, actual
4 costs of providing such supplemental services at an amount computed by
5 SHERIFF, based on the current year's COUNTY law enforcement cost
6 study. The cost of these supplemental services shall be in addition to the
7 Maximum Obligation of CITY set forth in Subsection F-2 of this Agreement.
8 SHERIFF shall bill CITY immediately after each such event.

9 ~~D. ENHANCED AND SUPPLEMENTAL SERVICES BY COUNTY:~~ (Continued)

10 4. Notwithstanding the foregoing, CITY, through its permit process, may utilize
11 the services of SHERIFF at events, for which CITY issues permits, that are
12 operated by private individuals or entities or public entities. SHERIFF shall
13 determine personnel and equipment needed for said events. If said events
14 are in addition to the level of services listed in Attachment A of this
15 Agreement, CITY shall reimburse COUNTY for such additional services at
16 an amount computed by SHERIFF, based upon the current year's COUNTY
17 law enforcement cost study. The cost of these services shall be in addition
18 to the Maximum Obligation of CITY set forth in Subsection F-2 of this
19 Agreement. SHERIFF shall bill City immediately after said services are
20 rendered.

21 5. In accordance with Government Code Section 51350, COUNTY has
22 adopted Board Resolution 89-1160 which identifies Countywide services,
23 including but not limited to helicopter response. SHERIFF through this
24 contract provides enhanced helicopter response services. The cost of
25 enhanced helicopter response services is included in the cost of services
26 set forth in Attachment B and in the Maximum Obligation of CITY set forth
27 in Subsection F-2. COUNTY shall not charge any additional amounts for
28 enhanced helicopter services after the cost of services set forth in

1 ~~Attachment B and in the Maximum Obligation set forth in Subsection F-2~~
2 ~~has been established without written notification to the CITY.~~

3 **~~E. PATROL VIDEO SYSTEMS:~~**

4 ~~1. As part of the law enforcement services to be provided to CITY, COUNTY~~
5 ~~has provided, or will provide, patrol video systems (hereinafter called "PVS")~~
6 ~~that are or will be mounted in patrol vehicles designated by COUNTY for~~
7 ~~use within CITY service area.~~

8 ~~/SHERIFF has the exclusive right to use said PVS for law enforcement services~~
9 ~~related to this Agreement.~~

10 ~~2. CITY shall pay COUNTY the full costs to COUNTY of a) the acquisition and~~
11 ~~installation of Patrol Video Systems that are or will be mounted in patrol~~
12 ~~vehicles assigned to CITY, and b) recurring costs, as deemed necessary by~~
13 ~~COUNTY, including the costs of maintenance and contributions to a fund~~
14 ~~for replacement and upgrade of such PVS when they become functionally~~
15 ~~or technologically obsolete.~~

16 ~~The costs to be paid by CITY for recurring costs, including maintenance~~
17 ~~and replacement/upgrade of PVS, are included in the costs set forth in~~
18 ~~Attachment B and the Maximum Obligation of CITY set forth in Subsection~~
19 ~~F-2 of this Agreement unless CITY has already paid such costs. CITY shall~~
20 ~~not be charged additional amounts for maintenance or~~
21 ~~replacement/upgrade of said PVS during the period July 1, 2020 through~~
22 ~~June 30, 2021.~~

23 ~~3.1. If, following the initial acquisition of PVS referenced above, CITY~~
24 ~~requires PVS for additional patrol cars designated for use in the CITY~~
25 ~~service area, COUNTY will purchase said additional PVS. Upon demand by~~
26 ~~COUNTY, CITY will pay to COUNTY a) the full costs of acquisition and~~
27 ~~installation of said additional PVS, and b) the full recurring costs for said~~
28 ~~PVS, as deemed necessary by COUNTY, including the costs of~~

1 ~~maintenance, and contributions to a fund for replacement and upgrade of~~
2 ~~such PVS when they become functionally or technologically obsolete. Said~~
3 ~~costs related to additional PVS are not included in, and are in addition to,~~
4 ~~the costs set forth in Attachment B and the Maximum Obligation of CITY set~~
5 ~~forth in Subsection F-2 of this Agreement.~~

6 //

7 **E. PATROL VIDEO SYSTEMS: (Continued)**

8 ~~4.2. COUNTY will replace and/or upgrade PVS as needed. The costs of~~
9 ~~replacing/upgrading PVS shall be paid by COUNTY from the~~
10 ~~replacement/upgrade funds to be paid by CITY in accordance with the~~
11 ~~foregoing. CITY shall not be charged any additional charge to replace or~~
12 ~~upgrade PVS.~~

13 ~~**F. PAYMENT:**~~

14 1. ~~Pursuant to Government Code Section 51350, CITY agrees to pay to~~
15 ~~COUNTY the full costs of performing the services mutually agreed upon in~~
16 ~~this Agreement. The costs of services include salaries, wages, benefits,~~
17 ~~mileage, services, supplies, equipment, and divisional, departmental and~~
18 ~~COUNTY General overhead.~~

19 ~~2. Effective December 15, 2020, Subsection F-2 of the Agreement is amended to~~
20 ~~read as follows:~~

21 ~~2. "F-2. Unless the level of service set forth in Attachment A is increased or~~
22 ~~decreased by mutual agreement of the parties, or CITY is required to pay for~~
23 ~~increases as set forth in Subsection F-4, or the costs increase or decrease as a~~
24 ~~result of amendment of the Operations Agreement (Attachment C hereto and~~
25 ~~incorporated herein by this reference) in accordance with Subsection M-2, the~~
26 ~~Maximum Obligation of CITY for services, other than Licensing Services, set forth~~
27 ~~in Attachment A, of this Agreement to be provided by the COUNTY for the period~~
28

1 July 1, 2020 through June 30, 2021 shall be \$17,145,464 as set forth in
2 Attachment B.

3 The overtime costs included in the Agreement are only an estimate. SHERIFF
4 shall notify CITY of actual overtime worked during each fiscal year. If actual
5 overtime worked is above or below budgeted amounts, billings will be adjusted
6 accordingly at the end of the fiscal year. Actual overtime costs may exceed CITY's
7 Maximum Obligation."

8 //

9 ~~F. PAYMENT: (Continued)~~

10 ~~3. For services provided between July 1, 2020 and June 30, 2021, COUNTY~~
11 ~~shall invoice CITY, monthly, one-twelfth (1/12) of the Maximum Obligation~~
12 ~~of CITY. If a determination is made that increases described in Subsection~~
13 ~~F-4 must be paid, COUNTY thereafter shall include the pro-rata charges for~~
14 ~~such increases in its monthly invoices to CITY for the balance of the period~~
15 ~~July 1, 2020 and June 30, 2021. If this Agreement is extended pursuant to~~
16 ~~Subsection B-2, COUNTY shall invoice CITY thereafter for the full costs of~~
17 ~~the law enforcement services provided in the preceding month.~~

18 ~~4a. At the time this Agreement is executed, there may be unresolved~~
19 ~~issues pertaining to potential changes in salaries and benefits for COUNTY~~
20 ~~employees. The costs of such potential increases are not included in the~~
21 ~~Fiscal Year 2020-21 cost set forth in Attachment B nor in the Fiscal Year~~
22 ~~2020-21 Maximum Obligation of CITY set forth in Subsection F-2 of this~~
23 ~~Agreement. If the changes result in the COUNTY incurring or becoming~~
24 ~~obligated to pay for increased costs for or on account of personnel whose~~
25 ~~costs are included in the calculations of costs charged to CITY hereunder,~~
26 ~~CITY shall pay COUNTY, in addition to the Maximum Obligation set forth in~~
27 ~~Subsection F-2 of this Agreement, the full costs of said increases to the~~
28 ~~extent such increases are attributable to work performed by such personnel~~

1 ~~after July 1, 2020, and CITY's Maximum Obligation hereunder shall be~~
2 ~~deemed to have increased accordingly. CITY shall pay COUNTY in full for~~
3 ~~such increases on a pro-rata basis over the portion of the period between~~
4 ~~July 1, 2020 and June 30, 2021 remaining after COUNTY notifies CITY that~~
5 ~~increases are payable. If the changes result in the COUNTY incurring or~~
6 ~~becoming obligated to pay for decreased costs for or on account of~~
7 ~~personnel whose costs are included in the calculations of costs charged to~~
8 ~~CITY hereunder, COUNTY shall reduce the amount owed by the CITY to~~

9 ~~**F. PAYMENT:** (Continued)~~

10 ~~the extent such decreases are attributable to work performed by such~~
11 ~~personnel during the period July 1, 2020 through June 30, 2021, and~~
12 ~~CITY's Maximum Obligation hereunder shall be deemed to have decreased~~
13 ~~accordingly. COUNTY shall reduce required payment by CITY in full for~~
14 ~~such decreases on a pro-rata basis over the portion of the period between~~
15 ~~July 1, 2020 and June 30, 2021 remaining after COUNTY notifies CITY that~~
16 ~~the Maximum Obligation has decreased.~~

17 ~~4b. If CITY is required to pay for increases as set forth in Subsection F-4a~~
18 ~~above, COUNTY, at the request of CITY will thereafter reduce the level of~~
19 ~~service to be provided to CITY as set forth in Attachment A of this~~
20 ~~Agreement to a level that will make the Maximum Obligation of CITY~~
21 ~~hereunder for the period July 1, 2020 through June 30, 2021 an amount~~
22 ~~specified by CITY that is equivalent to or higher or lower than the Maximum~~
23 ~~Obligation set forth in Subsection F-2 for said period at the time this~~
24 ~~Agreement originally was executed. The purpose of such adjustment of~~
25 ~~service levels will be to give CITY the option of keeping its Maximum~~
26 ~~Obligation hereunder at the pre-increase level or at any other higher or~~
27 ~~lower level specified by CITY. In the event of such reduction in level of~~
28 ~~service and adjustment of costs, the parties shall execute an amendment to~~

1 ~~this Agreement so providing. Decisions about how to reduce the level of~~
2 ~~service provided to CITY shall be made by SHERIFF with the approval of~~
3 ~~CITY.~~

4 ~~3. 5. CITY shall pay COUNTY in accordance with COUNTY Board of~~
5 ~~Supervisors' approved County Billing Policy, which is attached hereto as~~
6 ~~Attachment D and incorporated herein by this reference.~~

7 ~~6. COUNTY shall charge CITY late payment penalties in accordance with~~
8 ~~County Billing Policy.~~

9 ~~7. Narcotic asset forfeitures will be handled pursuant to Attachment E hereto,~~
10 ~~which is incorporated herein by this reference.~~

11 ~~8. CITY shall reimburse COUNTY for the cost of any equipment that is~~
12 ~~removed from service before the unamortized value is used.~~

13 ~~3. Effective December 15, 2020, Subsection F-9 is added to read as follows:~~

14 ~~"F-9. As payment for the Licensing Services described in Subsection C-8 of this~~
15 ~~Agreement, COUNTY shall retain all fees paid by applicants for licenses~~
16 ~~pursuant to CITY ordinances listed in Attachment H hereto. Retention of~~
17 ~~said fees by COUNTY shall constitute payment in full to COUNTY for costs~~
18 ~~incurred by COUNTY in performing the functions related to licensing~~
19 ~~described in Subsection C-8; provided, however, that if any of said fees are~~
20 ~~waived or reduced by CITY, CITY shall pay to COUNTY the difference~~
21 ~~between the amount of fees retained by COUNTY and the fees that were~~
22 ~~set forth in the ordinances listed in Attachment H at the time this Agreement~~
23 ~~was executed. If CITY increases the fee schedule for the licensing~~
24 ~~ordinances set forth in Attachment H, either party shall have the right to~~
25 ~~seek amendment of this Agreement with respect to the division of the~~
26 ~~increased fees between CITY and COUNTY."~~

27 ~~**G. OWNERSHIP OF POLICE STATION:**~~

28

1 ~~CITY will retain title to the land and building used for the San Clemente Police~~
2 ~~Station. CITY agrees to lease the premises to COUNTY for no further~~
3 ~~consideration during the period of this Agreement. Said lease agreement has~~
4 ~~been memorialized in a separate document entitled "Lease Agreement" and~~
5 ~~dated November 6, 2012.~~

6 ~~**H. NOTICES:**~~

7 ~~1. Except for the notices provided for in Subsection 2 of this Section, all~~
8 ~~notices authorized or required by this Agreement shall be effective when~~
9 ~~written and deposited in the United States mail, first class postage prepaid~~
10 ~~and addressed as follows:~~

11 ~~**CITY:** _____ ATTN: CITY MANAGER~~

12 ~~_____ 910 CALLE NEGOCIO~~

13 ~~_____ SAN CLEMENTE, CA 92673~~

14 ~~**COUNTY:** _____ ATTN: LAW ENFORCEMENT CONTRACT MANAGER~~

15 ~~_____ SHERIFF-CORONER DEPARTMENT~~

16 ~~_____ 320 NORTH FLOWER STREET, SUITE 108~~

17 ~~_____ SANTA ANA, CA 92703~~

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

21 ~~**I. STATUS OF COUNTY:**~~

22 ~~COUNTY is, and at all times shall be deemed to be, an independent contractor.~~
23 ~~Nothing herein contained shall be construed as creating the relationship of~~
24 ~~employer and employee, or principal and agent, between CITY and COUNTY~~
25 ~~or any of COUNTY's agents or employees. COUNTY and its SHERIFF shall~~
26 ~~retain all authority for rendition of services, standards of performance, control~~
27 ~~of personnel, and other matters incident to the performance of services by~~
28 ~~COUNTY pursuant to this Agreement. COUNTY, its agents and employees~~

1 ~~shall not be entitled to any rights or privileges of CITY employees and shall not~~
2 ~~be considered in any manner to be CITY employees.~~

3 ~~**J. STATE AUDIT:**~~

4 ~~Pursuant to Government Code Section 8546.7, CITY and COUNTY shall be~~
5 ~~subject to examination and audit by the State Auditor for a period of three (3)~~
6 ~~years after final payment by CITY to COUNTY under this Agreement. CITY~~
7 ~~and COUNTY shall retain all records relating to the performance of this~~
8 ~~Agreement for said three-year period, except that those records pertaining to~~
9 ~~any audit then in progress, or to any claim or litigation, shall be retained beyond~~
10 ~~said three-year period, until final resolution of said audit, claim or litigation.~~

11 ~~**K. ALTERATION OF TERMS:**~~

12 ~~This Agreement fully expresses all understanding of CITY and COUNTY with~~
13 ~~respect to the subject matter of this Agreement and shall constitute the total~~
14 ~~Agreement between the parties for these purposes. No addition to, or~~
15 ~~alteration of, the terms of this Agreement shall be valid unless made in writing,~~
16 ~~formally approved and executed by duly authorized agents of both parties.~~

17 ~~**L. INDEMNIFICATION:**~~

18 ~~1. COUNTY, its officers, agents, employees, subcontractors and independent~~
19 ~~contractors shall not be deemed to have assumed any liability for the~~
20 ~~negligence or any other act or omission of CITY or any of its officers,~~

21 ~~**L. INDEMNIFICATION: (Continued)**~~

22 ~~agents, employees, subcontractors or independent contractors, or for any~~
23 ~~dangerous or defective condition of any public street or work or property of~~
24 ~~CITY, or for any illegality or unconstitutionality of CITY's municipal~~
25 ~~ordinances. CITY shall indemnify and hold harmless COUNTY and its~~
26 ~~elected and appointed officials, officers, agents, employees, subcontractors~~
27 ~~and independent contractors from any claim, demand or liability whatsoever~~
28 ~~based or asserted upon the condition of any public street or work or~~

1 ~~property of CITY, or upon the illegality or unconstitutionality of any~~
2 ~~municipal ordinance of CITY that SHERIFF has enforced, or upon any act~~
3 ~~or omission of CITY, or its elected and appointed officials, officers, agents,~~
4 ~~employees, subcontractors or independent contractors related to this~~
5 ~~Agreement, including, but not limited to, any act or omission related to the~~
6 ~~maintenance or condition of any vehicle or motorcycle that is owned or~~
7 ~~possessed by CITY and used by COUNTY personnel in the performance of~~
8 ~~this Agreement, for property damage, bodily injury or death or any other~~
9 ~~element of damage of any kind or nature, and CITY shall defend, at its~~
10 ~~expense including attorney fees, and with counsel approved in writing by~~
11 ~~COUNTY, COUNTY and its elected and appointed officials, officers, agents,~~
12 ~~employees, subcontractors and independent contractors in any legal action~~
13 ~~or claim of any kind based or asserted upon such condition of public street~~
14 ~~or work or property, or illegality or unconstitutionality of a municipal~~
15 ~~ordinance, or alleged acts or omissions. If judgment is entered against~~
16 ~~CITY and COUNTY by a court of competent jurisdiction because of the~~
17 ~~concurrent active negligence of either party, CITY and COUNTY agree that~~
18 ~~liability will be apportioned as determined by the court. Neither party shall~~
19 ~~request a jury apportionment.~~

20 ~~**L. INDEMNIFICATION:**~~ (Continued)

21 ~~2. COUNTY shall indemnify and hold harmless CITY and its elected and~~
22 ~~appointed officials, officers, agents, employees, subcontractors and~~
23 ~~independent contractors from any claim, demand or liability whatsoever~~
24 ~~based or asserted upon any act or omission of COUNTY or its elected and~~
25 ~~appointed officials, officers, agents, employees, subcontractors or~~
26 ~~independent contractors related to this Agreement, for property damage,~~
27 ~~bodily injury or death or any other element of damage of any kind or nature,~~
28 ~~and COUNTY shall defend, at its expense, including attorney fees, and with~~

1 ~~counsel approved in writing by CITY, CITY and its elected and appointed~~
2 ~~officials, officers, agents, employees, subcontractors and independent~~
3 ~~contractors in any legal action or claim of any kind based or asserted upon~~
4 ~~such alleged acts or omissions.~~

5 ~~**M. OPERATIONS AGREEMENT:**~~

- 6 ~~1. CITY's Manager and COUNTY's SHERIFF are authorized to execute, on~~
7 ~~behalf of CITY and COUNTY, respectively, the Operations Agreement~~
8 ~~attached hereto as Attachment C.~~
- 9 ~~2. Within the limitations set forth below, SHERIFF, on behalf of COUNTY, and~~
10 ~~CITY Manager, on behalf of CITY, are authorized to execute written~~
11 ~~amendments to the Operations Agreement. Amendments may be executed~~
12 ~~by SHERIFF and CITY Manager without prior approval by CITY's Council~~
13 ~~and COUNTY's Board of Supervisors only if they pertain to the same subject~~
14 ~~matter as the original Operations Agreement attached hereto and do not, in~~
15 ~~the aggregate, increase or decrease the total costs of CITY or the total~~
16 ~~expenses of COUNTY under this Agreement by more than one percent~~
17 ~~(1%). Prior approval of CITY's Council and COUNTY's Board of Supervisors~~
18 ~~is necessary for any other amendment of the Operations Agreement.~~
19 ~~SHERIFF and CITY Manager shall file copies of any amendments to the~~

20 ~~**M. OPERATIONS AGREEMENT: (Continued)**~~

21 ~~Operations Agreement with the Clerk of COUNTY's Board of Supervisors~~
22 ~~and CITY's Clerk.~~

23 ~~**N. TRAFFIC VIOLATOR APPREHENSION PROGRAM:**~~

- 24 ~~1. COUNTY has established a Traffic Violator Apprehension Program ["the~~
25 ~~Program"], which is operated by SHERIFF, and is designed to reduce~~
26 ~~vehicle accidents caused by unlicensed drivers and drivers whose licenses~~
27 ~~are suspended and to educate the public about the requirements of the~~
28 ~~Vehicle Code and related safety issues with regard to driver licensing,~~

1 ~~vehicle registration, vehicle operation, and vehicle parking. The Program~~
2 ~~operates throughout the unincorporated areas of the COUNTY and in the~~
3 ~~cities that contract with COUNTY for SHERIFF's law enforcement services,~~
4 ~~without regard to jurisdictional boundaries, because an area-wide approach~~
5 ~~to reduction of traffic accidents and driver education is most effective in~~
6 ~~preventing traffic accidents. In order for CITY to participate in the Program,~~
7 ~~CITY has adopted a fee pursuant to Vehicle Code Section 22850.5, in the~~
8 ~~amount and under the terms and conditions set forth in the resolution that is~~
9 ~~attached hereto as Attachment F and incorporated into this Agreement by~~
10 ~~reference [hereinafter called a "TVAP resolution"], and has directed that the~~
11 ~~revenue from such fee be used for the Program. CITY's participation in the~~
12 ~~Program may be terminated at any time by rescission or amendment of its~~
13 ~~TVAP resolution that is attached hereto as Attachment F. In the event CITY~~
14 ~~1) amends said TVAP resolution, or rescinds said TVAP resolution and~~
15 ~~adopts a new TVAP resolution pertaining to the above-referenced fee and~~
16 ~~the Program, and 2) remains a participant in the Program thereafter, CITY's~~
17 ~~Manager, on behalf of CITY, and SHERIFF, on behalf of COUNTY, have~~
18 ~~authority to execute an amendment of this Agreement to substitute CITY's~~
19 ~~amended or new TVAP resolution for Attachment F hereto, as long as said~~

20 ~~**N. TRAFFIC VIOLATOR APPREHENSION PROGRAM:**~~ (Continued)

21 ~~amendment to this Agreement does not materially change any other~~
22 ~~provision of this Agreement.~~

23 ~~2. COUNTY will make available for review, at the request of CITY, all financial~~
24 ~~data related to the Program as may be requested by CITY.~~

25 ~~3. Fee revenue generated by COUNTY and participating cities will be used to~~
26 ~~fund the following positions, which will be assigned to the Program:~~

27 ~~• Ten one hundredths of one (0.10) Sergeant~~

28 ~~— (8 hours per two-week pay period)~~

- ~~• One (1) Staff Specialist~~
~~— (80 hours per two-week pay period)~~
- ~~• One (1) Office Specialist~~
~~— (80 hours per two-week pay period)~~

~~4. Fee revenue generated by CITY may be used to reimburse CITY for expenditures for equipment and/or supplies directly in support of the Program. In order for an expenditure for equipment and/or supplies to be eligible for reimbursement, CITY shall submit a request for and obtain pre-approval of the expenditure by using the form as shown in Attachment G. The request shall be submitted within the budget schedule established by SHERIFF. SHERIFF shall approve the expenditure only if both of the following conditions are satisfied: 1) there are sufficient Program funds, attributable to revenue generated by CITY's fee, to pay for the requested purchase, and 2) CITY will use the equipment and/or supplies, during their entire useful life, only for purposes authorized by its TVAP resolution in effect at the time of purchase.~~

~~In the event that CITY terminates its participation in the Program, CITY agrees that the equipment purchased by CITY and reimbursed by Program funds will continue to be used, during the remainder of its useful life,~~

~~**N. TRAFFIC VIOLATOR APPREHENSION PROGRAM:** (Continued)~~

~~exclusively for the purposes authorized by CITY's TVAP resolution in effect at the time of purchase.~~

~~5. In the event the fees adopted by COUNTY, CITY and other participating jurisdictions are not adequate to continue operation of the Program at the level at which it operated previously, COUNTY, at the option of CITY, will reduce the level of Program service to be provided to CITY or will continue to provide the existing level of Program services. COUNTY will charge CITY the cost of any Program operations that exceed the revenue generated by~~

1 ~~fees. Such charges shall be in addition to the Maximum Obligation of CITY~~
2 ~~set forth in Subsection F-2 of this Agreement. The amount of any revenue~~
3 ~~shortfall charged to CITY will be determined, at the time the revenue~~
4 ~~shortfall is experienced, according to CITY's share of Program services~~
5 ~~rendered. In the event of a reduction in level of Program service,~~
6 ~~termination of Program service or adjustment of costs, the parties shall~~
7 ~~execute an amendment to this Agreement so providing. Decisions about~~
8 ~~how to reduce the level of Program service provided to CITY shall be made~~
9 ~~by SHERIFF with the approval of CITY.~~

10 ~~**O. MOBILE DATA COMPUTERS:**~~

- 11 ~~1. As part of the law enforcement services to be provided to CITY, COUNTY~~
12 ~~has provided, or will provide, mobile data computers (hereinafter called~~
13 ~~"MDCs") that are or will be mounted in patrol vehicles and motorcycles,~~
14 ~~designated by COUNTY for use within CITY limits.~~
- 15 ~~2. SHERIFF has the exclusive right to use said MDCs for law enforcement~~
16 ~~services related to this Agreement.~~
- 17 ~~3. CITY shall pay COUNTY the full costs to COUNTY of a) the acquisition and~~
18 ~~installation of MDCs that are or will be mounted in patrol vehicles and~~
19 ~~motorcycles assigned to CITY, and b) recurring costs, as deemed~~

20 ~~**O. MOBILE DATA COMPUTERS: (Continued)**~~

21 ~~necessary by COUNTY, including the costs of maintenance and~~
22 ~~contributions to a fund for replacement and upgrade of such MDCs when~~
23 ~~they become functionally or technologically obsolete.~~

24 ~~The costs to be paid by CITY for recurring costs, including maintenance~~
25 ~~and replacement/upgrade of MDCs, are included in the costs set forth in~~
26 ~~Attachment B and the Maximum Obligation of CITY set forth in Subsection~~
27 ~~F-2 of this Agreement unless CITY has already paid such costs. CITY shall~~
28 ~~not be charged additional amounts for maintenance or~~

1 ~~replacement/upgrade of said MDCs during the period July 1, 2020 through~~
2 ~~June 30, 2021.~~

3 ~~4. If, following the initial acquisition of MDCs referenced above, CITY requires~~
4 ~~MDCs for additional patrol cars or motorcycles designated for use in the~~
5 ~~CITY, or for CITY's Emergency Operations Center, COUNTY will purchase~~
6 ~~said additional MDCs. Upon demand by COUNTY, CITY will pay to~~
7 ~~COUNTY a) the full costs of acquisition and installation of said additional~~
8 ~~MDCs, and b) the full recurring costs for said MDCs, as deemed necessary~~
9 ~~by COUNTY, including the costs of maintenance, and contributions to a fund~~
10 ~~for replacement and upgrade of such MDCs when they become functionally~~
11 ~~or technologically obsolete. Said costs related to additional MDCs are not~~
12 ~~included in, and are in addition to, the costs set forth in Attachment B and~~
13 ~~the Maximum Obligation of CITY set forth in Subsection F-2 of this~~
14 ~~Agreement.~~

15 ~~5. COUNTY will replace and/or upgrade MDCs as needed. The costs of~~
16 ~~replacing/upgrading MDCs shall be paid by COUNTY from the~~
17 ~~replacement/upgrade funds to be paid by CITY in accordance with the~~
18 ~~foregoing. CITY shall not be charged any additional charge to replace or~~
19 ~~upgrade MDCs.~~

20 ~~**P. E-CITATION UNITS:**~~

21 ~~1. As part of the law enforcement services to be provided to CITY, COUNTY~~
22 ~~has provided, or will provide, E-Citation units designated by COUNTY for~~
23 ~~use within CITY limits.~~

24 ~~2. SHERIFF has the exclusive right to use said E-Citation units for law~~
25 ~~enforcement services related to this Agreement.~~

26 ~~3. CITY shall pay COUNTY the full costs to COUNTY of a) the acquisition of~~
27 ~~E-Citation units that are assigned to CITY, and b) recurring costs, as~~
28 ~~deemed necessary by COUNTY, including the costs of maintenance and~~

1 ~~contributions to a fund for replacement and upgrade of such E-Citation units~~
2 ~~when they become functionally or technologically obsolete.~~

3 ~~The costs to be paid by CITY for recurring costs, including maintenance~~
4 ~~and replacement/upgrade of E-Citation units, are included in the costs set~~
5 ~~forth in Attachment B and the Maximum Obligation of CITY set forth in~~
6 ~~Subsection F-2 of this Agreement unless CITY has already paid such costs.~~
7 ~~CITY shall not be charged additional amounts for maintenance or~~
8 ~~replacement/upgrade of said E-Citation units during the period July 1, 2020~~
9 ~~through June 30, 2021.~~

10 ~~4. If, following the initial acquisition of E-Citation units referenced above, CITY~~
11 ~~requires E-Citation units designated for use in CITY, COUNTY will purchase~~
12 ~~said additional E-Citation units. Upon demand by COUNTY, CITY will pay~~
13 ~~to COUNTY a) the full costs of acquisition of said additional E-Citation units,~~
14 ~~and b) the full recurring costs for said E-Citation units, as deemed~~
15 ~~necessary by COUNTY, including the costs of maintenance, and~~
16 ~~contributions to a fund for replacement and upgrade of such E-Citation units~~
17 ~~when they become functionally or technologically obsolete. Said costs~~
18 ~~related to additional E-Citation units are not included in, and are in addition~~
19 ~~to, the costs set forth in Attachment B and the Maximum Obligation of CITY~~

20 ~~**P. E-CITATION UNITS:**~~ (Continued)

21 ~~set forth in Subsection F-2 of this Agreement.~~

22 ~~5.1. COUNTY will replace and/or upgrade E-Citation units as needed. The~~
23 ~~costs of replacing/upgrading E-Citation units shall be paid by COUNTY from~~
24 ~~the replacement/upgrade funds to be paid by CITY in accordance with the~~
25 ~~foregoing. CITY shall not be charged any additional charge to replace or~~
26 ~~upgrade E-Citation units.~~

27 ~~4. Effective December 15, 2020, Section Q – LICENSES SERVICES TO CITY, is~~
28 ~~added to this Amendment to Agreement to read as follows:~~

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“Q. LICENSES SERVICES BY CITY:

6. Upon receipt from SHERIFF of investigations of application for licenses referred to in Subsection C-8 of the Amendment, CITY Manager shall determine whether to grant or deny the licenses and will issue the licenses or notify the applicants of denial. CITY shall provide all attorney services related to the granting, denial, revocation and administration of said licenses and enforcement of CITY ordinances pertaining to said licenses.”

5. All other provisions of the Agreement, to the extent that they are not in conflict with this FIRST AMENDMENT TO AGREEMENT, remain unchanged.

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IN WITNESS WHEREOF, the parties have executed the FIRST AMENDMENT TO AGREEMENT in the County of Orange, State of California.

DATED: _____

ATTEST: _____
City Clerk

CITY OF SAN CLEMENTE

BY: _____
Mayor Pro Tem

APPROVED AS TO FORM:

BY: _____
City Attorney

DATED: _____

COUNTY OF ORANGE

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BY: _____
Chairwoman of the Board of Supervisors
County of Orange, California

SIGNED AND CERTIFIED THAT A COPY OF THIS
AGREEMENT HAS BEEN DELIVERED TO THE CHAIR
OF THE BOARD PER G.C. Sec. 25103, Reso 79-1535

Attest:

Robin Stieler
Clerk of the Board
County of Orange, California

APPROVED AS TO FORM:
Office of the County Counsel
County of Orange, California

BY: _____
Deputy

DATED: _____

