

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

August 22, 2023

FROM

SHANNON D. DICUS, Sheriff/Coroner/Public Administrator

SUBJECT

Agreement with Flight Safety International Inc. for Aircraft Flight Training

RECOMMENDATION(S)

1. Approve **Agreement No. 23-937**, and incorporated General Terms and Conditions, including non-standard terms, with Flight Safety International Inc. to provide aircraft flight training, in a total aggregate amount of \$690,900, for a term beginning September 1, 2023 through December 31, 2027.
2. Authorize the Sheriff/Coroner/Public Administrator or Undersheriff to execute change orders to the Agreement, as needed, subject to review by County Counsel, with an increase in an amount not to exceed \$10,000 per change order, so long as the total aggregate amount of such change order does not exceed \$34,545, or 5%, and the change orders do not amend the Agreement term.
3. Direct the Sheriff/Coroner/Public Administrator or Undersheriff to transmit copies of all change orders to the Clerk of the Board of Supervisors within 30 days of execution.
(Presenter: Ernie Perez, Deputy Chief, 387-3760)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

Provide for the Safety, Health and Social Service Needs of County Residents.

FINANCIAL IMPACT

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost). The \$690,900 cost of training will be funded within the Sheriff/Coroner/Public Administrator's (Department) existing budget allocation (4430001000). Sufficient appropriation will be included in future recommended budgets.

BACKGROUND INFORMATION

The Department's Aviation Division (Division) maintains a fleet of various aircraft for patrol, surveillance, search and rescue, firefighting, and transportation services, which fly approximately 3,700 flight hours each year in support of the Department operations. Recognizing the importance of continuous skill development and ensuring the highest standards of safety, the Division aims to provide its pilots with training opportunities for the Bell 121 helicopter, Airbus AS350 H125 helicopter, and the Beechcraft King Air KA200 airplane. This required training builds pilot proficiency, improves decision-making abilities in critical situations, and enhances flight safety for all mission profiles.

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The Division's pilots currently attend training with Flight Safety International Inc. (FSI) for recurrent and initial training on an as-needed basis. This Agreement will establish a long-term contract to cover both the recurrent and initial trainings on an annual basis instead of as needed.

The recommended Agreement with FSI includes its General Terms and Conditions (GTC) that have terms that differ from the standard County contract terms. The non-standard terms are as follows:

1. Governing Law/Venue is the State of New York
 - The County standard contract requires California governing law and venue be San Bernardino County.
 - Potential Impact: The GTC will be interpreted under New York law. Any question, issues, or claims arising under the GTC will require the County to hire outside counsel competent to advise on, and practice New York law, which may result in fees that exceed the total amount of the Agreement.
2. Both the Agreement and the GTC do not include the County's insurance standards as required pursuant to County Policy 11-07.
 - The County's Policy requires contractors to carry appropriate insurance limits and under conditions determined by the County's Risk Management Department as set forth in the County standard contract.
 - Potential Impact: The County has no assurance that FSI will be financially responsible for claims that may arise from the County's participation in any trainings, which could result in expenses to the County that exceed the total Agreement amount.
3. Both the Agreement and the GTC do not include a requirement to indemnify the County for any claims.
 - (c) The County's standard contract indemnity provision requires the Contractor to indemnify, defend, and hold the County harmless from third party claims arising out of the acts, errors, or omissions of any person.
 - (d) Potential Impact: FSI is not required to defend, indemnify, or hold the County harmless from any claims, including indemnification for claims arising from FSI's negligent or intentional acts. If the County is sued for any claim based on FSI's training, the County may be solely liable for the costs of defense and damages, which could exceed the total Agreement amount.
4. The GTC includes a requirement for the County to indemnify FSI for any claims.
 - (c) The County's standard contract indemnity provision requires the Contractor to indemnify, defend, and hold the County harmless from third party claims arising out of the acts, errors, or omissions of any person.
 - (d) Potential Impact: The County would have to indemnify FSI for any claims or losses related to the Agreement.
5. The GTC limits FSI's liability to the actual amount paid to FSI by the County.
 - The County standard contract does not permit a contractor to limit its liability in the performance of the contract.

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- Potential Impact: Claims could exceed the liability cap leaving the Department financially liable for the excess.
6. FSI's payment terms are Net 45, and subject to 1.5% per month on the outstanding balance and require agreement that the County will pay FSI's reasonable legal and other expenses incurred in the collection of past due amounts.
- County standard payment terms are Net 60 with no interest or late payment penalties.
 - Potential Impact: Failing to pay invoices within 45 days will result in FSI charging additional late fees which may exceed the Agreement amount.

While these are notable exceptions to the County's standard contract language, the Department recommends approval of FSI's Agreement and GTC, including non-standard terms, to ensure the Department provides the mandated training to all pilots. County Counsel and Risk Management have reviewed the information and provided input.

PROCUREMENT

The Division requires its pilots to be trained on Level D flight simulators. FSI is the only provider of Level D full motion simulated flight training that is approved by the Federal Aviation Administration. It is also the only provider of Level D simulated flight training for the Bell 121 helicopter, Airbus AS350 H125 helicopter.

The Purchasing Department concurs that a non-competitive justification exists for specialized training with Flight Safety International. The terms in the Agreement, and incorporated GTC, may be used to accompany future purchase orders to FSI, as necessary, per County Policy 11-04 Procurement of Goods, Supplies, Equipment, and Services. Additionally, County Policy 11-05 requires departments to obtain Board of Supervisors approval for the procurement of goods and services with non-standard terms and conditions.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Richard D. Luczak, Deputy County Counsel, 387-5455) on August 1, 2023; Purchasing (Michael Candelaria, Lead Buyer, 387-0321) on August 1, 2023; Risk Management (Gregory Ustaszewski, Risk Management Analyst, 396-8621) on August 1, 2023; Finance (Erika Rodarte, Administrative Analyst, 387-4919) on August 4, 2023; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on August 7, 2023.

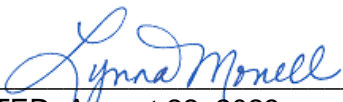
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Curt Hagman
Ayes: Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.
Absent: Col. Paul Cook (Ret.)

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: August 22, 2023



cc: Sheriff - Welty w/ agree
Contractor c/o Sheriff w/ agree
File w/ agree
JLL 09/1/2023