

Agreement No. OCP14-002
Orange County Parks
(OCFA Hand Crews and Equipment)

**COOPERATIVE AGREEMENT
FOR THE USE OF
ORANGE COUNTY FIRE AUTHORITY
HAND CREWS AND EQUIPMENT
AT ORANGE COUNTY PARKS**

THIS COOPERATIVE AGREEMENT FOR THE USE OF ORANGE COUNTY FIRE AUTHORITY HAND CREWS AND EQUIPMENT IN ORANGE COUNTY PARKS ("**Agreement**"), dated this ____ day of _____, 2014, is made by and between the COUNTY OF ORANGE, a political subdivision of the State of California, (hereinafter referred to as "**COUNTY**") and the ORANGE COUNTY FIRE AUTHORITY, a Joint Powers Authority, (hereinafter referred to as "**OCFA**"). OCFA and COUNTY are sometimes referred to herein individually as a "**Party**" or collectively as the "**Parties**."

R E C I T A L S

WHEREAS, COUNTY is the owner and operator of certain regional, wilderness and open space parks and preserves located within the service area of OCFA; and

WHEREAS, Orange County Parks ("**OC Parks**") is the COUNTY's designated department for administration, operation and management of COUNTY park property; and

WHEREAS, COUNTY and OCFA have entered into a Memorandum of Understanding (OC Parks Agreement No. OCP14-001) to identify and to develop mitigation plans to reduce areas of flammable or hazardous vegetation in COUNTY parks that may pose a threat to life, property and/or natural resources in the event of a wildland fire; and

WHEREAS, OCFA can make available to OC Parks OCFA hand crews and equipment to perform fuel reduction and maintenance work that will include but not be limited to maintenance and repair of park roads and trails, vegetation management, erosion control, habitat restoration, debris removal, fire recovery and storm preparation/recovery; and

WHEREAS, OC Parks desires to utilize OCFA to perform fuel reduction and maintenance work that will include but not be limited to maintenance and repair of park roads and trails, vegetation management, erosion control, habitat restoration, debris removal, fire recovery and storm preparation/recovery.

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

1. ADMINISTRATION

The COUNTY's Director of OC Parks, or designee, ("**Director of OC Parks**") shall administer this Agreement for COUNTY. OCFA's Fire Chief, or designee, ("**Fire Chief**") shall administer

this Agreement for OCFA. The respective administrators for COUNTY and OCFA shall be responsible for any approvals, permissions or notices required pursuant to this Agreement.

2. TERM OF AGREEMENT

The term of this Agreement shall be for one (1) year effective on the first day following execution of this Agreement by COUNTY, renewable for three (3) additional one (1) year terms. This Agreement may be terminated by either Party upon sixty (60) days written notice to the other in compliance with Paragraph 19.

3. OCFA RESPONSIBILITIES

OCFA agrees to:

- A. Schedule and perform fuel reduction or maintenance work as requested by OC Parks on written work orders.
- B. Provide hand labor crews or equipment, including supervision, transportation and hand/power tools or equipment for each OC Parks work order.
- C. Perform various protective and maintenance activities as requested by OC Parks including but not limited to vegetation control/removal, trail improvements, repair and restoration, erosion control, habitat restoration, debris removal, fire recovery and storm preparation/recovery.
- D. Designate a single point of contact (either an individual or work group) for communication/coordination of work requests, billing or invoice issues, and Agreement updates.
- E. Communicate schedule with OC Parks' Systems Group ("**Systems Group**") and requesting park or facility.
- F. Track total labor hours and equipment hours by day/date and submit to Systems Group upon completion of work order.
- G. Not expand work scope or work area beyond what is indicated on the written work order unless an updated work order is provided by Systems Group.
- H. Submit monthly invoices for work completed detailing labor hours by work order number and date.

4. COUNTY RESPONSIBILITIES

COUNTY agrees to:

- B. Provide OCFA with written work orders from the Systems Group, with clear descriptions and defined scopes of work, for each work order.

- C. Provide a single point of contact for communication and coordination of work orders and invoice issues and Agreement amendments. OC Parks' Systems Group will be the point of contact for all issues regarding this Agreement.
- D. Upon receipt, review invoices against labor hours submitted by OCFA on completed work orders and promptly process invoices for payment, or coordinate with OCFA on discrepancies.

5. COMPENSATION

Compensation for services billed under this Agreement shall be based on the following:

- A. Hourly Rates. For any Fuel Reduction or Maintenance Work rendered pursuant to this Agreement, COUNTY shall compensate OCFA at the normal Wildland Hand Crew and Equipment hourly rates approved by the OCFA Board of Directors, and updated annually. The 2013-2014 rates are as follows:

Crew: \$16.92/hr per person
Crew Supervisor: \$37.35/hr
Crew Chief (Fire Captain): \$52.22/hr
Heavy Equipment Operator (Dozer): \$99.11/hr
Swamper: \$31.61
Dozer Equipment: \$65.00/hr
Dozer Tender: \$20.00/hr
Grader: \$58.00/hr

- B. Calculation of Time. Compensable time begins when the Hand Crew or Work Crew enters a COUNTY regional park and ends when the crew leaves the park. Transportation to and from COUNTY regional parks is not billable.
- C. Billing. The OCFA Wildland Hand Crew supervisor will maintain a daily log indicating the number of crew members (including dozer operators) and hours worked on a given day. Based on these daily logs, OCFA will prepare and send monthly invoices for services performed to:

OC Parks
13042 Old Myford Road
Irvine, CA 92602
Attn: Systems Group

- D. Cost of Services. The cost of services for the initial one-year term shall not exceed Two Hundred Thousand Dollars (\$200,000) per year. The cost of services for each additional one (1) year term shall not exceed Two Hundred Thousand Dollars (\$200,000) per year, respectively.

6. INSURANCE

Prior to the provision of services under this contract, OCFA agrees to purchase all required insurance or maintain a program of self-insurance at OCFA's expense and to deposit with COUNTY Certificates of Insurance, including all endorsements required herein, necessary to satisfy COUNTY that the insurance provisions of this contract have been complied with and to

keep such insurance coverage and the certificates therefore on deposit with COUNTY during the entire term of this contract. In addition, all subcontractors performing work on behalf of OCFA pursuant to this contract shall obtain insurance subject to the same terms and conditions as set forth herein for OCFA.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. .

If OCFA fails to maintain insurance acceptable to COUNTY for the full term of this contract, COUNTY may terminate this contract.

Qualified Insurer

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

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier). If the carrier is a non-admitted carrier in the state of California and does not meet or exceed an A.M. Best rating of A-/VIII, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings. If the non-admitted carrier meets or exceeds the minimum A.M. Best rating of A-/VIII, the agency can accept the insurance.

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that the OCFA's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

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

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insured's" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to Orange County Parks (13042 Old Myford Road, Irvine, CA 92602).

COUNTY expressly retains the right to require OCFA to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be as deemed by COUNTY's Risk Manager as appropriate to adequately protect COUNTY.

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

The procuring of such required policy or policies of insurance shall not be construed to limit OCFA's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

7. HOLD HARMLESS

OCFA agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold harmless the COUNTY and each of its elected and appointed officials, officers, employees, agents and representatives with respect to any loss, damage, injury, claim, demand, litigation or liability and all expenses and costs relating thereto arising out of or in any way related to acts or omissions of a OCFA member or OCFA Supervisor or OCFA personnel, except those arising out of the willful conduct or sole negligent acts of the COUNTY

8. INDEPENDENT CONTRACTOR

Neither COUNTY nor any of its officials, officers, employees or agents shall have any control over the manner, mode or means by which OCFA performs the Fuel Reduction and/or Maintenance work contemplated herein. Although County Natural Resources Management staff may provide prioritization preferences for sensitive habitat in advance of any work performed by OCFA, OCFA shall perform all such services as an independent contractor of COUNTY and shall remain at all times as to COUNTY a wholly independent contractor with only such obligations as are consistent with that role.

9. TIME OF ESSENCE

Time is of the essence of this Agreement and each and every term and provision hereof.

10. AMENDMENTS

This Agreement expresses all the understandings of the Parties concerning all matters covered. No addition to or alteration of the terms of this Agreement shall be valid unless made in the form of a written amendment to this Agreement and formally approved by the Parties hereto.

11. SEVERABILITY

If any term, provision, condition or covenant of this Agreement, or the application thereof, to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12. FURTHER ASSURANCES

Each Party agrees to cooperate with the other Party, at no additional cost to such Party, and to execute such additional instruments and documents as may be reasonably necessary or proper in order to carry out the provisions of this Agreement.

13. ATTORNEYS' FEES

In any action or proceeding between the Parties arising out of or related to the terms of this Agreement, or in any way connected herewith, the Parties agree that attorneys' fees shall not be recoverable by the prevailing party.

14. AGREEMENT ORGANIZATION

The various headings and numbers herein, the grouping of provisions of this Agreement into separate clauses and paragraphs, the organization hereof, are for the purpose of convenience only and shall not be considered otherwise.

15. SUCCESSORS AND ASSIGNS

The provisions of this Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective successors and assigns.

16. NO THIRD PARTY BENEFICIARIES

No person or entity other than the Parties to this Agreement shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement, either express or implied, is intended to confer upon any person or entity, other than the Parties to this Agreement and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

17. GOVERNING LAW AND VENUE

This Agreement has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

18. AUTHORITY TO SIGN

Each person signing this Agreement on behalf of a Party hereto represents and warrants to the other Parties that he/she has all requisite power and authority to execute and deliver this Agreement for such Party and that this Agreement, when so executed and delivered, will be a binding obligation of, and enforceable against, such party in accordance with its terms.

19. NOTICES

Any notice or other communication to be given one Party to the other hereunder shall be in writing and given by personal service, express mail, Federal Express or any similar form of airborne/overnight delivery service, or by United States certified mail, return receipt requested, addressed to the Party at its respective address as follows:

COUNTY: County of Orange
OC Parks
13042 Old Myford Road
Irvine, California 92602-2304
Attn: Director, OC Parks

OCFA: Orange County Fire Authority
P.O. Box 57115
Irvine, CA 92619-7115
Attn: Fire Chief, OCFA

//
//
//

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

APPROVED AS TO FORM:

By: _____
David E. Kendig
General Counsel

Dated _____

OCFA

Orange County Fire Authority

By: _____
Fire Chief

Attest:

By: _____
Sherry A. F. Wentz
Clerk of the Board

APPROVED AS TO FORM:
County Counsel

By: Michael R. Hawk

Dated 2/13/14

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec 25103, Resolution 79-1535

Attest:

Susan Novak
Clerk of the Board of Supervisors
Orange County, California

COUNTY

County of Orange

By: _____
Chair, Board of Supervisors