

JOINT POWERS AGREEMENT

BETWEEN THE

COUNTY OF ORANGE

AND

CAPISTRANO UNIFIED SCHOOL DISTRICT

THIS AGREEMENT is entered into this First day of June 2023, which date is enumerated for purposes of reference only, by and between the COUNTY OF ORANGE, a political subdivision of the State of California, hereinafter referred to as "COUNTY" and CAPISTRANO UNIFIED SCHOOL DISTRICT, a public school district, hereinafter referred to as "DISTRICT."

WITNESSETH:

WHEREAS, DISTRICT is authorized by Government Code Section 6500 et seq. to enter into joint powers agreements, and

WHEREAS, DISTRICT wishes to contract with COUNTY for supplemental law enforcement services;

WHEREAS, COUNTY is agreeable to the rendering of such services as authorized in Government Code sections 6500 et seq. and 54981 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 be the period July 1, 2023 through June 30,
3 2026, unless earlier terminated by either party in the manner set forth herein.

4 **B. OPTIONAL TERMINATION:**

5 COUNTY or DISTRICT may terminate this Agreement, without cause, upon thirty
6 (30) days written notice to the other party specifying the desired date of
7 termination.

8 **C. SERVICES BY COUNTY:**

9 1. COUNTY, through its Sheriff-Coroner and deputies, officers and employees,
10 hereinafter referred to as "SHERIFF", shall render to DISTRICT
11 supplemental law enforcement services as hereinafter provided.

12 2.a. At the request of DISTRICT, SHERIFF may provide patrol services for
13 functions, such as athletic events, school dances, assemblies, conducted on
14 DISTRICT owned, leased or operated property. DISTRICT shall reimburse
15 COUNTY for such services at an amount computed by SHERIFF, as
16 provided for Section D.

17 2.b. No later than ten (10) days before a function where services are required,
18 DISTRICT shall notify SHERIFF of the nature of the scheduled function.
19 SHERIFF shall then ascertain the deployment of law enforcement personnel
20 and equipment needed and shall notify DISTRICT of the estimated cost of
21 said personnel and equipment.

22 **D. PAYMENT:**

23 1. DISTRICT agrees to pay to COUNTY the total costs of performing the services
24 mutually agreed upon in this Agreement. The cost of services includes:
25 salaries, wages, benefits, mileage, services, supplies, and divisional,
26 departmental and COUNTY General overhead.

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D. PAYMENT: (Continued)

2. The rate charged to DISTRICT by COUNTY shall be computed by SHERIFF in accordance with COUNTY's law enforcement cost study in effect at the time the services are provided.
 3. COUNTY shall invoice DISTRICT quarterly for said services.
 4. DISTRICT shall pay COUNTY in accordance with COUNTY Billing Policy, a copy of which is attached hereto as Attachment A and incorporated herein by reference.
 5. COUNTY shall charge DISTRICT late payment penalties in accordance with said COUNTY Billing Policy.
 6. The Cost of potential future salary and benefit increases or decreases are not included in the costs set forth in Subsection D-2 of this Agreement. If COUNTY incurs or becomes obligated to pay for any such increases for or on account of personnel whose costs are included in the calculations of costs charged to Capistrano Unified School District hereunder, Capistrano Unified School District shall pay COUNTY, in addition to the cost of service set forth in Subsection D-2 of this Agreement, the full costs of said increases to the extent such increases are attributable to work performed by such personnel after July 1, 2023, and Capistrano Unified School District's cost of service hereunder shall be deemed to have increased accordingly. Capistrano Unified School District shall pay COUNTY in full for such increases on a pro-rata basis over the portion of the period after COUNTY notifies Capistrano Unified School District that increases are payable.
- In the event that salaries and benefits cost for COUNTY employees decrease for or on account of personnel whose cost are included in the calculations of costs charged to Capistrano Unified School District hereunder, COUNTY shall notify Capistrano Unified School District of decreased cost and bill accordingly.

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E. NOTICES:

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

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

DISTRICT: ATTN: DIRECTOR OF PURCHASING
CAPISTRANO UNIFIED SCHOOL DISTRICT
33122 VALLE ROAD
SAN JUAN CAPISTRANO, CA 92675-4853

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

F. STATUS OF COUNTY:

COUNTY, including SHERIFF, is, and shall at all times be deemed to be, an independent contractor. 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, 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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G. ENTIRE AGREEMENT/AMENDMENT:

This Agreement 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. INDEMNIFICATION:

COUNTY, its officers, and employees, shall not be deemed to have assumed any liability for the negligence or any other act or omission of DISTRICT or any of its officers or employees.

DISTRICT shall indemnify and hold harmless COUNTY and, its elected and appointed officials, officers, and employees from any claim, demand or liability whatsoever based or asserted upon any act or omission of DISTRICT, its officers, and employees, related to this Agreement, for property damage, bodily injury or death or any other element of damage of any kind or nature, and DISTRICT shall defend, at its expense including attorney fees, and with counsel approved in writing by COUNTY, COUNTY and its elected and appointed officials, officers, and employees in any legal action or claim of any kind based or asserted upon such alleged acts or omissions. If judgment is entered against DISTRICT and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of COUNTY, DISTRICT and COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

COUNTY shall indemnify and hold DISTRICT and its elected and appointed officials, officers, and employees, free and harmless from any claim or liability whatsoever, based or asserted upon any act or omission of COUNTY, or its elected and appointed officials, officers, and employees, related to this Agreement, for property damage, bodily injury or death, or any other element of

1 **H. INDEMNIFICATION: (Continued)**

2 damage of any kind or nature, and COUNTY shall defend, at its expense,
3 including attorney fees, DISTRICT, and its elected and appointed officials,
4 officers, and employees in any legal action or claim of any kind based or asserted
5 upon such alleged acts or omissions.

6 **I. ASSIGNMENT:**

7 The services to be rendered by COUNTY shall not be assigned by COUNTY
8 and/or SHERIFF.

9 **J. GOVERNING LAW:**

10 The terms and conditions of this Agreement shall be governed by the laws of
11 California.

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1 **IN WITNESS WHEREOF**, the parties have executed the AGREEMENT in
 2 the County of Orange, State of California.

3 DATED: May 17, 2023

4 CAPISTRANO UNIFIED SCHOOL DISTRICT

5 BY: 
 6

7 Dr. Cary Johnson

8 Title: Assistant Superintendant
 9

10
 11 DATED: _____

12 COUNTY OF ORANGE

13 BY: _____
 14 Chairman of the Board of Supervisors
 15 County of Orange, California
 16

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

21 _____
 22 Robin Stieler
 23 Clerk of the Board
 24 County of Orange, California
 25

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

26 BY: **Annie Loo**
 27 Deputy
 28

Digitally signed by Annie Loo
 DN: cn=Annie Loo, o=County Counsel, ou,
 email=annie.loo@co.co.or.ca.gov, c=US
 Date: 2023.04.25 10:08:28 -0700'

DATED: 4/25/23

COUNTY BILLING POLICY
APPROVED BY BOARD MINUTE ORDER DATED OCTOBER 27, 1992

ATTACHMENT A

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.