

**SB-331 Audit Review –
Huntington Beach Helicopter Services Contract**

COSTA MESA, CALIFORNIA



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1. INTRODUCTION AND OVERVIEW

This report presents the results and findings of the SB-331 review conducted regarding the procurement of public safety helicopter services from the City of Huntington Beach Police Department by the City of Costa Mesa (City). This review was conducted to ensure the City was in compliance with the provision of the state statutes *et seq.* regarding the review of contracts that was imposed by the passage of SB-331 and codified at Public Contract Code sections 22175 .

In part, the relevant sections of the legislation impose the following requirements on certain contracts to be entered into by municipalities that are subject to the requirements (i.e. – those that have adopted certain legislation commonly referred to as COIN legislation).

22178. (a) This chapter shall apply to any contracts with a value of at least two hundred fifty thousand dollars (\$250,000), and to any contracts with a person or entity, or related person or entity, with a cumulative value of at least two hundred fifty thousand dollars (\$250,000) within the fiscal year of the city, county, city and county, or special district, being negotiated between the city, county, city and county, or special district, and any person or entity that seeks to provide services or goods to the city, county, city and county, or special district, in the following areas: accounting, financing, hardware and software maintenance, health care, human resources, human services, information technology, telecommunications, janitorial maintenance, legal services, lobbying, marketing, office equipment maintenance, passenger vehicle maintenance, property leasing, public relations, public safety, social services, transportation, or waste removal.

(b) The city, county, city and county, or special district shall designate an unbiased independent auditor to review the cost of any proposed contract. The independent auditor shall prepare a report on the cost of the contract and provide the report to all parties and make it available to the public before the governing body takes any action to approve or disapprove the contract. The report shall comply with the following:

(1) The report shall include a recommendation regarding the viability of the contract, including any supplemental data upon which the report is based, and shall determine the fiscal impacts attributable to each term and condition of the contract.

(2) The report shall be made available to the public at least 30 days before the issue can be heard before the governing body and at least 60 days before any action to approve or disapprove the contract by the governing body.

Any proposed changes to the contract after it has been approved by the governing body shall adhere to the same approval requirements as the original contract. The changes shall not go into effect until all of the requirements of this subdivision are met.

- (c) The city, county, city and county, or special district shall disclose all offers and counteroffers to the public within 24 hours on its Internet Web site.
- (d) Before approving any contract, the city, county, city and county, or special district shall release a list of names of all persons in attendance, whether in person or by electronic means, during any negotiation session regarding the contract, the date of the session, the length of the session, the location where the session took place, and any pertinent facts regarding the negotiations that occurred in that session.
- (e) Representatives of the governing body shall advise the governing body of all offers, counteroffers, information, or statements of position discussed by the contracting person or entity and city, county, city and county, or special district representatives participating in negotiations regarding any contract.
- (f) Each governing body member and staff members of governing body offices shall disclose publicly all verbal, written, electronic, or other communications regarding a subject matter related to the negotiations or pending negotiations they have had with any official or unofficial representative of the private entity within 24 hours after the communication occurs.
- (g) A final governing body determination regarding approval of any contract shall be undertaken only after the matter has been heard at a minimum of two meetings of the governing body wherein the public has had the opportunity to review and comment on the matter.

The Matrix Consulting Group was requested, pursuant to its agreement with the City of Costa Mesa, to serve as an unbiased independent auditor to review the total cost of the proposed contract and the costs, or potential costs, of specific terms and provisions. The outcome is a report provided to the City that includes the following:

- A recommendation regarding the viability of the contract, including any supplemental data upon which the report is based, and determination of fiscal impacts attributable to the terms and conditions of the contract.

The project team used the following documents in conducting this review:

- Huntington Beach Police Department Air Support Contract Services Proposal to Costa Mesa Police Department dated June 14, 2018.
- Services Agreement for Public Safety Helicopter Support Between the City of Huntington Beach and the City of Costa Mesa executed in 2015.
- Services Agreement for Public Safety Helicopter Support Between the City of Huntington Beach and the City of Costa Mesa drafted for services between 2018 and 2021.
- City Council Agenda Report dated June 2, 2011 regarding Alternatives for Helicopter Services.

The following sections summarize the key findings of the overall assessment of the proposed contract and associated costs.

2. SUMMARY OF PROPOSED CONTRACT FOR PUBLIC SAFETY HELICOPTER SERVICES

This section summarizes the key provisions of the contract proposed by the City of Huntington Beach Police Department to provide air support (helicopter) contract services for the City of Costa Mesa.

1. SUMMARY OF SERVICES TO BE PROVIDED BY HUNTINGTON BEACH.

The City of Costa Mesa has contracted with the City of Huntington Beach since 2011 to provide helicopter services. These services provide air support and assistance for the City of Costa Mesa's Police Department for activities such as vehicle pursuits, crime scene investigations, and burglary / robbery alarms. Although the existing contract ends June 30, 2018, the cities have agreed to a six month extension. The proposed contract under review is drafted to begin on July 1, 2018 with an expiration date of June 30, 2021 unless terminated earlier as outlined in accordance with provisions of the agreement.

The public safety helicopter services to be provided by the City of Huntington Beach to the City of Costa Mesa as outlined in the contract consist of:

- Response to a direct request for public safety helicopter services by Costa Mesa.
- Response to a public safety call generated by Costa Mesa and monitored by Huntington Beach helicopter aircrew
- Routine patrol over Costa Mesa's jurisdictional areas.
- Provision of helicopter aircrew comprised of a pilot and tactical flight officer that:
 - Are sworn peace officers and trained to provide public safety helicopter services.
 - Possess and maintain all permits, licenses, certifications, and training required from any federal, state, or local governmental entity to provide said services.

- In the event of a natural disaster or local or regional emergency, Huntington Beach will take reasonable steps to provide Costa Mesa with public safety helicopter service that is dedicated to the exclusive use of Costa Mesa. Additionally, Costa Mesa shall have the first right of refusal to have public safety helicopter services prior to Huntington Beach allowing or releasing public safety helicopter services to other governmental agencies during the natural disaster or local or regional emergency.

The activities summarized above encompass the general scope of public safety helicopter services that Huntington Beach would provide to the City of Costa Mesa. The contract contains additional responsibilities to support the provision of these services. The City of Huntington Beach is also responsible for:

- Obtaining, providing, maintaining, and paying for insurance and naming Costa Mesa as an additional insured for Workers' Compensation, Aircraft Liability, Automobile Liability, and any other additional insurance.
- Indemnifying Cost Mesa for any claim, loss, liability, damage, cost or expense that arises out of, or is in any way related to negligence or willful misconduct by Huntington Beach, including its boards, officers, agents and employees, within Costa Mesa's jurisdiction.
- Providing services at an all-inclusive flat rate billed in tenth of an hour increments.
- Providing the City with monthly invoices detailing the description of services provided including all calls for service and time spent on patrol over Costa Mesa's jurisdiction.

The additional responsibilities listed above, coupled with the public safety helicopter services described in the proposed contract, provide the full scope of activities to be provided by Huntington Beach.

2. SUMMARY COSTA MESA DUTIES UNDER THE AGREEMENT.

The proposed contract identifies duties that the City of Costa Mesa would be committed to performing under the agreement. The agreement states the City is responsible for the following:

- Installation of any necessary radio equipment, within the City of Costa Mesa's communications / dispatch center, to communicate directly with Huntington Beach.
- Compensating the City of Huntington Beach at an all-inclusive flat rate per hour for the cost of the services provided to the City of Costa Mesa.
- The City of Costa Mesa may authorize its ground-based public safety personnel to cancel a response by the Huntington Beach aircrew.
- Indemnifying Huntington Beach for performance of services in excess of Huntington Beach's insurance requirements.

In addition to paying Huntington Beach, the City would be responsible for equipment installation and indemnification of Huntington Beach.

3. COST ANALYSIS.

The key component of this report is to analyze the costs associated with the proposed contract. This section summarizes the analysis of the costs of specific contract provisions and terms and total costs of the proposed agreement.

1. TOTAL COMPENSATION LIMITS.

The primary cost impact under this agreement is related to the provision of contract public safety helicopter services. In Provision 3.6, the contract sets the initial all-inclusive hourly rate for the services provided by Huntington Beach at \$735. The contract, in Provision 3.1, also sets limits of compensation due under the agreement at \$300,000 (per fiscal year) and \$900,000 (during the three year term of the agreement) for all services performed. These limits cannot be exceeded without prior written authorization. As such, absent the City of Costa Mesa authorizing additional expenditures, the total fiscal impact for all services under this agreement is limited to \$300,000 annually.

The beginning hourly rate of the existing contract with Huntington Beach, and the hourly rate since 2011, is \$700. The increase from \$700 to \$735 is 5% which is a reasonable increase over a seven year time period in comparison to changes in CPI over the same term. When the \$700 per hour rate was approved in 2011, the City determined that a rate of \$700 was lower than similar services provided to other cities in Orange County.

For the first year of the proposed contract, the annual cost of \$300,000 would equate to a maximum of 408.2 hours of helicopter services during the year. Provision 3.6 details the ability to increase the hourly rate each year effective July 1st based upon the January index of the current year and the January index of the prior year utilizing 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 contract limits the proposed annual adjustment to a maximum five percent (5%) increase in the hourly rate. If the maximum increase of 5% were to be applied during the term of the agreement, the second year hourly rate would be \$772 and the third year would be \$810. These hourly rate increases would not directly increase the annual expenditures by the City of Costa Mesa but would limit the number of hours available for public safety helicopter services each year achievable out of the annual \$300,000 contractual limit.

2. INDETERMINATE COSTS UNDER THE AGREEMENT.

The proposed agreement also outlined provisions that could have a fiscal impact to the City of Costa Mesa. Since the agreement limits total annual expenditures to \$300,000, these provisions would not increase the total annual expenditure of the City of Costa Mesa (unless the City were to specifically authorize this) but would reduce the number of hours of service available for public safety helicopter services.

The specific provisions within the proposed agreement that would have fiscal impacts to the City of Costa Mesa include the following:

- **Installation of Equipment.** Provision 4.2 includes the requirement that the City of Costa Mesa install any necessary radio equipment, within the City of Costa Mesa’s communications / dispatch center, needed to communicate directly with Huntington Beach on the designated frequency. If any equipment installations are necessary during the terms of this agreement, this would either limit the available hours for public safety helicopter services or require additional funding. No estimate of the potential impact of this provision is possible at this time.
- **Indemnification.** Provisions 5.1 and 5.2 includes the requirement for the City to protect and indemnify Huntington Beach for performance of services in excess of

Huntington Beach's insurance requirements. Although this could, in the future, increase the cost of the contract if a situation arose where the City need to indemnify Huntington Beach, there is no immediate financial impact to the City.

Based on the City's responsibilities stated in the contract, the provisions discussed above could result in financial costs to the City of Costa Mesa. In the case of the need to install radio equipment, this cost, if required, would not necessarily result in total costs increases unless specifically approved by the City of Costa Mesa. Absent an increase in the total annual expenditure; however, it would reduce the available funding to cover direct provision of helicopter services.

The costs for indemnification, if needed, could result in additional cost exposure to the City of Costa Mesa. However, the potential impact of this cost cannot be reasonable estimated at this time.

4. FINDINGS AND CONCLUSIONS.

The following points summarize the overall findings and conclusions of the SB331 review of the proposed agreement with the City of Huntington Beach for public safety helicopter services:

- Absent specific authorization of the City of Costa Mesa, the total annual fiscal impact of the proposed agreement is limited to \$300,000 annually for all services outlined in the agreement and \$900,000 over the three year term of the agreement. The City of Costa Mesa has the ability to limit its annual expenditure to this amount.
- The initial all-inclusive hourly rate of \$735 is reasonable in comparison to the existing hourly rate of \$700 per hour. That rate has not changed since the original contract was awarded in 2011. Additionally, in 2011, the City found Huntington Beach to provide the lowest hourly rate compared to others providing similar services.
- While the City could incur costs associated with indemnification of the City of Huntington Beach should a need arise, these potential costs of this cannot be determined or reasonable estimated.

Based upon the project team's review, the proposed contract and associated costs are viable for the City of Costa Mesa.