

AGREEMENT NO. _____
BETWEEN
THE CITY OF LOS ANGELES
AND
ERICKSON INCORPORATED

This Agreement between the City of Los Angeles (hereinafter referred to as the "CITY"), a municipal corporation, acting by and through the Los Angeles Fire Department (hereinafter referred to as the "LAFD"), and Erickson Incorporated, a Delaware corporation (hereinafter referred to as the "CONTRACTOR"), is entered into with reference to the following:

WHEREAS, the LAFD issued a Request for Proposal (RFP No. 2013-38-001) for qualified CONTRACTORS to perform dedicated aircraft (hereinafter referred to as "helitanker") services to perform aerial firefighting services during the CITY's annual brush fire season to augment the LAFD's air attack assets to combat major brush fire incidents; and

WHEREAS, the CITY evaluated the CONTRACTOR's responsive proposal and selected the CONTRACTOR's proposal as the best-value and availability of the desired helitanker services, and has negotiated with the CONTRACTOR to provide the services specified herein; and

WHEREAS, the Parties wish to enter into an Agreement for aerial helitanker services covering the 2014-15 through 2018-19 fiscal years and corresponding fire seasons; and

WHEREAS, the CITY desires to enter into a five (5) year term Agreement with the CONTRACTOR, from July 1, 2014 to June 30, 2019, with a guaranteed minimum performance period of 150 days each year and the CONTRACTOR's satisfactory performance of all the terms of the Agreement; and

WHEREAS, the Parties wish to enter into an Agreement for aerial helitanker services covering the 2014-15 through 2018-19 fiscal years and corresponding fire seasons.

NOW, THEREFORE, in consideration of the above premises, and the mutual covenants contained herein, the Parties hereto agree as follows:

SECTION 1. PARTIES TO AGREEMENT, REPRESENTATIVES, AND NOTICES

A. The Parties to this Agreement are:

1. CITY - The City of Los Angeles, a municipal corporation, having its principal offices at 200 North Spring Street, Los Angeles, California 90012.
2. CONTRACTOR - Erickson Incorporated, a Delaware corporation, having its principal offices at 5550 SW Macadam Avenue, Suite 200, Portland, Oregon 97237.

B. The representatives of the Parties who are authorized to administer this Agreement and to whom formal notices, demands, and communications will be given are as follows:

1. The CITY's representative will be as follows, unless otherwise stated in this Agreement:

James G. Featherstone, Interim Fire Chief
Los Angeles Fire Department
200 North Main Street, 18th Floor
Los Angeles, California 90012

With copies to:
Mario D. Rueda, Chief Deputy
Commander, Emergency Operations
Los Angeles Fire Department
200 North Main Street, 18th Floor
Los Angeles, California 90012
(213) 978-3880

2. The CONTRACTOR's representative will be:

Mike Rotonda, Aerial Firefighting Manager
Erickson Incorporated
5550 SW Macadam Avenue, Suite 200
Portland, Oregon 97237.
(505) 603-9275

Attn: Legal Counsel
Erickson Incorporated
5550 SW Macadam Avenue, Suite 200
Portland, Oregon 97237.

- C. Formal notices, demands, and communications to be given hereunder by either party will be made in writing and must be effected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested, and will be deemed communicated as of the date of receipt.
- D. If the name or the address of the person designated to receive the notices, demands, or communication, or the address of such person is changed, written notice will be given, in accord with this section, within five (5) working days of said change.

SECTION 2. TERMS OF THE AGREEMENT

- A. The term of this Agreement will commence on July 1, 2014 and will terminate on June 30, 2019, subject to funding provided in the CITY's FY2014-15 Adopted Budget and in subsequent fiscal years, unless otherwise terminated by the Fire Department as provided for in Section 10 of this Agreement.
- B. Notwithstanding any other provision of this Agreement, including any exhibits or attachments incorporated therein, and in order for the CITY to comply with its governing legal requirements, the CITY shall have no obligation to make any payments to CONTRACTOR, unless the CITY shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in said Agreement.

CONTRACTOR agrees that any services provided by CONTRACTOR, purchases made by CONTRACTOR, or expenses incurred by CONTRACTOR, in excess of said appropriation(s) shall be free and without charge to the CITY and the CITY shall have no

obligation to pay for said services, purchases, or expenses. CONTRACTOR shall have no obligation to provide any services, provide any equipment, or incur any expenses in excess of the appropriated amount(s) until the CITY appropriates additional funds for this Agreement.

- C. The CITY may, with mutual agreement of the CONTRACTOR and through the LAFD, amend the Agreement to extend for five (5) additional years, subject to approval of the CITY Council and funding provided in the CITY's Adopted Budget.
- D. Upon the CITY submitting written notification to the CONTRACTOR to commence performance, the base services period for FY2014-15 will begin on August 1, 2014 and will end 150 days later. Services required beyond that date, but before the contract expires, will be compensated at the rate stated in Section 6.A.
- E. The CONTRACTOR and LAFD Air Operations Section will hold a Pre-Work Conference within 48 hours of the arrival of the helitanker and the CONTRACTOR's crew at the Van Nuys Airport.

SECTION 3. CONTRACTOR'S OBLIGATIONS

Upon written notification by the CITY to the CONTRACTOR to commence performance, the CONTRACTOR will perform the helitanker services as set forth below.

A. Minimum Aircraft Capabilities

The CONTRACTOR will provide a helitanker, as required by the LAFD that is equipped and has the following capabilities:

1. Fixed-water tank and functioning self-filling snorkel pump with the ability to draw 2,000 gallons of water of either fresh or salt water within 120 seconds. The helitanker must be capable of lifting 2,000 gallons of water or retardant minimum or performance limited load as per temperature and density altitude limitations allowed at mean sea level.
2. The Federal Aviation Administration and the National Air Tanker Board must approve the tank system. The water tank must utilize an onboard Class "A" foam injection system capable of metering foam concentrate to create a foam solution ranging from 0.1% to 0.3%. A 75 gallon concentrate tank must be provided so that a minimum of 28 water drops utilizing a 0.1% "A" foam solution can be made without refilling the concentrate tank.
3. The helitanker and accessories shall be in airworthy and operable condition, and present a neat and clean appearance. Upholstery, paint, and Plexiglas shall be in good condition.
4. Equipped and in airworthy condition sufficient to pass all LAFD, United States Forest Service (USFS) aircraft inspections and certified and listed in the national air tanker system, as applicable.

B. Pilots and Aircraft Support

1. The CONTRACTOR must provide pilots who possess a current USFS issued Helicopter Pilot Qualification card and have experience fighting brushfires.
2. Aircraft, pilots, mechanical support, and all other support needs for the aerial fire-fighting mission must be provided by the CONTRACTOR as a complete stand-alone package with no sub-CONTRACTORS or third-party providers.
3. The CONTRACTOR will provide a fuel tender vehicle and driver for incident needs and will make all other arrangements necessary to dispense fuel to the helitanker.
4. The CONTRACTOR will provide materials and supplies (including, but not limited to, lube oils, hydraulic fluid, filter, parts, etc.) mechanical support staff, and other support functions, sufficient to maintain the helitanker in airworthy condition as specified above.

C. Cooperation

During times of facility construction or repair, the CONTRACTOR is responsible for ascertaining the nature and extent of any simultaneous, collateral, and essential work to be done by others on the worksite to which the helitanker is assigned.

The Department, its work-personnel, CONTRACTORS, and others must have the right to operate within or adjacent to the worksite to perform work. The Department, its CONTRACTORS, work-personnel, the CONTRACTOR, and others will coordinate their operations and cooperate to minimize interference.

The CONTRACTOR must absorb in its Proposal all costs involved on its part as a result of coordinating its work with others. The CONTRACTOR will not be entitled to additional compensation from the Department for damages or delays resulting from such simultaneous, collateral, or essential work. If necessary, to avoid or minimize such damage or delay, the CONTRACTOR must redeploy its workforce to other parts of the worksite.

D. Operations Outside of the CITY

The CONTRACTOR may be called upon to support water-dropping operations outside the CITY's boundaries based upon mutual aid agreements between the CITY and other jurisdictions. Operations outside of the CITY will be at the discretion of the Fire Department. The Fire Department reserves the right to suspend outside operations by the CONTRACTOR to address the Fire Department's immediate needs within the CITY.

E. Housing Expense

Charges for the off-site housing of the CONTRACTOR's flight and maintenance personnel will be at the CONTRACTOR's expense.

F. Aircraft on Ground (AOG)

1. If, for any reason, the primary aircraft is deemed grounded (Aircraft on Ground "AOG") for a period in excess of one (1) hour, all AOG time will be deducted from the established billing rate as follows:
 - Billing credit in 0.10 increments at the established contract per hour rate, reflected in the invoice for the affected billing cycle.
2. If, for any reason, the primary aircraft is deemed AOG for 10-hours, or longer, within a 24-hour (one-day) period, an approved back-up replacement aircraft may be requested, as determined by the LAFD Air Operations Commander, or his designee at no additional cost to the CITY. The replacement aircraft must arrive at the Air Operations facility (Van Nuys, CA) within 24-hours of the request being made. The Proposer will submit the last three years of service records for the back-up/replacement aircraft within 24-hours of the aircraft arrival.
3. The Proposer must submit proof of the availability of a second aircraft available for deployment, should the primary aircraft become AOG. The Proposer may either by submitting proof or by a "letter of agreement," provide for a back-up aircraft with immediate availability should the primary aircraft become AOG for any reason during the performance period.

G. Option to Request Additional Helitanker

During the term of this Agreement, the CITY may request a second helitanker, related crew, and services ("second helitanker") to the extent that funds are approved by the CITY Council and an aircraft is available from the CONTRACTOR. In the event that funding is approved and an aircraft is available, the Fire Department will provide written notice to the CONTRACTOR and request the Second helitanker. The CONTRACTOR will provide the Second helitanker under the terms and conditions of this Agreement. The Parties will amend the Agreement to reflect the increased funding.

SECTION 4. FIRE DEPARTMENT RESPONSIBILITIES

A. The LAFD will provide the following items:

1. The Fire Department will provide aircraft fuel, whether through repayment or by fuel dispensed, at the heliport where the helitanker will be based. Although the fuel will be provided, the CONTRACTOR is responsible for providing a fuel tender vehicle and driver for incident needs and must make all other arrangements necessary to dispense fuel to the helitanker; and
2. All Class "A" foam.

B. Location of the Helitanker

The daily standby facility will be located at the Van Nuys Airport adjacent to the Fire Department's Air Operations Section, with the Air Operations Section Commander providing day-to-day supervision. The Fire Department will provide accommodations

within Air Operations to helitanker personnel, during standby hours. The Fire Department will provide water, telephone, fax, and other incidentals, as needed and as approved by the Fire Department.

SECTION 5. JOINT RESPONSIBILITIES

A. Meetings

Both Parties agree to attend formal meetings and informal consultations with each other on an as-needed basis to discuss and agree on needed actions regarding helitanker operations.

B. Annual Scheduling of Performance Period

Both Parties agree to meet on an annual basis, no later than April 15, to begin discussions regarding the scheduling of the performance period for the following fiscal year. The CITY will notify the CONTRACTOR in writing by no later than May 1 of the need for a base performance period of more than the guaranteed minimum of 150 days the following fiscal year. The performance period will commence August 1 unless otherwise mutually agreed to by the Parties.

SECTION 6. COMPENSATION AND METHOD OF PAYMENT

A. Daily Rate for Aircraft Only

This amount is based on a stand-by rate for a specific performance period of a minimum of one hundred fifty (150) days per year at \$23,500 per day, and a minimum of one hundred eighty (180) days per year at \$23,000 per day. The standby rates do not include any flight hours. The CITY will pay a base price amount, for 150 days, not to exceed \$3,573,800 to the CONTRACTOR for FY2014-15. The daily stand-by rates are subject to a 3% increase each year beyond FY2014-15.

B. Flight Hour Rate

Flight hours will be billed as a separate line item at \$4,880 per flight hour, in one-tenth hour increments. Flight hours are actual flight hours operating the aircraft in an aerial firefighting capacity. The CITY will pay up to ten (10) flight hours, not to exceed \$48,800 to the CONTRACTOR for FY2014-15. Flight hours do not include pilot orientation, proficiency, or training flight time. Additional flight hours may be authorized subject to the availability of funding by the City Council. The flight-hour rate is subject to a 3% increase each year beyond FY2014-15.

C. Normal Standby Hours

Under the base price, the CONTRACTOR will provide the helitanker, pilots, mechanical support, and other support functions for a minimum of ten (10) hours per day. Emergency operations may be conducted from dawn to dusk. Extended-phase fires may require operations during daylight hours that extend beyond the ten (10) hour standby time.

D. Service During Term After Base Services Period Ends

In the event that the CITY requires service beyond the base performance period of 150 days or 180 days, the terms and amount to be paid for each day will be the same as during the contracted performance period. The LAFD will notify the CONTRACTOR at least 14 days prior to departure, if the aircraft is needed to be held over. The CONTRACTOR will assess its schedule and confirm the aircraft is still available. Any holdover is subject to the availability of additional funds by the Mayor and CITY Council. Any callback by the LAFD will be subject to the CONTRACTOR's schedules and availability of an aircraft.

E. Operations Outside of the CITY

In the event that the CITY requests that the CONTRACTOR provide services outside of the CITY's boundaries pursuant to Section 3.D, the CITY will compensate the CONTRACTOR in accordance with the terms and conditions contained herein.

F. Method of Payment

1. The CITY will make payment to the CONTRACTOR for the services performed after the receipt and approval of the invoices by the CITY's Representative. The CITY will not unreasonably withhold approval of invoices. In the event any invoice is not approved, the CITY's Representative will immediately send a notice to the CONTRACTOR setting forth therein the reason(s) said invoice was not approved. Upon receipt of such notice, the CONTRACTOR may re-invoice the CITY for the accepted portion of the invoice or cure the defects identified in the CITY Representative's notice. The CITY will pay the revised invoice as soon as practicable after its submission. If the CITY's Representative contests all or a portion of an invoice, the CITY's representative and the CONTRACTOR will use their best efforts to resolve the disputed portion or portions of the invoice.

The invoice must include the following information:

- a. Name and address of company or firm;
- b. Name and address of the LAFD;
- c. Date of the invoice and period covered;
- d. Reference to contract number;
- e. Description of completed task and amount due for the task;
- f. Payment terms, total due, and due date;
- g. Certification by a duly authorized officer;
- h. Discounts and terms; and
- i. Remittance Address (if different from company address)

All invoices will be submitted on the company's letterhead, contain the company's official logo, or contain other unique and identifying information such as name and address of company or individual. Evidence that tasks have been completed, in the form of a report, brochure, or photograph, must be attached to all invoices. Invoices must be submitted within thirty (30) days of service, or monthly. Invoices are considered complete when appropriate documentation of services provided is signed off as satisfactory by the CITY's representative or their designee.

Invoices and supporting documentation will be prepared at the sole expense and responsibility of the CONTRACTOR. The CITY will not compensate the CONTRACTOR for any costs incurred for invoice preparation. The CITY may request, in writing, changes to the content and format of the invoices and supporting documentation to substantiate costs at any time.

2. Notwithstanding any other provision of this Agreement, any changes or additions thereto, including changes that will increase the CITY's total obligation, will be accomplished only by a properly authorized written amendment to this Agreement.

The CITY will not recognize any changes or additions made without the CITY's written authorization and the CITY will not be obligated to make any payment for such changes or additions.

SECTION 7. RESPONSIBILITY TO PROVIDE SERVICES IN ACCORDANCE WITH APPLICABLE STANDARDS AND REQUIREMENT TO POSSESS ALL VALID PERMITS AND LICENSES

CONTRACTOR warrants that the work performed hereunder will be completed in a manner consistent with professional standards among those firms in the CONTRACTOR's profession, doing the same or similar work, under the same or similar circumstances. CONTRACTOR must possess and maintain valid licenses and permits required to perform the services described herein.

SECTION 8. COMPLIANCE WITH STATUTES AND REGULATIONS

CONTRACTOR, in the performance of this Agreement, will comply with all applicable statutes, rules, regulations, and orders of the United States, the State of California, the County, and the City of Los Angeles. CONTRACTOR will comply with new, amended, or revised laws, regulations, and procedures that apply to the performance of this Agreement.

SECTION 9. LIMITATION OF CITY'S OBLIGATION TO MAKE PAYMENTS TO CONTRACTOR

Notwithstanding any other provision of this Agreement, including any exhibits or attachments incorporated therein, and in order for the CITY to comply with its governing legal requirements, the CITY shall have no obligation to make any payments to CONTRACTOR unless the CITY shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in said Agreement. CONTRACTOR agrees that any services provided by CONTRACTOR, purchases made by CONTRACTOR or expenses incurred by CONTRACTOR in excess of said appropriation(s) shall be free and without charge to the CITY and the CITY shall have no obligation to pay for said services, purchases, or expenses.

CONTRACTOR shall have no obligation to provide any services, provide any equipment, or incur any expenses in excess of the appropriated amount(s) until the CITY appropriates additional funds for this Agreement.

SECTION 10. TERMINATION

A. Termination for Convenience

The CITY may terminate this agreement for CITY's convenience at any time by giving CONTRACTOR thirty (30) days written notice thereof. Upon receipt of said notice, CONTRACTOR will immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The CITY will pay CONTRACTOR its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by CONTRACTOR to effect such termination. Thereafter, CONTRACTOR will have no further claims against the CITY under this Agreement.

B. Termination for Breach of Agreement

1. If CONTRACTOR fails to perform any of the provisions of this agreement or fails to make progress as to endanger timely performance, the CITY may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default that is acceptable to the CITY within the time permitted by the CITY, then the CITY may terminate this Agreement due to CONTRACTOR's breach of this Agreement.
2. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then the CITY may immediately terminate this Agreement.
3. If CONTRACTOR engages in any dishonest conduct related to the performance or administration of this Agreement or violates the CITY's lobbying policies, then the CITY may immediately terminate this Agreement.
4. In the event the CITY terminates this Agreement as provided in this article, the CITY may procure, upon such terms and in such manner as the CITY may deem appropriate, services similar in scope and level of effort to those so terminated, and CONTRACTOR will be liable to the CITY for all of its costs and damages, including, but not limited to, any excess costs for such services.
5. All finished or unfinished documents and materials produced or procured under this Agreement will become CITY property upon date of such termination.
6. If, after notice of termination of this Agreement under the provisions of this article, it is determined for any reason that CONTRACTOR was not in default under the provisions of this article, or that the default was excusable under the terms of this Agreement, the rights and obligations of the Parties will be the same as if the notice of termination had been issued pursuant to the preceding section in this article, titled "Termination for Convenience."
7. The rights and remedies of the CITY provided in this article will not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

SECTION 11. STANDARD PROVISIONS FOR CITY CONTRACTS

The CONTRACTOR will comply with the Standard Provisions for City Contracts (Rev. 03/09), attached hereto as Attachment A and hereby incorporated into and made a part of this Agreement.

SECTION 12. ENTIRE AGREEMENT

A. Complete Agreement

1. By reference, the CONTRACTOR's proposal to RFP 2013-38-001 and the addendum submitted on March 11, 2014, at the request of the CITY are hereby incorporated into this Agreement.
2. This Agreement contains the full and complete Agreement between the two Parties. No verbal contract or conversation with any officer or employee of either party will effect or modify any of the terms and conditions of this Agreement.

B. Number of Pages and Attachments

This Agreement is executed in four copies, each of which is deemed an original. This Agreement, includes ten (10) pages, and constitutes the complete understanding and Agreement between the Parties.

THE PARTIES SIGNING ON BEHALF OF THE CONTRACTOR AFFIRM THEY ARE LEGALLY AUTHORIZED TO SIGN ON BEHALF OF THE CORPORATION.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed by their respective duly authorized representatives.

Approved Corporate Signature Methods:

- a) Two signatures: one by Chairman of Board of Directors, President, or Vice President; and one by Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer.

- b) One signature by corporate designated individual together with properly attested resolution of Board of Directors authorizing person to sign on the company's behalf.

Date:

For: THE CITY OF LOS ANGELES

By:

JAMES G. FEATHERSTONE
Interim Fire Chief
Los Angeles Fire Department

Date:

For: Erickson, Incorporated

By: _____

By: _____

Approved as to Form:
MICHAEL N. FEUER, City Attorney

ATTEST:
HOLLY L. WOLCOTT, Interim CITY Clerk

By: _____
Anthony-Paul Diaz
Deputy City Attorney

By: _____
Deputy City Clerk

Date:

Date: