



Agreement # _____

AGREEMENT TO PROVIDE SERVICES

THIS AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and the **Elks Recreation, Inc.**, a non-profit corporation having its principal place of business at 1309 North Bradley Road, PO Box 605, Santa Maria, CA 93454 (hereafter ELKS) wherein COUNTY agrees to provide and the ELKS agrees to accept the services specified herein.

WHEREAS, there are within the boundaries of the County of Santa Barbara certain events which attract such large numbers of persons and vehicles that additional assistance from outside law enforcement agencies, including the Santa Barbara Sheriff's Department, is required in order to provide adequate law enforcement services; and,

WHEREAS, the ELKS has requested the COUNTY, through its Sheriff's Department, to assist in the provision of necessary law enforcement services pursuant to a contractual agreement; and,

WHEREAS, the COUNTY, through its' Sheriff's Department, has expressed willingness to provide law enforcement assistance on a cost reimbursement basis pursuant to contractual agreement; and

WHEREAS, pursuant to Government Code 53069.8, "the Board of Supervisors...contract on behalf of the Sheriff... to provide supplemental law enforcement services to private entities to preserve the peace at special events or occurrences that happen on an occasional basis;"

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

DESIGNATED REPRESENTATIVE. Sheriff Bill Brown at phone number (805) 681-4290 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Loretta Simas, Manager, at phone (805) 925-4125, is the authorized representative for the ELKS. Changes in designated representatives shall be made only after advance written notice to the other party.

NOTICES. Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first class mail, postage prepaid, or otherwise delivered as follows:

To COUNTY: Douglas A. Martin, Chief Financial Officer, Santa Barbara County Sheriff Department, 4434 Calle Real, CA 93110
To ELKS: Loretta Simas, Manager, Elks Recreation Inc., 1309 North Bradley Road, PO Box 609, Santa Maria, CA 93454

or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

SCOPE OF SERVICES. COUNTY agrees to provide services to the ELKS in accordance with Exhibit A attached hereto and incorporated herein by reference.

TERM. COUNTY shall commence on July 1, 2009 and complete services on June 30, 2012, unless earlier terminated.

COMPENSATION OF COUNTY. COUNTY shall be paid for performance under this Agreement in accordance with the terms of Exhibit B attached hereto and incorporated herein by reference.

STANDARD OF PERFORMANCE. COUNTY represents that it has the skills and expertise necessary to perform the services required under this Agreement. Accordingly, COUNTY shall perform services in the manner and according to the standards observed by a competent practitioner of the same profession.

OWNERSHIP OF EQUIPMENT. COUNTY shall be the owner of all items incidental to the performance of this Agreement. No transfer of ownership of equipment from COUNTY to the ELKS shall occur as a result of this contract.

INDEMNIFICATION AND INSURANCE. The ELKS shall agree to defend indemnify and save harmless the COUNTY and to procure and maintain insurance in accordance with the provisions of Exhibit C, attached hereto and incorporated herein by reference.

NONDISCRIMINATION. COUNTY hereby notifies the ELKS that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and the ELKS agrees to comply with said ordinance.

NONEXCLUSIVE AGREEMENT. The ELKS understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with others to provide the same or similar services.

ASSIGNMENT. The ELKS shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of COUNTY and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

TERMINATION.

A. **By COUNTY.** COUNTY may, by written notice to ELKS, terminate this Agreement in whole or in part at any time, whether for COUNTY's convenience or because of the failure of the ELKS to fulfill the obligations herein.

- 1) For Convenience. COUNTY may terminate this Agreement upon thirty (30) days written notice. Following notice of such termination, COUNTY shall promptly cease work and notify ELKS as to the status of its performance.

- 2) For Cause. Should the ELKS default in the performance of this Agreement or materially breach any of its provisions, COUNTY may, at COUNTY's sole option, terminate this Agreement by written notice which shall be effective upon receipt by the ELKS.

B. By ELKS. Should COUNTY fail to provide the ELKS all or any part of the services set forth in Exhibit A, the ELKS may, at the ELKS option terminate this agreement if such failure is not remedied by COUNTY within thirty (30) days of written notice to COUNTY.

Notwithstanding any other payment provision of this Agreement, the ELKS shall pay COUNTY for service performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made.

SECTION HEADINGS. The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

SEVERABILITY. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

REMEDIES NOT EXCLUSIVE. No remedy herein conferred upon or reserved to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

TIME IS OF THE ESSENCE. Time is of the essence in this Agreement and each covenant and term is a condition herein.

NO WAIVER OF DEFAULT. No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

ENTIRE AGREEMENT AND AMENDMENT. In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppels.

SUCCESSORS AND ASSIGNS. All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

COMPLIANCE WITH LAW. The ELKS shall, at their sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of the ELKS in any action or proceeding against the ELKS, whether COUNTY be a party thereto or not, that the ELKS has violated any such ordinance or statute, shall be conclusive of that fact as between the ELKS and COUNTY.

CALIFORNIA LAW. The laws of the State of California shall govern this Agreement. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

EXECUTION OF COUNTERPARTS. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

AUTHORITY. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, the ELKS hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which the ELKS is obligated, which breach would have a material effect hereon.

PRECEDENCE. In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

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Agreement between, the **Elks Recreation, Inc.** and **Santa Barbara County Sheriff's Department** regarding contracted law enforcement services as approved by the following parties:

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

COUNTY OF SANTA BARBARA

SHERIFF'S DEPARTMENT

By: _____
Chair, Board of Supervisors

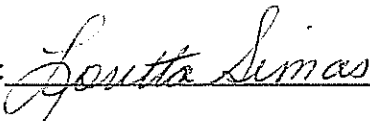
By: 
Bill Brown, Sheriff

Date: _____

ATTEST:
MICHAEL F. BROWN,
CLERK OF THE BOARD


ELKS:
Loretta Simas
Manager
Elks Recreation, Inc.


By: _____
Deputy

By: 

APPROVED AS TO FORM:
DENNIS MARSHALL
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM:
ROBERT W. GEIS, CPA
AUDITOR-CONTROLLER

By: 
Deputy County Counsel

By: 
Deputy

APPROVED AS TO FORM:
RAY AROMATORIO

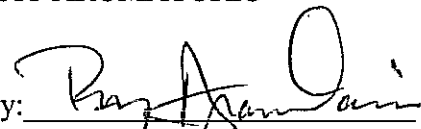
By: 
Risk Program Administrator

EXHIBIT A

STATEMENT OF WORK

The COUNTY agrees to provide special event law enforcement services for the ELKS for the term stated in Section 4 of this Contract for various special events, including, but not limited to athletic, business and/or entertainment events.

Written notice will be presented to COUNTY by the ELKS for specific personnel requests, preferably thirty days in advance of the special event sponsored by the ELKS. Untimely requests are subject to inability to accommodate the request. Volunteer deputies will be scheduled outside of their regular work calendar to serve supplemental security requests. If the event is canceled by the ELKS, a written notice from the ELKS to the COUNTY must be received at least twenty-four hours prior to the event in order to avoid a two-hour minimum charge per officer scheduled. If deemed necessary to carryout the duties assigned to the Sheriff's Department under the Special Events arrangement, additional personnel and/or equipment may be added by written notification to the designated representative of the other party.

The rendition of services to be performed by COUNTY under this agreement, including the standards of performance, the discipline of all Sheriff's Department personnel and the control of all Sheriff's Department personnel employed under the Agreement shall be under, and remain under, the ranking Sheriff's Department officer assigned.

No exemptions and exceptions to the services are to be performed.

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EXHIBIT B

PAYMENT METHODOLOGY

The ELKS will reimburse the COUNTY for actual, additional personnel, supply costs and mileage costs incurred in the provision of the services described in Exhibit A. Costs will be tracked through the COUNTY's financial (FIN) system and a summary invoice will be sent to the ELKS within 60 days of the conclusion of the work performed. A minimum of two hours per officer will be assessed for each scheduled event unless the event is cancelled and the COUNTY is informed at least twenty-four hours in advance. A detailed listing of these charges will be kept on file at the COUNTY office and made available to the ELKS upon written request. These records will be maintained for a period of one year after the date of the original invoice.

The ELKS may request and receive an estimate of costs based on number and rank of staff, hours of service and direct expense items requested. In no way will an estimate constitute a minimum or maximum allowable charge under the terms of this contract.

The ELKS payment is due to the COUNTY within sixty (60) days of the date of the invoice. Payment will be made payable to: Santa Barbara County Sheriff, and mailed to Santa Barbara County Sheriff's Department, Attention: Business Office, P. O. Box 6427, Santa Barbara, CA 93160-6427.

If such payment is not delivered to the COUNTY office within sixty days after the date of the invoice, COUNTY is entitled to recover interest thereon. Said interest shall be at the rate of ten (10) percent per annum and commence sixty (60) days after the date of the invoice and continue until such time as the payment is delivered to the COUNTY office described on said invoice.

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EXHIBIT C

SPECIAL INDEMNIFICATION AND INSURANCE PROVISIONS

INDEMNIFICATION

1. **Indemnification by the ELKS.** The ELKS shall indemnify, defend and hold COUNTY, and COUNTY's agents, officers and employees, harmless from and against all claims, damages, losses, causes of action and expenses, including attorneys' fees, for any personal injury, bodily injury, loss of life or damage to property, violation of any federal, state or municipal law, ordinance or constitutional provision, or other cause which arise out of, relate to or result from the activities or omissions, negligent or otherwise, under this Agreement of the ELKS, and the ELKS officers, agents and employees.
2. **Indemnification by COUNTY.** COUNTY shall indemnify, defend and hold the ELKS, and the ELKS's agents, officers and employees, harmless from and against all claims, damages, losses, causes of action and expenses, including attorneys' fees, for any personal injury, bodily injury, loss of life or damage to property, violation of any federal, state or municipal law, ordinance or constitutional provision, or other cause which arise out of, relate to or result from the activities or omissions, negligent or otherwise, under this Agreement of COUNTY, and COUNTY's officers, agents and employees.
3. **No Agency.** Except as otherwise specified herein, for the purposes of this section, the ELKS's shall not be deemed to be COUNTY's agent and COUNTY shall not be deemed to be the ELKS agent.
4. **Notification.** Each party shall give the other prompt notification when it first learns of an incident or occurrence covered, or likely to be covered, under the terms of this section, as well as prompt notification if a claim is made or suit is brought against a party based on an incident or occurrence covered, or likely to be covered, by the terms hereof.
5. **Continuing Obligation.** To the extent that COUNTY has agreed to indemnify, defend and hold harmless the ELKS, its officers, agents and employees under this Agreement, said obligations shall continue to exist during the term of this Agreement and subsequent to this Agreement for those acts or omissions giving rise to liability which occurred during this Agreement. To the extent that the ELKS has agreed to indemnify, defend and hold harmless COUNTY, its officers, agents and employees under this Agreement, said obligations shall continue to exist during the term of this Agreement and subsequent to this Agreement for those acts or omissions giving rise to liability which occurred during this Agreement.
6. **Insurance.** Either party may purchase commercial insurance to cover their exposure hereunder, in whole or in part.

INSURANCE

1. **Workers' Compensation.** COUNTY warrants that it is permissibly self-insured for workers' compensation coverage and agrees that its employees providing services to the ELKS pursuant to this Agreement will be covered by COUNTY's self-insurance program for all injuries arising out of or occurring in the course and scope of their employment. COUNTY reserves the right at its sole discretion to purchase a workers' compensation policy at any time during the term of this Agreement.

2. **Liability.** COUNTY warrants that it is self-insured for liability and property damage claims up to its current self-insured retention and that it purchases excess liability insurance for claims in excess of that amount. The ELKS shall maintain insurance against claims for liability and property damage in an amount of not less than Two Million Dollars (\$2,000,000), combined single limit coverage. COUNTY shall be named as an additional insured on any liability policy of the ELKS. The parties shall maintain such insurance coverage in full force and effect during the term of this Agreement.

3. **Proof of Insurance.** Each party shall provide evidence of the above insurance coverage, listing the other party as an additional insured. Each such insurance coverage policy shall provide that such policy may not be cancelled or changed except after at least thirty (30) days prior written notice to the other party. The foregoing insurance coverage shall not limit the indemnification obligations of the parties as set forth in the above listed indemnification, and the failure to maintain said coverage shall constitute a material breach of this Agreement.

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