



# Revision to ASR and/or Attachments

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CLERK OF THE BOARD  
ORANGE COUNTY  
BOARD OF SUPERVISORS

**Date:** January 7, 2020  
**To:** Clerk of the Board of Supervisors  
**CC:** County Executive Office  
**From:** County Counsel  
**Re:** ASR Control #: 19-001237, Meeting Date January 14, 2020, Item No. # 30  
**Subject:** Approve Cooperative Services Agreement Program and Agreement with Stanton

Explanation: Additions to the Staff Report assure that the Orange County Flood Control District will also have the authority to complete projects on behalf of participating municipalities and to include further clarifying language in the Cooperative Services Agreement Template.

☒ Revised Recommended Action No. 5

5. Authorize the Director of OC Public Works or designee to execute Cooperative Services Agreement with the City of Stanton, effective upon execution by both parties, for an initial term of three years and option to extend for one additional year without Board approval, with a total capacity not-to-exceed \$300,000. Additionally, OC Public Works requests the Board of Supervisors authorize the Director of OC Public Works to execute minor amendments to the Cooperative Services Agreement, with approval of County Counsel, and to exercise contingency cost increases in an amount not to exceed 15 percent of the ~~annual~~ Cooperative Services Agreement amount per ~~fiscal year~~ the terms of the Cooperative Services Agreement.

☒ Make modifications to the:

☐ Subject ☒ Background Information ☐ Summary ☒ Financial Impact

Revise as indicated below by strikethrough (deletions) and bold underlined (additions):

Revise Caption:

**LEGAL ENTITY TAKING ACTION:** Board of Supervisors **and Board of Supervisors Acting as the Governing Body of the Orange County Flood Control District**

**BACKGROUND:**

OC Public Works requests the Board approve Agreement MA-080-20010760 (Agreement) with the City of Stanton (City) for a period of three years effective upon execution by both parties in an amount not-to-exceed \$300,000. Additionally, OC Public Works requests the Board authorize the Director of OC Public Works or designee to execute minor amendments to the Agreement and to exercise contingency cost increases in an amount not to exceed 15 percent of the ~~annual~~ Agreement amount per fiscal-year **the terms of the Agreement.**

**FINANCIAL IMPACT:**

The initial Recommended Actions are to adopt the Program template agreement only; therefore, no detailed cost information is available at this time. Executed cooperative services agreements pursuant to this action are contingent upon applicable budgetary appropriations and proposed to recover 100 percent of the associated costs of provided services.

Appropriations for the Agreement with the City will be absorbed in the FY 2019-20 Budget for Fund 115: OC Road **and Fund 400: Orange County Flood Control District** and will be included in the budgeting process for future years. All costs associated with the Agreement are 100 percent recoverable from the City.

The Program may be terminated by the County, City or special district at any time and without cause after 30 calendar days' written notice to the other party.

☒ Revised Attachments (attach revised attachment(s) and redlined copy(s))

Attachment A – Resolution

Attachment B – Cooperative Services Agreement Template

RESOLUTION OF THE BOARD OF SUPERVISORS OF  
ORANGE COUNTY, CALIFORNIA AND THE BOARD OF SUPERVISORS, ACTING AS  
THE GOVERNING BOARD OF THE ORANGE COUNTY FLOOD CONTROL DISTRICT

January 14, 2020

WHEREAS, pursuant to California Government Code section 54981, the County may contract with any other local agency for the performance by the latter of municipal services or functions within the territory of the former, and

WHEREAS, such services or functions may include performance of public projects in accordance with California Public Contract Code section 22032(a), which provides that public projects of sixty thousand dollars (\$60,000) or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order.

WHEREAS, the County has charged OC Public Works to serve the citizens of Orange County by providing a safe environment and enhanced quality of life through improvements to and maintenance of public infrastructure; and

WHEREAS, the County strives to deliver services to the citizens of Orange County in an efficient and cost-effective manner; and

WHEREAS, multiple local agencies have expressed the desire to contract with County for the performance of various municipal services or functions as generally described in Attachment “B” herein referred to as “Cooperative Agreement Template” and

WHEREAS, COUNTY is willing to provide these services to other local agencies in accordance with the terms, conditions and provisions of this Cooperative Agreement Template;

NOW, THEREFORE, BE IT RESOLVED that this Board acting on behalf of the County of Orange and the Orange County Flood Control District does hereby:

1. Authorize the establishment and implementation of a Cooperative Services Agreement Program to provide municipal services or functions to local agencies pursuant to California Government Code Section 54981.

2. Authorize the Director of OC Public Works or designee to enter into contracts with local agencies to provide municipal services or functions pursuant to California Government Code section 54981, and in accordance with the terms, conditions and provisions of the Cooperative Agreement Template, with a maximum not-to-exceed capacity of \$1,500,000 per agreement, for a maximum period of three years.
3. Authorize the Director of OC Public Works or designee to execute minor changes to the terms, conditions or provisions of the Cooperative Agreement Template, as deemed appropriate, with approval of County Counsel.
4. Authorize the Director of OC Public Works or designee to expend County of Orange funds pursuant to the Cooperative Services Agreement Program and as appropriations are available to deliver or perform contracted-for municipal services or functions.

RESOLUTION OF THE BOARD OF SUPERVISORS OF  
ORANGE COUNTY, CALIFORNIA AND THE BOARD OF SUPERVISORS, ACTING AS  
THE GOVERNING BOARD OF THE ORANGE COUNTY FLOOD CONTROL DISTRICT  
January 14, 2020

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WHEREAS, the County has charged OC Public Works to serve the citizens of Orange County by providing a safe environment and enhanced quality of life through improvements to and maintenance of public infrastructure; and

WHEREAS, the County strives to deliver services to the citizens of Orange County in an efficient and cost-effective manner; and

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2. Authorize the Director of OC Public Works or designee to enter into contracts with local agencies to provide municipal services or functions pursuant to California Government Code section 54981, and in accordance with the terms, conditions and provisions of the Cooperative Agreement Template, with a maximum not-to-exceed capacity of \$1,500,000 per agreement, for a maximum period of three years.
3. Authorize the Director of OC Public Works or designee to execute minor changes to the terms, conditions or provisions of the Cooperative Agreement Template, as deemed appropriate, with approval of County Counsel.
4. Authorize the Director of OC Public Works or designee to expend County of Orange funds pursuant to the Cooperative Services Agreement Program and as appropriations are available to deliver or perform contracted-for municipal services or functions.

**COOPERATIVE SERVICES AGREEMENT**

**BETWEEN**

**THE COUNTY OF ORANGE AND THE CITY OF [INSERT CITY]**

This AGREEMENT, made and entered into by and between the City of [INSERT CITY], a municipal corporation located within the County of Orange, State of California, hereinafter referred to as “AGENCY”, and the County of Orange, a political subdivision of the State of California, hereinafter referred to as “COUNTY”. AGENCY and COUNTY shall sometimes be referred to individually as “PARTY” or collectively as “PARTIES”.

**RECITALS**

WHEREAS, pursuant to California Government Code section 54981, the legislative body of any local agency may contract with any other local agency for the performance by the latter of municipal services or functions within the territory of the former, and

WHEREAS, such services or functions may include performance of public projects in accordance with California Public Contract Code section 22032(a), which provides that public projects of sixty thousand dollars (\$60,000) or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order.

WHEREAS, the PARTIES mutually desire to serve the citizens of Orange County by providing a safe environment and enhanced quality of life through improvements to, and maintenance of, public infrastructure; and

WHEREAS, AGENCY wishes to contract with COUNTY for the performance of various municipal services or functions as more specifically described in Attachment “A” herein referred to as “SERVICES”; and

WHEREAS, COUNTY is willing to provide these SERVICES to AGENCY in accordance with the terms, conditions and provisions of this AGREEMENT;

NOW, THEREFORE, AGENCY and COUNTY mutually agree as follows:

## **GENERAL PROVISIONS**

### **SECTION I – PURPOSE AND DEFINITIONS**

#### **A. PURPOSE:**

The PARTIES are entering into this AGREEMENT pursuant to authority granted by California Government Code § 54981 to establish the terms, conditions and provisions upon which AGENCY may request COUNTY to perform SERVICES on the AGENCY's behalf, including but not limited to performance of public projects in accordance with California Public Contract Code § 22032(a). The COUNTY may use either COUNTY staff or contractors as the COUNTY deems appropriate. All COUNTY staff and contractors utilized to perform SERVICES will work under COUNTY's direction and supervision.

#### **B. DEFINITIONS**

1. "AGENCY" shall mean the City of [INSERT CITY], a municipal corporation.
2. "AGENCY MANAGER" shall mean the AGENCY's [INSERT TITLE, POSITION, OR OFFICE], or authorized designee.
3. "AGREEMENT CAPACITY" shall mean the maximum aggregate dollar value of all SERVICES that may be provided by COUNTY to AGENCY under this AGREEMENT.
4. "BILLING SCHEDULE" is the component of a WORK ORDER that describes the time and manner in which AGENCY shall pay COUNTY for SERVICES provided under that WORK ORDER.



5. "COUNTY" shall mean the County of Orange, a political subdivision of the State of California.
6. "COUNTY RESOURCES" shall mean the COUNTY personnel or contractors that may be used to provide AGENCY with SERVICES under this AGREEMENT. The COUNTY may utilize any combination of COUNTY staff or contractors as the COUNTY deems appropriate to provide the requested SERVICES.
7. "DIRECTOR" shall mean the Director, OC Public Works, or authorized designee.
8. "EFFECTIVE DATE" shall be the date that both PARTIES execute this AGREEMENT.
9. "EMERGENCY" for the limited purposes of this AGREEMENT, shall mean the following: (a) when the COUNTY's Chief Executive Officer determines that there is an immediate danger to life, safety and property of contracting AGENCY, its citizens, or the citizens of the COUNTY requiring the performance of EMERGENCY WORK; and/or (b) when the AGENCY's legislative body or authorized officer declares an emergency pursuant to the applicable provisions of the Government Code; and/or (c) when the COUNTY's Board of Supervisors or authorized COUNTY officer declares an emergency pursuant to Government Code section 8630, et seq.; and/or (d) when the State or Federal Government, or both, declare an emergency for the geographic area encompassing all or part of the AGENCY's jurisdiction.
10. "EMERGENCY WORK" is work or services that the AGENCY may require that occurs due to an EMERGENCY and exceeds the dollar value limits for ONE-TIME SERVICES.

11. A "JOB ORDER CONTRACT" is a COUNTY contract for the provision of repair, remodeling, or other repetitive work done according to unit prices pursuant to Public Contract Code section 20128.5.
12. "ONE-TIME SERVICES" are SERVICES provided by COUNTY under this AGREEMENT may be utilized for a specific project, including new construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any AGENCY-owned, leased, or operated facility, and the painting or repainting of any AGENCY-owned, leased, or operated facility. ONE-TIME SERVICES do not include work that is properly classified as RECURRING SERVICES.
13. "PARTY" or "PARTIES" shall mean either or collectively the AGENCY or COUNTY.
14. A "QUALIFIED VENDOR LIST" is a COUNTY-maintained list of potential contractors who may provide either services architecture or engineering services that was assembled by the COUNTY through the Request for Qualification process.
15. "RATE SHEET" shall mean the rate sheet for all SERVICES that COUNTY may provide under this AGREEMENT, prepared by the COUNTY upon execution of this AGREEMENT. The RATE SHEET, along with a brief description of the types of work that may be performed under this AGREEMENT, shall constitute Attachment "A" to this AGREEMENT.
16. "RECURRING SERVICES" are SERVICES that are performed on a routine, repetitive basis within a given time period.
17. "SCOPE OF WORK" is a detailed description of the SERVICES and the manner in which they will be provided.

18. "SERVICES" shall mean the routine, recurring services, or one-time projects, provided to AGENCY by COUNTY under the terms of this AGREEMENT, and shall more explicitly be defined in Attachment "A" hereto.
19. A "STOP WORK ORDER NOTICE" shall mean a written notice by the COUNTY to the AGENCY, immediately stopping or cancelling all or any part of a WORK ORDER.
20. "URGENT WORK" is unforeseen work that AGENCY may periodically require to be performed on an urgent, but is not an EMERGENCY, basis, which may exceed the dollar value limits applicable to ONE-TIME SERVICES. This URGENT WORK may include either provision of services, or the performance of repair work.
21. A "WORK ORDER" shall be a document created collaboratively by the AGENCY and COUNTY for the purpose of describing and ordering the time, manner and duration in which the COUNTY provides AGENCY with SERVICES under this AGREEMENT. A WORK ORDER shall consist of a SCOPE OF WORK, Estimated Timeline for performance of the SERVICES, Cost Estimate for performing the SERVICES, and BILLING SCHEDULE describing the time and manner in which AGENCY shall pay COUNTY for SERVICES provided thereunder. Once approved by the AGENCY MANAGER, a WORK ORDER shall incorporated into this AGREEMENT as an Exhibit to Attachment A.

## **SECTION II – ADMINISTRATION OF AGREEMENT**

**A. PARTIES' REPRESENTATIVES:** AGENCY MANAGER shall be AGENCY's representative in all matters pertaining to this AGREEMENT and will act as liaison between AGENCY and COUNTY and coordinate the activities of AGENCY staff assigned to work with COUNTY staff to implement the terms of this AGREEMENT.

COUNTY'S DIRECTOR shall be authorized to act as COUNTY's representative in all matters pertaining to this AGREEMENT, and shall act as liaison between AGENCY and COUNTY and coordinate the activities of COUNTY staff assigned to work with AGENCY staff to implement the terms of this AGREEMENT.

**B. PROVISION OF SERVICES:**

The PARTIES agree that:

1. AGENCY may request COUNTY to provide SERVICES of the types described in Section III at any time; and

2. Subject to the availability of COUNTY RESOURCES and the limitations of Paragraph 4 herein below, COUNTY may provide SERVICES when requested by AGENCY; and

3. All COUNTY RESOURCES utilized to perform SERVICES will work under COUNTY's direction and supervision; and

4. If COUNTY RESOURCES are unavailable for whatever reason as determined by the DIRECTOR, or the DIRECTOR determines that provision of the SERVICES requested by AGENCY would not be in the COUNTY's best interest or would impair the COUNTY's ability to provide government services of any type in areas outside the AGENCY's jurisdiction, COUNTY may decline to provide the requested SERVICES at no penalty to the COUNTY.

5. If COUNTY agrees to provide SERVICES requested by AGENCY, COUNTY, in collaboration with AGENCY, will prepare a WORK ORDER for approval of AGENCY MANAGER. Upon approval by AGENCY MANAGER, an approved WORK ORDER shall become part of the AGREEMENT between the PARTIES as described in Section VII(C) herein; provided, however, WORK ORDERS may not materially change the terms this AGREEMENT or

any Attachments, but rather may only specify the times, manner and total cost particular SERVICES to be provided under this AGREEMENT.

Upon obtaining AGENCY's approval of a WORK ORDER, COUNTY will perform or cause to be performed the requested SERVICES and shall invoice the AGENCY in the manner described in Section III.

6. The COUNTY may, at any time, by written STOP WORK ORDER NOTICE to the AGENCY, immediately stop or cancel all or any part of a WORK ORDER, for a period of 90 days after the STOP WORK ORDER NOTICE is delivered to the AGENCY and for any further period to which the Parties may agree. Within a period of 90 days after a STOP WORK ORDER NOTICE is delivered to the AGENCY, or within any period to which the Parties shall have agreed, the COUNTY shall either:

- a. Cancel the STOP WORK ORDER NOTICE; or
- b. Cancel the WORK ORDER immediately in whole or in part in writing as soon as feasible.

**C. AGREEMENT CAPACITY:** The AGREEMENT CAPACITY shall be \$\_\_\_\_\_.

### **SECTION III - SERVICES**

**A. WARRANTIES BY AGENCY:** Agency warranties, promises and agrees as follows:

1. The SERVICES ordered by AGENCY and provided under this AGREEMENT do not violate the force account limits applicable to AGENCY.
2. The AGENCY will not order any SERVICES that would violate any statutory or contractual obligation of AGENCY.



**B. DEFINITION OF SERVICES:** The COUNTY may provide the following types of SERVICES to the AGENCY in the following manner:

1. RECURRING SERVICES: AGENCY may request, and COUNTY may provide, RECURRING SERVICES of the following types:

- a. Maintenance work as described in Public Contract Code section 22002(d)
- b. Architect or engineering services provided by COUNTY on-call contractors.

2. ONE-TIME SERVICES: AGENCY may request, and COUNTY may provide, ONE-TIME SERVICES.

**C. LIMITS ON THE PROVISION OF SERVICES:** SERVICES may be provided AGENCY in the following manner:

1. Delivery of RECURRING SERVICES: RECURRING SERVICES may be provided by COUNTY to AGENCY utilizing COUNTY personnel or contractors, except that (a) JOB ORDER CONTRACTS shall not be used to provide RECURRING SERVICES; (b) architect and engineering services can only be provided to AGENCY (i) using COUNTY contractors, and not COUNTY personnel, (ii) if such architect and engineering contractors agree in writing to provide to AGENCY all such contractual defense, indemnification and insurance provisions they are contractually obligated to provide to COUNTY, and (iii) if such architect and engineering contractors agree in writing to obtain and comply with all permits required by the applicable permitted authority; and (c) COUNTY shall not procure contracts for the sole benefit of AGENCY, but may use existing on-call contracts, provided, however, that this limitation shall not prohibit the COUNTY from entering into a contract with a vendor on an active COUNTY QUALIFIED VENDOR LIST to provide SERVICES to AGENCY. The

aggregate cost of RECURRING SERVICES provided to AGENCY may be in any amount up to the AGREEMENT CAPACITY.

2. Delivery of ONE-TIME SERVICES: ONE-TIME SERVICES may be provided by COUNTY to AGENCY utilizing COUNTY personnel or contractors, except that (a) JOB ORDER CONTRACTS shall not be used to provide ONE-TIME SERVICES; (b) architect and engineering services can only be provided to AGENCY (i) using COUNTY contractors, and not COUNTY personnel, (ii) if such architect and engineering contractors agree in writing to provide to AGENCY all such contractual defense, indemnification and insurance provisions they are contractually obligated to provide to COUNTY, and (iii) if such architect and engineering contractors agree in writing to obtain and comply with all permits required by the applicable permitted authority; (c) COUNTY shall not procure contracts for the sole benefit of AGENCY provided, however, that this limitation shall not prohibit the COUNTY from entering into a contract with a vendor on an active COUNTY QUALIFIED VENDOR LIST to provide SERVICES to AGENCY; and (d) the maximum value of ONE-TIME SERVICES for the performance of a public project, if applicable and as defined in Public Contract Code section 22002(c), shall not exceed the limits set forth in Public Contract Code section 22032(a) or \$60,000 per project, whichever is the greater. Neither COUNTY nor AGENCY shall use this AGREEMENT to engage in project splitting in violation of law, or in violation of applicable COUNTY or AGENCY policy.

**D. ORDERING SERVICES:** RECURRING SERVICES and ONE-TIME SERVICES may be ordered by the drafting of a WORK ORDER. The WORK ORDER, as part of the SCOPE OF WORK, shall also memorialize the AGENCY's completion of any necessary

environmental review, and shall specify which PARTY is responsible for obtaining necessary permits.

The PARTIES shall collaborate in the drafting of all WORK ORDER. No WORK ORDER shall be effective until signed by both the AGENCY MANAGER and DIRECTOR or designee. Once effective, WORK ORDERS shall amend and become part of this AGREEMENT, except that WORK ORDERS may not change the terms of the General Provisions or any Attachments. No WORK ORDER shall result in the expenditure of any funds or provision of any SERVICES that would exceed the AGREEMENT CAPACITY. No WORK ORDER shall have a period of performance that exceeds the TERM of this AGREEMENT.

**E. COST OF SERVICES:** Cost Estimates for SERVICES provided under this AGREEMENT shall be drafted according to the RATE SHEET prepared by COUNTY. The RATE SHEET shall be prepared and updated annually by the COUNTY, in the manner authorized by the COUNTY's Board of Supervisors, during the TERM of this AGREEMENT, and shall be made part of this AGREEMENT as Attachment "A" and incorporated herein by reference once prepared by the COUNTY and provided to AGENCY. The COUNTY may also provide SERVICES using contracts awarded by, or pursuant to the delegated authority of, the COUNTY's Board of Supervisors. In the event that the COUNTY provides SERVICES using these contracts, the cost shall be that set forth in the respective contract, plus the added rate set forth in the RATE SHEET for any COUNTY labor used in administering or procuring those contracts.

**F. URGENT WORK:** From time to time, AGENCY may require the COUNTY to provide URGENT WORK under this AGREEMENT.



1. URGENT WORK may only be performed when authorized by, and at the discretion and direction of, the COUNTY's Chief Executive Officer. URGENT WORK is defined as work that AGENCY demonstrates is necessary to prevent a potential threat to the life, safety, or property of the citizens of the County of Orange were such URGENT WORK not to be performed, but where such circumstances do not yet constitute an EMERGENCY as defined in this AGREEMENT.

2. URGENT WORK is limited to activities as the AGENCY and COUNTY agree are reasonably necessary to prevent an EMERGENCY (as defined in this AGREEMENT) from occurring. The scope of URGENT WORK that may be provided by any single WORK ORDER under this AGREEMENT shall only be that which is necessary to mitigate the potential threat of an EMERGENCY developing. Once the threat of an EMERGENCY developing is mitigated, any further repair work necessary for complete reconstruction of AGENCY facilities or property shall be delivered as ONE-TIME SERVICES or by separate contract.

3. URGENT WORK shall be ordered by WORK ORDER.

4. URGENT WORK may be delivered using JOB ORDER CONTRACTS; provided, however, that the total amount of URGENT WORK delivered by JOB ORDER CONTRACT shall not exceed the lesser of \$250,000 or the remaining amount of the AGREEMENT CAPACITY per WORK ORDER for URGENT WORK.

5. URGENT WORK shall be billed to AGENCY in the same manner as that of SERVICES provided under this AGREEMENT.

**G. EMERGENCY WORK:** From time to time, the AGENCY may require the performance of "EMERGENCY WORK".

1. EMERGENCY WORK shall only be performed in the event of an Emergency.

2. EMERGENCY WORK shall be ordered by WORK ORDER.
3. EMERGENCY WORK may be performed either by COUNTY personnel or COUNTY contractors, or both, as is determined necessary by the DIRECTOR and the COUNTY's Chief Executive Officer. EMERGENCY WORK may be performed by COUNTY JOB ORDER CONTRACT Contractors under existing COUNTY JOB ORDER CONTRACT.
4. EMERGENCY WORK shall be billed to AGENCY in the same manner as that of SERVICES provided under this AGREEMENT.
5. The scope of EMERGENCY WORK that may be provided under this AGREEMENT shall only be that which is necessary to mitigate the threat of the EMERGENCY to the health, safety and welfare of the citizens of the County of Orange, COUNTY-owned infrastructure or facilities, or infrastructure or facilities owned or operated by other public entities located within the County of Orange. Once the EMERGENCY is mitigated, any further repair work necessary for complete reconstruction of AGENCY facilities or property shall be delivered as ONE-TIME SERVICES or by separate contract.
6. The value of all EMERGENCY WORK provided under this AGREEMENT shall not exceed the AGREEMENT CAPACITY.

#### **SECTION IV– BILLING AND INVOICING**

COUNTY shall submit invoice(s) to AGENCY for SERVICES provided. The invoiced amount shall reflect the agreed upon costs and fees set in the manner authorized by the COUNTY's Board of Supervisors or as set forth in a contractor awarded by, or pursuant to authority delegated by, the COUNTY's Board of Supervisors. All amounts invoiced to AGENCY

shall reasonably reflect COUNTY's actual costs for providing those SERVICES to AGENCY in accordance with applicable COUNTY Revenue Policy.

AGENCY shall pay all invoices sent by COUNTY in the manner described in the relevant WORK ORDER. AGENCY assumes all risk of loss if payments are mailed. Payment shall be deemed complete when received by the COUNTY.

Notwithstanding any other provision of this AGREEMENT, this obligation of AGENCY to pay for SERVICES performed by the COUNTY shall remain in effect until such time as COUNTY has received all payment for the SERVICES it has performed.

#### **SECTION V - DEFENSE AND INDEMNIFICATION**

COUNTY agrees to indemnify, defend with counsel approved in writing by AGENCY, protect and hold harmless the AGENCY, its officers, elected or appointed officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, or liability of any kind or nature which the AGENCY, its officers, elected or appointed officials, employees and volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons or damage to property arising out of COUNTY's grossly negligent or willful wrongful acts in performing under the terms of this AGREEMENT. COUNTY shall defend, at its expense, including attorney fees, AGENCY, its officers, agents, employees, independent contractors and volunteers in any legal action or claim of any kind based upon such alleged acts or omissions. The COUNTY shall not be liable in any way or indemnify the AGENCY, its officers, elected or appointed officials, employees and volunteers for AGENCY'S negligence or the negligence of AGENCY's officers, officials, employees or volunteers.

AGENCY agrees to indemnify, defend with counsel approved in writing by COUNTY, protect and hold harmless the COUNTY, its officers, elected or appointed officials, employees and volunteers from and against any and all claims, demands, losses, defense cost or expenses, or liability of any kind or nature which the COUNTY, its officers, elected or appointed officials, employees or volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons or damage to property arising out of the AGENCY's negligent or wrongful acts in performing under the terms of this AGREEMENT. The AGENCY shall not be liable in any way or indemnify the COUNTY, its officers, elected or appointed officials, employees and volunteers for COUNTY's gross and willful negligence, or the gross and willful negligence of COUNTY's officers, elected or appointed officials, employees or volunteers. If judgment is entered against AGENCY and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of AGENCY or COUNTY, AGENCY and COUNTY agree that liability will be apportioned as determined by the court. Neither PARTY shall request a jury apportionment.

Without limiting the foregoing, AGENCY indemnification also extends to COUNTY employees or agents serving as inspectors in the AGENCY whose duties include recurring inspection to identify maintenance and repair needs. The failure to identify a hazard not currently involved in maintenance or repair which results in claim shall not transfer responsibility for the hazard to the COUNTY. COUNTY responsibility includes maintenance and repair work in progress by COUNTY employees or contract work under COUNTY administration.

Each PARTY agrees to fully cooperate with the other and assist the other PARTY hereto in all matters relating to losses covered by the terms of this AGREEMENT, and more specifically but not being limited thereby, each PARTY will:

1. Give prompt notification of all occurrences covered or likely to be covered by Section V of this AGREEMENT;

2. If claim is made, or suit is brought against a PARTY on occurrences covered or likely to be covered by the terms hereof, such PARTY shall immediately forward every claim, demand, notice, summons or other process received by it to the other PARTY.

Either PARTY may, at its own expense, participate in the defense of any suit, or in the prosecution of any appeal affecting matters herein involved where the duty of defense or prosecution is imposed on the other PARTY, and where that other PARTY has consented to that participation.

#### **SECTION VI – DISPUTE RESOLUTION**

In the event that either PARTY contends that the other PARTY has failed to perform any of its obligations under this AGREEMENT, that PARTY shall, within ten (10) business days of becoming aware of the facts constituting that dispute, provide notice of the dispute to the other PARTY in the manner set forth in this AGREEMENT. Thereafter, the DIRECTOR and AGENCY MANAGER shall meet and confer in good faith to resolve any such dispute.

In no event shall either PARTY initiate any action in equity or at law prior to engaging in the meet and confer process described in this Section.

#### **SECTION VII - MISCELLANEOUS PROVISIONS**

A. **TERM:** The term of this AGREEMENT shall commence upon its EFFECTIVE DATE and shall remain in effect for three (3) years; until the AGREEMENT CAPACITY has been expended; or otherwise terminated by either PARTY.

**B. TERMINATION:** Either PARTY may at any time, for any reason, and with or without cause, terminate this AGREEMENT by serving upon the non-terminating PARTY, in the manner set forth in Section VII(D) herein, a written Notice of Termination at least thirty (30) days prior to the date of termination. The terminating PARTY shall not be obligated to provide any reason for exercising its right to terminate this AGREEMENT. If COUNTY initiates a Notice of Termination, that Notice shall include an invoice for all SERVICES that have not yet been invoiced to AGENCY. If AGENCY initiates a Notice of Termination, upon receipt of said Notice, County shall prepare and serve on AGENCY a final invoice for all SERVICES performed by COUNTY that have not yet been invoiced to AGENCY. AGENCY'S obligations under this AGREEMENT shall remain in effect until the COUNTY has received all payments for SERVICES previously performed.

**C. ENTIRE AGREEMENT AND CONSTRUCTION:** This AGREEMENT, any Attachments and any WORK ORDER issued under the provisions herein, constitutes the entire agreement between the PARTIES with respect to the matters provided for herein.

**D. NOTICE:** All notices or other communication provided for herein shall be in writing and shall be personally served or delivered by United States mail, registered or certified return receipt requested, postage prepaid, addressed as follows:

AGENCY:

[INSERT NAME]

[INSERT ADDRESS]

[INSERT PHONE NUMBER]

[INSERT EMAIL]

COUNTY:

[INSERT NAME]

[INSERT ADDRESS]

[INSERT PHONE NUMBER]

[INSERT EMAIL]



Any PARTY may, by notice to the others, designate a different address for notices that shall be substituted for that specified above. Any notice given as provided in this subparagraph shall be deemed to have been received, if personally served, as of the date and time of service, or if deposited in the mail as provided above, forty-eight (48) hours after deposit in the mail.

**E. NON-ASSIGNMENT:** This AGREEMENT shall not be assigned except by written amendment to this AGREEMENT.

**F. EXECUTION IN COUNTERPARTS:** This AGREEMENT may be executed in counterparts, each of which when executed and delivered shall be considered an original, and when taken together shall constitute a single document.

**G. ATTORNEY'S FEES:** In any action or proceeding brought to enforce or interpret any provision of this AGREEMENT, or where any provision hereof is validly asserted as a defense, each PARTY shall bear its own attorney's fees and costs.

**H. AMENDMENTS:** No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the PARTIES hereto, and no oral understanding or AGREEMENT not incorporated herein shall be binding on any of the PARTIES hereto.

**I. COMPLIANCE WITH APPLICABLE LAW:** Each PARTY and their respective contractors shall at all times and in all respects comply with all applicable federal, state and local laws, ordinances, regulations, and permits with respect to their performance of this AGREEMENT.

**J. INTERPRETATION:** This AGREEMENT shall be construed and enforced in accordance with California law. The PARTIES acknowledge that the PARTIES and their counsel have both reviewed and revised this AGREEMENT, that it is the product of the PARTIES' mutual drafting efforts, and that therefore the normal rule of construction to the effect that any ambiguities

are to be resolved against the drafting PARTY shall not be employed in the interpretation of this AGREEMENT or any exhibits or amendments hereto.

**K. CALENDAR DAYS:** Any reference to the word “day” or “days” shall mean calendar day or calendar days respectively, unless otherwise expressly provided.

**L. FORCE MAJEURE:** COUNTY shall not be assessed with damages or penalties for unsatisfactory performance during any delay in the performance of any work under this AGREEMENT caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided COUNTY gives written notice of the cause of the delay to the AGENCY within 24 hours of the start for the delay.

**M. SEVERABILITY:** If any part of this AGREEMENT is held, determined or adjudicated to be illegal, void or unenforceable by a court of competent jurisdiction, the remainder of this AGREEMENT shall be given effect to the fullest extent reasonably possible.

**N. AUTHORITY:** The PARTIES represent and warrant that this AGREEMENT has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

**O. PRECEDENCE:** In the event there is a conflict in language between any component documents of this AGREEMENT, the conflict in language shall be resolved by treating the language of the General Provisions as controlling over the language of any Attachments and any WORK ORDERS; and the language of any Attachments as controlling over the language of any WORK ORDERS.



[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT on the dates following their respective signatures effective as of the date first above written:

**COUNTY OF ORANGE ("COUNTY")**

**CITY OF [INSERT CITY] ("AGENCY")**

By: \_\_\_\_\_  
Shane L. Silsby, Director  
County of Orange, California


By: \_\_\_\_\_  
[SIGNARORY'S NAME AND TITLE]  
CITY OF [INSERT CITY]

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM  
OFFICE OF THE COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

APROVED AS TO FORM

By:  \_\_\_\_\_  
Deputy

By: \_\_\_\_\_  
City Attorney

**Attachment A**  
**Scope of Services / Rate Sheet**

[INTENTIONALLY LEFT BLANK]

**COOPERATIVE SERVICES AGREEMENT**  
**BETWEEN**  
**THE COUNTY OF ORANGE AND THE CITY OF [INSERT CITY]**

This AGREEMENT, made and entered into by and between the City of [INSERT CITY], a municipal corporation located within the County of Orange, State of California, hereinafter referred to as “AGENCY”, and the County of Orange, a political subdivision of the State of California, hereinafter referred to as “COUNTY”. AGENCY and COUNTY shall sometimes be referred to individually as “PARTY” or collectively as “PARTIES”.

**RECITALS**

WHEREAS, pursuant to California Government Code section 54981, the legislative body of any local agency may contract with any other local agency for the performance by the latter of municipal services or functions within the territory of the former, and

WHEREAS, such services or functions may include performance of public projects in accordance with California Public Contract Code section 22032(a), which provides that public projects of sixty thousand dollars (\$60,000) or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order.

WHEREAS, the PARTIES mutually desire to serve the citizens of Orange County by providing a safe environment and enhanced quality of life through improvements to, and maintenance of, public infrastructure; and

WHEREAS, AGENCY wishes to contract with COUNTY for the performance of various municipal services or functions as more specifically described in Attachment “A” herein referred to as “SERVICES”; and

WHEREAS, COUNTY is willing to provide these SERVICES to AGENCY in accordance with the terms, conditions and provisions of this AGREEMENT;

NOW, THEREFORE, AGENCY and COUNTY mutually agree as follows:

## **GENERAL PROVISIONS**

### **SECTION I – PURPOSE AND DEFINITIONS**

#### **A. PURPOSE:**

The PARTIES are entering into this AGREEMENT pursuant to authority granted by California Government Code § 54981 to establish the terms, conditions and provisions upon which AGENCY may request COUNTY to perform SERVICES on the AGENCY's behalf, including but not limited to performance of public projects in accordance with California Public Contract Code § 22032(a). The COUNTY may use either COUNTY staff or contractors as the COUNTY deems appropriate. All COUNTY staff and contractors utilized to perform SERVICES will work under COUNTY's direction and supervision.

#### **B. DEFINITIONS**

1. "AGENCY" shall mean the City of [INSERT CITY], a municipal corporation.
2. "AGENCY MANAGER" shall mean the AGENCY's [INSERT TITLE, POSITION, OR OFFICE], or authorized designee.
3. "AGREEMENT CAPACITY" shall mean the maximum aggregate dollar value of all SERVICES that may be provided by COUNTY to AGENCY under this AGREEMENT.
4. "BILLING SCHEDULE" is the component of a WORK ORDER that describes the time and manner in which AGENCY shall pay COUNTY for SERVICES provided under that WORK ORDER.

5. "COUNTY" shall mean the County of Orange, a political subdivision of the State of California.
6. "COUNTY RESOURCES" shall mean the COUNTY personnel or contractors that may be used to provide AGENCY with SERVICES under this AGREEMENT. The COUNTY may utilize any combination of COUNTY staff or contractors as the COUNTY deems appropriate to provide the requested SERVICES.
7. "DIRECTOR" shall mean the Director, OC Public Works, or authorized designee.
8. "EFFECTIVE DATE" shall be the date that both PARTIES execute this AGREEMENT.
9. "EMERGENCY" for the limited purposes of this AGREEMENT, shall mean the following: (a) when the COUNTY's Chief Executive Officer determines that there is an immediate danger to life, safety and property of contracting AGENCY, its citizens, or the citizens of the COUNTY requiring the performance of EMERGENCY WORK; and/or (b) when the AGENCY's legislative body or authorized officer declares an emergency pursuant to the applicable provisions of the Government Code; and/or (c) when the COUNTY's Board of Supervisors or authorized COUNTY officer declares an emergency pursuant to Government Code section 8630, et seq.; and/or (d) when the State or Federal Government, or both, declare an emergency for the geographic area encompassing all or part of the AGENCY's jurisdiction.
10. "EMERGENCY WORK" is work or services that the AGENCY may require that occurs due to an EMERGENCY and exceeds the dollar value limits for ONE-TIME SERVICES.

11. A "JOB ORDER CONTRACT" is a COUNTY contract for the provision of repair, remodeling, or other repetitive work done according to unit prices pursuant to Public Contract Code section 20128.5.
12. "ONE-TIME SERVICES" are SERVICES provided by COUNTY under this AGREEMENT may be utilized for a specific project, including new construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any AGENCY-owned, leased, or operated facility, and the painting or repainting of any AGENCY-owned, leased, or operated facility. ONE-TIME SERVICES do not include work that is properly classified as RECURRING SERVICES.
13. "PARTY" or "PARTIES" shall mean either or collectively the AGENCY or COUNTY.
14. A "QUALIFIED VENDOR LIST" is a COUNTY-maintained list of potential contractors who may provide either services architecture or engineering services that was assembled by the COUNTY through the Request for Qualification process.
15. "RATE SHEET" shall mean the rate sheet for all SERVICES that COUNTY may provide under this AGREEMENT, prepared by the COUNTY upon execution of this AGREEMENT. The RATE SHEET, along with a brief description of the types of work that may be performed under this AGREEMENT, shall constitute Attachment "A" to this AGREEMENT.
16. "RECURRING SERVICES" are SERVICES that are performed on a routine, repetitive basis within a given time period.
17. "SCOPE OF WORK" is a detailed description of the SERVICES and the manner in which they will be provided.

18. "SERVICES" shall mean the routine, recurring services, or one-time projects, provided to AGENCY by COUNTY under the terms of this AGREEMENT, and shall more explicitly be defined in Attachment "A" hereto.
19. A "STOP WORK ORDER NOTICE" shall mean a written notice by the COUNTY to the AGENCY, immediately stopping or cancelling all or any part of a WORK ORDER.
20. "URGENT WORK" is unforeseen work that AGENCY may periodically require to be performed on an urgent, but is not an EMERGENCY, basis, which may exceed the dollar value limits applicable to ONE-TIME SERVICES. This URGENT WORK may include either provision of services, or the performance of repair work.
21. A "WORK ORDER" shall be a document created collaboratively by the AGENCY and COUNTY for the purpose of describing and ordering the time, manner and duration in which the COUNTY provides AGENCY with SERVICES under this AGREEMENT. A WORK ORDER shall consist of a SCOPE OF WORK, Estimated Timeline for performance of the SERVICES, Cost Estimate for performing the SERVICES, and BILLING SCHEDULE describing the time and manner in which AGENCY shall pay COUNTY for SERVICES provided thereunder. Once approved by the AGENCY MANAGER, a WORK ORDER shall incorporated into this AGREEMENT as an Exhibit to Attachment A.

## **SECTION II – ADMINISTRATION OF AGREEMENT**

**A. PARTIES' REPRESENTATIVES:** AGENCY MANAGER shall be AGENCY's representative in all matters pertaining to this AGREEMENT and will act as liaison between AGENCY and COUNTY and coordinate the activities of AGENCY staff assigned to work with COUNTY staff to implement the terms of this AGREEMENT.



COUNTY'S DIRECTOR shall be authorized to act as COUNTY's representative in all matters pertaining to this AGREEMENT, and shall act as liaison between AGENCY and COUNTY and coordinate the activities of COUNTY staff assigned to work with AGENCY staff to implement the terms of this AGREEMENT.

**B. PROVISION OF SERVICES:**

The PARTIES agree that:

1. AGENCY may request COUNTY to provide SERVICES of the types described in Section III at any time; and
2. Subject to the availability of COUNTY RESOURCES and the limitations of Paragraph 4 herein below, COUNTY may provide SERVICES when requested by AGENCY; and
3. All COUNTY RESOURCES utilized to perform SERVICES will work under COUNTY's direction and supervision; and
4. If COUNTY RESOURCES are unavailable for whatever reason as determined by the DIRECTOR, or the DIRECTOR determines that provision of the SERVICES requested by AGENCY would not be in the COUNTY's best interest or would impair the COUNTY's ability to provide government services of any type in areas outside the AGENCY's jurisdiction, COUNTY may decline to provide the requested SERVICES at no penalty to the COUNTY.
5. If COUNTY agrees to provide SERVICES requested by AGENCY, COUNTY, in collaboration with AGENCY, will prepare a WORK ORDER for approval of AGENCY MANAGER. Upon approval by AGENCY MANAGER, an approved WORK ORDER shall become part of the AGREEMENT between the PARTIES as described in Section VII(C) herein; provided, however, WORK ORDERS may not materially change the terms this AGREEMENT or

any Attachments, but rather may only specify the times, manner and total cost particular SERVICES to be provided under this AGREEMENT.

Upon obtaining AGENCY's approval of a WORK ORDER, COUNTY will perform or cause to be performed the requested SERVICES and shall invoice the AGENCY in the manner described in Section III.

6. The COUNTY may, at any time, by written STOP WORK ORDER NOTICE to the AGENCY, immediately stop or cancel all or any part of a WORK ORDER, for a period of 90 days after the STOP WORK ORDER NOTICE is delivered to the AGENCY and for any further period to which the Parties may agree. Within a period of 90 days after a STOP WORK ORDER NOTICE is delivered to the AGENCY, or within any period to which the Parties shall have agreed, the COUNTY shall either:

- a. Cancel the STOP WORK ORDER NOTICE; or
- b. Cancel the WORK ORDER immediately in whole or in part in writing as soon as feasible.

**C. AGREEMENT CAPACITY:** The AGREEMENT CAPACITY shall be \$\_\_\_\_\_.

### **SECTION III - SERVICES**

**A. WARRANTIES BY AGENCY:** Agency warranties, promises and agrees as follows:

1. The SERVICES ordered by AGENCY and provided under this AGREEMENT do not violate the force account limits applicable to AGENCY.

2. The AGENCY will not order any SERVICES that would violate any statutory or contractual obligation of AGENCY.

**B. DEFINITION OF SERVICES:** The COUNTY may provide the following types of SERVICES to the AGENCY in the following manner:

1. RECURRING SERVICES: AGENCY may request, and COUNTY may provide, RECURRING SERVICES of the following types:
  - a. Maintenance work as described in Public Contract Code section 22002(d)
  - b. Architect or engineering services provided by COUNTY on-call contractors.

2. ONE-TIME SERVICES: AGENCY may request, and COUNTY may provide, ONE-TIME SERVICES.

**C. LIMITS ON THE PROVISION OF SERVICES:** SERVICES may be provided AGENCY in the following manner:

1. Delivery of RECURRING SERVICES: RECURRING SERVICES may be provided by COUNTY to AGENCY utilizing COUNTY personnel or contractors, except that (a) JOB ORDER CONTRACTS shall not be used to provide RECURRING SERVICES; (b) architect and engineering services can only be provided to AGENCY (i) using COUNTY contractors, and not COUNTY personnel, (ii) if such architect and engineering contractors agree in writing to provide to AGENCY all such contractual defense, indemnification and insurance provisions they are contractually obligated to provide to COUNTY, and (iii) if such architect and engineering contractors agree in writing to obtain and comply with all permits required by the applicable permitted authority; and (c) COUNTY shall not procure contracts for the sole benefit of AGENCY, but may use existing on-call contracts, provided, however, that this limitation shall not prohibit the COUNTY from entering into a contract with a vendor on an active COUNTY QUALIFIED VENDOR LIST to provide SERVICES to AGENCY. The

aggregate cost of RECURRING SERVICES provided to AGENCY may be in any amount up to the AGREEMENT CAPACITY.

2. Delivery of ONE-TIME SERVICES: ONE-TIME SERVICES may be provided by COUNTY to AGENCY utilizing COUNTY personnel or contractors, except that (a) JOB ORDER CONTRACTS shall not be used to provide ONE-TIME SERVICES; (b) architect and engineering services can only be provided to AGENCY (i) using COUNTY contractors, and not COUNTY personnel, (ii) if such architect and engineering contractors agree in writing to provide to AGENCY all such contractual defense, indemnification and insurance provisions they are contractually obligated to provide to COUNTY, and (iii) if such architect and engineering contractors agree in writing to obtain and comply with all permits required by the applicable permitted authority; (c) COUNTY shall not procure contracts for the sole benefit of AGENCY provided, however, that this limitation shall not prohibit the COUNTY from entering into a contract with a vendor on an active COUNTY QUALIFIED VENDOR LIST to provide SERVICES to AGENCY; and (d) the maximum value of ONE-TIME SERVICES for the performance of a public project, if applicable and as defined in Public Contract Code section 22002(c), shall not exceed the limits set forth in Public Contract Code section 22032(a) or \$60,000 per project, whichever is the greater. Neither COUNTY nor AGENCY shall use this AGREEMENT to engage in project splitting in violation of law, or in violation of applicable COUNTY or AGENCY policy.

**D. ORDERING SERVICES:** RECURRING SERVICES and ONE-TIME SERVICES may be ordered by the drafting of a WORK ORDER. The WORK ORDER, as part of the SCOPE OF WORK, shall also memorialize the AGENCY's completion of any necessary

environmental review, and shall specify which PARTY is responsible for obtaining necessary permits.

The PARTIES shall collaborate in the drafting of all WORK ORDER. No WORK ORDER shall be effective until signed by both the AGENCY MANAGER and DIRECTOR or designee. Once effective, WORK ORDERS shall amend and become part of this AGREEMENT, except that WORK ORDERS may not change the terms of the General Provisions or any Attachments. No WORK ORDER shall result in the expenditure of any funds or provision of any SERVICES that would exceed the AGREEMENT CAPACITY. No WORK ORDER shall have a period of performance that exceeds the TERM of this AGREEMENT.

**E. COST OF SERVICES:** Cost Estimates for SERVICES provided under this AGREEMENT shall be drafted according to the RATE SHEET prepared by COUNTY. The RATE SHEET shall be prepared and updated annually by the COUNTY, in the manner authorized by the COUNTY's Board of Supervisors, during the TERM of this AGREEMENT, and shall be made part of this AGREEMENT as Attachment "A" and incorporated herein by reference once prepared by the COUNTY and provided to AGENCY. The COUNTY may also provide SERVICES using contracts awarded by, or pursuant to the delegated authority of, the COUNTY's Board of Supervisors. In the event that the COUNTY provides SERVICES using these contracts, the cost shall be that set forth in the respective contract, plus the added rate set forth in the RATE SHEET for any COUNTY labor used in administering or procuring those contracts.

**F. URGENT WORK:** From time to time, AGENCY may require the COUNTY to provide URGENT WORK under this AGREEMENT.

1. URGENT WORK may only be performed when authorized by, and at the discretion and direction of, the COUNTY's Chief Executive Officer. URGENT WORK is defined as work that AGENCY demonstrates is necessary to prevent a potential threat to the life, safety, or property of the citizens of the County of Orange were such URGENT WORK not to be performed, but where such circumstances do not yet constitute an EMERGENCY as defined in this AGREEMENT.

2. URGENT WORK is limited to activities as the AGENCY and COUNTY agree are reasonably necessary to prevent an EMERGENCY (as defined in this AGREEMENT) from occurring. The scope of URGENT WORK that may be provided by any single WORK ORDER under this AGREEMENT shall only be that which is necessary to mitigate the potential threat of an EMERGENCY developing. Once the threat of an EMERGENCY developing is mitigated, any further repair work necessary for complete reconstruction of AGENCY facilities or property shall be delivered as ONE-TIME SERVICES or by separate contract.

3. URGENT WORK shall be ordered by WORK ORDER.

4. URGENT WORK may be delivered using JOB ORDER CONTRACTS; provided, however, that the total amount of URGENT WORK delivered by JOB ORDER CONTRACT shall not exceed the lesser of \$250,000 or the remaining amount of the AGREEMENT CAPACITY per WORK ORDER for URGENT WORK.

5. URGENT WORK shall be billed to AGENCY in the same manner as that of SERVICES provided under this AGREEMENT.

**G. EMERGENCY WORK:** From time to time, the AGENCY may require the performance of "EMERGENCY WORK".

1. EMERGENCY WORK shall only be performed in the event of an Emergency.



2. EMERGENCY WORK shall be ordered by WORK ORDER.
3. EMERGENCY WORK may be performed either by COUNTY personnel or COUNTY contractors, or both, as is determined necessary by the DIRECTOR and the COUNTY's Chief Executive Officer. EMERGENCY WORK may be performed by COUNTY JOB ORDER CONTRACT Contractors under existing COUNTY JOB ORDER CONTRACT.
4. EMERGENCY WORK shall be billed to AGENCY in the same manner as that of SERVICES provided under this AGREEMENT.
5. The scope of EMERGENCY WORK that may be provided under this AGREEMENT shall only be that which is necessary to mitigate the threat of the EMERGENCY to the health, safety and welfare of the citizens of the County of Orange, COUNTY-owned infrastructure or facilities, or infrastructure or facilities owned or operated by other public entities located within the County of Orange. Once the EMERGENCY is mitigated, any further repair work necessary for complete reconstruction of AGENCY facilities or property shall be delivered as ONE-TIME SERVICES or by separate contract.
6. The value of all EMERGENCY WORK provided under this AGREEMENT shall not exceed the AGREEMENT CAPACITY.

#### **SECTION IV– BILLING AND INVOICING**

COUNTY shall submit invoice(s) to AGENCY for SERVICES provided. The invoiced amount shall reflect the agreed upon costs and fees set in the manner authorized by the COUNTY's Board of Supervisors or as set forth in a contractor awarded by, or pursuant to authority delegated by, the COUNTY's Board of Supervisors. All amounts invoiced to AGENCY

shall reasonably reflect COUNTY's actual costs for providing those SERVICES to AGENCY in accordance with applicable COUNTY Revenue Policy.

AGENCY shall pay all invoices sent by COUNTY in the manner described in the relevant WORK ORDER. AGENCY assumes all risk of loss if payments are mailed. Payment shall be deemed complete when received by the COUNTY.

Notwithstanding any other provision of this AGREEMENT, this obligation of AGENCY to pay for SERVICES performed by the COUNTY shall remain in effect until such time as COUNTY has received all payment for the SERVICES it has performed.

#### **SECTION V - DEFENSE AND INDEMNIFICATION**

COUNTY agrees to indemnify, defend with counsel approved in writing by AGENCY, protect and hold harmless the AGENCY, its officers, elected or appointed officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, or liability of any kind or nature which the AGENCY, its officers, elected or appointed officials, employees and volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons or damage to property arising out of COUNTY's grossly negligent or willful wrongful acts in performing under the terms of this AGREEMENT. COUNTY shall defend, at its expense, including attorney fees, AGENCY, its officers, agents, employees, independent contractors and volunteers in any legal action or claim of any kind based upon such alleged acts or omissions. The COUNTY shall not be liable in any way or indemnify the AGENCY, its officers, elected or appointed officials, employees and volunteers for AGENCY'S negligence or the negligence of AGENCY's officers, officials, employees or volunteers.



AGENCY agrees to indemnify, defend with counsel approved in writing by COUNTY, protect and hold harmless the COUNTY, its officers, elected or appointed officials, employees and volunteers from and against any and all claims, demands, losses, defense cost or expenses, or liability of any kind or nature which the COUNTY, its officers, elected or appointed officials, employees or volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons or damage to property arising out of the AGENCY's negligent or wrongful acts in performing under the terms of this AGREEMENT. The AGENCY shall not be liable in any way or indemnify the COUNTY, its officers, elected or appointed officials, employees and volunteers for COUNTY's gross and willful negligence, or the gross and willful negligence of COUNTY's officers, elected or appointed officials, employees or volunteers. If judgment is entered against AGENCY and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of AGENCY or COUNTY, AGENCY and COUNTY agree that liability will be apportioned as determined by the court. Neither PARTY shall request a jury apportionment.

Without limiting the foregoing, AGENCY indemnification also extends to COUNTY employees or agents serving as inspectors in the AGENCY whose duties include recurring inspection to identify maintenance and repair needs. The failure to identify a hazard not currently involved in maintenance or repair which results in claim shall not transfer responsibility for the hazard to the COUNTY. COUNTY responsibility includes maintenance and repair work in progress by COUNTY employees or contract work under COUNTY administration.

Each PARTY agrees to fully cooperate with the other and assist the other PARTY hereto in all matters relating to losses covered by the terms of this AGREEMENT, and more specifically but not being limited thereby, each PARTY will:

1. Give prompt notification of all occurrences covered or likely to be covered by Section V of this AGREEMENT;

2. If claim is made, or suit is brought against a PARTY on occurrences covered or likely to be covered by the terms hereof, such PARTY shall immediately forward every claim, demand, notice, summons or other process received by it to the other PARTY.

Either PARTY may, at its own expense, participate in the defense of any suit, or in the prosecution of any appeal affecting matters herein involved where the duty of defense or prosecution is imposed on the other PARTY, and where that other PARTY has consented to that participation.

#### **SECTION VI – DISPUTE RESOLUTION**

In the event that either PARTY contends that the other PARTY has failed to perform any of its obligations under this AGREEMENT, that PARTY shall, within ten (10) business days of becoming aware of the facts constituting that dispute, provide notice of the dispute to the other PARTY in the manner set forth in this AGREEMENT. Thereafter, the DIRECTOR and AGENCY MANAGER shall meet and confer in good faith to resolve any such dispute.

In no event shall either PARTY initiate any action in equity or at law prior to engaging in the meet and confer process described in this Section.

#### **SECTION VII - MISCELLANEOUS PROVISIONS**

**A. TERM:** The term of this AGREEMENT shall commence upon its EFFECTIVE DATE and shall remain in effect for three (3) years; until the AGREEMENT CAPACITY has been expended; or otherwise terminated by either PARTY.

**B. TERMINATION:** Either PARTY may at any time, for any reason, and with or without cause, terminate this AGREEMENT by serving upon the non-terminating PARTY, in the manner set forth in Section VII(D) herein, a written Notice of Termination at least thirty (30) days prior to the date of termination. The terminating PARTY shall not be obligated to provide any reason for exercising its right to terminate this AGREEMENT. If COUNTY initiates a Notice of Termination, that Notice shall include an invoice for all SERVICES that have not yet been invoiced to AGENCY. If AGENCY initiates a Notice of Termination, upon receipt of said Notice, County shall prepare and serve on AGENCY a final invoice for all SERVICES performed by COUNTY that have not yet been invoiced to AGENCY. AGENCY'S obligations under this AGREEMENT shall remain in effect until the COUNTY has received all payments for SERVICES previously performed.

**C. ENTIRE AGREEMENT AND CONSTRUCTION:** This AGREEMENT, any Attachments and any WORK ORDER issued under the provisions herein, constitutes the entire agreement between the PARTIES with respect to the matters provided for herein.

**D. NOTICE:** All notices or other communication provided for herein shall be in writing and shall be personally served or delivered by United States mail, registered or certified return receipt requested, postage prepaid, addressed as follows:

AGENCY:

[INSERT NAME]

[INSERT ADDRESS]

[INSERT PHONE NUMBER]

[INSERT EMAIL]

COUNTY:

[INSERT NAME]

[INSERT ADDRESS]

[INSERT PHONE NUMBER]

[INSERT EMAIL]

Any PARTY may, by notice to the others, designate a different address for notices that shall be substituted for that specified above. Any notice given as provided in this subparagraph shall be deemed to have been received, if personally served, as of the date and time of service, or if deposited in the mail as provided above, forty-eight (48) hours after deposit in the mail.

**E. NON-ASSIGNMENT:** This AGREEMENT shall not be assigned except by written amendment to this AGREEMENT.

**F. EXECUTION IN COUNTERPARTS:** This AGREEMENT may be executed in counterparts, each of which when executed and delivered shall be considered an original, and when taken together shall constitute a single document.

**G. ATTORNEY'S FEES:** In any action or proceeding brought to enforce or interpret any provision of this AGREEMENT, or where any provision hereof is validly asserted as a defense, each PARTY shall bear its own attorney's fees and costs.

**H. AMENDMENTS:** No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the PARTIES hereto, and no oral understanding or AGREEMENT not incorporated herein shall be binding on any of the PARTIES hereto.

**I. COMPLIANCE WITH APPLICABLE LAW:** Each PARTY and their respective contractors shall at all times and in all respects comply with all applicable federal, state and local laws, ordinances, regulations, and permits with respect to their performance of this AGREEMENT.

**J. INTERPRETATION:** This AGREEMENT shall be construed and enforced in accordance with California law. The PARTIES acknowledge that the PARTIES and their counsel have both reviewed and revised this AGREEMENT, that it is the product of the PARTIES' mutual drafting efforts, and that therefore the normal rule of construction to the effect that any ambiguities

are to be resolved against the drafting PARTY shall not be employed in the interpretation of this AGREEMENT or any exhibits or amendments hereto.

**K. CALENDAR DAYS:** Any reference to the word “day” or “days” shall mean calendar day or calendar days respectively, unless otherwise expressly provided.

**L. FORCE MAJEURE:** COUNTY shall not be assessed with damages or penalties for unsatisfactory performance during any delay in the performance of any work under this AGREEMENT caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided COUNTY gives written notice of the cause of the delay to the AGENCY within 24 hours of the start for the delay.

**M. SEVERABILITY:** If any part of this AGREEMENT is held, determined or adjudicated to be illegal, void or unenforceable by a court of competent jurisdiction, the remainder of this AGREEMENT shall be given effect to the fullest extent reasonably possible.

**N. AUTHORITY:** The PARTIES represent and warrant that this AGREEMENT has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

**O. PRECEDENCE:** In the event there is a conflict in language between any component documents of this AGREEMENT, the conflict in language shall be resolved by treating the language of the General Provisions as controlling over the language of any Attachments and any WORK ORDERS; and the language of any Attachments as controlling over the language of any WORK ORDERS.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT on the dates following their respective signatures effective as of the date first above written:

**COUNTY OF ORANGE (“COUNTY”)**

**CITY OF [INSERT CITY] (“AGENCY”)**

By: \_\_\_\_\_  
Shane L. Silsby, Director  
County of Orange, California


By: \_\_\_\_\_  
[SIGNARORY’S NAME AND TITLE]  
CITY OF [INSERT CITY]

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM  
OFFICE OF THE COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

APROVED AS TO FORM

By:  \_\_\_\_\_  
Deputy

By: \_\_\_\_\_  
City Attorney



**Attachment A**  
**Scope of Services / Rate Sheet**

[INTENTIONALLY LEFT BLANK]