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CONTRACT FOR

TOLL FACILITIES ROAD MAINTENANCE SERVICES

THIS CONTRACT FOR TOLL FACILITIES ROAD MAINTENANCE SERVICES (hereinafter “Agreement”) is effective July 1, 2016, by and between the Foothill/Eastern Transportation Corridor Agency, a Joint Powers Agency, hereinafter referred to as “AGENCY” and The County of Orange, a political subdivision of the State of California, hereinafter referred to as “COUNTY”; with AGENCY and COUNTY sometimes individually referred to as “Party” or collectively referred to as “Parties”.

RECITALS

WHEREAS, AGENCY bears maintenance responsibility for two toll plazas and several toll booths located on State Routes 133, 241 and 261 (the F/E Toll Roads) and its on & off-ramps, landscaped areas adjacent to THE F/E TOLL ROADS, and appurtenant trail blazer signs on arterial streets adjacent to THE F/E TOLL ROADS (the SJH Maintenance Areas);

WHEREAS, AGENCY and COUNTY entered into contract number D13-006 for COUNTY to provide certain road maintenance and operation functions in conjunction with operation of THE F/E TOLL ROADS by the Foothill/Eastern Transportation Corridor Agency, for the term of July 1, 2013 through June 30, 2016; and,

WHEREAS, AGENCY desires COUNTY to continue to provide those services; and,

WHEREAS, COUNTY is willing to continue to perform certain road maintenance and operation functions and accept payment from AGENCY for the cost of those services; and,

WHEREAS, the Parties are desirous of entering into an agreement to continue services and supersede agreement number D13-006.

NOW, THEREFORE, the Parties mutually agree as follows:

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AGREEMENT

A. DEFINITIONS

~~1. Work Plan: For the purposes of this Agreement, the term Work Plan shall mean the AGENCY's annual fiscal Work Plan and Budget ("Work Plan"). The Work Plan consists of specific work activities, equipment, materials, labor, and estimated cost to perform such activities for Toll Facilities Road Maintenance Services that the AGENCY intends to have accomplished during the fiscal year. The Work Plan for July 1, 2016 through June, 30, 2017 is hereby attached as Exhibit A. The Work Plans for each subsequent fiscal year, from July 1 through and including June 30, shall be developed and finalized by October 1 of the preceding year.~~

Amendment 1

2. Force Account: For the purpose of this Agreement, the term Force Account shall mean in house COUNTY labor resources.

B. TERM

~~That the term of this Agreement shall be for three (3) years commencing on July 1, 2016, through June 30, 2019 unless otherwise terminated by either Party as provided in section C below.~~

Amendment 1

Term: The Parties mutually agree to extend the Agreement for an additional five years, for a total Agreement period of eight (8) years, expiring June 30, 2024.

Amendment 2

Term: The Parties mutually agree to extend the Agreement for an additional five years, for a total Agreement period of thirteen (13) years, expiring June 30, 2029.

C. TERMINATION

Either Party may at any time, for any reason, with or without cause terminate this Agreement, or any portion, by serving upon the non-terminating Party a written Notice of Termination at least thirty (30) days prior to the date of termination. The terminating Party shall not be obligated to explain its reasons

1 for termination. If the terminating Party terminates a portion of this Agreement, such termination shall not
2 make void or invalidate the remainder of this Agreement.

3 **D. COMPENSATION:**

4 1. ~~AGENCY agrees to pay compensation to COUNTY for work performed under this~~
5 ~~Agreement at the prices, rates and fees set forth in the annual Work Plan, subject to a not-to-exceed~~
6 ~~amount as specified therein. The not-to-exceed amount for the first fiscal year 2016-17 shall be~~
7 ~~\$60,000. The not-to-exceed amount for each subsequent fiscal year after 2016-17 shall not increase or~~
8 ~~decrease by more than 10% of the preceding year without mutual consent of the Parties as set forth in a~~
9 ~~written amendment to this Agreement. COUNTY shall not have any obligation to perform services~~
10 ~~hereunder in excess of the not to exceed amount, and shall not be entitled to compensation for services~~
11 ~~hereunder in excess of such amount, unless the Parties mutually agree in writing to increase the~~
12 ~~amount. However, in the event the COUNTY provides emergency maintenance services, beyond~~
13 ~~anticipatable emergency services necessitated by accidents, storms, or other weather conditions, or~~
14 ~~AGENCY requests additional services on a time and materials basis, COUNTY shall be compensated~~
15 ~~by AGENCY for the work at the prices, rates, and fees set forth in the annual Work Plan. This~~
16 ~~compensation shall not be calculated in the total not to exceed compensation amount set forth herein.~~
17 ~~The COUNTY may also provide services to the AGENCY beyond the level of specific work activities set~~
18 ~~forth in the annual Work Plan, but within the not to exceed amount, based on a written request from the~~
19 ~~AGENCY and the availability of COUNTY work force or contract capability.~~

20 2. ~~The AGENCY may reduce or revise level of Force Account services provided under this~~
21 ~~Agreement during the year to not less than 75% of the projected Force Account portion of Exhibit A to~~
22 ~~accommodate changes in the AGENCY budget, and may utilize alternative source or sources for~~
23 ~~services beyond the level of service in the projected plan.~~

24 3. ~~COUNTY shall submit to AGENCY a monthly itemized invoice which indicates work~~
25 ~~completed and hours of services rendered by COUNTY. The invoice shall describe the amount of~~
26 ~~services provided since the initial commencement date, or since the start of the subsequent billing~~

1 ~~periods, as appropriate, through the date of the invoice. AGENCY shall, within 30 days of receiving~~
2 ~~such invoice, review the invoice and pay all non-disputed and approved charges thereon. If the~~
3 ~~AGENCY disputes any of COUNTY's fees, the AGENCY shall give written notice to COUNTY within 30~~
4 ~~days of receipt of an invoice of any disputed fees set forth on the invoice.~~

5 **Amendment 1**

6 **Compensation:** 1. Agency agrees to pay compensation to COUNTY for work
7 performed under this Agreement in an amount not to exceed \$180,000 in total over the Term
8 of this Agreement, unless otherwise terminated by either Party as provide in Article C of the
9 Agreement. The rates in Attachment A, Rate Schedule are estimated rates and COUNTY
10 will bill AGENCY on time and materials basis for actual services rendered. The time and
11 materials costs shall include all costs for COUNTY Personnel (including labor, burden,
12 overhead), equipment, and materials using the actual number of man-hours and equipment-
13 hours required (including travel time to and from project locations) and actual
14 contract(s)/contractor(s) costs.

15 2. COUNTY shall submit to AGENCY a monthly itemized invoice which indicates
16 work completed and hours of services rendered by COUNTY. The invoice shall describe the
17 amount of services provided since the initial commencement date, or since the start of the
18 subsequent billing periods, as appropriate, through the date of the invoice. AGENCY shall,
19 within 30 days of receiving such invoice, review the invoice and pay all non-disputed and
20 approved charges thereon. If the AGENCY disputes any of COUNTY's fees, the AGENCY
21 shall give written notice to COUNTY within 30 days of receipt of an invoice of any disputed
22 fees set forth on the invoice.

23 **E. INDEMNIFICATION**

24 COUNTY agrees to indemnify, defend with counsel approved by AGENCY in writing, protect and
25 hold harmless the AGENCY, each of the governmental entities that is now or may in the future become
26 a member of AGENCY (other than COUNTY), and their respective officers, elected or appointed
officials, employees and assigns (the "Agency Indemnitees") from and against any and all claims,
demands, losses, defense costs or expenses, or liability of any kind or nature which any Agency
Indemnitee 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 negligent or wrongful acts or omissions in performing
under the terms of this Agreement. COUNTY shall defend, at its expense, including attorney fees, the
Agency Indemnitees 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 Indemnitees for AGENCY's
negligence or the negligence of any Agency Indemnitee.

1 COUNTY agrees that it will follow its work management system field manual and the Caltrans
2 manual of traffic controls for construction and maintenance work zones to avoid or minimize risk of loss.

3 AGENCY agrees to indemnify, defend with counsel approved by COUNTY in writing, protect and
4 hold harmless the COUNTY, its officers, elected or appointed officials and employees from and against
5 any and all claims, demands, losses, defense cost or expenses, or liability of any kind or nature which
6 the COUNTY, its officers, elected or appointed officials and employees may sustain or incur or which
7 may be imposed upon them for injury to or death of persons or damage to property arising out of the
8 AGENCY's negligent or wrongful acts or omission in performing under the terms of this Agreement. The
9 AGENCY shall not be liable in any way or indemnify the COUNTY for COUNTY's negligence or the
10 negligence of COUNTY's officers, elected or appointed officials or employees.

11 If judgment is entered against AGENCY and COUNTY by a court of competent jurisdiction
12 because of the concurrent active negligence of AGENCY or COUNTY, AGENCY and COUNTY agree
13 that liability will be apportioned as determined by the court. Neither party shall request a jury
14 apportionment.

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

21 Each Party agrees to fully cooperate with the other and assist the other in all matters relating to
22 losses covered by the terms of this Agreement, and more specifically but not being limited thereby, each
23 Party will:

24 1. Give prompt notification of all occurrences covered or likely to be covered by the terms
25 hereof, together with the particulars thereof the other Party hereto;

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

4 AGENCY may, at its own expense, participate in the defense of any suit, or in the prosecution of
5 any appeal affecting matters herein involved where the duty of defense or prosecution is imposed on
6 COUNTY, and where COUNTY has consented thereto.

7 **F. NOTICES**

8 Any and all notices permitted or required to be given hereunder shall be deemed duly given 1)
9 upon actual delivery, if delivery is by email, hand; or overnight courier, or 2) upon delivery by the United
10 States Mail if delivery is by postage paid registered or certified return receipt requested mail. Any Notice
11 of Termination served pursuant to Paragraph C (Termination) above shall be delivered via hand
12 delivery, overnight delivery, or registered or certified mail only. Each such notice shall be sent to the
13 respective Party at the address indicated below:

14 FOR AGENCY: Transportation Corridor Agencies
15 Attention: Manager of Contracts and Procurement
16 125 Pacifica Suite 100
17 Irvine, CA 92618
18 P.O. Box 53770
19 Irvine, CA 92619-3770
20 Email: contracts@thetollroads.com

with a copy to the AGENCY's Project Manager at the same address as above.

21 FOR COUNTY: County of Orange
22 Attention: City Contracts Manager
23 2301 N. Glassell Street
24 Orange, CA 92865
25 Email: lori.hanson@ocpw.ocgov.com

26 **G. PROJECT MANAGER**

The AGENCY shall appoint a Project Manager to act as liaison between the COUNTY and AGENCY during the term of this Agreement. The AGENCY's Project Manager shall coordinate the

1 activities of the AGENCY staff assigned to work with COUNTY. COUNTY shall appoint a Contract
2 Administrator. COUNTY's Contract Administrator shall direct the COUNTY's efforts in fulfilling
3 COUNTY's obligations under this Agreement.

4 **H. ENTIRE AGREEMENT**

5 ~~This Agreement along with each fiscal year's annual Work Plan contains the entire agreement~~
6 ~~between the Parties with respect to the matters contained herein.~~

7 **Amendment 1**

8 **Entire Agreement:** This agreement along with the Attachment A, Rate Schedule contains
9 the entire agreement between the Parties with respect to the matters contained herein.

10 **I. GOVERNING LAW AND VENUE**

11 The AGENCY and COUNTY understand and agree that the laws of the State of California shall
12 govern the rights, obligations, duties and liabilities of the Parties to this Agreement and also govern the
13 interpretation of this Agreement. In the event of any legal action to enforce or interpret this Agreement,
14 the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County,
15 California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court,
16 notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to
17 waive any and all rights to request that an action be transferred for trial to another County.

18 **J. AMENDMENTS**

19 No alteration or variation of the terms of this Agreement shall be valid unless made in writing and
20 signed by the Parties, no oral understanding or agreement not incorporated herein shall be binding on
21 either of the Parties, and no exceptions, alternatives, substitutes or revisions are valid or bind on the
22 COUNTY unless authorized by COUNTY in writing.

23 **K. ASSIGNMENT**

24 Neither Party shall assign its performance of this Agreement, nor any part thereof, without the
25 prior written consent of the non-assigning Party. Any attempt by either Party to assign this Agreement or
26 any portion thereof without the express written consent of the non-assigning Party shall be invalid and

1 constitute a breach of this agreement. In the event that AGENCY or its assets are acquired by the
2 Transportation Corridor System, a California Joint Powers Agency or another entity formed pursuant to
3 Government Code Section 66484.3(f) or (m), COUNTY consents to AGENCY's assignment of its
4 performance under this Agreement to such entity. AGENCY agrees to bind such entity to perform all of
5 AGENCY's obligations under this Agreement should such acquisition and assignment occur.

6 **L. CONSENT TO BREACH NOT WAIVER**

7 No term or provision of this Agreement shall be deemed waived and no breach excused unless
8 such a waiver or consent shall be in writing and signed by the Party claimed to have waived or
9 consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied,
10 shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

11 **M. FORCE MAJEURE**

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

16 **N. HEADINGS**

17 The various heading and numbers herein, the grouping of provisions of this Agreement into
18 separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only
19 and shall not limit or otherwise affect the meaning hereof.

20 **O. CALENDAR DAYS**

21 Any reference to the word "day" or "days" shall mean calendar day or calendar days respectively,
22 unless otherwise expressly provided.

23 **P. ATTORNEY FEES**

24 In any action or proceeding to enforce or interpret any provision of this Agreement or where any
25 provisions hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs
26 and expenses.

1 **Q. INTERPRETATION**

2 This Agreement has been negotiated at arm's length and between persons sophisticated and
3 knowledgeable in the matters dealt with in this Agreement. In addition, each Party has been represented
4 by experienced and knowledgeable independent legal counsel of its own choosing or has knowingly
5 declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party
6 further acknowledges that it has not been influenced to any extent whatsoever in executing this
7 Agreement by any other Party or by any person representing them, or both. Accordingly, any rule of law,
8 (including California Civil Code section 1654) or legal decision that would require interpretation of any
9 ambiguities in this Agreement against the Party that drafted it is not applicable and it deemed waived.
10 The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purpose of
11 the Parties to this Agreement.

12 **R. SEVERABILITY**

13 If any term, condition, provision or article of this Agreement is held by a court of competent
14 jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full
15 force and effect and shall in no way be affected, impaired or invalidated thereby.

16 **S. DISPUTE**

17 If a dispute arises, the Parties' respective designated representatives shall attempt to resolve the
18 issue. In the event the COUNTY Contracts Manager and the AGENCY's Project Manager have failed to
19 resolve the issue within twenty working days after the referral of the issue to them, the Parties shall refer
20 the issue to the AGENCY's Chief Executive Officer or his designee and OC Public Works Operations
21 Manager for resolution.

22 **T. AUTHORITY TO EXECUTE THIS AGREEMENT**

23 The Parties represent and warrant that this Agreement has been duly authorized and executed
24 and constitutes the legally binding obligation of their respective organization or entity, enforceable in
25 accordance with its terms.

26 **AGENCY AND COUNTY RESPONSIBILITIES:**

1 **U. COUNTY SHALL:**

2 ~~1. Each fiscal year develop a preliminary annual Work Plan to provide field operations,~~
3 ~~contract effort and support operations required to provide the level of maintenance requested by the~~
4 ~~AGENCY and within the "not to exceed" amount established by this Agreement. The preliminary Work~~
5 ~~Plan will include estimates for manpower and equipment. This Work Plan will be based on the~~
6 ~~AGENCY's historical maintenance workload, discussions with AGENCY's Project Manager of future~~
7 ~~priority and emphasis, and changes in the composition of the COUNTY work force and contract~~
8 ~~capability. COUNTY shall submit the preliminary annual Work Plan to AGENCY for review by August 1~~
9 ~~of each year for the next fiscal year scheduled to begin July 1. The annual Work Plan shall be finalized~~
10 ~~by October 1, consistent with AGENCY recommendations and available resources. The Work Plan shall~~
11 ~~include an allowance for miscellaneous work to respond to anticipatable emergencies. The Work Plan~~
12 ~~for the initial fiscal year is attached as Exhibit A, and shall be replaced at the end of each fiscal year with~~
13 ~~the annual Work Plan for the subsequent fiscal year.~~

14 ~~2. Perform road maintenance and operation functions as requested by AGENCY:~~

15 ~~a. Provide sign fabrication/maintenance/installation services.~~

16 ~~b. Provide weed abatement within SJH Maintenance Areas to conform to COUNTY~~
17 ~~fire department requirements.~~

18 ~~c. Provide erosion control~~

19 ~~d. Provide various construction activities~~

20 ~~e. Provide attenuator repair/installation~~

21 ~~f. Provide highway striping and stenciling services as specified by AGENCY~~

22 ~~g. Provide labor, materials and equipment to perform various work tasks as defined~~
23 ~~by AGENCY.~~

24 ~~3. Road maintenance activities may be performed by COUNTY either by force account or~~
25 ~~contract, or a combination of the two.~~

26

1 ~~4. Perform emergency or special road maintenance and operation functions necessitated by~~
2 ~~accidents, storms or other weather conditions, slides, settlements, or other unusual or unexpected~~
3 ~~damage to a roadway, structure, or facility.~~

4 ~~5. Be and is hereby designated as contract and construction agent to do and perform all~~
5 ~~things necessary in order to design and accomplish road maintenance tasks by contract.~~

6 ~~6. Prepare general work schedule indicating work to be accomplished by contract and work~~
7 ~~to be accomplished by force account. Prepare specific work schedule for COUNTY force account work~~
8 ~~that includes all AGENCY service requests and provide a copy to AGENCY on a biweekly basis. Adjust~~
9 ~~work schedules to address AGENCY comments.~~

10 ~~7. Submit monthly progress updates to the AGENCY in the form of activity status reports,~~
11 ~~contract status and backlog reports. Meet periodically or as needed with AGENCY to discuss services~~
12 ~~being provided. Notify AGENCY in advance of cost overruns associated with deviations from Work Plan~~
13 ~~at AGENCY's request. Work with AGENCY to implement strategies for budget and/or service level~~
14 ~~adjustments commensurate with available funding.~~

15 ~~8. Provide support operations required for providing normal maintenance operations in~~
16 ~~accordance with the AGENCY's request or direction. This includes the following operations and~~
17 ~~functions:~~

18 ~~a. Provide scheduling services for preparation of work assignments based upon~~
19 ~~inspection reports and/or input from AGENCY.~~

20 ~~b. Develop and maintain a backlog report for activities for the AGENCY area to track~~
21 ~~work performed, and prepare reports of project costs for those projects where special reimbursement is~~
22 ~~possible.~~

23 ~~c. Provide all routine service, supplies and logistical support for performance of~~
24 ~~maintenance and operations functions for COUNTY crews in accordance with its standard warehouse~~
25 ~~operating procedures.~~

26

~~d. Provide contract administration/inspection services for maintenance work performed by COUNTY hereunder.~~

~~e. Provide logistical support for COUNTY crews including contract administration of specialty contractors, support contracts, special materials and services.~~

~~9. Include AGENCY requested special road maintenance work beyond the scope of the Work Plan, (i.e., slurry seal, crack seal or overlay — with associated subgrade repairs/surface preparation work) in formally bid COUNTY contracts for slurry seal and A/C overlay work on COUNTY-owned roads and streets.~~

~~10. Provide all supervision and management required for the annual Work Plan.~~

~~11. Invoice AGENCY for all cost for labor, equipment, materials, service contracts, special maintenance contracts, repair contracts, and all applicable overhead and supervisory expenses in accordance with the established COUNTY prices, rates, fees, and charges at the time work is performed.~~

Amendment 1

County Shall: 1. Provide field operations, contract effort and support operations required to provide the level of maintenance requested by the AGENCY within the "not to exceed" amount established by this Agreement.

2. Perform road maintenance and operation functions as requested by AGENCY:

- a. Provide sign fabrication/maintenance/installation services.
- b. Provide weed abatement within F/E Maintenance Areas to conform to COUNTY fire department requirements.

- c. Provide erosion control
- d. Provide various construction activities
- e. Provide attenuator repair/installation
- f. Provide highway striping and stenciling services as specified by AGENCY
- g. Provide labor, materials and equipment to perform various work tasks as defined by AGENCY.

3. Road maintenance activities may be performed by COUNTY either by force account or contract, or a combination of the two.

4. Perform emergency or special road maintenance and operation functions necessitated by accidents, storms or other weather conditions, slides, settlements, or other unusual or unexpected damage to a roadway, structure, or facility.

5. Be and is hereby designated as contract and construction agent to do and perform all things necessary in order to design and accomplish road maintenance tasks by contract.

6. Prepare general work schedule indicating work to be accomplished by contract and work to be accomplished by force account. Prepare specific work schedule for COUNTY force account work that includes all AGENCY service requests

1 and provide a copy to AGENCY on a biweekly basis. Adjust work schedules to address
2 AGENCY comments.

3 7. Submit monthly progress updates to the AGENCY in the form of
4 activity status reports, contract status and backlog reports. Meet periodically or as
5 needed with AGENCY to discuss services being provided. Notify AGENCY in advance of
6 cost overruns associated with deviations from Agency-approved work at AGENCY's
7 request. Work with AGENCY to implement strategies for budget and/or service level
8 adjustments commensurate with available funding.

9 8. Provide support operations required for providing normal
10 maintenance operations in accordance with the AGENCY's request or direction. This
11 includes the following operations and functions:

12 a. Provide scheduling services for preparation of work assignments based
13 upon inspection reports and/or input from AGENCY.

14 b. Develop and maintain a backlog report for activities for the
15 AGENCY area to track work performed, and prepare reports of project costs for those
16 projects where special reimbursement is possible.

17 c. Provide all routine service, supplies and logistical support for performance
18 of maintenance and operations functions for COUNTY crews in accordance with its
19 standard warehouse operating procedures.

20 d. Provide contract administration/inspection services for maintenance work
21 performed by COUNTY hereunder.

22 e. Provide logistical support for COUNTY crews including contract
23 administration of specialty contractors, support contracts, special materials and services.

24 9. Provide all supervision and management required for all field operations,
25 contract effort, and support operations.

26 10. Invoice AGENCY for all cost for labor, equipment, materials,
service contracts, special maintenance contracts, repair contracts, and all applicable
overhead and supervisory expenses in accordance with the established COUNTY prices,
rates, fees, and charges at the time work is performed.

V. AGENCY SHALL:

~~1. Review service levels contained within COUNTY's preliminary annual Work Plan, and
make adjustments by October 1, based upon AGENCY's budget and desired service levels and
consistent with available COUNTY resources and contract capability.~~

~~2. Meet periodically or as needed with COUNTY to discuss the services being provided.
Review with COUNTY any cost overruns associated with deviations from the Work Plan at AGENCY
request and develop strategies for budget and/or service levels commensurate with available funding.~~

~~3. Notify COUNTY of priority service requests to be included within the following two-week
work schedule. Review work schedule for force account and contract work.~~

1 ~~4. Designate an individual or individuals authorized to request performance of services~~
2 ~~hereunder and designate an individual or individuals with authority to review and approve contract~~
3 ~~documents on behalf of the AGENCY.~~

4 ~~5. Subject to the limitations specified herein, pay COUNTY for entire total cost incurred by~~
5 ~~COUNTY for maintenance, operation, support and contract functions performed within the SJH~~
6 ~~Maintenance Areas by COUNTY staff or COUNTY administered contract to include all costs for labor,~~
7 ~~equipment, materials, service contracts, special maintenance contracts, repair contracts, and all~~
8 ~~applicable overhead and supervisory expenses in accordance with established COUNTY prices, rates,~~
9 ~~fees and charges at the time work is performed.~~

10 ~~6. Pay COUNTY invoiced costs by payment due date. Payment due dates are date of~~
11 ~~delivery of acceptable invoice plus thirty days.~~

12 ~~7. Pay late charges for invoices not paid within thirty (30) days after receipt of in accordance~~
13 ~~with the following schedule:~~

14 ~~a. Over the counter payments will be assessed a late charge if any payment is not~~
15 ~~received by the COUNTY by the payment due date.~~

16 ~~b. Payments transmitted to the COUNTY via the U.S. Mail that have payer's postage~~
17 ~~meter mark will be assessed a late charge if any payment is not received by the COUNTY by the~~
18 ~~payment due date plus one day.~~

19 ~~c. Payments transmitted to the COUNTY via the U.S. Mail that have a U.S. Post~~
20 ~~Office postmark dated after the payment due date will be assessed a late charge.~~

21 ~~d. The late charge assessed in each of these situations shall be three quarters of~~
22 ~~one percent (0.75%) of the payment due and unpaid plus \$100.00 for late payments made within thirty~~
23 ~~(30) days of the payment due date. An additional charge of three quarters of one percent (0.75%) of~~
24 ~~said payment shall be added for each additional thirty (30) day period that the payment remains unpaid.~~
25 ~~Late charges shall be added to the payment and invoiced to the contracting entity.~~

26

1 ~~8. Serve as liaison with individuals, citizen groups and others concerning performance of work and~~
2 ~~levels of service provided under this Agreement.~~

3 **Amendment 1**

4 **Agency Shall:** 1. Meet periodically or as needed with COUNTY to discuss the services being
5 provided. Review with COUNTY any cost overruns associated with deviations from Agency-
6 authorized work at AGENCY request and develop strategies for budget and/or service levels
7 commensurate with available funding.

8 2. Notify COUNTY of priority service requests to be included within the following two-
9 week work schedule. Review work schedule for force account and contract work.

10 3. Designate an individual or individuals authorized to request performance of
11 services hereunder and designate an individual or individuals with authority to review and
12 approve contract documents on behalf of the AGENCY.

13 4. Except as otherwise provided in this AGREEMENT, pay COUNTY for entire total
14 cost incurred by COUNTY for maintenance, operation, support and contract functions performed
15 within the F/E Maintenance Areas by COUNTY staff or COUNTY administered contract to
16 include all costs for labor, equipment, materials, service contracts, special maintenance
17 contracts, repair contracts, and all applicable overhead and supervisory expenses in accordance
18 with established COUNTY prices, rates, fees and charges at the time work is performed.

19 5. Pay COUNTY invoiced costs by payment due date. Payment due dates shall be
20 thirty calendar days after the date of invoicing.

21 6. Serve as liaison with individuals, citizen groups and others concerning
22 performance of work and levels of service provided under this Agreement.

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1 IN WITNESS WHEREOF, AGENCY has caused this Agreement to be executed by its Chief
2 Executive Officer and approved as to form by its General Counsel, and COUNTY has caused this
3 Agreement to be executed by the Chairman of its Board of Supervisors and attested by its Clerk, all
4 thereunto duly authorized by the AGENCY's Board of Directors and the COUNTY's Board of
5 Supervisors, respectively.

7 **COUNTY OF ORANGE**

**FOOTHILL/EASTERN TRANSPORTATION
CORRIDOR AGENCY**

9 By _____
10 Chairwoman of the Board of Supervisors
Amendment 2

Chief Executive Officer

11 Chairman of the Board of Supervisors
12 County of Orange, California

13 Date: _____

Date: _____

14 SIGNED AND CERTIFIED THAT A COPY OF
15 THIS AGREEMENT HAS BEEN DELIVERED TO
16 THE CHAIR OF THE BOARD PER G.C. Sec 25103,
17 Reso 79-1535

Amendment 2

Attest:

APPROVED AS TO FORM

Nossaman LLP

18 By _____
19 Robin Stieler
20 Clerk of the Board of Supervisors
Orange County, California

General Counsel for the Foothill/Eastern
Transportation Corridor Agency

21 Date: _____

Date: _____

Amendment 1

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

25 By _____
26 Deputy