

**THIRD AMENDED
AVIATION PROGRAM AGREEMENT
BETWEEN THE CITY OF RIVERSIDE
AND THE CITY OF CORONA**

This Third Amended Aviation Program Agreement (hereinafter "Agreement") is made and entered into as of the ____ day of _____ 2018, by and between the City of Riverside, a municipal corporation (hereinafter "Riverside") and the City of Corona, a municipal corporation (hereinafter "Corona"), collectively referred herein as "Parties".

RECITALS

WHEREAS, Riverside owns and operates aircraft for policing functions; and

WHEREAS, Corona desires assistance from Riverside for air support services; and

WHEREAS, Riverside and Corona first entered into that Helicopter Program Agreement dated June 25, 2014 ("Original Agreement") and subsequently entered into an amended version of the Helicopter Program Agreement dated June 26, 2015 ("First Amended Agreement"); and

WHEREAS, Riverside and Corona entered into a second amended version of the Helicopter Program Agreement dated June 26, 2017 ("Second Amended Agreement"); and

WHEREAS, Riverside and Corona now desire to enter into this third amended version of the Helicopter Program Agreement in order to provide as-needed emergency response only for \$100,000 per year and to acknowledge the new replace "Helicopter" with "Aviation" in the name of the program and agreement.

NOW, THEREFORE, Riverside and Corona agree to develop an "Aviation Program" as follows:

1. Obligations of Riverside: Riverside agrees to make available the aircraft to Corona for as-needed emergency police response functions, as further provided for herein. In addition, Riverside shall provide full-time salaried police officers (hereinafter "Riverside Pilots") to pilot the aircraft. Riverside shall be responsible for payment of all of the Riverside Pilots' wages and benefits as employees of the City of Riverside, and shall comply with all requirements pertaining to employer's liability, worker's compensation, unemployment insurance, and social security.

Riverside shall be responsible for all maintenance or repairs to the aircraft. The only exception to this would be if the repairs required were caused by negligence on behalf of the Corona's agents or employees and covered under the indemnification provisions of Section 3 below.

2. Obligations of Corona: For the Term of this Agreement, Corona shall pay to Riverside One Hundred Thousand Dollars (\$100,000.00) each year ("Riverside Compensation"). The Riverside Compensation shall be due and payable in two (2) equal installments each year on July 15 and January 15.

On or before the effective date of the Agreement and subject to Corona's rights provided for in Section 4 below, Corona shall assign to Riverside for its Aviation Unit within the Special Operations Division one full-time (40 hours per week) employee. The employee provided by Corona will be a sworn police officer who will perform the function of a Tactical Flight Officer (hereinafter "Corona TFO"). If the Corona TFO is absent from work due to vacation, sick time, personal leave, or compensatory time, Riverside shall make every reasonable effort to provide a replacement from relief personnel. If Riverside is unable to provide a replacement TFO, Corona shall have the option of providing a replacement Corona TFO. As provided for in Section 7 below, Corona shall be responsible for payment of all of the Corona TFO wages and benefits as an employee of the City of Corona, and shall comply with all requirements pertaining to employer's liability, worker's compensation, unemployment insurance and Social Security.

3. Reciprocal Indemnification and Hold Harmless Provisions: Riverside agrees to indemnify and hold harmless Corona, its elected and appointed officers, employees and agents from and against any damage or injury to persons, including death, and /or property due to the negligence or willful acts by Riverside, their elected and appointed officers, employees and agents in performing its duties and obligations, pursuant to this Agreement.

Corona agrees to indemnify and hold harmless Riverside, its elected and appointed officers, employees and agents from and against any damage or injury to persons, including death, and/or property due to the negligence or willful acts by Corona, their elected and appointed officers, employees and agents in performing its duties and obligations, pursuant to this Agreement.

4. Assignment & Supervision: The Corona TFO will work as a crew member on one permanently assigned shift. Shift assignment will be determined by Riverside police aviation supervision.

Day to day supervision of the Corona TFO will be the responsibility of supervisors assigned to the Special Operations Division of the Riverside Police Department ("Riverside Supervisors"). Any personnel issues regarding the Corona TFO shall be communicated to the Corona Police Department command staff assigned to the Aviation Program ("Corona Supervisors"). The Riverside Police Aviation Lieutenant shall make these notifications. Corona shall handle any personnel issues with recommendations and assistance from the Riverside Supervisors, and ultimate responsibility for the conduct of the Corona TFO will remain with Corona. In the event the Corona TFO is removed from duty for an extended period of time for disciplinary or other reasons, Corona shall assign a replacement Corona TFO.

Notwithstanding anything to the contrary in this Agreement, Corona shall have the right, due to budgetary, staffing or other reasons, to terminate its assignment of the Corona TFO from the Aviation Program; provided, however, that Corona shall provide thirty (30) days prior written notice to Riverside before the effective date of such action.

5. Program Mission: The mission of the Aviation Program established by this Agreement shall be to provide police air support services for the Corona Police Department. Such services shall include, but are not limited to, response to emergency calls for surveillance relating to in-progress felonies, crimes against persons and property, vehicle pursuits and similar activities.

The Aviation Program will be based upon a scheduled seven (7) day availability per week basis, for day and night operations.

The City of Corona will be added into the City of Riverside's area of operation and will be patrolled as-needed during scheduled flights ("As-Needed Flight Patrol"). As used herein, "As-Needed Flight Patrol" shall mean requests made by Corona, either through its Corona TFO, command staff or dispatch, that Riverside determines in its sole and reasonable discretion can be accommodated. This will apply even when the Corona TFO is absent from work or off duty. When operations are cancelled due to weather, maintenance or any other matter causing cancellation, the Corona TFO will be reassigned to other duties within the Aviation Unit or reassigned back to Corona for deployment.

6. **Compensation:** Riverside cannot guarantee an annual base number of flight hours in the City of Corona. Any specific, dedicated hours of flight time requested by Corona outside of the As-Needed Flight Patrol will be billed at the "Hourly Flight Rate" for that year provided for in Exhibit "A" attached hereto and incorporated herein by reference. Flight time will be billed in full hour increments, so any flight time of less than one hour will be rounded up to one hour. Riverside will track flight hours within the City of Corona in the same manner in which it tracks flight hours for other cost reimbursement purposes, and shall provide a total of the flight hours to Corona on a quarterly basis.

On such occasions where there is a request or need for air support in the jurisdiction of both Parties simultaneously, the mission of the Aviation Program is to provide air support to the Party with the highest priority (nature) of call. Said determination as to which Party shall receive air support shall lie within the sole discretion of the Pilot in Command.

7. **Corona TFO Costs:** The Corona TFO shall be assigned to the Aviation Program at no cost to Riverside. All salary and benefit costs of the Corona TFO position will be paid by Corona. Any increase in salary or benefits for the Corona TFO, as approved by Corona, will be the responsibility of Corona. Corona shall also be responsible to maintain workers compensation coverage for its employees working in the TFO position.

Any cost for in-service or professional training of the "Corona TFO" outside of the Aviation Unit will be paid for by Corona. This includes, but is not limited to, ALEA (Airborne Law Enforcement) conferences and other professional development. The Riverside Supervisors shall determine what training is required of the Corona TFO, and Corona shall make every reasonable effort to budget and make available the money for such training as promptly as possible.

8. **Term; Renewals:** The initial term of this Agreement shall be for a period of two (2) years from July 1, 2018 through June 30, 2020, unless earlier terminated as provided for herein ("Term"). The Term shall be extended for additional two (2) year renewal Terms, unless either Party provides notice to the other Party of its intent not to renew at least thirty (30) days prior to the expiration of the initial Term or any renewal Term. Except as provided in Section 9 below, the terms and conditions of the Agreement during any renewal Term shall be the same as provided in this Agreement.

9. **Adjustment to Compensation for Renewal Terms:** At least ninety (90) days prior to the expiration of the initial Term or any renewal Term, Riverside shall notify Corona if a change to the Riverside Compensation (provided for in Section 2 above) or the Hourly Flight Rate (provided in Section 5 above) may be necessary for the upcoming renewal Term. The Riverside Police Chief and the Corona Police Chief, or their designees, shall use all reasonable efforts to discuss such potential changes within thirty (30) days of Riverside's notice. Any changes in the Riverside Compensation or the Hourly Flight Rate (Exhibit "A" – Cost of Services) during any renewal Term shall be approved by the respective City Councils and documented in writing in a form acceptable to the Riverside City Attorney and the Corona City Attorney; provided, however, that the Corona Police Chief shall have the delegated authority to approve and execute any changes which do not result in a change to the Riverside Compensation of more than ten percent (10%) in any fiscal year.

10. **Termination; Reimbursement:** At any time during the Term of this Agreement, either Party hereto shall have the right to terminate this Agreement, with or without cause, upon thirty (30) days written notice to the other Party. The effective date of such termination shall be the thirty-first (31st) day following the date of the notice of termination. If the Agreement is terminated before the natural expiration of the initial Term or any Renewal Term, Corona shall be entitled to a reimbursement of a pro-rata amount of the Riverside Compensation. The pro-rata amount shall be equivalent to the number of months remaining prior to natural expiration of the initial Term or any Renewal Term divided by twelve (12), multiplied by the Riverside Compensation.

11. **Loaned Equipment:**

11.1 **List of Loaned Equipment.** Corona shall provide Riverside the following helicopter equipment ("Loaned Equipment") upon the request of Riverside:

- Spectrolab SX16 Nightsun with or without Slave System

11.2 **Maintenance of Loaned Equipment.** Upon acceptance of the Loaned Equipment, Riverside agrees to care for, house and maintain the Loaned Equipment in good working condition at its sole costs and expense. Riverside shall not surrender any of the Loaned Equipment to an agency or entity other than Corona, except by written permission from Corona, except Riverside may send Loaned Equipment to a qualified repair facility at its sole cost and expense for maintenance or repair when necessary.

11.3 **Insurance.** Riverside shall procure and maintain, at all times during the Term of this Agreement, all appropriate liability insurance coverage on the Loaned Equipment. Such coverage shall be standard for such Loaned Equipment, and shall be subject to review and approval by the Corona's Representative. All applicable insurance policies shall name Corona as an additional insured. Riverside shall deliver to Corona a certificate of insurance and endorsements evidencing the required insurance. The Parties agree that the Corona Representative's failure to issue a written objection to the certificate of insurance or endorsements within ten (10) days from receipt shall be interpreted to mean that Corona is satisfied as to the adequacy of the insurance coverage.

11.4 Indemnification. To the fullest extent permitted by law, Riverside shall defend, indemnify and hold Corona, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Riverside, its officials, officers, employees, subcontractors, consultants or agents in connection with the use of the Loaned Equipment and its performance under this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys fees and other related costs and expenses.

To the fullest extent permitted by law, Corona shall defend, indemnify and hold Riverside, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Corona, its officials, officers, employees, subcontractors, consultants or agents in connection with the lending of Loaned Equipment and its performance under this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys fees and other related costs and expenses.

12 General Provisions:

12.1 Entire Agreement; Amendments. This Agreement sets forth the entire understanding of the Parties and supersedes all prior agreements covering the same subject matter, including the Original Agreement, the First Amended Agreement and the Second Amended Agreement (as of 11:59 PM on June 30, 2018). This Agreement may be amended only by a written instrument duly approved by both Parties and executed by their authorized representatives.

12.2 Successors and Assigns. This Agreement shall be binding upon the successors and assigns of the Parties.

12.3 Representatives. Corona and Riverside hereby designate their respective Police Chiefs, or their designees, to act as their representatives for the performance of this Agreement. Each representative shall have the power to act on behalf of their respective Party in order to implement the purposes under this Agreement.

12.4 Attorney Fees. If either Party commences an action against the other Party arising out of or in connection with this Agreement, the prevailing Party in such action shall be entitled to have and recover from the non-prevailing Party (or the Party found to have breached this Agreement) reasonable attorneys' fees and costs.

12.5 Authority to Approve and Implement. The Parties have all requisite power and authority to execute, deliver, and perform the Agreement. The Parties warrant that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

12.6 Third Party Rights. Corona and Riverside agree that the provisions of this Agreement are not intended to create or clarify any rights in third parties not a party to this Agreement. In addition, no third party shall have any right of action hereunder. This Agreement shall not be enforceable by any parties other than Corona and Riverside.

12.7 Governing Law. This Agreement shall be governed by the laws of the State of California. Any action to interpret or enforce this Agreement shall be maintained in Riverside County.

12.8 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

12.9 Privileges and Immunities. All privileges and immunities of Corona and Riverside provided by state or federal law shall remain in full force and effect.

12.10 Notices. Any notice required by this Agreement, or correspondence concerning this Agreement, shall be deemed to have been properly delivered, served, or given for all purposes when personally delivered to the Party to whom it is directed to, or in lieu of such personal service, when mailed, postage prepaid, to the representatives of the Parties shown below:

CITY OF CORONA

Attn: Police Chief
Corona Police Department
730 Corporation Yard Way
Corona, CA 92880

CITY OF RIVERSIDE

Attn: Police Chief
Riverside Police Department
4102 Orange Street
Riverside, CA 92501

Any Party may change its address for purposes of this paragraph by giving written notice of such change in the manner prescribed by this paragraph.

[SIGNATURES ON NEXT PAGE]

SIGNATURE PAGE FOR
THIRD AMENDED
AVIATION PROGRAM AGREEMENT
BETWEEN THE CITY OF RIVERSIDE
AND THE CITY OF CORONA

CITY OF RIVERSIDE

By: _____
City Manager

ATTEST:

By: _____
Colleen J. Nicol
City Clerk

APPROVED AS TO FORM:

By: Neil Okazaki
Neil Okazaki
Assistant City Attorney

CITY OF CORONA

By: [Signature]
City Manager
JL 6.7.18

ATTEST:

By: Sylvia Edwards
Sylvia Edwards
City Clerk

APPROVED AS TO FORM:

By: [Signature]
Dean DeMeth
City Attorney

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EXHIBIT "A" - COST OF SERVICES

July 1, 2018 – June 30, 2019

Riverside Compensation: \$100,000.00
Annual Base Flight Hours: -0- hours
Hourly Flight Rate: \$ 760.11
Average # flight hours/day: Emergency response only

July 1, 2019 – June 30, 2020

Riverside Compensation: \$100,000.00
Annual Base Flight Hours: -0- hours
Hourly Flight Rate: \$ 760.11
Average # flight hours/day: Emergency response only