SERVICES AGREEMENT FOR PUBLIC SAFETY HELICOPTER SUPPORT BETWEEN THE CITY OF HUNTINGTON BEACH AND THE CITY OF COSTA MESA

This Services Agreement for Public Safety Helicopter Support ("Agreement") is made by and between the City of Huntington Beach, a California Municipal Corporation ("Huntington Beach") and the City of Costa Mesa, a California Municipal Corporation ("Costa Mesa") based on the following:

A. Huntington Beach employs, maintains, trains and equips personnel capable of responding to requests for public safety helicopter services from ground based public safety personnel.

B. Costa Mesa is responsible for providing public safety services within its jurisdiction, which include public safety helicopter services.

C. Costa Mesa requires the services of Huntington Beach to provide public safety helicopter services to its land and residents.

TERM

This Agreement shall commence on the date it is last executed by a party and end on June 30, 2018 unless terminated earlier as set forth herein.

PURPOSE

1.01 The purpose of this Agreement is to provide public safety helicopter services to Costa Mesa's land and residents and for Costa Mesa to pay an all inclusive flat rate per hour for the cost of the services provided by Huntington Beach.

1.02 Nothing in this Agreement shall be interpreted to give Costa Mesa a right to services from Huntington Beach. Huntington Beach expressly retains all rights and powers to direct, manage, maintain, train, employ, equip, operate and control all equipment, facilities, properties and personnel in providing public safety helicopter services to Costa Mesa pursuant to this Agreement. Costa Mesa acknowledges and agrees that the efficient use of public safety helicopter services requires a timely and prioritized response of a helicopter. Costa Mesa agrees that Huntington Beach will have the sole discretion to determine the priority of calls for service and when an assignment of an air crew to a call will be terminated.

1.03 Notwithstanding anything in the Agreement to the contrary, Costa Mesa expressly retains all rights and powers to direct, manage, maintain, train, employ, equip, operate and control all equipment, facilities, properties and personnel in providing ground based public safety services to its land and residents.

SERVICES

2.01 Huntington Beach will furnish Costa Mesa with public safety helicopter services that will include a helicopter aircrew comprised of a pilot and tactical flight officer that are both sworn peace officers and specially trained to conduct public safety helicopter services. Huntington Beach and the helicopter aircrews retain the sole and exclusive discretion as to the specific type, nature, timing and duration of the services performed pursuant to this Agreement.

2.02 Huntington Beach certifies that all helicopter aircrews providing public safety helicopter services to Costa Mesa under this Agreement currently possess, and shall maintain for the life of this Agreement, all permits, licenses, certifications, and training required from any federal, state or local governmental entity to provide public safety helicopter services.

2.03 In no event shall Huntington Beach or the helicopter aircrew be responsible for the direction and control of ground based public safety personnel and equipment of Costa Mesa during the course and scope of the public safety helicopter services performed pursuant to this Agreement.

2.04 In the event of a natural disaster or local or regional emergency, Huntington Beach shall take all reasonable steps to provide Costa Mesa with public safety helicopter service that is dedicated to the exclusive use of Costa Mesa. This shall include an obligation on the part of Huntington Beach to "hold over" any on-duty and/or "call in" any off-duty helicopter aircrew(s) or personnel necessary to provide Costa Mesa with public safety helicopter service that is dedicated to the exclusive use of Costa Mesa. Additionally, in the event of a natural disaster or local or regional emergency, Huntington Beach shall provide Costa Mesa with a first right of refusal to have public safety helicopter services prior to allowing or releasing said public safety helicopter services to other governmental agencies for use or deployment during natural disaster or local or regional emergency.

COMPENSATION

3.01 Costa Mesa shall pay Huntington Beach for the public safety helicopter services provided on an hourly basis in accordance with the provisions of this Section. Huntington Beach's compensation for all services performed in accordance with this Agreement shall not exceed Nine Hundred Thousand Dollars and no/100 ($900,000.00) without prior written authorization from Costa Mesa. Furthermore, Huntington Beach's total compensation in any single Fiscal Year (defined as July 1st through June 30th) shall not exceed Three Hundred Thousand Dollars and no/100 ($300,000.00) without prior written authorization from Costa Mesa.

3.02 Huntington Beach shall provide public safety helicopter services to Costa Mesa at an all inclusive flat rate pursuant to Paragraph 3.01-3.06 of this Agreement. Costa Mesa shall incur no other direct or indirect costs or fees for the services in the Services Agreement For Public Safety Helicopter Support provided by Huntington Beach under this Agreement. Huntington Beach shall bill Costa Mesa for all public safety helicopter services provided under this Agreement in tenth of an hour increments.

3.03 Huntington Beach shall submit monthly invoices to Costa Mesa describing the public safety helicopter services provided in the preceding month. Huntington Beach will also provide Costa Mesa with a monthly statement detailing all calls for service and time spent on routine patrol over Costa Mesa's

jurisdiction. The monthly statement shall include the names of the helicopter aircrew who performed the services, a brief description of the services performed and/or the specific task performed, the date the services were performed, the number of hours spent on all services billed on an hourly basis in tenth of an hour increments.

3.0 Costa Mesa's Chief of Police, or the Chief's designee (the "Chief'), shall notify the Huntington Beach Air Support Unit Commander ("Unit Commander") within twenty (20) days of receipt of the monthly statement of any disputed calls for service or time spent on routine patrol over Costa Mesa's jurisdiction. The Unit Commander and the Chief will review the public safety helicopter service provided by Huntington Beach on an as needed basis to ensure that it coincides with the service level desired by Costa Mesa. The Unit Commander and the Chief will be responsible for cooperatively resolving any disputes over services provided under this Agreement and adjusting the service level to coincide with that desired by Costa Mesa.

3.05 Should Huntington Beach provide over One Thousand (1000) hours of public safety helicopter services to Costa Mesa in any single Fiscal Year under this Agreement, Huntington Beach acknowledges and agrees that it shall not receive any compensation for said services without the prior written authorization from Costa Mesa.

3.06 Huntington Beach shall provide public safety helicopter services to Costa Mesa at an all inclusive flat rate of Seven Hundred Dollars ($700) per hour of service for the first year of service. Commencing on January 1, 2016, the hourly fee for Air Support Services shall be adjusted on July 1 of each year based on the change in the Metropolitan Consumer Price Index.

The change will be conducted using the "Consumer Price Index for All Urban Consumers (CPI-U), for the Los Angeles-Riverside-Orange County, California area; All items, not seasonally adjusted, 1982-1984=100 reference base." The adjustment will be based on the current contract rate using the January index of the current year and the January index of the preceding year.

The Huntington Beach Police Chief shall adjust the fees set forth in the MOU by such percentage change and rounded to the next highest dollar amount. Should the Consumer Price Index be revised or discontinued, the Police Chief shall use the revised or a comparable index as approved by the City Council.

COSTA MESA DUTIES

4.01 Costa Mesa shall pay Huntington Beach an all inclusive flat rate per hour for the cost of the services provided by Huntington pursuant to Paragraph 3.01 - 3.06 of this Agreement, for services provided by Huntington Beach under this Agreement. The public safety helicopter services performed by Huntington Beach shall be deemed to commence as of the date and time the aircraft is dispatched to, or arrives over, the airspace of Costa Mesa, whichever occurs first. These services shall continue until the aircrew notifies Costa Mesa that the assignment is complete or that the assignment must be terminated due to a higher priority assignment. Huntington Beach helicopter aircrew shall be responsible to notify Costa Mesa's dispatch center

that the assignment is complete or that the assignment must be terminated due to a higher priority assignment. Services performed by Huntington Beach aircraft for Costa Mesa shall be defined as:

A. A direct request for public safety helicopter services by Costa Mesa where a Huntington Beach aircraft is dispatched to or arrives over the incident (operationally identified as a "D-1" call) or;

B. Any public safety call generated by Costa Mesa and monitored by a Huntington Beach helicopter aircrew in which the aircraft arrives over the incident (operationally identified as a "D-2" call) or;

C. Routine patrol over Costa Mesa's jurisdictional areas, in which case Huntington Beach's aircrew shall notify Costa Mesa's dispatch center upon their arrival and depart from Costa Mesa's jurisdictional area. Costa Mesa may authorize its ground based public safety supervision to cancel a response by a Huntington Beach aircrew.

4.02 Costa Mesa agrees to install within its communications/dispatch center any radio equipment necessary to communicate directly with Huntington Beach on the designated frequency (800 MHz Talk Group) agreed upon by Huntington Beach and Costa Mesa. All costs associated with said installation shall be paid by Costa Mesa.

INDEMNIFICATION AND WAIVER

5.01 Costa Mesa agrees that Huntington Beach should be fully protected from any loss, injury, damage, claim, lawsuit, cost or expense arising out of, or in any way related, to the performance of services pursuant to this Agreement that is in excess of Huntington Beach's requirement to carry and maintain certain policies of insurance and name Costa Mesa as an additional insured as set forth below in section VI. Subject to Huntington Beach's requirement to carry and maintain certain policies of insurance and name Costa Mesa as an additional insured as set forth below in section VI, the provisions of this Agreement should be constructed and interpreted to provide the fullest possible protection to Huntington Beach. Costa Mesa acknowledges that Huntington Beach would not provide services in the absence of the commitments of Costa Mesa as specified in this Agreement. Huntington Beach acknowledges that Costa Mesa would not enter into this Agreement in the absence of Huntington Beach's commitment and obligation to carry and maintain certain policies of insurance and name Costa Mesa as an additional insured as set forth below in section VI.

5.02 To the fullest extent permitted by law, Costa Mesa shall indemnify, defend and hold harmless Huntington Beach, its boards, officers, agents and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any services provided under this Agreement including, but not limited to, activities that relate in any way to this Agreement (including the negligent and/or willful acts, errors and/or omissions of Costa Mesa, its council members, officers, agents, employees, and anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them) that is in excess of Huntington Beach's requirement to carry and maintain certain policies of insurance and name Costa Mesa as an additional insured as set forth below in section VI. Notwithstanding the foregoing, nothing herein shall be construed to require Costa Mesa to indemnify the Indemnified Parties from any Claim arising from

the negligence or willful misconduct of the Indemnified Parties. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable.

5.03 Huntington Beach shall defend, indemnify and hold harmless Costa Mesa and its officers, employees, contractors, agents and representatives, with respect to any claim, loss, liability, damage, lawsuit, cost or expense that arises out of, or is in any way related, to the negligence or willful misconduct by Huntington Beach, including its boards, officers, agents and employees, within the Costa Mesa's jurisdiction. The obligation of Huntington Beach pursuant to this section extends, without limitation, to any injury, death, loss or damage which occurs within the Costa Mesa's jurisdiction and which is sustained by any third party, any employee or contractor of Costa Mesa and to such contractor's employees.

INSURANCE

6.01 Without limiting Huntington Beach's indemnification of Costa Mesa, and prior to commencement of Work, Huntington Beach shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to Costa Mesa.

6.01.1 Proof of Insurance. Huntington Beach shall provide certificates of Insurance to Costa Mesa as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by Costa Mesa's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with Costa Mesa at all times during the term of this contract. Costa Mesa reserves the right to require complete, certified copies of all required insurance policies, at any time. Huntington Beach shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Huntington Beach, its agents, representatives, employees or subconsultants. The cost of such insurance shall be included in Huntington Beach's bid.

6.01.2 Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the Costa Mesa's Risk Manager.

6.01.3 Coverage Requirements.

6.01.3.1 Worker's Compensation. Huntington Beach shall maintain Worker's Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least one million dollars ($1,000,000)) for Huntington Beach's employees in accordance with the laws of the State of California, Section 3700 of the Labor Code. Any notice of cancellation or non-renewal of all Worker's Compensation policies must be received by Costa Mesa at least thirty (30) calendar days (ten (10) calendar days written notice of non-payment of premium) prior to such change. Huntington Beach shall submit to Costa Mesa, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of Costa Mesa, its officers, agents, employees and volunteers.

6.01.3.2 Aircraft Liability Coverage. Huntington Beach shall maintain commercial aircraft liability insurance in an amount not less than twenty-five million dollars ($25,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability including war risk and premises liability insurance to include property damages incidental to the operations of the named insured.

6.01.3.3 Automobile Liability Coverage. Huntington Beach shall maintain automobile insurance covering bodily injury and property damage for all activities of Huntington Beach arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars ($1,000,000) combined single limit for each accident.

6.01.4 Other Insurance Provisions or Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

6.01.4.1 Additional Insured. Endorsement naming the City of Costa Mesa as respects the Aircraft Liability coverage with primary non-contributory and severability of interest language.

6.01.4.2 Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against Costa Mesa, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Huntington Beach or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Huntington Beach hereby waives its own right of recovery against Costa Mesa, and shall require similar written express waivers and insurance clauses from each of its subconsultants. This waiver of subrogation extends to hull loss and property damage.

6.01.4.3 Enforcement of Contract Provisions. Huntington Beach acknowledges and agrees that any actual or alleged failure on the part of Costa Mesa to inform Huntington Beach of non-compliance with any requirement imposes no additional obligations on Costa Mesa nor does it waive any rights hereunder.

6.01.4.4 Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

6.01.4.5 Notice of Cancellation. Huntington Beach agrees to oblige its insurance agent or broker and insurers to provide to Costa Mesa with thirty (30) days notice of cancellation (except for nonpayment for which ten (10) days notice is required) or nonrenewal of coverage for each required coverage.

6.01.6 Timely Notice of Claims. Huntington Beach shall give Costa Mesa prompt and timely notice of claims made or suits instituted that arise out of or result from Huntington Beach's performance under this Agreement.

6.01.7 Additional Insurance. Huntington Beach shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

MISCELLANEOUS PROVISIONS

7.01 Each of the Parties to this Agreement shall immediately notify the other of any litigation or claim that is asserted by or against either party regarding this Agreement. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.

7.02 Each of the Parties to this Agreement shall cooperate with one another in the defense of any lawsuit or claim filed against either party, arising out of, or in any way related, to this Agreement, as well as any effort of Huntington Beach to collect money from persons or entities responsible for any request for public safety helicopter services.

7.03 The public safety helicopter services provided by Huntington Beach under this Agreement shall not be assigned, transferred, contracted or subcontracted out without the prior written approval of Costa Mesa.

7.04 Each of the Parties to this Agreement may terminate this Agreement without cause upon sixty (60) days prior written notice.

7.05 The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.

7.06 If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

7.07 This Agreement may be modified or amended only by a written document executed by both Huntington Beach and Costa Mesa.

7.08 The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

7.09 This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

7.10 A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

7.11 Except as specifically authorized under this Agreement, the services to be provided under this Agreement shall not be assigned, transferred, contracted or subcontracted out without the prior written approval of Huntington Beach and Costa Mesa.

7.12 This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

7.13 The Parties shall at their own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted.

7.14 The Parties each represent that they are an equal opportunity employer and they shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age.

7.15 All notices, demands, requests or approvals to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Huntington Beach to Costa Mesa shall be addressed to Costa Mesa at:

Attn: Interim Chief Ron Lowenberg
Costa Mesa Police Department
99 Fair Drive
Costa Mesa, CA 92692
Phone: (714) 754-5344

All notices, demands, requests or approvals from Costa Mesa to Huntington Beach shall be addressed to Huntington Beach at:

Attention: Chief Robert Handy
Huntington Beach Police Department
2000 Main Street
P.O. Box 70
Huntington Beach, CA 92648
Phone: (714) 536-5903
Fax: (714) 536-5605

IN WITNESS WHERE OF, the parities hereto have executed this Agreement the day and year first above written.

CITY OF COSTA MESA,
a municipal corporation of the
State of California

_____
Mayor

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

_____
City Manager

CITY OF HUNTINGTON BEACH,
a municipal corporation of the
State of California

_____
Mayor

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney DKO 3/30/15 3/30/15

INITIATED AND APPROVED:

_____
Police Chief

REVIEWED AND APPROVED:

_____
City Manager