



# **CITY COUNCIL AGENDA REPORT**

MEETING DATE: APRIL 7, 2009

ITEM NUMBER:

**VI-8**

**SUBJECT:** AGREEMENT FOR PROSECUTION SERVICES

**DATE:** APRIL 3, 2009

**FROM:** CITY ATTORNEY'S OFFICE

**PRESENTATION BY:** HAROLD W. POTTER, JR., ASSISTANT CITY ATTORNEY

**FOR FURTHER INFORMATION CONTACT:** KIMBERLY HALL BARLOW, 714-754-5399

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## **RECOMMENDATION:**

Approve the Agreement for Prosecution Services attached hereto as Attachment 1.

## **BACKGROUND:**

The current agreement with the County of Orange ("County") for prosecution of City municipal violations vests entire control for prosecution of municipal code violations with the District Attorney's Office ("District Attorney").

## **ANALYSIS:**

Under the current contract, the District Attorney has the "sole and exclusive authority to determine whether a criminal complaint shall be filed and determining the conduct of legal proceedings with respect to any suspected violations of the City Criminal ordinances and with respect to any additional prosecutions handled by the District Attorney." Thus, once a violation is referred to the District Attorney's Office, that Office determines whether or not to file a complaint and proceed with prosecution. For certain kinds of prosecution, such as drunk in public, public urination, and animal control violations (which the DA's office prosecutes at no additional charge), referral to and use of the District Attorney's office to prosecute these cases is very cost effective. However, certain kinds of cases, such as routine code enforcement cases, or violation of other municipal codes, are not well suited to referral to the District Attorney's Office, and the proposed revisions to the Agreement gives the Police Department flexibility to determine that the case should be referred to the City Attorney's Office for prosecution if it is a municipal code violation.

## **ALTERNATIVES CONSIDERED:**

City Council could choose not to approve the revised agreement.

## **FISCAL REVIEW:**

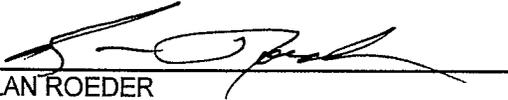
The fiscal impact is unknown at this time.

**LEGAL REVIEW:**

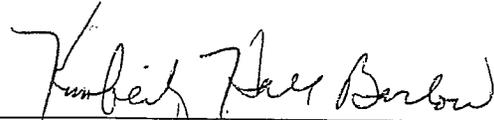
The City Attorney's office has prepared the revised Agreement for Prosecution Services for City Council's consideration.

**CONCLUSION:**

The proposed Agreement prepared by the City Attorney is intended to give the City more control over prosecution of violations. The City Attorney recommends that City Council adopt the Agreement.



ALLAN ROEDER  
City Manager



KIMBERLY HALL BARLOW  
City Attorney



MARC PUCKETT  
Finance Director



CHRISTOPHER SHAWKEY  
Police Chief

DISTRIBUTION: City Manager  
Chief of Police

ATTACHMENTS: 1 Agreement

File Name

Date

Time

## AGREEMENT FOR PROSECUTION SERVICES

THIS AGREEMENT, made and entered into by and between the COUNTY OF ORANGE, CALIFORNIA, a political subdivision of the State of California and a body politic and corporate (hereinafter designated as "COUNTY", and the City of Costa Mesa, a municipal corporation, located in the County of Orange (hereinafter designated as "CITY").

### WITNESSETH

In consideration of the terms, covenants, conditions, and promises to be kept, performed and observed by the parties, hereto, it is agreed as follows:

1. COUNTY, through its District Attorney and deputies, officers and employees of his department, shall render to CITY such services as may be required to prosecute certain violation of CITY's ordinances in the courts.
2. For the purpose of performing said functions, COUNTY shall provide all staffing and supervision necessary to maintain the services to be rendered hereunder.
3. The final authority for rendition of services, standards of performance, and other matters incident to the performance of such services and the control of COUNTY personnel shall remain in COUNTY. The District Attorney shall have the sole exclusive authority to determine whether a criminal complaint shall be filed on cases referred to the District Attorney's Office by CITY and the conduct of legal proceedings with respect to any suspected violations of the CITY criminal ordinances and with respect to any additional prosecutions handled by

the District Attorney for CITY.

4. CITY shall not be called upon to assume any liability for the direct payment of any salaries, wages or other compensation to any COUNTY personnel performing services hereunder or any liability other than that provided for by this Agreement. Except as herein otherwise specified, CITY shall not be liable for compensation or indemnity to any COUNTY employee for any injury or sickness arising out of his employment.

5. COUNTY, its officers, agents and employees shall not be deemed to have assumed any liability for the negligence of CITY or any of its officers or employees; and CITY shall hold COUNTY, its officers and employees harmless from any and all claims for damages resulting therefrom.

6. Both CITY and COUNTY shall hold each other harmless from liability for acts or omissions of the other.

7. (a) Referrals for Complaints. CITY may refer suspected violations of its criminal ordinances to the District Attorney for a determination as to whether a criminal complaint should be filed.

CITY agrees to pay COUNTY the sum of two hundred two dollars (\$202.00) for each referral, without regard to the issuance of a complaint. As used herein, a "referral" means an occurrence constituting an alleged violation of one or more CITY ordinances by one person. CITY will provide investigation, reports, copies of its ordinances, and additional evidence as requested by the District Attorney. In cases where prosecution is authorized by the District

Attorney, the District Attorney will draft and prepare the complaint. When "not guilty" pleas are entered on such complaints, the District Attorney will prosecute such cases through trial without further charge, except as provided in Paragraph 7(c) herein.

(b) Additional Prosecution. The District Attorney will prosecute CITY citations for animal control violations with no charge to CITY. Trials on other CITY citations and trials on CITY complaints not issued pursuant to Paragraph 7(a) above will not be tried by the District Attorney without the consent of the Assistant District Attorney in charge of the branch serving the judicial district in which CITY is located. The CITY has the right to determine that special ordinances of exclusively local concern should be prosecuted by the city attorney. Except as provided in Paragraph 7 (c) below, CITY agrees to pay COUNTY two hundred two dollars (\$202.00) for each prosecution of a CITY citation (other than animal control violations) and each prosecution of a CITY complaint not issued pursuant to Paragraph 7(a). As used herein, "prosecution" means the District Attorney's appearance in Court after witnesses are subpoenaed on the first setting for one Defendant's trial. Where CITY asks the District Attorney to request dismissal before subpoenas have been issued, no charge will be made. As prosecutor, the District Attorney has the right to control the disposition of all complaints, trials, and appeals herein described in accordance with the duties of his office. CITY will provide investigation, reports, citations, copies of its ordinances, and additional evidence necessary for trial as

requested by the District Attorney.

(c) Special Costs. CITY may request the District Attorney to file, answer, and litigate appeals of convictions of violations of CITY's ordinances. CITY agrees to pay COUNTY for such services on appeals the sum of one hundred twenty seven dollars (\$127.00) per hour of attorney time and seventy six dollars (\$76.00) per hour of clerical support's time. In addition to charges described in paragraphs 7(a) and 7(b) herein, CITY agrees to pay COUNTY for all time, including preparation spent in prosecutions in excess of one day, at the rate specified in this paragraph.

(d) The above rates shall be reviewed annually by COUNTY's Auditor Controller and, if it is determined that a change in the rate is necessary to reflect change in costs to COUNTY, COUNTY shall notify CITY of such change prior to June 30th, and the change shall become effective the following July 1<sup>st</sup>.

8. Within ten (10) days following the end of each calendar quarter, COUNTY shall render to CITY a statement of the cost of services performed under this Agreement, and CITY shall pay COUNTY therefore within twenty (20) days after receipt of such statement. Such statement shall consist of the number of referrals for complaints, additional prosecution, and itemized special costs. If such payment is not received by COUNTY within thirty (30) days after rendition of billing, COUNTY may satisfy such indebtedness from any funds of CITY on deposit with COUNTY without giving further notice to CITY of COUNTY's intention to do so.

9. Upon execution of this Agreement, CITY shall provide two (2) copies of its municipal ordinances to the District Attorney. CITY will further provide the District Attorney with complete details on any additions, deletions, or corrections to the municipal ordinances that may occur during the term of this Agreement.

10. This Agreement shall continue in full force and effect for a five-year period, commencing May 1, 2009 and terminating on April 30, 2014, provided that either party may terminate upon thirty (30) days' written notice. All compensation for services rendered shall be paid regardless of termination or expiration of this Agreement. Termination of this Agreement shall not affect the duties of the parties already initiated that extend beyond the termination of this Agreement.

IN WITNESS WHEREOF, COUNTY has caused this Agreement to be executed by the Chairman of its Board of Supervisors and Attested by the Clerk of said Board, and CITY has caused this Agreement to be executed by its Mayor and attested by the City Clerk on the dates set opposite their respective signatures.

Dated: \_\_\_\_\_, 2009

"COUNTY"

COUNTY OF ORANGE, a political subdivision of the State of California

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE

By \_\_\_\_\_  
Chairman of the Board of Supervisors

CHAIRMAN OF BOARD

\_\_\_\_\_  
DARLENE J. BLOOM  
Clerk of the Board of Supervisors  
Of Orange County, California

APPROVED AS TO FORM:

ACITY@

BENJAMIN P. DE MAYO,  
COUNTY COUNSEL

\_\_\_\_\_  
A municipal corporation

By Michael A. Hunt  
Deputy

By \_\_\_\_\_  
Mayor

Dated: March 18, 2009

ATTEST:

Dated: \_\_\_\_\_, 2009

By \_\_\_\_\_  
City Clerk