

Commission Letter # :228-10
Commission Meeting: Monday, July 19, 2010
RE: **ABE Agreement with Oakland County Sheriff's Office**

July 14, 2010

The Honorable Mayor
and
Members of City Commission

Attached is the agreement to contract with the Oakland County Sheriff's Officer for assistance during the 2010 Arts Beats and Eats Festival. This agreement outlines the cost of the personnel Attachment B will be complete upon final numbers being determined. We have yet to determine the exact number of staff that will be required at this time.

The following resolution is recommended for approval:

BE IT RESOLVED THAT THE CITY COMMISSION hereby approves the ABE Agreement with the Oakland County Sheriff's Office; and

BE IT FURTHER RESOLVED that the Mayor and City Clerk are hereby authorized to execute the agreement.

Respectfully submitted,



Christopher Jahnke
Chief Of Police

Approved,



Donald E. Johnson
City Manager

Attachment

**CONTRACT FOR AUXILIARY SHERIFF'S DEPUTY SERVICES
FOR THE CITY OF ROYAL OAK**

This CONTRACT FOR AUXILIARY SHERIFF'S DEPUTY SERVICES FOR THE CITY OF ROYAL OAK (hereafter this "CONTRACT") is made and entered into between the CITY OF ROYAL OAK, a Michigan Constitutional and Municipal Corporation, whose address is 211 Williams Street, Royal Oak, Michigan, 48068-0064 (hereafter the "CITY"), and the COUNTY OF OAKLAND, a Michigan Constitutional and Municipal Corporation, whose address is 1200 North Telegraph Road, Pontiac, Michigan 48341 (hereafter the "COUNTY"). In this CONTRACT, the COUNTY and/or the City may also be referred to as a "PARTY" or the "PARTIES. The COUNTY is also represented in this CONTRACT by the OAKLAND COUNTY SHERIFF, MICHAEL J. BOUCHARD, in his official capacity as a Michigan Constitutional Officer, whose address is 1200 North Telegraph Road, Bldg. 38 East, Pontiac, Michigan 48341 (hereafter the "SHERIFF"). In this CONTRACT, whenever the COUNTY and SHERIFF are intended to be referred to jointly, they will be collectively referred to as the "OAKLAND COUNTY SHERIFF'S OFFICE" or, as abbreviated, the "O.C.S.O."

INTRODUCTION:

- A. Within the City there are numerous governmental, business, athletic, entertainment, social, and educational enterprises which sponsor or host special functions and events (hereafter, and as further defined herein a "SPECIAL EVENT" or "SPECIAL EVENTS"). Such SPECIAL EVENTS often bring large crowds and traffic congestion.
- B. The City recognizes that it is responsible for providing police protection for persons and property during all such SPECIAL EVENTS and for some SPECIAL EVENTS, the City anticipates that it may not have sufficient City police resources to independently meet the CITY'S potential police protection needs. In such circumstances, the City has, on occasion, requested the SHERIFF'S assistance in meeting the CITY'S police protection needs.
- C. The City acknowledges that, absent an agreement such as this, the SHERIFF has only limited responsibility for law enforcement activities within the City and is not required to assign any specific Number(s) or Rank(s) of DEPUTIES, as defined herein, to provide DEPUTY SERVICE(S), as defined herein, for any SPECIAL EVENT held within the CITY.
- D. The CITY, therefore, seeks a contract with the COUNTY, whereby, upon the CITY'S request, the O.C.S.O. would, if otherwise able, provide AUXILIARY DEPUTY SERVICE(S), as defined herein, on an overtime basis, to assist the City in meeting its police protection needs at various SPECIAL EVENTS.
- E. The COUNTY is willing to provide DEPUTY SERVICE(S) for AUXILIARY police protection pursuant to the terms and conditions of this CONTRACT, provided that such AUXILIARY DEPUTY SERVICE(S) do not: (a) impair or interfere with the O.C.S.O.'s ability to meet its other law enforcement responsibilities; (b) result in any O.C.S.O. loss of operational efficiency or readiness; and/or (c) result in the assumption of any additional liability or any increased financial burden by COUNTY taxpayers.

NOW THEREFORE, in consideration of these premises and the promises, agreements, representations, and acknowledgments contained in this CONTRACT and Attachment "A", SHERIFF'S DEPUTY HOURLY OVERTIME COST RATE (hereafter "Attachment A") and Attachment "B", CITY OF ROYAL OAK REQUEST FOR AUXILIARY O.C.S.O. DEPUTY SERVICES (hereafter "Attachment B") which are both hereby incorporated in and made part of this CONTRACT, it is mutually agreed as follows:

1 **DEFINITIONS.** In addition to the terms and expressions "CITY", "COUNTY", "PARTY", "PARTIES", "SHERIFF", "OAKLAND COUNTY SHERIFF'S OFFICE", or "O.C.S.O.", "Attachment A", and "Attachment B", which are defined in this CONTRACT, the parties agree that for all purposes, and as used throughout this CONTRACT and Attachment A and Attachment B, the words and expressions below are also defined terms under this CONTRACT. The parties also agree that whenever any defined term or expression is printed in all uppercase characters, whether used in the singular or plural, possessive or non-possessive, and/or either within or without quotation marks, it shall be defined, read, and interpreted as provided for in this CONTRACT.

- 1.1 "DEPUTY SERVICES" shall be defined to include the responsibility for the prevention and detection of crime and the enforcement of the general criminal laws of this state and the motor vehicle and traffic laws of this state, including, but not limited to, road patrol, crime detection, crime prevention, and criminal apprehension, as well as any necessary supervision to the extent of the staffing provided under this CONTRACT, and/or response to any emergency or non-emergency which, in the sole judgment of any DEPUTY, appears to require the presence, attention, or services of any DEPUTY to address, respond, or attend to any issue, event, or circumstance involving public safety, a breach of peace, public health, an accident or accidental injury, and related law enforcement functions as authorized and/or mandated by law to be performed by any O.C.S.O. DEPUTY.
- 1.2 "CLAIM(S)" shall be defined to include any and all losses, complaints, demands for relief or damages, lawsuits, causes of action, proceedings, judgments, deficiencies, penalties, and costs and expenses, including, but not limited to, any reimbursement for reasonable attorney fees, witness fees, court costs, investigation and/or litigation expenses, any amounts paid in settlement, or any other amount for which the O.C.S.O. becomes legally and/or contractually obligated to pay, or any other liabilities of any kind whatsoever whether direct, indirect or consequential, whether based upon any alleged violation of the constitution (federal or state), any statute, rule, regulation, or the common law, whether in law or equity, tort, contract, or otherwise, and/or whether commenced or threatened.
- 1.3 "CITY AGENT(S)" shall be defined to include any and all City officers, elected officials, appointed official, directors, board members, Commission members, authorities, authority board members, boards, committees, commissions, employees, police officers, managers, departments, divisions, volunteers, agents, and representatives of the CITY, and/or any such persons' successors or predecessors, agents, employees, attorneys, or auditors (whether such persons act or acted in their personal, representative, or official capacities), and/or any and all persons acting by, through, under, or in concert with any of them and/or the CITY. CITY AGENT(S) as defined in this CONTRACT shall also include any person who was a City AGENT(S) at any time during the term of this CONTRACT but, for any reason, is no longer employed, appointed, or elected in their previous capacity.
- 1.4 "DEPUTY" or "DEPUTIES", whether or not preceded by the term SHERIFF or O.C.S.O., shall be defined to include the Undersheriff, Captain, Lieutenant, Sergeant, Deputy II, or Deputy I who, pursuant to state law, is a sworn Deputy of the SHERIFF and Michigan Law Enforcement Officers Training Council (M.L.E.O.T.C.) certified.
- 1.5 "COUNTY AGENT(S)" shall be defined to include the OAKLAND COUNTY SHERIFF, SHERIFF MICHAEL J. BOUCHARD, and any and/or all other COUNTY elected and appointed officials, commissioners, officers, boards, committees, commissions, departments, divisions, volunteers, employees (including any DEPUTY or DEPUTIES), agents, representatives, contractors, predecessors, successors, assigns, attorneys, or auditors (whether such persons act or acted in their personal, representative, or official capacities), and any and all any time during the term of this CONTRACT but, for any reason, is no longer employed, appointed, or elected in his/her previous capacity.
- 1.6 "SPECIAL EVENT" or "SPECIAL EVENTS" shall be defined as any and all planned sporting, entertainment, governmental and/or social event, ceremony, activity, or function, taking place within the City for which the City requests AUXILIARY DEPUTY SERVICES from the

O.C.S.O. during the term of this CONTRACT. SPECIAL EVENTS do not include any recognized police emergency (i.e., riots, insurrections, mass lawlessness, etc.) which cannot be adequately addressed by the combined police forces (including any O.C.S.O. DEPUTIES) already provided, pre-positioned, and on hand pursuant to this CONTRACT. Any additional DEPUTIES dispatched by the O.C.S.O., over and above any DEPUTIES already pre-positioned and assigned in the City pursuant to the terms of this CONTRACT, to respond specifically to any police emergency, such as described above, shall be provided by the O.C.S.O. at no additional cost to the CITY.

2 **CITY REQUEST FOR DEPUTY SERVICES AT A SPECIAL EVENT.** The CITY, upon independently determining a need for DEPUTY SERVICES at a SPECIAL EVENT through its Mayor, or his designated representative, shall request SHERIFF'S DEPUTY SERVICES from the SHERIFF, or his designated representative, as follows:

- 2.1 The Mayor, or his designated representative, shall verbally communicate with the SHERIFF, or his designated representative, to discuss:
 - 2.1.1 Whether or not the SHERIFF, or his designated representative, anticipates he will be able to assign any DEPUTIES to provide DEPUTY SERVICES at any SPECIAL EVENT;
 - 2.1.2 The appropriate Number(s) and Rank(s) of DEPUTIES, and Number of Hour(s) of overtime requested by the City and whether in the SHERIFF'S, or his designated representative's judgment and opinion, the requested compliment of DEPUTIES will be able to provide adequate police protection at any SPECIAL EVENT;
 - 2.1.3 The estimated "COUNTY COSTS", as defined herein, should the SHERIFF assign DEPUTIES in the Number(s), Rank(s), and for the period of time the SHERIFF and the Mayor, or their designated representatives, determine may be necessary to provide adequate police protection at any SPECIAL EVENT.
- 2.2 If, after the above discussions, and subject to the terms of this CONTRACT, the Mayor and the SHERIFF, or their designated representatives, are satisfied that providing AUXILIARY DEPUTY SERVICES at any SPECIAL EVENT is possible and the estimated COUNTY COSTS for such AUXILIARY DEPUTY SERVICES are acceptable to the CITY, then the CITY, through its Mayor or his designated representative, shall execute and deliver to the SHERIFF a completed copy of Attachment B.

3 **CITY OF ROYAL OAK REQUEST FOR AUXILIARY O.C.S.O. DEPUTY SERVICES (Attachment B).** The City agrees that, upon receipt of a signed and fully completed copy of Attachment B, CITY OF ROYAL OAK REQUEST FOR AUXILIARY O.C.S.O. DEPUTY SERVICES, for any SPECIAL EVENT, that the SHERIFF on behalf of the COUNTY, may accept and undertake the provision of the requested DEPUTY SERVICES by simply performing such acts as necessary to develop the necessary schedules, budgets and plans, and/or notifying or assigning such DEPUTIES as necessary to enable the O.C.S.O. to provide the Number(s) and Rank(s) of DEPUTIES contemplated at any SPECIAL EVENTS. No written acceptance of the City request, (i.e., Attachment B) from the O.C.S.O. shall be required. The City agrees that any act or forbearance by the O.C.S.O. in response to or as a result of the receipt of Attachment B from the CITY, which results in the COUNTY'S incurring any COUNTY COSTS, as defined in this CONTRACT, shall obligate the City to pay the COUNTY for any such COUNTY COSTS incurred. The City further agrees that:

- 3.1 Any Attachment B, CITY OF ROYAL OAK REQUEST FOR AUXILIARY O.C.S.O. DEPUTY SERVICES signed and submitted by the Mayor, or his designated representative shall in all regards be interpreted and governed by the terms and conditions of this CONTRACT.
- 3.2 The City shall provide the O.C.S.O. with as much advance notice and a fully completed Attachment B, CITY OF ROYAL OAK REQUEST FOR AUXILIARY O.C.S.O. DEPUTY SERVICES, as soon as reasonably possible in advance of any SPECIAL EVENT at which any DEPUTY SERVICES are anticipated.

- 3.3 The CITY'S Mayor, or his designated representative, has full authority to submit a fully completed copy of Attachment B for any SPECIAL EVENT and bind the City to the resulting payment obligations to the COUNTY.
- 3.4 The O.C.S.O. may accept as true that any CITY AGENT(S) submitting an Attachment B to the O.C.S.O. has been authorized by the City to submit same, and the City agrees to waive any argument or defense based, in any way, upon any mistake or upon any CITY AGENT(S) lack of proper authorization to either request O.C.S.O. DEPUTY SERVICE or otherwise obligate the City to pay for any resulting DEPUTY SERVICES.
- 3.5 The City may withdraw any Attachment B, CITY OF ROYAL OAK REQUEST FOR AUXILIARY O.C.S.O. DEPUTY SERVICES, previously submitted pursuant to this CONTRACT at any time prior to any Start Time of any requested DEPUTY SERVICES shown on any Attachment B for any SPECIAL EVENT by delivering written notice to the SHERIFF or his designated representative either in person or as provided for in this CONTRACT; however, the City shall remain obligated to reimburse the COUNTY for any and all COUNTY COSTS (e.g., minimum overtime pay, minimum contract call-in or overtime notice provisions, etc.) incurred by the COUNTY prior to the delivery of the written withdrawal notice.
- 3.6 The O.C.S.O. shall neither be expected nor obligated in any manner to plan or otherwise make any arrangements to provide for any DEPUTY SERVICES for any SPECIAL EVENT prior to its receipt of a fully completed copy of Attachment B, CITY OF ROYAL OAK REQUEST FOR AUXILIARY O.C.S.O. DEPUTY SERVICES.

4 O.C.S.O. OBLIGATION TO PROVIDE DEPUTY SERVICES. Subject to the terms of this CONTRACT, upon receipt of a fully executed Attachment B, CITY OF ROYAL OAK REQUEST FOR AUXILIARY O.C.S.O. DEPUTY SERVICES for a SPECIAL EVENT, the SHERIFF shall assign, on an overtime basis, DEPUTIES in such Number(s) and Rank(s) as the SHERIFF and the CITY'S Mayor, or his designated representative, may have agreed and as shown in any Attachment B or shall notify the City Mayor, or his designated representative, that the O.C.S.O. will be unable to favorably respond to the CITY'S request for DEPUTY SERVICES.

- 4.1 In the event the SHERIFF is unable to provide any or all DEPUTIES SERVICES requested in any Attachment B at any SPECIAL EVENT, he, or his designated agent, shall verbally communicate that fact to the CITY'S Mayor, or his designated representative, as soon as such fact becomes reasonably known to him.
- 4.2 The City acknowledges and agrees that there may be circumstances beyond the SHERIFF'S control when the SHERIFF, in his sole discretion and judgment as to the prioritization of his law enforcement resources and DEPUTIES, his overall evaluation of Oakland County's immediate law enforcement needs, and his sole determination as to the allocation of O.C.S.O. law enforcement personnel at that time to best serve the citizens of Oakland County, may be unable to assign, and/or if already assigned, remove at anytime, with or without replacement, any or all of the DEPUTIES contemplated to provide DEPUTY SERVICES for any SPECIAL EVENT. The City acknowledges and agrees that this CONTRACT does not, and is not intended to, create either any absolute right in favor of the City or any corresponding absolute duty or obligation upon the SHERIFF or the O.C.S.O. to guarantee that any specific Number(s) or Rank(s) of DEPUTIES will be present to provide DEPUTY SERVICES at a SPECIAL EVENT, but only that the SHERIFF shall make every reasonable effort, subject to the above conditions, to provide adequate DEPUTY SERVICES at any SPECIAL EVENT. The City hereby acknowledges, based upon its prior experience working with the O.C.S.O. in similar circumstances, that the O.C.S.O.'s good faith and reasonable efforts to cooperate with the City in providing DEPUTY SERVICES in these regards is sufficient and adequate consideration upon which to warrant and bind the City to the terms of this CONTRACT.

- 5 CITY PAYMENT FOR DEPUTY SERVICES.** The City agrees to pay to the COUNTY any and all COUNTY COSTS for any DEPUTY SERVICES at any SPECIAL EVENT. "COUNTY COSTS" shall be defined and calculated as follows:
- 5.1 For each and every DEPUTY who renders any DEPUTY SERVICES at any SPECIAL EVENT pursuant to an Attachment B submitted by the CITY, the CITY shall pay to the COUNTY an amount equal to: the total number of "HOUR(S) OF DEPUTY SERVICES", as described below, including any part of any Hour, for any and all DEPUTY SERVICES rendered by each individual DEPUTY, multiplied by the Hourly Overtime Cost Rate, as shown in Attachment A, for the year in which such DEPUTY SERVICES were rendered, for each such DEPUTY'S corresponding Rank shown in Attachment A.
 - 5.2 The COUNTY shall total the COUNTY COSTS for all DEPUTIES providing DEPUTY SERVICES at any SPECIAL EVENT and prepare and send to the CITY such invoice(s) setting forth the amount due for each DEPUTY'S SERVICES rendered. The CITY agrees to pay to the COUNTY the full amount due and owing on any invoice(s) within 45 days of the invoice date.
 - 5.3 Except as otherwise expressly provided for in this CONTRACT, any DEPUTY providing DEPUTY SERVICES at any SPECIAL EVENT shall work, during those "HOUR(S) OF DEPUTY SERVICES" for which the CITY is being charged, only on SPECIAL EVENT related matters. The CITY agrees, however, that whenever any DEPUTY assigned to provide DEPUTY SERVICES under this CONTRACT is not directly present at any SPECIAL EVENT due to any of the reasons described in the following subsections, such periods of time shall be included in and counted toward the "HOUR(S) OF DEPUTY SERVICES" provided under the terms of this CONTRACT:
 - 5.3.1 Any appearance in any Court or any meeting with any other law enforcement agency in connection with any prosecution or Court appearance related to or resulting from any DEPUTY SERVICES at any SPECIAL EVENT;
 - 5.3.2 Any performance of any DEPUTY SERVICES for the CITY at any SPECIAL EVENT which takes any DEPUTY away from any SPECIAL EVENT;
 - 5.3.3 Any time expended transporting any person arrested by any DEPUTY during the course of providing DEPUTY SERVICES at any SPECIAL EVENT to the Oakland County Jail, in Pontiac, Michigan, including any reasonable length of time spent at the Oakland County Jail by any DEPUTY while booking such person(s);
 - 5.3.4 Any minimum call-in or overtime hour(s) guaranteed to DEPUTIES under any applicable union or employment contract; and/or
 - 5.3.5 Any performance of any DEPUTY SERVICES related duty or obligation which takes any DEPUTY away from any SPECIAL EVENT but which begins or arises while any DEPUTY is providing DEPUTY SERVICES at any SPECIAL EVENT (i.e., hot pursuit, transporting a person for medical attention, an automobile accident occurring on any public road, etc.).
 - 5.4 The CITY shall pay such amounts as shown on any O.C.S.O. invoice by a check drawn on a City account which shall be made payable to the County of Oakland and delivered to the attention of: Mr. Andy Meisner, Oakland County Treasurer, 1200 N. Telegraph Road, Pontiac, MI 48341-0479 (or such other person as the County may from time to time designate in writing). Each such payment shall clearly identify that it is a payment for DEPUTY SERVICES made pursuant to this CONTRACT.
 - 5.5 The City agrees that any and all of its payment obligations as set forth in this CONTRACT shall be absolute and unconditional in all events and shall not be subject to any set off, defense, counterclaim, or recoupment for any reason whatsoever. Should the CITY fail, for any reason, to timely pay the COUNTY the amounts required under this Agreement, the

CITY agrees that upon notice from the Oakland County Treasurer to the Treasurer of the State of Michigan (or any other State of Michigan official authorized to disburse funds to the CITY), the State of Michigan is authorized to withhold any funds due the CITY from the State, and assign those funds to partially or completely offset any deficiency by the CITY to the COUNTY. Such funds shall be paid directly to the County. Further, the CITY waives any claims against the State or County, or their respective officials, for any such amounts paid to the COUNTY. Furthermore, should the CITY fail for any reason to pay the County the amounts required under this Agreement, the County Treasurer shall be entitled to set-off and retain any amounts due the CITY from Delinquent Tax Revolving Fund (DTFR) or any other source of funds due the CITY in possession of the County, to partially or completely offset any deficiency by the CITY, unless expressly prohibited by law. Such a transfer shall be considered an assignment by the CITY to the COUNTY. Further, the CITY waives any claims against the County, or its officials, for any such amounts paid to the County. Nothing in this paragraph shall operate to limit in any way the County's right to pursue any other legal remedies against the CITY for the reimbursement of amounts due the County under this Agreement. The remedies in this paragraph are available to the County on an ongoing and successive basis, as the CITY becomes delinquent in its payments.

- 5.6 The CITY acknowledges that the same practical and financial restrictions which limit CITY police resources also limit the ability of the SHERIFF to assign DEPUTIES to DEPUTY SERVICES for SPECIAL EVENT as part of their normal job duties. The CITY further recognizes that because many of the DEPUTIES normal work assignments (i.e., prisoner pickups, jail activity, court appearances, court support functions, etc.) do not conflict with most scheduled SPECIAL EVENTS, the SHERIFF should, in most instances, be able to provide AUXILIARY DEPUTY SERVICES at SPECIAL EVENTS, on an overtime basis only, without unduly interfering with a DEPUTY'S normal O.C.S.O. work assignment.
- 5.7 The CITY agrees that it has, to its satisfaction, examined the O.C.S.O.'s wage and cost structures and agrees that the above Hourly Overtime Cost Rate, shown in Attachment A, that the CITY is to pay to the COUNTY for DEPUTY'S SERVICES under the terms of this CONTRACT is not intended to result in any net financial gain or profit for the COUNTY. The CITY agrees that the Hourly Overtime Cost Rate only guarantees that the O.C.S.O. is fully reimbursed for any and all salary costs, including the necessary overtime premiums and a prorated factor in recognition of the average DEPUTY fringe benefit, equipment, and supply costs incurred by the O.C.S.O. for equipment, automobile expenses, supplies, and other related expenses that the COUNTY will incur for, or on behalf of its DEPUTIES in order to provide AUXILIARY DEPUTY SERVICES at any SPECIAL EVENT.
- 5.8 The O.C.S.O. agrees that, upon request, any O.C.S.O. payroll policies, payroll or attendance records, procedures, employment contracts, equipment cost structures, etc., applicable to the determination of any COUNTY COSTS to be reimbursed and paid to the COUNTY by the CITY pursuant to this CONTRACT shall be made available by appointment by the O.C.S.O. for inspection by the CITY.

6 ASSURANCES AND CERTIFICATIONS.

- 6.1 The O.C.S.O. and the CITY agree and acknowledge that the sole and exclusive purpose of this CONTRACT is to provide governmental law enforcement and DEPUTY SERVICES. The O.C.S.O. and the CITY agree and acknowledge that the DEPUTY SERVICES activities provided for under the terms of this CONTRACT are strictly limited to those governmental law enforcement functions authorized by law.
- 6.2 The CITY represents and warrants that it has reviewed all of its current or proposed agreements and/or contracts with any and all persons who are or may become contractually involved with the CITY, and hereby represents and warrants that the CITY does not have, and will not any time during the term of this CONTRACT have, any other contractual agreement that will in any manner restrict, interfere with, or prohibit the CITY, any CITY AGENT(S), or any other person from complying with the CITY'S obligations and duties as set

forth in this CONTRACT and/or the O.C.S.O.'s provision of DEPUTY SERVICES as set forth herein.

- 6.3 The CITY agrees that no CITY AGENT(S), either as a result of or arising out of any act(s) by any person in the performance of any duty under this CONTRACT, shall be considered or asserted to be an employee of the O.C.S.O. The CITY agrees that it shall be solely and completely liable for any and all CITY AGENT(S) past, present, or future wages, compensation, overtime wages, expenses, fringe benefits, pension or retirement benefits, travel expenses, mileage allowances, training expenses, transportation costs, and/or other allowances or reimbursements of any kind, including, but not limited to, workers= disability compensation benefits, unemployment compensation, Social Security Act protection(s) and benefits, any employment taxes, and/or any other statutory or contractual right or benefit based on or in any way related to any CITY AGENT(S) employment status or any alleged violation of any CITY AGENT(S) statutory, contractual, or constitutional rights by the CITY, the COUNTY or any COUNTY AGENT(S). The CITY agrees to indemnify and hold harmless the COUNTY and/or any COUNTY AGENT(S) from and against any and all CLAIM(S) which are imposed upon, incurred by, or asserted against the COUNTY and/or any COUNTY AGENT(S) by any CITY AGENT(S) which are based upon, result from, or arise from, or are in any way related to any CITY AGENT(S) wages, compensation, benefits, or other employment-related rights, including, but not limited to, those described in this section.
- 6.4 The CITY agrees that this CONTRACT does not, and is not intended to, include any O.C.S.O. warranty, promise, or guaranty, either express or implied, of any kind or nature whatsoever, in favor of the CITY, any CITY AGENT(S), or any person attending any SPECIAL EVENT, that any DEPUTY SERVICES provided by the O.C.S.O. under the terms and conditions of this CONTRACT will result in any specific reduction or prevention of any criminal activity at any SPECIAL EVENT, or any other such performance-based outcomes, but only that the SHERIFF will make every reasonable effort to provide professional DEPUTY SERVICES at any SPECIAL EVENT in accordance with generally accepted standards for DEPUTY SERVICES with the number and ranks of DEPUTIES requested by the CITY.

7 RESERVATION OF RIGHTS.

- 7.1 The SHERIFF and the COUNTY reserve to themselves any rights and obligations relating to the provision of any and all police and/or governmental law enforcement services, and this CONTRACT does not, and is not intended to, diminish, delegate, divest, impair, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, capacity, immunity, or character of office of either the SHERIFF, the COUNTY, and/or any DEPUTY. The CITY agrees that it shall, at all times and under all circumstances, remain solely and exclusively responsible for any and all costs, obligations, and/or civil liabilities associated with its CITY governmental functions, obligations and responsibilities.
- 7.2 The CITY agrees that this CONTRACT does not, and is not intended to, transfer, delegate, or assign to the COUNTY, the SHERIFF, and/or any COUNTY AGENT(S) any civil or legal responsibility, obligation, duty of care, or liability which is not expressly within the definition of DEPUTY SERVICES under the terms of this CONTRACT and which is not under the sole and exclusive control and direction of the O.C.S.O.

8 O.C.S.O. INDEPENDENT CONTRACTOR STATUS. The CITY and the O.C.S.O. agree that neither the COUNTY, any COUNTY AGENT(S), nor any DEPUTY, by virtue of this CONTRACT or otherwise, shall be considered or asserted to be an employee, contractor, subcontractor, partner, joint venturer, representative, or agent of the CITY and/or any CITY AGENT(S), and further agree that, at all times and for all purposes under the terms of this CONTRACT, the O.C.S.O., any and all COUNTY AGENT(S) and/or DEPUTIES' relationship to the CITY shall be that of an Independent Contractor and shall be controlled and governed by the terms of this CONTRACT.

- 8.1 The PARTIES agrees that, at all times and for all purposes relevant to this CONTRACT, the O.C.S.O. shall remain the sole and exclusive employer of all DEPUTIES and that the O.C.S.O. shall remain solely and exclusively responsible for the direct payment to any

DEPUTY of any DEPUTY'S wages, compensation, overtime wages, expenses, fringe benefits, pension or retirement benefits, travel expenses, mileage allowances, training expenses, transportation costs, and/or other allowances or reimbursements of any kind, including, but not limited to, workers' disability compensation, unemployment compensation, Social Security Act protection(s) and benefits, any employment taxes, and/or any other statutory or contractual right or benefit based in any way upon any DEPUTY'S status as an employee of the O.C.S.O.

- 8.2 The PARTIES agrees that the O.C.S.O. shall be solely and exclusively responsible for providing DEPUTIES with all necessary tools, automobiles, radios, communications equipment, firearms, and any and all other equipment that the O.C.S.O., in its sole judgment, deems required or beneficial for the completion of any O.C.S.O. duty under the terms of this CONTRACT. The O.C.S.O. shall also be solely and exclusively responsible for any and all DEPUTIES' business expenses, licenses, taxes, uniform or equipment costs, insurance(s), supplies, etc.
- 8.3 Except as otherwise provided herein, the CITY agrees and warrants that it shall not grant, give, allow, pay, reimburse, compensate, or otherwise provide any wages, fringe benefits, privileges, gifts, equipment, personal property, supplies, benefits, entitlement, consideration (monetary or otherwise), or any other thing of value, either directly or indirectly, to, for the use by, or on behalf of any individual DEPUTY, except that any money paid directly to the COUNTY by the CITY to reimburse the COUNTY for its costs pursuant to this CONTRACT shall not be deemed consideration paid by the CITY to any DEPUTY.
- 8.4 Under the terms of this CONTRACT, the CITY agrees and promises that no DEPUTY shall be asked or required to perform any services directly for the CITY or otherwise be available to perform any other work or assignments from the CITY or be expected to perform any acts other than governmental law enforcement functions DEPUTY SERVICES, and that no DEPUTY shall be employed, in any manner or capacity, by the CITY.
- 8.5 The CITY agrees that neither the CITY nor any CITY AGENT(S) shall otherwise provide, furnish or assign any DEPUTY with any job instructions, job descriptions, job specifications, or job duties, tools, supplies, or equipment or, in any manner attempt to control, supervise, or train, any DEPUTY in the performance of any O.C.S.O. duty or obligation to provide DEPUTY SERVICES under the terms of this CONTRACT.
- 8.6 The PARTIES agree that this CONTRACT does not, and is not intended to, create, grant, modify, supplement, supersede, alter, or otherwise affect or control, in any manner or form:
- 8.6.1 Any right, privilege, benefit, or any other term(s) or condition(s) of employment, of any kind or nature whatsoever, in, upon, or for any DEPUTY and/or any DEPUTY'S agents, representatives, unions, or the successors or assigns of any of them;
 - 8.6.2 Any applicable O.C.S.O. employment and/or union contract(s);
 - 8.6.3 Any level(s) or amount(s) of DEPUTY supervision, standard(s) of performance, training and education standard(s); and/or
 - 8.6.4 Any O.C.S.O. rules, regulations, hours of work, shift assignments, orders, policies, procedures, directives, ethical guidelines, etc., which shall, solely and exclusively, govern and control the employment relationship between the O.C.S.O. and/or all conduct and actions of all DEPUTIES.
- 8.7 The PARTIES agrees that this CONTRACT does not, and is not intended to, limit, modify, control, or otherwise affect in any manner the complete and unilateral discretion of the SHERIFF to either continue or revoke the deputization of any DEPUTY who in the SHERIFF'S sole judgment, he does not believe is qualified or otherwise fit to be an O.C.S.O. DEPUTY.

- 8.8 The PARTIES agrees that this CONTRACT does not, and is not intended to limit, modify, control, or otherwise affect in any manner the SHERIFF'S sole and exclusive right, obligation, and responsibility to determine, establish, modify, or implement any and all operational policies, procedures, orders, rules, regulations, ethical guidelines, and/or any other judgment, policy or directive which in any way governs or controls any activity or the performance of any duty by any DEPUTY. The CITY further agrees that this CONTRACT does not obligate or require the SHERIFF or the O.C.S.O. to change, alter, modify, use, or develop any different or special DEPUTY SERVICES policies, practices or procedures under this CONTRACT, except that the SHERIFF shall coordinate DEPUTY SERVICES of his DEPUTIES with other participating governmental law enforcement agencies in providing comprehensive DEPUTY SERVICES for the purposes of this CONTRACT.
- 8.9 The PARTIES agree that this CONTRACT does not, and is not intended to, limit, modify, control, or otherwise affect in any manner the O.C.S.O.'s complete and unilateral discretion, responsibility, and right, subject only to its collective bargaining agreements, to employ, compensate, assign, reassign, transfer, promote, reclassify, discipline, demote, layoff, furlough, discharge any O.C.S.O. DEPUTY, and/or pay any and all O.C.S.O. DEPUTY wages, salaries, allowances, reimbursements, compensation, fringe benefits, or otherwise decide any and all such terms and conditions of employment and make any and all employment decisions that affect in any way the employment of any O.C.S.O. DEPUTY with the OAKLAND COUNTY SHERIFF'S OFFICE.

9. LIABILITY

- 9.1 Each PARTY shall be responsible for its acts and the acts of its employees, agents, and subcontractors, the cost associated with those acts, and the defense of those acts.
- 9.2 In any litigation or dispute that may arise from the performance of this Agreement, each PARTY shall seek its own legal representation and bear the costs associated with such representation, including judgments and attorney fees.
- 9.3 Neither PARTY shall have any right under this Agreement or under any other legal principle (including legal, equitable, or implied indemnification; contribution; or subrogation) to be indemnified or reimbursed by the other PARTY or any of its agents.
- 9.4 This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the PARTIES. Nothing in this Agreement shall be construed as a waiver of governmental immunity for either PARTY.

10 GENERAL CONTRACT PROVISIONS.

- 10.1 **NO THIRD-PARTY BENEFICIARIES.** The CITY agrees that this CONTRACT does not, and is not intended to, create, by implication or otherwise, any specific, direct or indirect obligation, duty, promise, benefit, and/or special right to O.C.S.O.'s DEPUTY SERVICES or governmental law enforcement protection in favor or for the benefit of any particular person(s) beyond the O.C.S.O.'s and/or any DEPUTY'S governmental law enforcement officer duty, as established under existing law, to the general public. The CITY agrees that at all times, and for any and all purposes under this CONTRACT, the O.C.S.O. and/or any DEPUTY present at any SPECIAL EVENT shall be present strictly and solely to perform DEPUTY SERVICES and governmental law enforcement functions as authorized by law to and for the benefit of the general public and under no circumstances shall the O.C.S.O. and/or any DEPUTY be obligated in any manner to undertake any activity or duty on behalf of the CITY or provide any particular, direct, or specific service or benefit to or for the CITY, any CITY AGENT(S), or any patron or other person attending any SPECIAL EVENT.
- 10.2 **NO DELEGATION OR ASSIGNMENT OF THIS CONTRACT.** The CITY agrees that it may not assign, delegate, contract, subcontract or otherwise, transfer, promise, commit, or loan

any O.C.S.O.'s or any DEPUTY SERVICES or duties under this CONTRACT to any other person and/or public or private corporation, entity, or organization of any kind.

10.3 NOTICE OF ANY CLAIM(S). The CITY agrees that it shall promptly deliver to the O.C.S.O. written notice and copies of any CLAIM(S), complaint(s), charge(s), or any other accusation(s) or allegation(s) of negligence or other wrongdoing, whether civil or criminal in nature, that the CITY becomes aware of which involves in any way the O.C.S.O. or any DEPUTY. The CITY agrees to cooperate with the O.C.S.O. in any investigation conducted by the O.C.S.O. into any act(s) or work performance of any DEPUTY.

10.4 TERM, EFFECTIVE DATE AND CANCELLATION.

10.4.1 Subject to the following subsection, and unless canceled as provided for in this section, this CONTRACT shall become effective on June 1, 2010 and shall remain in effect continuously until it expires, without any further act or notice being required of any PARTY, at 11:59 P.M. on December 31, 2010. Either the COUNTY, the SHERIFF, or the CITY may cancel this CONTRACT, for any reason, including the convenience of any PARTY, and without any penalty, before its December 31, 2010, expiration by delivering a written notice of the cancellation of this CONTRACT to the other signatories to this CONTRACT, or their successors in office. Such written notice shall provide at least a thirty (30) calendar day notice of the effective date of cancellation, and such cancellation of this CONTRACT shall be effective at 11:59 P.M. on last calendar day of the calendar month following the expiration of the 30 calendar day notice period.

10.4.2 This CONTRACT, and any subsequent amendments, shall not become effective prior to the approval by concurrent resolutions of the COUNTY Board of Commissioners and the CITY Commission. The approval and terms of this CONTRACT shall be entered in the official minutes and proceedings of the COUNTY Board of Commissioners and CITY Commission and shall also be filed with the office of the Clerk for the COUNTY and the CITY. In addition, this CONTRACT, and any subsequent amendments, shall be filed with the Secretary of State for the State of Michigan by the COUNTY and shall not become effective or implemented prior to its filing with the Secretary of State.

10.5 NOTICES. Any signatory or any signatories' successor in office to this Agreement shall send, by first class mail, or alternatively may deliver in person, any correspondence and written notices required or permitted by this Agreement to each of the signatories of this Agreement, or any signatories' successor in office, to the addresses shown in this Agreement. Any written notice required or permitted under this Agreement shall be considered delivered to a PARTY as of the date that such notice is deposited, with sufficient postage, with the U.S. Postal Service or delivered to such persons office during normal working hours.

10.6 APPLICABLE LAW. This CONTRACT is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the State of Michigan. The language of all parts of this CONTRACT is intended to and, in all cases, shall be construed as a whole according to its fair meaning and not construed strictly for or against any PARTY. As used in this CONTRACT, the singular or plural number, possessive or non-possessive shall be deemed to include the other whenever the context so suggests or requires.

10.7 NO IMPLIED WAIVERS. Absent an express written waiver, the failure of any PARTY to pursue any right granted under this CONTRACT shall not be deemed a waiver of that right regarding any existing or subsequent breach or default under this CONTRACT. No failure or delay on the part of any PARTY in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise of any right, power or privilege preclude any other or further exercise of any other right, power or privilege.

- 10.8 SUCCESSORS AND ASSIGNS BOUND. The COUNTY, the SHERIFF, and the CITY acknowledge that this CONTRACT shall be binding upon each of them and, to the extent permitted by law, upon their administrators, representatives, subsidiaries, executors, successors and assigns, and all persons acting by, through, under, or in concert with any of them.
- 10.9 EFFECT OF CANCELLATION OR TERMINATION. The CITY agrees that any and all CITY obligations, including, but not limited to, any and all indemnification and hold harmless promises, insurance coverage(s), waivers of liability, liabilities, any CITY payment obligations to the COUNTY, and/or any other related obligations provided for in this CONTRACT with regard to any acts, occurrences, events, transactions, or CLAIM(S) either occurring or having their basis in any events or transactions that occurred before the cancellation or completion of this CONTRACT, shall survive the cancellation or completion of this CONTRACT. The expiration, cancellation, or termination of this CONTRACT shall be without prejudice to any rights or claims of either PARTY against the other and shall not relieve either PARTY of any obligations that, by their nature, survive expiration or termination of this CONTRACT.
- 10.10 CAPTIONS. The section or paragraph numbers, headings, and captions contained in this CONTRACTS are intended for the convenience of the reader and not intended to have any substantive meaning and/or be interpreted as part of the CONTRACT.
- 10.11 ENTIRE AGREEMENT BETWEEN THE PARTIES. This CONTRACT, consisting of a total of sixteen (16) pages, including Attachment A, and Attachment B, which are incorporated herein, sets forth the entire agreement for DEPUTY SERVICES at any SPECIAL EVENT between the O.C.S.O. and the CITY and fully supersedes any and all prior agreements or understandings between them in any way related to the subject matter hereof. It is further understood and agreed that the terms and conditions herein are contractual and are not a mere recital and that there are no other agreements, understandings, contracts, or representations between the O.C.S.O. and the CITY in any way related to the subject matter hereof, except as expressly stated herein. This CONTRACT shall not be changed or supplemented orally and may be amended only by concurrent resolutions of the Oakland County Board of Commissioners and the City Board for the City of ROYAL OAK.
- 11 CONCLUSION. For and in consideration of the mutual promises, acknowledgments, representations, and agreements set forth in this CONTRACT; and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the CITY and the COUNTY hereby agree and promise to be bound by the terms and provisions of this CONTRACT.

IN WITNESS WHEREOF, James B. Ellison, Mayor for the City of ROYAL OAK, hereby acknowledges that he has been authorized by a resolution of the City Commission to execute this Agreement on behalf of the City and hereby accepts and binds the City of ROYAL OAK to the terms and conditions of this CONTRACT on this _____ day of _____, 2010.

WITNESSES:

City of ROYAL OAK,
a Michigan Municipal Corporation

BY: _____
JAMES B. ELLISON
Mayor

BY: _____
Melanie Halas
Clerk

IN WITNESS WHEREOF, Bill Bullard, Jr., Chairperson, Oakland County Board of Commissioners, hereby acknowledges that he has been authorized by a resolution of the Oakland County Board of Commissioners (a certified copy of which is attached) to execute this CONTRACT on behalf of the COUNTY OF OAKLAND and hereby accepts and binds the COUNTY OF OAKLAND to the terms and conditions of the CONTRACT on this _____ day of _____, 2010.

WITNESS:

COUNTY OF OAKLAND, a Michigan Municipal Corporation

BY: _____
BILL BULLARD, Jr.,
Chairperson, Oakland County Board
of Commissioners

IN WITNESS WHEREOF, MICHAEL J. BOUCHARD, in his official capacity as the Oakland County Sheriff, a Michigan Constitutional Officer, hereby concurs and accepts the terms and conditions of this CONTRACT on this _____ day of _____, 2010.

WITNESS:

OAKLAND COUNTY SHERIFF, a Michigan Constitutional Officer

BY: _____
MICHAEL J. BOUCHARD,
Oakland County Sheriff

ATTACHMENT A

SHERIFF'S DEPUTY HOURLY OVERTIME COST RATE

SHERIFF'S DEPUTY RANK (job classification)	<u>Hourly Overtime Cost Rate</u> 2010
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Lieutenant	\$83.50
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Sergeant	\$75.91
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Deputy II	\$66.01
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Deputy I	\$49.11
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ATTACHMENT B

CITY OF ROYAL OAK REQUEST FOR AUXILIARY O.C.S.O. DEPUTY SERVICES

TO: MICHAEL J. BOUCHARD, Oakland County Sheriff
OAKLAND COUNTY SHERIFF'S OFFICE
1200 N. Telegraph Road, Bldg. 38 East
ROYAL OAK, MI 48341-1044
Phone: (248)858-5001; Fax: (248)858-1806

FROM: JAMES B. ELLISON, Mayor (or designated representative)
City of ROYAL OAK
211 Williams Street
Royal Oak, MI 48068-0064
Phone: (248) 246-3000; FAX (248) 246-3001

The CITY, pursuant to the **CONTRACT FOR AUXILIARY SHERIFF'S DEPUTY SERVICES FOR THE CITY OF ROYAL OAK** between the CITY and the COUNTY OF OAKLAND, the terms of which are hereby incorporated into and made part of this Request, requests that the SHERIFF provide the Numbers and Ranks of SHERIFF'S DEPUTIES for the periods of time indicated below, to provide AUXILIARY DEPUTY SERVICES for the following SPECIAL EVENT:

SPECIAL EVENT DESCRIPTION: _____

DATE OF SPECIAL EVENT: _____

DURATION OF REQUESTED DEPUTY SERVICES: Start _____ End _____

NUMBER(s) and RANK(s) of SHERIFF'S DEPUTIES requested to provide DEPUTY SERVICES at the above SPECIAL EVENT:

Number(s) of SHERIFF'S DEPUTIES Requested	Rank(s) of SHERIFF'S DEPUTIES Requested

The undersigned hereby acknowledges and affirms that he or she has been authorized by the City of ROYAL OAK to initiate this request for **CITY OF ROYAL OAK REQUEST FOR AUXILIARY O.C.S.O. DEPUTY SERVICES** and bind the CITY to reimburse the COUNTY OF OAKLAND for any COUNTY COSTS incurred in response to preparing to or assigning the above Number(s) and Rank(s) of SHERIFF'S DEPUTIES to provide DEPUTY SERVICES at the above SPECIAL EVENT.

_____ Date: _____

James B. Ellison, Mayor
(or designated representative)