

**AMENDMENT NO. 2**

**COOPERATIVE AGREEMENT**

**FOR**

**WATER QUALITY PROGRAM SUPPORT**

THIS ~~AGREEMENT~~AMENDMENT, for purposes of identification hereby numbered Amendment No. 2 to Agreement D04-060, is made and entered into this 10-day of May 2005~~2014~~, by and between the County of Orange, hereinafter referred to as "COUNTY", and the Regents of the University of California on behalf of its UC Cooperative Extension, Orange County, hereinafter referred to as "UNIVERSITY", which are sometimes referred to as individually as "PARTY" or collectively as "PARTIES".

**WITNESSETH**

~~WHEREAS, on May 15, 1915, the California State Legislature authorized the UNIVERSITY to conduct the Agricultural Extension Program and approved an act empowering the County Board of Supervisors to appropriate and use COUNTY funds to support and maintain UNIVERSITY work in agriculture, in cooperation with the United States Department of Agriculture. This three-way cooperative arrangement was created to bring agricultural education and research information to the public; and~~

WHEREAS, in 1990, the PARTIES established a Memorandum of Understanding ~~was established between UNIVERSITY and for the~~ COUNTY to provide funding ~~for clerical, support and academic services to the~~ UNIVERSITY ~~staff assigned to~~ operate a Cooperative Extension within Orange County to plan and conduct research and educational programs for the benefit of COUNTY residents; and

~~WHEREAS, the countywide, municipal National Pollutant Discharge Elimination System (NPDES) stormwater permit has requirements for the development of programs to improve water quality by reducing urban runoff through management practices and water conservation measures; and~~

~~WHEREAS, the California Regional Water Quality Control Board, Santa Ana Region, has adopted Total Maximum Daily Load ("TMDL") allocations in the Newport Bay watershed for nutrients,~~

1 ~~sediment and fecal coliform and is developing TMDLs for aquatic toxicity pursuant to the provisions of~~  
2 ~~Section 303(d) of the Clean Water act; and~~

3  
4 ~~WHEREAS, the California Regional Water Quality Control Board, Santa Ana and San Diego~~  
5 ~~Regions intend to develop additional TMDLs for other water quality limited segments within Orange~~  
6 ~~County; and~~

7 ~~WHEREAS, the adopted and pending TMDLs contain, or will contain, requirements for studies,~~  
8 ~~monitoring and the development of programs to attain TMDL reduction over a multi-year period; and~~

9 ~~WHEREAS, for many years, UNIVERSITY and COUNTY have had an ongoing working~~  
10 ~~relationship whereby COUNTY provided funding and benefited from UNIVERSITY's services and~~  
11 ~~activities; and~~

12 ~~WHEREAS, COUNTY desires to continue the working relationship with UNIVERSITY to~~  
13 ~~provide funding for~~ WHEREAS, on May 10 2005, the PARTIES approved Cooperative Agreement  
14 D04-060 (hereinafter "AGREEMENT") to support COUNTY mandated core programs including water  
15 quality research, education, and outreach activities in areas where UNIVERSITY has extraordinary  
16 expertise, particularly related to fertilizer and pesticide applications, exotic species control, education and  
17 outreach, and training for pesticide management, ~~hereinafter termed SERVICES; and~~

18 ~~WHEREAS in 2004, , the AGREEMENT provided for an annual payment of two hundred and~~  
19 ~~fifty thousand dollars (\$250,000) by the COUNTY approved payment of \$125,000 to the UNIVERSITY~~  
20 ~~subject with annual extensions through June 30, 2010; and~~

21 WHEREAS, on June 22, 2010 the PARTIES approved Amendment No. 1 to the conditions that  
22 the money be spent to support core programs and that an agreement be negotiated; and AGREEMENT  
23 extending the term by one year renewable for four additional years and amending Sections 6 (Services to  
24 be Provided by County) and 20 (Notices).

1           ~~WHEREAS in 2004, COUNTY approved payment of \$125,000 to University under, the~~  
2 ~~UNIVERSITY has prepared a summary of its extensive accomplishments since approval of Amendment~~  
3 ~~No. 1 of the AGREEMENT number D01-051 dated June 26, 2001; and~~

4           ~~WHEREAS, COUNTY now desires this separate AGREEMENT to support core programs and to~~  
5 ~~combine and replace AGREEMENT No. D01-051 for a total annual payment of \$250,000 to~~  
6 ~~UNIVERSITY;~~

7           ~~WHEREAS, the PARTIES desire to amend the AGREEMENT a second time to extend the term~~  
8 ~~for one year renewable for four additional years through June 30, 2020, to update the name of the~~  
9 ~~UNIVERSITY's project manager, to clarify the description of the services to be provided, and to update~~  
10 ~~the notice contact information.~~

11           NOW, THEREFORE, ~~IT IS AGREED~~ in consideration of the foregoing, it is agreed by and  
12 between the PARTIES hereto that the AGREEMENT remains in full force and effect, except that all  
13 references to Resources and Development Management Department shall be amended to OC Public  
14 Works Department and that Section 1, 3, 6 and 20 are amended in their entirety as follows:

15           1. RETAINER

16                         COUNTY does hereby retain UNIVERSITY to provide the SERVICES upon the  
17 terms and conditions hereinafter specified. UNIVERSITY's project manager  
18 ("PROJECT MANAGER") who shall be assigned to manage completion of the  
19 SERVICES and who is accepted by COUNTY is ~~John Kabashima~~ Darren Haver. Any  
20 change in PROJECT MANAGER must be approved in writing by the Director of OC  
21 Public Works ~~the Orange County Resources and Management~~ Department or his  
22 designee (hereinafter referred to as "DIRECTOR").

23           2. ADMINISTRATION OF AGREEMENT

24                         The DIRECTOR shall administer this AGREEMENT for COUNTY.

25           3. TERM

1           The term of this AGREEMENT shall be ~~twelve months~~ through June 30,  
2           ~~2005~~2016 renewable for ~~five~~four additional twelve (12) month periods upon mutual  
3           agreement of the PARTIES as memorialized in writing thirty (30) days prior to  
4           expiration. DIRECTOR may extend the term, based on prior satisfactory performance,  
5           ~~provided that such extension does not result in the total term of the AGREEMENT~~  
6           ~~exceeding sixty (60) months~~ and provided that all terms and conditions remain  
7           unchanged.

8           4. DESCRIPTION OF SERVICES

9           The SERVICES to be managed by UNIVERSITY shall consist of COUNTY  
10           mandated core programs including water quality research, education, and outreach  
11           activities in areas where UNIVERSITY has extraordinary expertise, particularly related  
12           to fertilizer and pesticide applications, exotic species control, education and outreach, and  
13           training for pesticide management. UNIVERSITY shall provide COUNTY with an  
14           annual summary of progress of work prior to June 30<sup>th</sup> of each year.

15           UNIVERSITY shall be responsible for submitting all written reports and other  
16           work products during the course of performing SERVICES to COUNTY in a form which  
17           has been thoroughly reviewed and checked for completeness, accuracy and consistency  
18           by the PROJECT MANAGER. Any work product not fulfilling this requirement shall be  
19           returned to UNIVERSITY for correction prior to acceptance by COUNTY.

20           5. UNIVERSITY RELATIONSHIP

21           UNIVERSITY is and at all times shall be deemed to be an independent  
22           contractor, wholly responsible for the SERVICES performed under terms of this  
23           AGREEMENT. COUNTY shall look only to UNIVERSITY for results. Nothing  
24           contained herein shall be construed as creating any relationship of employer/employee,  
25           principal/agent, master/servant, partners, joint venture or association. UNIVERSITY

1 shall assume full responsibility for the actions of its employees as related to the  
2 SERVICES provided under this AGREEMENT.

3 6. SERVICES TO BE PROVIDED BY COUNTY

4 The DIRECTOR shall assign an appropriate staff representative (hereinafter  
5 “STAFF REPRESENTATIVE”) to coordinate with the UNIVERSITY in implementing  
6 this AGREEMENT and completing the SERVICES described in Section 4. STAFF  
7 REPRESENTATIVE shall provide direction to UNIVERSITY, review UNIVERSITY’s  
8 work, and assist UNIVERSITY in dealings with other public agencies and private parties  
9 and other activities which in the ~~judgement~~judgment of UNIVERSITY or DIRECTOR  
10 warrant attention.

11 ~~COUNTY shall waive all COUNTY issued permit fees associated with~~  
12 ~~UNIVERSITY research on COUNTY property. Permit fees shall be waived only when~~  
13 ~~research conducted benefits COUNTY within the scope of this AGREEMENT.~~

14 ~~COUNTY shall provide UNIVERSITY with the use of an automotive vehicle to~~  
15 ~~facilitate the completion of SERVICES by UNIVERSITY. This automotive vehicle shall~~  
16 ~~be fully owned and maintained by COUNTY and shall be surrendered to COUNTY upon~~  
17 ~~the termination of the contract.~~

18 7. MEETINGS

19 The STAFF REPRESENTATIVE and PROJECT MANAGER shall attend  
20 meetings on reasonable notice to discuss contractual matters or poor performance and  
21 progress under this AGREEMENT.

22 8. TERMINATION OF AGREEMENT FOR CONVENIENCE

23 If for any reason COUNTY determines that UNIVERSITY’s services, in whole  
24 or in part, are no longer required, COUNTY shall notify UNIVERSITY in writing of  
25 such termination and UNIVERSITY shall immediately suspend performance of  
SERVICES approved by DIRECTOR (unless the notification directs otherwise).

1 UNIVERSITY shall within a reasonable period of time, not to exceed sixty (60) days,  
2 deliver to COUNTY all work performed by UNIVERSITY and/or anyone working under  
3 the supervision of UNIVERSITY pursuant to this AGREEMENT, which work has been  
4 reduced to submittals or other work products, shall be delivered to COUNTY by  
5 UNIVERSITY prior to payment of any remaining compensation. UNIVERSITY, in  
6 executing this AGREEMENT, shall be deemed to have waived any and all claims for  
7 damages in the event of COUNTY termination for convenience.

8 **9. PAYMENTS TO UNIVERSITY**

9 The payment of one hundred and twenty-five thousand dollars (\$125,000) shall  
10 be made to the UNIVERSITY within sixty (60) days of approval of AGREEMENT.

11 If the term of the AGREEMENT is extended pursuant to Section 3 above, an  
12 additional annual payment of two hundred and fifty thousand dollars (\$250,000) shall be  
13 made for each year that the term is extended to UNIVERSITY, subject to the limitations  
14 described in Section 23 below (Limitation of Obligation Due to Non-Appropriation of  
15 Funds).

16 **10. PUBLICATION**

17 No copies, sketches or graphs, including graphic art work, are to be released by  
18 UNIVERSITY and/or anyone acting on behalf of UNIVERSITY to any person,  
19 partnership, company, corporation, or agency, without prior review by COUNTY, except  
20 as necessary for the performance of SERVICES. Within two weeks after receipt of  
21 proposed publication, COUNTY shall notify UNIVERSITY of any changes or additions,  
22 such as consistency with program language or acknowledgement of support that they  
23 have identified. If UNIVERSITY determines that disclosure of documents described in  
24 this section must be disclosed as a matter of law, COUNTY shall be notified as soon as  
25 practicable prior to disclosure of these documents. COUNTY and the State of California  
shall have a royalty-free, non-exclusive and irrevocable license to publish, copy,

1 translate, or use now and hereafter, all documents, data, films, tapes, and other material  
2 development under this Agreement, including materials covered by copyright. All press  
3 releases referring to County by name are to be administered only by COUNTY unless  
4 otherwise agreed to by both PARTIES.

5 **11. ERRORS AND OMISSIONS**

6 All reports submitted by UNIVERSITY shall be complete and shall be carefully  
7 checked by PROJECT MANAGER, prior to submission to COUNTY. UNIVERSITY  
8 agrees that COUNTY review is discretionary and UNIVERSITY shall not assume that  
9 COUNTY will discover errors and/or omissions. If COUNTY discovers any errors or  
10 omissions in reports, the reports will be returned to UNIVERSITY for correction prior to  
11 COUNTY approving UNIVERSITY's report. Should COUNTY or others discover, after  
12 COUNTY approval, error or omissions in reports submitted by UNIVERSITY, said  
13 approval of reports shall not be used as a defense.

14 **12. SUBCONTRACTOR OF WORK**

15 UNIVERSITY shall not sublet or transfer any other of SERVICES.  
16 UNIVERSITY agrees to perform by this AGREEMENT. UNIVERSITY may employ  
17 special consultants in the performance of SERVICES only if each special consultant and  
18 the aggregate money value of its work is submitted to and approved by DIRECTOR prior  
19 to employment of said special consultant. No obligation to approve such a substitution in  
20 performance of SERVICES is implied. UNIVERSITY's employment of special  
21 consultants shall not relieve UNIVERSITY from responsibility for the performance of  
22 UNIVERSITY's obligations and duties pursuant to this AGREEMENT. However, all  
23 special consultants independently contracting with COUNTY shall be independently  
24 liable to COUNTY for the performance of the work pursuant to their agreements, and  
25 UNIVERSITY shall have no liability for work by special consultants independently  
contracting with COUNTY.

1           13. RECORDS AND AUDIT/INSPECTIONS

2                           UNIVERSITY shall keep an accurate record of time expended by UNIVERSITY  
3                           and/or special consultants employed by UNIVERSITY in the performance of this  
4                           AGREEMENT. Within ten (10) days of COUNTY’s written request, UNIVERSITY  
5                           shall allow COUNTY or authorized State or Federal agencies or any duly authorized  
6                           representative to have the right to access, examine, audit, excerpt, copy or transcribe any  
7                           pertinent transaction, activity, time cards or other records relating to this AGREEMENT.  
8                           UNIVERSITY shall keep such material, including all pertinent cost accounting, financial  
9                           records and proprietary data for a period of one (1) year after termination or completion  
10                          of the AGREEMENT or until resolution of any claim or dispute between the PARTIES,  
11                          whichever is later. Should UNIVERSITY cease to exist as a legal entity, records  
12                          pertaining to this AGREEMENT shall be forwarded within a reasonable period of time  
13                          not to exceed sixty (60) days to its successor in interest or surviving entity in a merger or  
14                          acquisition, or, in the event of liquidation, to COUNTY.

15           14. CONFLICT OF INTEREST

16                          UNIVERSITY agrees that no former or current County of Orange employee shall  
17                          participate in the SERVICES provided by UNIVERSITY to COUNTY, or become a  
18                          partner, shareholder or otherwise share in the profits of UNIVERSITY for a period of one  
19                          (1) year from the date such person ceased County of Orange employment.

20           15. NON-EMPLOYMENT OF COUNTY OF ORANGE PERSONNEL

21                          UNIVERSITY agrees that no full-time, regular employee of the County of  
22                          Orange who is involved with this AGREEMENT shall be given or offered employment  
23                          by UNIVERSITY in a moonlighting status during the life of this AGREEMENT  
24                          regardless of the assignments said employee may be given or the days or hours employee  
25                          may work. By accepting this AGREEMENT, UNIVERSITY agrees not to knowingly  
                                offer employment to any COUNTY full time regular employee employed by COUNTY



1 who is involved in professional classifications of the same skills required for the  
2 performance of this AGREEMENT.

3 16. NONDISCRIMINATION

4 In the performance of the terms of this AGREEMENT, UNIVERSITY shall not  
5 engage in discrimination in the employment of persons because of race, creed, color,  
6 religion, national origin, age, physical handicap, marital status or sex. Violation of this  
7 provision may result in the imposition of penalties referred to in Labor Code Section  
8 1735 or other applicable State and Federal regulation.

9 17. LAWS TO BE OBSERVED

10 UNIVERSITY is assumed to be familiar with and, at all times, shall observe and  
11 comply with all federal, state and local laws, ordinances, rules and regulations in any  
12 manner affecting the conduct of SERVICES under this AGREEMENT.

13 18. INDEMNIFICATION AND GENERAL LIABILITY

14 UNIVERSITY shall defend, indemnify and hold COUNTY harmless from and  
15 against any and all liability, loss, expense, attorney's fees, or claims for injury or  
16 damages arising out of the performance of this agreement but only in proportion to and to  
17 the extent such liability, loss, expense, attorney's fees or claims for injury or damages are  
18 caused by or result from the negligent or intentional acts or omissions of UNIVERSITY,  
19 its officers, agents, or employees.

20 COUNTY shall defend, indemnify and hold UNIVERSITY harmless from and  
21 against any and all liability, loss, expense, attorney's fees, or claims for injury or  
22 damages arising out of the performance of this agreement but only in proportion to and to  
23 the extent such liability, loss, expense, attorney's fees or claims for injury or damages are  
24 caused by or result from the negligent or intentional acts or omissions of COUNTY, its  
25 officers, agents or employees.

19. INSURANCE

1 Prior to the provision of services under this AGREEMENT, UNIVERSITY  
2 agrees to purchase all required insurance at UNIVERSITY'S expense and to deposit  
3 with COUNTY Certificates of Insurance, including all endorsements required herein,  
4 necessary to satisfy COUNTY that the insurance provisions of this AGREEMENT have  
5 been complied with and to keep such insurance coverage and the certificates therefore on  
6 deposit with COUNTY during the entire term of this AGREEMENT. In addition, all  
7 subcontractors performing work on behalf of UNIVERSITY pursuant to this  
8 AGREEMENT shall obtain insurance subject to the same terms and conditions as set  
9 forth herein for UNIVERSITY.

10 All insurance policies required by this AGREEMENT shall declare any  
11 deductible or self-insured retention (SIR) in an amount in excess of \$25,000 (\$5,000  
12 for automobile liability), which shall specifically be approved by the County Executive  
13 Office (CEO)/Office of Risk Management. UNIVERSITY shall be responsible for  
14 reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs) or  
15 deductibles shall be clearly stated on the Certificate of Insurance.

16 If UNIVERSITY fails to maintain insurance acceptable to the County for the full  
17 term of this AGREEMENT, COUNTY may terminate this AGREEMENT.

18 **Qualified Insurer**

19 The policy or policies of insurance must be issued by an insurer licensed  
20 to do business in the state of California (California Admitted Carrier).

21 Minimum insurance company ratings as determined by the most current  
22 edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com  
23 shall be A- (Secure Best's Rating) and VIII (Financial Size Category).

24 If the carrier is a non-admitted carrier in the state of California,  
25 CEO/Office of Risk Management retains the right to approve or reject carrier after  
a review of the company's performance and financial ratings.

1 The policy or policies of insurance maintained by UNIVERSITY shall  
2 provide the minimum limits and coverage as set forth below:

<u>COVERAGE</u>	<u>LIMIT</u>
1. Commercial General Liability with broad form property damage and contractual liability	\$1,000,000 combined single limit per occurrence; \$2,000,000 aggregate
2. Automotive Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 combined single limit per occurrence
3. Worker’s Compensation	Statutory
4. Professional Liability	\$1,000,000 per claims made per occurrence

10 Insurance shall be in force the first day of the term of this AGREEMENT.

11 UNIVERSITY may elect to self insure for the insurance coverages required by  
12 this AGREEMENT.

13 All liability insurance, except Professional Liability, required by this  
14 AGREEMENT shall be at least \$1,000,000 combined single limit per occurrence.  
15 Professional Liability may also be provided on a “Claims Made” basis. The minimum  
16 aggregate limit for the Commercial General Liability policy shall be \$2,000,000.

17 COUNTY shall be added as an additional insured on all insurance policies  
18 required by this AGREEMENT with respect to work done by UNIVERSITY under the  
19 terms of this AGREEMENT (except Workers' Compensation/Employers' Liability and  
20 Professional Liability). An additional insured endorsement evidencing that COUNTY  
21 is an additional insured shall accompany the Certificate of Insurance.

22 All insurance policies required by this AGREEMENT shall be primary  
23 insurance, and any insurance maintained by COUNTY shall be excess and non-  
24 contributing with insurance provided by these policies. An endorsement evidencing that  
25 UNIVERSITY’S insurance is primary and non-contributing shall specifically  
accompany the Certificate of Insurance for the Commercial General Liability.

1 All insurance policies required by this AGREEMENT shall give the COUNTY  
2 30 days notice in the event of cancellation. This shall be evidenced by an endorsement  
3 separate from the Certificate of Insurance. In addition, the cancellation clause must  
4 include language as follows, which edits the pre-printed ACORD certificate:

5 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED  
6 BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL  
7 ~~ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE~~  
8 ~~HOLDER NAMED TO THE LEFT. BUT FAILURE TO MAIL SUCH NOTICE~~  
9 ~~SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE~~  
10 ~~COMPANY, ITS AGENT OR REPRESENTATIVE.~~

11 All insurance policies required by this AGREEMENT shall waive all rights of  
12 subrogation against County and members of the Board of Supervisors, its elected and  
13 appointed officials, officers, agents and employees when acting within the scope of their  
14 appointment or employment.

15 If UNIVERSITY'S Professional Liability policy is a "claims made" policy,  
16 UNIVERSITY shall agree to maintain professional liability coverage for two years  
17 following completion of AGREEMENT.

18 The Commercial General Liability policy shall contain a severability of  
19 interests clause.

20 UNIVERSITY is aware of the provisions of Section 3700 of the California Labor  
21 Code which requires every employer to be insured against liability for Workers'  
22 Compensation or be self-insured in accordance with provisions of that code.  
23 UNIVERSITY shall comply with such provisions and shall furnish COUNTY  
24 satisfactory evidence that the UNIVERSITY has secured, for the period of this  
25 AGREEMENT, statutory Workers' Compensation insurance and Employers' Liability  
insurance with minimum limits of \$1,000,000 per occurrence.

1 Insurance certificates should be forwarded to the agency/department address  
2 listed on the solicitation.

3 If UNIVERSITY fails to provide the insurance certificates and endorsements  
4 within seven days of notification by CEO/Purchasing or the agency/department  
5 purchasing division, award may be made to the next qualified vendor.

6 COUNTY expressly retains the right to require UNIVERSITY to increase or  
7 decrease insurance of any of the above insurance types throughout the term of this  
8 AGREEMENT. Any increase or decrease in insurance shall be as deemed by County of  
9 Orange Risk Manager as appropriate to adequately protect COUNTY.

10 COUNTY shall notify UNIVERSITY in writing of changes in the insurance  
11 requirements. If UNIVERSITY does not deposit copies of acceptable certificates of  
12 insurance and endorsements with COUNTY incorporating such changes within thirty  
13 days of receipt of such notice, this AGREEMENT may be in breach without further  
14 notice to UNIVERSITY, and COUNTY shall be entitled to all legal remedies.

15 The procuring of such required policy or policies of insurance shall not be  
16 construed to limit UNIVERSITY'S liability hereunder nor to fulfill the indemnification  
17 provisions and requirements of this AGREEMENT.

18 The COUNTY Certificate of Insurance and the Special Endorsement for  
19 COUNTY can be utilized to verify compliance with the above-mentioned insurance  
20 requirements in place of commercial insurance certificates and endorsements.

21 **20. NOTICES**

22 Notices and correspondence in connection with this AGREEMENT shall be  
23 addressed as set forth below or as either PARTY may hereinafter designate by written  
24 notice to the other.

**COUNTY**

County of Orange

OC Public Works

OC Environmental Resources and Management Development Department

Watershed and Coastal Resources

2301 N. Glassell St

Orange, CA 92865

Attention: ~~Larry McKenney~~Mary Anne Skorpanich

~~300 N. Flower Street~~

~~Santa Ana CA 92703-5000~~

**UNIVERSITY**

University of California

Agriculture and Natural Resources Cooperative Extension

Attention: ~~John Kabashima~~Darren Haver, County Director

1045 Arlington Drive

~~Costa Mesa~~7601 Irvine Boulevard, Irvine, CA 9262692618

And

University of California

Agriculture and Natural Resources

Cooperative Extension

Attention: ~~Lynn E. Deetz~~Kathleen Nolan

Principal Director Contracts and Grants Analyst

~~1111 Franklin~~2801 Second Street, 6<sup>th</sup> Floor

~~Oakland~~Davis, CA 94607-520095618

21. 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.

22. CONSENT TO BREACH NOT WAIVER

No term or Provision of this AGREEMENT shall be deemed waived and no breach excused, unless such waiver of consent shall be in writing, signed by the PARTY claimed to have waived or consented. Any consent by any PARTY to, or waiver of, a breach by the other, whether express or implied, shall not constitute a waiver of any other breach of the provision or any other provision of this AGREEMENT. Failure of either

1 PARTY to enforce any provision of this AGREEMENT at any time shall not be  
2 construed as a waiver of that provision.

3 23. LIMITATION OF OBLIGATION DUE TO NON-APPROPRIATION OF FUNDS

4 The obligation of the COUNTY is subject to the availability of funds  
5 appropriated for this purpose and nothing contained herein shall be construed as  
6 obligating the COUNTY to expend or as involving the COUNTY in any contract or  
7 obligation for the future payment of money in excess of appropriations authorized by law.  
8 In the event this AGREEMENT extends into succeeding fiscal year periods and the  
9 Board of Supervisors does not allocate sufficient funds for the next succeeding fiscal  
10 year's payments, this AGREEMENT shall be terminated as of June 30 of the then-current  
11 fiscal year. COUNTY shall notify UNIVERSITY in writing of such non-allocation at the  
12 earliest possible date.

13 24. ENTIRETY

14 This AGREEMENT and Agreement D01-051 contain the entire AGREEMENTS  
15 between the PARTIES with respect to the matters herein and there are no restrictions,  
16 promises, warranties or undertakings other than those set forth or referred to herein.

17 25. SEVERABILITY

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

21 26. GOVERNING LAW AND VENUE

22 This AGREEMENT has been negotiated and executed in the State of California  
23 and shall be governed by and construed under the laws of the State of California. In the  
24 event of any legal action to enforce or interpret this AGREEMENT, the sole and  
25 exclusive venue shall be a court of competent jurisdiction located in Orange County,

1 California. The PARTIES hereto agree to and do hereby submit to the jurisdiction of  
2 such court, notwithstanding Code of Civil Procedure Section 394. The PARTIES  
3 specifically agree that by soliciting and entering into and performing SERVICES under  
4 this AGREEMENT, the UNIVERSITY shall be deemed to constitute doing business  
5 within Orange County from the time of solicitation of work, through the period when all  
6 work under this AGREEMENT is completed, and continuing until the expiration of any  
7 applicable limitations period. Furthermore, the PARTIES have specifically agreed, as  
8 part of the consideration given and received for entering into this AGREEMENT, to  
9 waive any and all rights to request that an action be transferred for trial to another county  
10 under Code of Civil Procedure Section 394.

11 **27. AUTHORITY**

12 The PARTIES to this AGREEMENT represent and warrant that this  
13 AGREEMENT has been duly authorized and executed and constitutes the legally binding  
14 obligation of their respective organization or entity, enforceable in accordance with its  
15 terms.

16 **28. CALENDAR DAYS**

17 Any reference to the word “day” or “days” herein shall mean calendar day or  
18 calendar days, respectively, unless otherwise expressly provided.

19 **29. ATTORNEY’S FEES**

20 In any action or proceeding brought to enforce or interpret any provision of this  
21 AGREEMENT, or where any provision hereof is validly asserted as a defense, each  
22 PARTY shall bear its own attorney’s fees and costs.

23 **30. INTERPRETATION**

24 This AGREEMENT has been negotiated at arm’s length and between persons  
25



1 sophisticated and knowledgeable in the matters dealt with in this AGREEMENT. In  
2 addition, each PARTY has been represented by experienced knowledgeable independent  
3 legal counsel of their own choosing, or has knowingly declined to seek such counsel  
4 despite having the opportunity to do so. Each PARTY further acknowledges that they  
5 have not been influenced to any extent whatsoever in executing this AGREEMENT by  
6 any other PARTY hereto or by any person representing them, or both. Accordingly, any  
7 rule of law (including California Civil Code Section 1654) or legal decision that would  
8 require interpretation of any ambiguities in this AGREEMENT against the PARTY that  
9 has drafted it is not applicable and is waived. The provisions of this AGREEMENT shall  
10 be interpreted in a reasonable manner to affect the purpose of the PARTIES and this  
11 AGREEMENT.

12 **31. HEADINGS**

13 The headings in this AGREEMENT are for convenience of reference only and  
14 shall not limit or otherwise affect the meaning thereof.

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22 IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT on the dates opposite  
23 their respective signatures:

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COUNTY OF ORANGE  
A body corporate and politic

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

By: \_\_\_\_\_  
Chair of the Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY  
OF THIS AGREEMENT HAS BEEN  
DELIVERED TO THE CHAIR OF THE  
BOARD

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

By: \_\_\_\_\_  
~~Darlene J. Bloom~~ Susan Novak  
Clerk of the Board of Supervisors  
of County of Orange, Orange  
County, California

APPROVED AS TO FORM:  
~~BENJAMIN DE MAYO~~  
COUNTY COUNSEL

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

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

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THE REGENTS OF THE  
~~THE~~ UNIVERSITY OF CALIFORNIA,

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

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

Wendy Ernst  
~~Director~~ Contracts and Grants  
~~Analyst~~Officer