

Attachment B

AGREEMENT BETWEEN THE COUNTY OF ORANGE AND THE ORANGE COUNTY CEMETERY DISTRICT FOR COSTS RELATED TO VETERAN'S CEMETERY FLAGPOLE

This AGREEMENT BETWEEN THE COUNTY OF ORANGE AND THE ORANGE COUNTY CEMETERY DISTRICT FOR COSTS RELATED TO VETERAN'S CEMETERY FLAGPOLE ("**Agreement**") entered into this ___ day of _____, 2022 ("**Effective Date**") is by and between ORANGE COUNTY CEMETERY DISTRICT, an independent special district (hereafter referred to as "**OCCD**"), and the COUNTY OF ORANGE, a political subdivision of the State of California (hereinafter referred to as "**County**"). The County and OCCD may individually be referred to herein as "**Party**" or collectively as "**Parties**."

RECITALS

WHEREAS, the County and OCCD desire to cooperate with each other concerning the creation of a State Veteran's Cemetery on certain property owned by the OCCD ("**Veteran's Cemetery Property**") within the City of Anaheim ("**City**"); and

WHEREAS, the Parties intend that at some point the Veteran's Cemetery Property will be transferred to the State for the creation of the Veteran's Cemetery thereon; and

WHEREAS, prior to the transfer of the Veteran's Cemetery Property to the State, the Parties are cooperating on the cemetery effort, which includes a public cemetery on adjacent property, also owned by OCCD ("**OCCD Cemetery Property**"); and

WHEREAS, as part of the Veteran's Cemetery effort, OCCD will be installing a flagpole and related improvements ("**Flagpole Improvements**") on the Veteran's Cemetery Property or adjacent property owned by OCCD; and

WHEREAS, OCCD will incur internal and third party costs for the Flagpole Improvements, for which the County has agreed to reimburse OCCD, whether those costs were incurred before or after the Effective Date of this Agreement, as more fully set forth herein.

NOW, THEREFORE, in consideration of mutual promises, covenants, and conditions hereinafter set forth, the Parties agree as follows:

Attachment B

TERMS AND CONDITIONS

I. DESCRIPTION OF SERVICES

OCCD agrees to provide for services related to the Flagpole Improvements, including, but not limited to, planning, installation and permitting, as identified in the scope of work, attached hereto as Exhibit A. OCCD further agrees to comply with all provisions, to perform all work and provide all services set forth in this Agreement in a professional, timely and diligent manner (which may be provided through a contractor) and in accordance with all applicable laws, which may include compliance with Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the State of California (Sections 1770, *et seq.*) and Section 1773 of the Labor Code of the State of California (prevailing wage laws), as necessary.

II. TERM

This Agreement shall commence on the Effective Date and terminate on the date that the Veteran's Cemetery Property is transferred to the State of California, unless otherwise terminated as provided in this Agreement; provided, however, OCCD shall be obligated to perform such duties as would normally extend beyond that term, including but not limited to, obligations with respect to confidentiality, indemnification, audits, reporting and accounting.

III. REIMBURSEMENT

County shall pay OCCD for services rendered hereunder in a sum not to exceed Three Hundred Ninety-Five Thousand Eight Hundred Dollars (\$395,800), payable on a cost reimbursement basis upon submission of monthly claims, in accordance with payment procedures as detailed in subparagraph IV.B of this Agreement. It is understood that the effort on the Flagpole Improvements commenced prior to the Effective Date, and the Parties hereto agree that invoices dated prior to the Effective Date may be submitted hereunder and will be reimbursed by the County.

Attachment B

IV. FINANCIAL ACCOUNTABILITY

A. Fiscal Procedures. OCCD agrees to provide adequate fiscal procedures to ensure accounting for the billing of costs to County under this Agreement, in accordance with County's general accounting policies, and the accounting policies and procedures of County's Auditor-Controller. All claimed reimbursements will be supported with source documents retained by County, including, but not limited to, time sheets, invoices, canceled checks, receipts and receiving records.

B. Allowable Costs. All items of cost, actually incurred, which are provided for in the appended budget, attached hereto as Exhibit B, shall be allowable for payment. Any program costs or administrative costs that cannot be charged directly to the said services of OCCD must be apportioned based on a cost allocation plan approved by County's Auditor-Controller, and must be certified by the Chief Real Estate Officer or designee ("**Chief Real Estate Officer**"). Such certification is subject to audit as authorized in Paragraph XI of this Agreement. Allowable costs shall be paid to OCCD in accordance with the major cost categories and maximum amounts as provided for in the appended budget. The maximum amount allowable for each of the major cost categories (consisting of the totals for personnel services, operating expenses and indirect cost) within this Agreement may be adjusted, provided that the overall budget and goals and objectives are not changed. During the term of this Agreement, new line items may be added, and line items within major categories may be adjusted by the County, through the Chief Real Estate Officer, and OCCD, as long as the expenditures are reasonable, appropriate, and necessary to achieve objectives, and the overall budget remains unchanged.

C. Utilization and Payment of Funds. OCCD shall be reimbursed monthly in arrears for actual costs incurred, upon the submission of detailed invoices provided and submitted to County. The monthly invoices shall be submitted in such form and detail as required by County's Auditor-Controller and be signed by Chief Real Estate Officer certifying the appropriateness of the costs claimed. All invoices shall be issued within 15 days of availability of the cost data for the previous month. County must reimburse costs within forty-five (45) days of the date of the invoice for which payment is being rendered.

1. Late charges will not be assessed to County in any situation.

Attachment B

2. OCCD shall have sixty (60) days from the end of the term of the Agreement to liquidate all program obligations incurred during said term. OCCD shall then submit the final claim for reimbursement within sixty (60) days of the end of the term of the Agreement. County shall not be liable for any claims submitted beyond sixty (60) days of the end of the term of the Agreement.

V. PROGRAM SUPERVISION

A. Chief Real Estate Officer shall appoint a CEO Real Estate staff person to oversee the daily operation and administration of the Agreement pursuant to the terms and conditions contained herein.

B. OCCD shall appoint a staff person to oversee the daily operation and administration of the Agreement pursuant to the terms and conditions contained herein.

C. Anytime a invoice is submitted for the Flagpole Improvements, OCCD shall also submit a "**Status Report**" related to the progress of the Flagpole Improvements.

VI. DISPUTES

A. When County and OCCD fail to agree as to whether or not any work is within the scope of the requirements of this Agreement, County shall, within fifteen (15) County working days, provide OCCD with a written protest specifying in detail the manner in which the requirements were not fulfilled, and the proposed remedy.

B. The OCCD agrees to furnish a written explanation on the dispute within thirty (30) County working days after receipt of such protest.

VII. RIGHT TO AUDIT

County shall have access to any books, documents, papers and records of OCCD, which County determines to be pertinent specifically to this Agreement, for the purpose of making an audit, evaluation, excerpts and transcripts.

Attachment B

VIII. RETENTION OF FINANCIAL RECORDS

A. OCCD shall maintain and preserve all books, financial statements, journals, ledgers, source documents and other financial records for a period of seven (7) years from the termination of this Agreement, and for such longer period as may be required by any applicable statute. All financial records shall be kept or made available to County at OCCD'S principal place of business. Exceptions to the above provisions of this section must have prior written approval of Chief Real Estate Officer.

B. Records which relate to: (1) litigation of the settlement of claims rising out of the performance of this Agreement, or (2) costs and expenses of this Agreement to which County takes exception, shall be retained by County until disposition of such appeals, litigation, claims, or exceptions.

IX. INDEMNIFICATION

County shall indemnify, hold harmless and defend OCCD, its officers, agents and employees from any and all claims, demands, loss or liability for injury, death or damage arising out of the acts or omission to act by County agents or employees in carrying out this Agreement. Transmittal to OCCD by County of any pleadings served shall be deemed to be a request to defend. This indemnification shall commence on the effective date of this Agreement and shall continue thereafter for any and all causes of action accruing during the term of this Agreement.

OCCD shall indemnify, hold harmless and defend County, its officers, agents and employees, from any and all claims, demands, loss or liability for injury, death or damages arising out of the acts or omission to act by OCCD'S agents or employees in carrying out this Agreement. Transmittal to County by OCCD of any pleadings served shall be deemed to be a request to defend. This indemnification shall commence on the effective date of this Agreement and shall continue thereafter for any and all causes of action accruing during the term of this Agreement.

Attachment B

X. TERMINATION

A. Either Party may terminate this Agreement, without cause, upon thirty (30) days written notice given to the other Party.

B. Contingent Funding – OCCD: Any obligation under this Agreement is contingent upon the continued availability of funds for reimbursement of OCCD'S cost of services hereunder, and inclusion of sufficient funding for the services hereunder in OCCD'S budget. In the event such funding is subsequently reduced or terminated, OCCD may immediately terminate or modify this Agreement without penalty.

C. Contingent Funding – County: The Parties acknowledge that funding or portions of funding for this Agreement may be contingent upon budget approval, receipt of funds from, and/or obligation of funds, and inclusion of sufficient funding for the services hereunder, in the budget approved by County's Board of Supervisors for each fiscal year covered by this Agreement. If any such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Agreement without penalty.

XI. NOTICES

Notices and payments to County shall be sent to OC Community Resources addressed as follows:

County of Orange
CEO Real Estate
333 West Santa Ana Boulevard, 3rd Floor
Santa Ana, CA 92701
Attn: Chief Real Estate Officer

Notices shall be sent to OCCD addressed as follows:

Orange County Cemetery District
25751 Trabuco Road
Lake Forest, CA 92630
Attn: General Manager

Attachment B

XII. THIRD PARTY RIGHTS

The Parties intend not to create rights in, or to grant remedies to, any third party as beneficiary of this Agreement or of any duty, covenant, obligation or undertaking established herein.

XIII. ALTERATION OF TERMS / ENTIRE AGREEMENT

This Agreement and the attached exhibits fully express the understanding of County and OCCD with respect to reimbursement of costs for the Flagpole Improvements and shall constitute the total agreement between the Parties for these purposes. No additions to, or alteration of, the terms of this Agreement, whether written or verbal, shall be valid unless made in writing and formally approved and executed by both Parties.

//

//

//

Attachement B

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers.

ORANGE COUNTY CEMETERY DISTRICT

BY:  DATED: 4-26-22
Tim Deutsch
General Manager


APPROVED AS TO FORM

By:  DATED: 4/26/22
Steven B. Quintanilla
General Legal Counsel

COUNTY OF ORANGE

BY: _____ DATED: _____
Thomas Miller
Chief Real Estate Officer
County of Orange

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

By:  DATED: April 26, 2022
Digitally signed by Michael A. Haubert
DN: cn=Michael A. Haubert, o=County
of Orange, ou=County Counsel,
email=michael.haubert@co.co.ca.gov, c=US
m, c=US
Date: 2022.04.26 13:45:27 -0700
DEPUTY COUNTY COUNSEL

*For Contractors that are corporations, signature requirements are as follows: 1) One signature by the Chairman of the Board, the President or any Vice President; and 2) One signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or an Assistant Treasurer.

For Contractors that are not corporations, the person who has authority to bind the contractor to a contract, must sign on one of the lines above.

Attachment B

Exhibit A

Scope of Work

[attached]

Attachment B

ORANGE COUNTY VETERAN'S FLAGPOLE SCOPE OF WORK

The Orange County Cemetery District at the request of the County of Orange is coordinating the purchase, installation and lighting of a 100-foot flag pole to be installed at the future home of the Southern California State Veterans Cemetery, located at the Gypsum Canyon Cemetery Development site in the city of Anaheim.

The Gypsum Canyon Cemetery Development Team has been assisting the Orange County Cemetery District staff with the coordination of all of the trades required, permits needed and materials to be order for the successful installation of the 100-foot flag pole which will proudly fly "Flag One" which was officially unfurled at a dedication ceremony hosted by the County of Orange on December 8, 2021.

The components of the project include the following:

- Purchase of three (3) 60-foot x 30-foot American Flags
- Purchase of one (1) 100-foot flag pole, halyard, wench and additional assembly material
- Purchase of five (5) electrical lights to illuminate flag
- City plan review (and applicable fees) for flag pole installation and electrical connection
- City application (and applicable fees) for temporary electrical meter and connection
- Establish electrical connection and use account with the Anaheim Public Utilities
- Southern California Edison application for connection review and applicable fees
- Coordination of temporary power poles and connection
- Coordination of a geotechnical study and environmental study for the project
- Hire electrical contractor to excavate and connect temporary electrical power from power poles to the control box and lights
- Hire drilling contractor to excavate footing for flag pole foundation and for the five lights
- Hire general contractor to prepare flag foundation
- Hire flag pole installation company to offload sections of flag pole, assemble sections of flag pole onsite and transport, place and secure 100-foot flag pole from entrance to flag pole location with the use of large cranes and equipment

Attachment B

Exhibit B

Flagpole Improvement Budget

[attached]

Attachment B

ORANGE COUNTY VETERANS CEMETERY FLAG POLE COSTS

Date	Vendor	Product or service provided	Cost
11/4/2021	The FlagPole Company via RJM	American Flag for Groundbreaking - Flag One	\$2,049.64
1/10/2022	GMU Geotechnical, Inc	Soil drilling, investigation and analysis for flag pole installation	\$6,183.00
1/13/2022	Power Plus	Installation of temporary power poles, wire, risers transformer, disconnect and cabling for lights for flagpole	\$33,810.00
1/21/2022	The FlagPole Company	100 ft. Flagpole with internal halyard & winch and 2 additional 60'x30' American Flags	\$33,205.36
1/21/2022	The FlagPole Company	Stamped Engineering Report for Footing & Flagpole	\$1,800.00
2/22/2022	South Coast Lighting & Design	Spot Lights, mounts and housing tubes for flagpole	\$27,603.48
3/8/2022	City of Anaheim	Building Division Plan Check Fee	\$405.00
3/31/2022	City of Anaheim	Temporary Permit for Electrical Service	\$2,056.25
TOTAL PAID AS OF 4/22/2022			\$107,112.73

Vendor	Services to be provided/completed	Est. Cost
Power Plus	Monthly Power Pole rentals beginning Sept. 2022 through June 2025 for a total of 34 months @ \$641.00 per month	\$21,794.00
RJM Design Group	Construction management for the flagpole installation	\$15,000.00
Finn Construction	Site work, preparation for flag pole and lighting structure foundation installation.	\$210,185.00
	Drilling rig and service to prepare foundation for flag pole and light fixtures	included
	Structural steel cage and concrete foundation for flag pole and steel light casings	included
	Onsite flag pole welding and assembly, installation with large crane.	included
Pacific Interior Electric	Trenching, installation and materials to illuminate the flag and flag pole	\$41,700.00
		\$395,791.73