

**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 \_\_\_\_\_ 2018, 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."

**RECITALS**

**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 approved by the Board of Supervisors on March 11, 2014, to identify and 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 and 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 the 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 date first written above and is renewable for four (4) 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 Section 19 (Notices). Based on prior satisfactory performance, the Director of OC Parks may renew this Agreement in writing, provided that such renewal does not result in the total term of the Agreement exceeding sixty (60) months and all terms and conditions remain unchanged.

### **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 and Resources 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:

- A. Provide OCFA with written work orders from the Systems Group, with clear descriptions and defined scopes of work, for each work order.
- B. 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.
- C. 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 cost reimbursement rates effective July 1, 2017, are provided as Exhibit A to this Agreement.
- 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.

## 6. INSURANCE PROVISIONS

Prior to the provision of services under this Agreement, OCFA agrees to purchase all required insurance or maintain a program of self-insurance at OCFA's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Agreement have been complied with. OCFA agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Agreement. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. In addition, all subcontractors performing work on behalf of OCFA pursuant to this Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for OCFA.

OCFA shall ensure that all subcontractors performing work on behalf of OCFA pursuant to this Agreement shall be covered under OCFA's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for OCFA. OCFA shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from OCFA under this Agreement. It is the obligation of OCFA to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by OCFA through the entirety of this Agreement for inspection by County

representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. If OCFA's SIR is approved, OCFA, in addition to, and without limitation of, any other indemnity provision(s) in this Agreement, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from OCFA's, its agents, employee's or subcontractor's performance of this Agreement, OCFA shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) OCFA's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and OCFA's SIR provision shall be interpreted as though OCFA was an insurer and the County was the insured.

Upon notice of any actual or alleged claim or loss arising out of subcontractor's work hereunder, subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for OCFA and Additional Insureds.

**If OCFA fails to maintain insurance acceptable to the County for the full term of this Agreement, the County may terminate this Agreement.**

#### Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

#### **Coverage**

#### **Minimum Limits**

Commercial General Liability

\$3,000,000 per occurrence

\$3,000,000 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 00 12, CA 00 20, or a substitute form providing liability 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 and agents** as Additional Insureds, or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT**.
- 2) A primary non-contributing endorsement evidencing that OCFA's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.
- 3) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO form CG2010 (ed. 11/85).

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the **County of Orange, its elected and appointed officials, officers, employees and agents** or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT** when acting within the scope of their appointment or employment.

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

OCFA shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Agreement, upon which the County may suspend or terminate this Agreement.

The Commercial General Liability policy shall contain a severability of interests clause (standard in the ISO CG 001 policy).

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

If OCFA fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified contractor.

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 of Orange 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 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, CA 92602-2304  
Attn: Director, OC Parks

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

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

APPROVED AS TO FORM:

By: *Daniel Kudry*  
General Counsel

Date: 2/14/18

**OCFA**

Orange County Fire Authority

By: *David McQuinn*  
Fire Chief

Attest:

By: *Shirley Gutz*  
OCFA Clerk of the Board

APPROVED AS TO FORM:

By: *MAS for Eric D'Amore*  
County Counsel

Date: 2/15/18

**COUNTY**

County of Orange

By: \_\_\_\_\_  
Chairman of the Board of Supervisors  
County of Orange, California

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

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

Attest:

By: \_\_\_\_\_  
Robin Stieler  
Clerk of the Board of Supervisors  
County of Orange, California

## Exhibit A

ORANGE COUNTY FIRE AUTHORITY  
 Personnel and Equipment Cost Reimbursement Rates  
 Effective July 1, 2017\*  
 (\*Rates approved annually by OCFA Board of Directors)

CLASSIFICATION	2017/18 PROPOSED RATE without ICRP	ADMIN RATE (ICRP)	2017/18 PROPOSED RATE with ICRP
HAND CREW (FIREFIGHTER)			\$20.22
HAND CREW SUPERVISOR (STAFF FIRE CAPTAIN)			\$39.76
HAND CREW SUPERVISOR (STAFF FIRE APP. ENGINEER)			\$33.96
HAND CREW SUPERVISOR (STAFF FIREFIGHTER)			\$30.28
HEAVY FIRE EQUIPMENT OPERATOR			\$52.75
SWAMPER/HAND CREW FF			\$20.22

DESCRIPTION	2017/18 RATE	Hourly / Daily
TYPE 1 ENGINE	\$91.00	Hourly
TYPE 2 ENGINE	\$80.00	Hourly
TYPE 3 ENGINE	\$80.00	Hourly
TRUCK/QUINT	\$91.00	Hourly
AIR/LIGHT UTILITY	\$29.00	Hourly
AIRPORT CRASH UNIT	\$91.00	Hourly
CHIPPER	\$25.00	Hourly
COMPACT TRACK LOADER	\$26.50	Hourly
CREW CARRYING VEHICLE	\$21.75	Hourly
DOZER TRANSPORT	\$73.25	Hourly
DOZER	\$72.50	Hourly
DOZER TRAILER	\$14.00	Hourly
DOZER TENDER	\$26.00	Hourly
DUMP TRUCK	\$77.25	Hourly
FIRE COMMAND UNIT	\$21.75	Hourly
FUEL TENDER	\$36.75	Hourly
GRADER	\$54.50	Hourly
LOADER	\$44.00	Hourly
MEDIC UNIT	\$96.00	Daily
MECHANIC SERVICE TRUCK	\$96.00	Daily
PATROL UNIT ( Type 6/ Swift Water Rescue)	\$80.00	Hourly
PICKUP (less than 3/4 ton)	\$86.00	Daily
SEDAN	\$47.00	Daily
SPORT UTILITY VEHICLE	\$96.00	Daily
VAN	\$109.00	Daily
WATER TENDER	\$36.75	Hourly
OTHER (3/4 ton and above)	\$96.00	Daily
HAZMAT (Unit 4)	\$91.00	Hourly
HAZMAT (Unit 79)	\$91.00	Hourly
HAZMAT (Unit 204)	\$24.25	Hourly
HELICOPTER - BELL SUPER HUEY (1)	\$1,082.03	Hourly
HELICOPTER - BELL 412 (1)	\$3,863.12	Hourly

## Notes:

1. Helicopter rates are based on 20 years useful life without the pilot and crew chief (Captain). The new rate reflects average usage for the past four years.