

**AGREEMENT
BETWEEN
THE COUNTY OF ORANGE
AND
THE CITY OF _____
FOR THE PROVISION OF
PROBATION OVERTIME SERVICES**

THIS AGREEMENT, hereinafter referred to as "AGREEMENT" entered into this ____ day of _____, 20____, which date is enumerated for purposes of reference only, is by and between the COUNTY OF ORANGE, a political subdivision of the State of California, hereinafter referred to as "COUNTY", acting through the Orange County Probation Department, hereinafter referred to as "PROBATION", and the CITY OF _____, hereinafter referred to as "CITY". COUNTY, PROBATION and CITY may be referred to individually as "PARTY" or collectively as "PARTIES".

WITNESSETH:

WHEREAS, PROBATION employs Deputy Probation Officers, hereinafter designated as "DPOs", and Supervising Probation Officers, hereinafter designated as "SPOs", to provide services for a target population consisting of adults and minors on probation, residing within CITY'S geographical limits;

WHEREAS, CITY desires to contract with PROBATION for the provision of overtime services, when such services are requested by CITY and scheduled with PROBATION; and

WHEREAS, COUNTY is willing and capable of providing such services through PROBATION's DPOs and SPOs designated to provide overtime services for CITY;

NOW, THEREFORE, it is mutually agreed as follows:

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Exhibit 1.0: Juvenile Court Administrative Orders of the Orange County Superior Court:

1. Order No. A-100-2-2013 - “Juvenile Court Proceedings: Media and Public Access; Confidentiality; Photography/Audio/Video Recording” dated January 21, 2014
2. Order No. 12/003-903 - “Exchange of Information” dated March 29, 2012

1.0 **TERM**

The initial term of this AGREEMENT shall be one (1) year, commencing on _____, 20__ through _____, 20__, and shall be automatically extended in one (1)-year increments, on the same terms and conditions, unless otherwise terminated by either PARTY pursuant to Section 20.0 of this AGREEMENT.

2.0 **DEFINITIONS**

Regular Position: A position established on a permanent year-round basis requiring work on a regular schedule.

Limited-Term Position: A position which, in COUNTY'S determination, has no anticipated long-range funding or has uncertain future funding.

Regular Work Period: The regular work period shall be twenty-eight (28) days and shall begin at 12 a.m. on each Friday and end at 12 a.m. four weeks later. Each 28-day period shall be divided into two (2) fourteen (14)-day periods, with overtime being paid for work ordered and performed in excess of eighty (80) hours actually worked in each fourteen (14)-day period.

Overtime: Hours worked in excess of eighty (80) hours in the employee's regular work period.

3.0 **SCOPE OF SERVICES AND PROBATION STAFFING**

3.1 Scope of Services:

3.1.1 CITY may request from PROBATION, subject to the provisions of this AGREEMENT, available funding and staffing, the provision of Overtime Services.

3.1.2 Overtime Services shall include, but not be limited to:

- a. Supervision of a target population consisting of adults and minors on probation and are residing within CITY'S geographical boundaries;
- b. Enforcement of court orders for said target population, including search and seizure, as appropriate;
- c. Patrolling areas where supervised offenders are known to congregate;
- d. Development of intelligence and documentation of information gathered from patrol operations;
- e. Identification of gang members and associates and/or other organized criminal participants, and indicators of at-risk behavior;

- f. Making arrests for violations of probation;
- g. Assistance in increasing pro-social awareness and activities in schools and preventing at-risk youth from becoming gang or criminally involved;
- h. Performance of probation compliance sweeps;
- i. Assistance in other law enforcement activities necessitating PROBATION presence.

4.0 PROBATION RESPONSIBILITIES

- 4.1 As requested by CITY and subject to the provisions of this AGREEMENT, and for compensation, provide a DPO for the provision of Overtime Services.
- 4.2 Assign a DPO, who is a full-time COUNTY employee in a regular or limited-term position, whose normally assigned work hours equal those of a full work period, to provide Overtime Services to CITY as needed, and in conjunction with work by police officers of CITY.
- 4.3 Provide a DPO who has demonstrated experience and knowledge of the roles and responsibilities of PROBATION in the delivery of the requested Overtime Services, in cooperation with the CITY, law enforcement agencies, schools, and community-based organizations.
- 4.4 If, at the time CITY requests Overtime Services, COUNTY's overall staffing needs and circumstances are such that a DPO is unavailable, PROBATION shall, subject to CITY'S approval, provide the Overtime Services of a SPO from PROBATION's Special Supervision Division.
- 4.5 PROBATION's Director of the Special Supervision Division shall have final authority and responsibility for decisions affecting PROBATION's provision of Overtime Services, including the DPO assignments and any other matters related to services under this AGREEMENT.

5.0 CITY RESPONSIBILITIES

CITY shall:

- 5.1 Coordinate the scheduling of Overtime Services directly with the appropriate SPO from PROBATION's Special Supervision Division.
- 5.2 Explain the scope of duties required and expected from the DPO, in order to accomplish CITY'S goals and objectives.
- 5.3 Provide transportation, office space, supplies and equipment necessary or incidental to the DPO'S performance of the scheduled or expected work.
- 5.4 Compensate PROBATION for the provision of Overtime Services pursuant to Section 6.0 of this AGREEMENT.

6.0 COMPENSATION

- 6.1 CITY shall pay PROBATION for the cost of Overtime Services rendered by the assigned DPO or, as applicable, for the cost of Overtime Services rendered by the SPO from PROBATION's Special Supervision Division.
- 6.2 Payment for Overtime Services Rendered by PROBATION's DPO or SPO:
Upon submission of monthly or quarterly invoices by PROBATION to CITY, and in accordance with the payment procedures detailed in Section 7.0 of this AGREEMENT, CITY shall pay PROBATION for Overtime Services rendered by PROBATION's DPO or SPO, as follows:
- 6.2.1 At one and one-half (1-1/2) times the assigned DPO's or SPO's then-current hourly rate, multiplied by the number of hours of service provided during the billing period.
- 6.2.2 The PARTIES acknowledge that COUNTY'S Board of Supervisors approves general salary increases and performance incentives, in accordance with the terms of the agreement reached between COUNTY and the Orange County Employees Association (OCEA), and as set forth in the Probation Services Unit Memorandum of Understanding. As used in this AGREEMENT, OCEA is the exclusively recognized employee organization for the Probation Services Unit, which includes the DPO and SPO position classifications.
- 6.2.3 In its submittal of invoices, PROBATION shall include the then-current hourly compensation rate and any salary adjustments for the DPO or SPO position classifications that are applicable or as they became effective in accordance with the terms of the Probation Services Unit Memorandum of Understanding.

7.0 FINANCIAL ACCOUNTABILITY

- 7.1 PROBATION agrees to follow fiscal procedures to assure adequate and accurate accounting for the billing of costs to CITY under this AGREEMENT, in accordance with COUNTY'S general accounting policies, and the accounting policies and procedures of COUNTY'S Auditor-Controller. All claimed reimbursements will be supported with source documents retained by COUNTY.
- 7.2 PROBATION shall be reimbursed in arrears for actual costs incurred, upon the submission of monthly or quarterly invoices to CITY. The invoices shall be submitted in such form and detail as required by COUNTY'S Auditor-Controller, and be accompanied by an affidavit signed by COUNTY certifying the appropriateness of the amounts billed.
- 7.3 Payment by CITY to COUNTY shall be within thirty (30) days of receipt of an invoice.
- 7.4 COUNTY shall have sixty (60) days from the end of the term of this

AGREEMENT to determine all program obligations incurred during said term and submit a final invoice to CITY. CITY shall not be responsible for payment of any invoices submitted more than sixty (60) days after this AGREEMENT expires or is terminated.

8.0 PROGRAM SUPERVISION

PROBATION's Director of the Special Supervision Division shall oversee the daily operation and administration of this AGREEMENT pursuant to the terms and conditions contained herein.

9.0 DISPUTES

9.1 PARTIES shall deal in good faith and attempt to resolve potential disputes informally. If COUNTY and CITY fail to agree as to whether or not any work is within the scope of the requirements of this AGREEMENT, CITY shall, within fifteen (15) working days, provide COUNTY with a written protest specifying in detail the manner in which the requirements of this AGREEMENT were not fulfilled, and the proposed remedy.

9.1.1 PROBATION agrees to furnish a written decision on the dispute within thirty (30) COUNTY working days after receipt of such protest.

9.1.2 Any final decision of the COUNTY shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or authorized designee. If the COUNTY fails to render a decision within ninety (90) calendar days after receipt of the CITY's demand, it shall be deemed a final decision adverse to the CITY's contentions. The COUNTY's final decision shall be conclusive and binding regarding the dispute unless the CITY commences action in a court of competent jurisdiction to contest such decision within ninety (90) calendar days following the date of the COUNTY's final decision or one (1) year following the accrual of the cause of action, whichever is later.

10.0 INDEPENDENT CONTRACTOR

PROBATION shall be considered an independent contractor and neither PROBATION, its employees, nor anyone working under PROBATION shall be considered an agent or an employee of CITY. Neither PROBATION, its employees nor anyone working under PROBATION shall qualify for workers' compensation or other fringe benefits of any kind through CITY.

11.0 NON-DISCRIMINATION

In the performance of this AGREEMENT, CITY agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental

disability, medical condition, marital status, or sex of such persons. CITY acknowledges that a violation of this provision shall subject CITY to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.

12.0 OTHER SOURCES OF INCOME

COUNTY shall not bill CITY for any service, cost or expense for which COUNTY has been reimbursed by revenue, income or grants from any other source, if those revenue, income, or grants are expressly earmarked by the source for services provided under this AGREEMENT, or for similar services for the benefit of CITY'S area.

13.0 RIGHT TO AUDIT

CITY shall have access to any books, documents, papers and records of COUNTY, which CITY determines to be pertinent specifically to this AGREEMENT, for the purpose of making an audit, evaluation, excerpts and transcripts.

14.0 RETENTION OF FINANCIAL RECORDS

14.1 COUNTY shall retain and preserve all books, financial statements, journals, ledgers, source documents and other financial records in accordance with the current Orange County Probation Department Records Control Schedule, as approved by the Orange County Board of Supervisors. All financial records shall be kept or made available to CITY at COUNTY'S principal place of business.

14.2 Records which relate to: a) litigation of the settlement of claims arising out of the performance of this AGREEMENT, or b) costs and expenses of this AGREEMENT to which CITY takes exception, shall be retained by COUNTY until disposition of such appeals, litigation, claims, or exceptions.

15.0 CONFIDENTIALITY

15.1 CITY agrees to maintain the confidentiality of COUNTY and COUNTY-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this AGREEMENT. All such records and information shall be considered confidential and kept confidential by CITY and CITY's staff, agents and employees.

15.2 CITY agrees to maintain the confidentiality of all records and information pertaining to adult probationers or parolees. CITY, CITY's staff, and all agents and employees of CITY shall maintain the confidentiality of all such records, access to which may be limited by Title 42 of the Code of Federal Regulations, California Welfare and Institutions Code Section 5328 et seq., Title 28, Parts 20 and 22 of the Code of Federal Regulations, California Penal Code Sections 1203.05, 1203.10, 11075-11081, 11105, 11140-44, 13200-13202 and 13300-13305, or any other statute, court order or case law. No access, disclosure, or release of such information shall be permitted except as authorized by statute,

court order or other lawful process.

- i. “Adult client information” shall be understood to include all records and data which identify the subject of the information with the criminal justice system within the State of California. Such information includes, but is not limited to, the subject’s offense history, social history, all information of a diagnostic or evaluative nature, and any other personal or confidential data which can be traced to the individual, whether generated by CITY or not. It shall be understood by CITY, CITY’s staff and all agents and employees of CITY, that unauthorized release of certain information, as specified by statute, may render CITY or CITY’s staff, or any of the employees or agents of CITY, liable for criminal and/or civil penalties.

15.3 CITY specifically agrees to comply with the following Juvenile Court Administrative Orders of the Orange County Superior Court, attached hereto as Exhibit 1.0 and incorporated herein by reference: (a) Order No. A-100-2-2013 - “Juvenile Court Proceedings: Media and Public Access; Confidentiality; Photography/Audio/Video Recording” dated January 21, 2014; and (b) Order No. 12/003-903 - “Exchange of Information” dated March 29, 2012. Said Juvenile Court Administrative Orders govern the confidentiality of juvenile probation records.

- i. The foregoing Juvenile Court Administrative Orders were adopted in accordance with applicable sections of the Welfare and Institutions Code, and all other applicable statutes, court orders and case law. No access, disclosure or release of information regarding a juvenile who is the subject of Juvenile Court Proceedings or any other juvenile record information as discussed in said Juvenile Court Administrative Orders, shall be permitted except as authorized. If authorization is in doubt, no such information shall be released without the prior approval and consent of the Judge of the Juvenile Court.
- ii. Juvenile Record Information is understood to include all records and data, which identify the subject of the information, and as respects any aspect of the administration of the Juvenile Court law of the State of California. Such information includes, but is not limited to the subject’s offense history, social history, all information of a diagnostic or evaluative nature, and any other personal or confidential data which can be traced to the individual, whether generated by CITY or not.

15.4 CITY shall be responsible for safeguarding all information provided by PROBATION for use by CITY.

15.5 All written materials pertaining to adult and juvenile clients shall be placed in a secure and locked file when not in use, and access to such materials shall be limited to specified authorized staff.

16.0 LICENSE TO USE CITY REAL AND PERSONAL PROPERTY

In consideration of the promises contained herein, CITY hereby grants to COUNTY rent-

free use of office space, office furniture, and office equipment located in the offices of the City Police Department for the provision of services under this AGREEMENT. Said office space, furniture and equipment shall be used solely by personnel of CITY and the DPO, or the substitute DPO or SPO if applicable, while performing their assigned duties related to services under this AGREEMENT. The precise location, size and type of said office space, office furniture and office equipment will be determined by CITY. CITY shall supply all repair, maintenance and janitorial supplies and services to said premises and shall be responsible for all charges for utilities supplied to said premises.

17.0 PERMISSION TO USE CITY VEHICLES

In consideration of the promises contained herein, CITY hereby grants to COUNTY permission for the DPO, and for the substitute DPO or SPO if applicable, to operate and to ride as passengers in vehicles owned or leased by CITY, while performing their assigned duties related to this Agreement. CITY shall supply all repair and maintenance services for said vehicles, and shall pay all fuel costs for said vehicles.

18.0 MUTUAL INDEMNIFICATION

COUNTY agrees to indemnify, defend with counsel approved in writing by CITY, and hold CITY, its officers, employees, and agents ("City Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, or other performance provided by COUNTY pursuant to this AGREEMENT. CITY's approval of counsel shall not be unreasonably withheld. If judgment is entered against COUNTY and CITY by a court of competent jurisdiction because of the concurrent active negligence of CITY or City Indemnitees, COUNTY and CITY agree that liability will be apportioned as determined by the court. Neither PARTY shall request a jury apportionment. This indemnification shall commence on the effective date of this AGREEMENT and shall continue thereafter for any and all causes of action accruing during the term of this AGREEMENT.

CITY agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies for which COUNTY's Board of Supervisors acts as the governing board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, or other performance provided by CITY pursuant to this AGREEMENT. COUNTY's approval of counsel shall not be unreasonably withheld. If judgment is entered against CITY and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of COUNTY or County Indemnitees, CITY and COUNTY agree that liability will be apportioned as determined by the court. Neither PARTY shall request a jury apportionment. This indemnification shall commence on the effective date of this AGREEMENT and shall continue thereafter for any and all causes of action accruing during the term of this AGREEMENT.

19.0 DISTRIBUTION OF FORFEITED AND SEIZED ASSESTS

The PARTIES agree to follow the guidelines of Sections 11469-11495 of the California Health and Safety Code regarding the distribution of forfeited and seized assets from drug enforcement activities, as they may apply to the services provided under this AGREEMENT. The PARTIES may, if needed, seek instructions or clarification from a countywide panel of law enforcement officers as may be appointed to implement specified forfeiture guidelines.

20.0 CONTINGENCY OF FUNDS

CITY acknowledges that funding or portions of funding for this AGREEMENT may be contingent upon State budget approval; receipt of funds from, and/or obligation of funds by the State of California to COUNTY; and inclusion of sufficient funding for the services hereunder in the budget approved by the COUNTY's Board of Supervisors for each fiscal year covered by this AGREEMENT. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, COUNTY may immediately terminate or modify this AGREEMENT without penalty.

21.0 TERMINATION

Either PARTY may terminate this AGREEMENT, with or without cause, upon thirty (30) days' written notice given to the other PARTY. The obligations pertaining to indemnification for, or defense of, causes of action accruing during the term of this AGREEMENT shall extend beyond the termination of this AGREEMENT until fully performed.

22.0 NOTICES

Notices and payments to COUNTY shall be sent to the Orange County Probation Department addressed as follows:

Chief Probation Officer
County of Orange
P.O. Box 10260
Santa Ana, CA 92711

Notices shall be sent to CITY addressed as follows:

[insert CITY address information]

With courtesy copies sent to:

[insert other address information]

23.0 ALTERATION OF TERMS

This AGREEMENT fully expresses the understanding of the PARTIES, and is the total agreement between the PARTIES as to the subject matter of this AGREEMENT. No addition to or alteration of the terms of this AGREEMENT, whether written or verbal,

shall be valid unless made in the form of a written amendment to this AGREEMENT, which is formally approved and executed by both PARTIES.

IN WITNESS WHEREOF, the PARTIES have caused this AGREEMENT to be executed by their duly authorized officers.

CITY OF _____

BY: _____

DATED: _____

ATTEST: _____

APPROVED AS TO FORM:

BY: _____

DATED: _____

RECOMMENDED FOR APPROVAL:

BY: _____

DATED: _____

COUNTY OF ORANGE:

BY: _____

DATED: _____

Steven J. Sentman
Chief Probation Officer

APPROVED AS A LEGAL CHARGE
OFFICE OF THE COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By: 
Deputy

Date: 4/11/2016