

## AGREEMENT

This Agreement is made and entered into the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the COUNTY OF ORANGE, a body corporate and politic, hereinafter referred to as "COUNTY," and Lightning Fence Co. Inc., hereinafter referred to as "CONTRACTOR."

WITNESSETH:

That COUNTY and CONTRACTOR, for consideration hereinafter, mutually agree as follows:

**1. CONTRACT DOCUMENTS:** The complete Contract includes all Contract Documents, to wit: Notice Inviting Bids, Definitions, Instructions to Bidders, Proposal, Faithful Performance Bond, Labor and Material Payment Bond, General Conditions, Special Provisions, Attachments, Appendices, Plans, current Standard Specifications for Public Works Construction, this Agreement, and all modifications and amendments thereto. The complete Contract Documents comprise the sole agreement between COUNTY and CONTRACTOR as to the subject matter therein. Any representation or agreement not specifically contained therein is null and void. The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all.

**2. SCOPE OF WORK:** CONTRACTOR, as described in the Contract Documents shall perform all work required, including but not limited to furnishing all the labor, materials, necessary tools, expendable equipment, and all utility and transportation services required to provide the construction of a comprehensive, functional, and regulatory compliant installation for the:

### **PROJECT: STOCKPILE V-D SCREENING PLAN**

Consistent with the Contract Documents, this project includes but not limited to the construction of approximately 2300 linear feet of 12-foot tall chain-link fence, gates, windscreen, protection of existing utilities and vegetation, while coordinating with the County on traffic controls and working hours.

All of said work to be performed and materials to be furnished shall be in strict accordance with the Plans and Specifications and the provisions of the Contract Documents herein enumerated and adopted by COUNTY.

**3. COUNTY AUTHORITY:** The COUNTY has the final authority in all matters affecting the work. Within the scope of the Agreement, the COUNTY has the authority to enforce compliance with the Plans and Specifications. The decision of the COUNTY is final and binding on all questions relating to: quantities, acceptability of material, equipment, or work; execution, progress or sequence of work; and interpretation of the Plans and Specifications. All labor, materials, tools, equipment, and services shall be furnished and work shall be performed and completed subject to the approval of COUNTY or its authorized representatives.

**4. CONTRACT AMOUNT AND SCHEDULE:** COUNTY agrees to pay and CONTRACTOR agrees to accept in full payment for the work to be performed the not-to-exceed the total amount of Two Hundred Sixty Three Thousand and No Cents Dollars (\$263,000.00) set forth in

CONTRACTOR'S bid, including all necessary labor, machinery, tools, apparatus, and other means of construction.

CONTRACTOR agrees to substantially complete construction (i.e., complete all field work) within sixty (60) calendar days, and complete all work (i.e. punch list items, deliver as-built drawings, and other closeouts) within ninety (90) calendar days, commencing upon issuance of a Notice to Proceed by COUNTY.

**5. BREAKDOWN OF BID:** A detailed breakdown of the CONTRACTOR's bid shall be provided within 14 calendar days after award of the Contract. This breakdown shall be used as a reference for development of the Partial Payment Requests and for negotiation of contract Change Orders.

**6. PAYMENTS:** On or about the thirtieth (30th) day of the month following the commencement of the work, there shall be paid to CONTRACTOR a sum equal to ninety-five (95) percent of the value of the work completed since the commencement of the work, and, thereafter on or about the thirtieth (30th) day of each successive month as the work progresses, CONTRACTOR shall be paid such sum as will bring the payments each month up to ninety-five (95) percent of the value of the work completed since the commencement of the work, less all previous payments, provided CONTRACTOR submits a request for payment prior to the last day of each proceeding month. COUNTY'S OC Waste & Recycling will review the payment request as soon as practicable to determine if it is proper. A payment request determined not to be a proper request suitable for payment will be returned to CONTRACTOR within seven (7) calendar days with a statement setting forth the reasons why the payment request is not proper. The final payment, if unencumbered, or any part thereof unencumbered, shall be made no later than sixty (60) calendar days after completion of the work and submission of all completion documents. Payments shall be made on demand drawn in the manner required by law, accompanied by a certificate signed by the OC Waste & Recycling, stating that work for which payment is demanded has been performed in accordance with the terms of the Contract, and that the amount stated in the certificate is due under the terms of the Contract. CONTRACTOR is entitled to interest pursuant to Public Contract Code Section 20104.50 if COUNTY fails to make any progress payment within thirty (30) calendar days after receipt of an undisputed and properly submitted payment request. Partial payments on the Contract price shall not be considered as COUNTY acceptance of any part of the work.

COUNTY will make progress payments monthly as the work proceeds on estimates approved by OC Waste & Recycling. In addition, consistent with the provisions of the General Conditions, Section 16, "JOB PROGRESS SCHEDULE AND SCHEDULE OF VALUES," payments made pursuant to Article 6 "PAYMENTS" of this Agreement, shall be based upon the total value of activities then completed or partially completed, accompanied by a schedule update, as set forth in said Section 16 "JOB PROGRESS SCHEDULE AND SCHEDULE OF VALUES", at the time of a submission of a payment request.

OC Waste & Recycling, at its discretion, may authorize payment up to 50 percent of the value thereof, as determined by it, of material delivered on the site and not yet incorporated into the construction. Material delivered to CONTRACTOR at locations other than the site may be taken into consideration if (1) such consideration is specifically authorized by the Contract and (2) CONTRACTOR furnishes satisfactory evidence that CONTRACTOR has acquired title to such material and it will be utilized on the work covered by this Contract. Such payments shall be made on submission of itemized requests by CONTRACTOR and shall be subject to reduction for overpayments or increase for underpayments

on preceding payments to CONTRACTOR. No payment will be made to CONTRACTOR for any materials on hand that are furnished but are not incorporated into the work.

**7. LIQUIDATED DAMAGES; EXTENSION OF TIME:** In accordance with Government Code Section 53069.85, CONTRACTOR agrees to forfeit and pay to COUNTY the sum of **five hundred dollars (\$500.00)** per day for each calendar day that completion of the entire Contract is delayed. For this project, Liquidated Damages will be assessed for each calendar day that the project is delayed beyond the time allotted for substantial completion as referenced in Article 4 “CONTRACT AMOUNT AND SCHEDULE” herein. Such sum shall be deducted from any payments due to or to become due to CONTRACTOR. If delays are caused by unforeseen events beyond the control of both CONTRACTOR and COUNTY, or by delays within the control of COUNTY, such delays will entitle CONTRACTOR to an extension of time, but CONTRACTOR shall not be entitled to damages or additional payment due to such delays.

**8. TERMINATION FOR CONVENIENCE OF COUNTY:** Notwithstanding any other provision of the Contract, COUNTY may at any time and without cause terminate in whole or in part, upon not less than thirty (30) days written notice to the contractor. Such termination shall be effected by delivery to the CONTRACTOR of a Notice of Termination specifying the effective date of the termination, whether the Contract shall be terminated in whole or in part and if applicable the portion of work to be terminated. The CONTRACTOR shall immediately stop work in accordance with the Notice of Termination and comply with any other direction as may be specified in the Notice of Termination or as provided subsequently by COUNTY. The COUNTY shall pay the CONTRACTOR for the work completed and accepted by COUNTY prior to the effective date of the termination, and such payment shall be CONTRACTOR’s sole remedy. Under no circumstances will the CONTRACTOR be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination in whole or in part under this provision. The CONTRACTOR shall insert in all subcontracts that the subcontractors shall stop work on the date of and if applicable the portion of work to be terminated in a Notice of Termination, and shall require sub-consultants to insert the same condition in any lower tier subcontracts.

**9. TERMINATION FOR DEFAULT AND DAMAGES FOR DELAY**

- A. If CONTRACTOR refuses or fails to prosecute the work with such diligence as will insure its completion within the time specified in this Contract, or any extension thereof, or fails to complete said work within such time, the Board of Supervisors may, by written notice to CONTRACTOR, terminate CONTRACTOR’s right to proceed with the work or such part of the work as to which there has been delay. In such event, COUNTY may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, reports, analysis, Plans, etc., as may be on the site for the work and necessary therefore. Whether or not CONTRACTOR’s right to proceed with the work is terminated, CONTRACTOR and CONTRACTOR’s sureties shall be liable for any damage to COUNTY resulting from CONTRACTOR’s refusal or failure to complete the work within the specified time.
- B. If fixed and agreed liquidated damages are provided in the Contract and if COUNTY so terminates CONTRACTOR’s right to proceed, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned COUNTY in completing the work.

- C. If fixed and agreed liquidated damages are provided in the Contract and if COUNTY does not so terminate CONTRACTOR's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.
- D. CONTRACTOR's right to proceed shall not be so terminated nor CONTRACTOR charged with resulting damage if:
  - (1) The delay in the completion of the work arises from causes beyond the control and without the fault or negligence of CONTRACTOR, including, but not restricted to, acts of God, acts of the public enemy, acts of COUNTY, acts of another contractor in the performance of a contract with COUNTY, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and delivery of project materials arising from causes beyond the control and without the fault or negligence of both CONTRACTOR and such Subcontractors or suppliers.
  - (2) CONTRACTOR within 7 calendar days from the beginning of any such delays (unless OC Waste & Recycling grants a further period of time before the date of final payment under the Contract), notifies OC Waste & Recycling in writing of the causes of delay. OC Waste & Recycling should ascertain the facts and the extent of the delay and extend the time for completing the work when, in its judgment, the delay is justified. OC Waste & Recycling shall make written findings, and the findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in Disputes of these General Conditions.
- E. The rights and remedies of COUNTY provided in this Section are in addition to any other rights and remedies provided by law or under this Contract.

**10. WAIVER OF CLAIMS:** Unless a shorter time is specified elsewhere in this Contract, on or before making final request for payment, CONTRACTOR shall submit to COUNTY, in writing, all claims for compensation under or arising out of this Contract. The acceptance by CONTRACTOR of the payment of the final certificate shall constitute a waiver of all claims against COUNTY under or arising out of this Contract except those previously made in writing and identified by CONTRACTOR as unsettled at the time of CONTRACTOR'S final request for payment.

**11. WARRANTY:**

- A. **WARRANTY:** CONTRACTOR warrants that materials and equipment furnished under the Contract Documents will be new, of good quality, and carrying all available manufacturers' and installers' warranties; that construction will be of good and workmanlike quality; and that all of the work shall be performed in strict conformance with the requirements of the Contract Documents, industry standards, and manufacturers' recommendations. Work not conforming to these requirements shall be considered defective ("Defective Work"). Defective Work does not include damage caused by modifications not executed by CONTRACTOR, improper operation or maintenance, or normal wear and tear.

- B. **ONE-YEAR CORRECTION PERIOD:** For a period of not less than one year from the date County accepts CONTRACTOR's work, as evidenced by a Notice of Completion issued by County, CONTRACTOR shall take immediate action to correct any Defective Work reported by County orally or in writing. CONTRACTOR shall initiate corrective action on Defective Work affecting use of a facility, safety, or preservation of property within twenty-four (24) hours after notification. CONTRACTOR shall initiate corrective action on other Defective Work within ten (10) calendar days after notification. If CONTRACTOR fails to initiate corrective action within the specified times or fails to complete the corrective work within a reasonable time, County may take whatever corrective action it deems necessary. All costs incurred by County because of CONTRACTOR's failure to correct Defective Work during the one-year correction period shall be due and payable immediately by CONTRACTOR. The one-year correction period relates only to the specific obligation of CONTRACTOR to return to the Project site and correct Defective Work. The one-year correction period does not establish a period of limitations with respect to any of CONTRACTOR's other obligations under the Contract Documents, including but not limited to CONTRACTOR's warranty, and it has no relationship to the time within which County may seek to enforce the CONTRACTOR's obligation to comply with the Contract Documents or to the time within which proceedings may be commenced to establish the CONTRACTOR's liability with respect to any of the CONTRACTOR's obligations.
  
- C. **MANUFACTURERS' AND INSTALLERS' WARRANTIES:** All manufacturers' or installers' warranties received by CONTRACTOR shall be assignable to County, and upon abandonment, termination, or completion of the Agreement shall be deemed, and hereby are, assigned to County. CONTRACTOR shall take all actions necessary to preserve the full scope of all manufacturers' and installers' warranties for the benefit of County and shall take no action that would impair County's rights under any such warranties. Before COUNTY's acceptance of the work, CONTRACTOR shall deliver to COUNTY manufacturers' warranties, guarantees, instruction sheets, and parts lists, which are furnished with certain articles of materials incorporated in the work.
  
- D. **SURVIVAL:** All of CONTRACTOR's warranty obligations shall survive abandonment, termination, and completion of the Agreement. Neither Final Payment nor any other provision in the Contract Documents shall constitute County's acceptance of work not performed in accordance with the Contract Documents nor relieve CONTRACTOR of liability with respect to its warranty obligations or for Defective Work.

**12. AFFIRMATIVE ACTION FOR DISABLED WORKERS:** CONTRACTOR will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The recipient or CONTRACTOR agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, promotion, demotion, transfer, recruitment, advertising, layoff, or termination.

**13. EMPLOYEE ELIGIBILITY VERIFICATION:** The CONTRACTOR warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and

others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The CONTRACTOR shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The CONTRACTOR shall retain all such documentation for all covered employees for the period prescribed by the law. The CONTRACTOR shall indemnify, defend with counsel approved in writing by COUNTY, and hold harmless, the COUNTY, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the CONTRACTOR or the COUNTY or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

**14. HEALTH AND SAFETY LAWS AND REGULATIONS:** CONTRACTOR shall prepare a Health and Safety Plan (H&SP) in compliance with all local, municipal, State, and Federal health and safety laws, orders, and regulations applicable to CONTRACTOR'S operations in the performance of the Scope of Services hereunder. While on the premises of COUNTY, CONTRACTOR and CONTRACTOR'S employees, Subcontractors, and agents shall comply with applicable requirements of the Occupational Safety and Health Act and any State-approved plan, and the regulations there under, to the extent applicable and shall ensure that all CONTRACTOR'S employees, Subcontractors, and agents have a safe place of work on the premises of COUNTY.

The H&SP shall be submitted to COUNTY within ten (10) calendar days after the award of the Contract. The Notice to Proceed (NTP) with construction under this Agreement will be contingent upon receipt of an H&SP acceptable to COUNTY'S OC Waste & Recycling Safety Officer or designee. Refer to Health and Safety Plan Checklist, of the General Conditions.

It is COUNTY'S intention to return its comments within ten (10) calendar days after receipt of the H&SP. Refer to the Agreement as to COUNTY'S intent with regard to issuance of the NTP. Any claims by CONTRACTOR for adjustments in time and/or cost for delays in processing the NTP due to CONTRACTOR'S failure to deliver an H&SP acceptable to COUNTY will not be considered.

CONTRACTOR shall be solely and completely responsible for conditions including safety of all persons and property during the performance of the work. COUNTY'S acceptance/concurrence of CONTRACTOR'S H&SP does not relieve or transfer any such responsibilities to COUNTY.

**15. WAGE RATES:** Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the CONTRACTOR shall comply with the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute the Contract. The per diem wages and general prevailing wage rates are from the Director of the Department of Industrial Relations. Copies of these rates may be obtained at a cost from the State Office, Department of Industrial Relations or at the Department of Industrial Relations website <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>. The CONTRACTOR shall post a copy of the wage rates at the job site and shall pay the prevailing wage rates as determined by the Director of Industrial Relations for each craft, classification, or type of worker needed in the performance of this Contract. The CONTRACTOR shall comply with the provisions of the Labor Code including but not limited to Sections 1774, 1775, 1776, and 1813.

**16. LIABILITY INSURANCE: CONTRACTOR**, by executing this Agreement, hereby certifies:

"I am aware of the provisions of Section 3700 of the Labor Code that require every employer to be insured against liability for Workers Compensation or undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Contract. CONTRACTOR agrees to provide and maintain all other insurance required by the General Condition."

**17. SIGNATURE REQUIREMENTS:** When the CONTRACTOR is a corporation, the Agreement must be signed by two corporate officers, as follows:

- a. One signature by the chairman of the board, the president, or any vice president and
- b. One signature by the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer.

**18. SOLE AND ONLY AGREEMENT:** This Agreement constitutes the sole and only agreement between the parties hereto with respect to the services herein described and correctly sets forth the obligations of each party. Any representations or agreements not specifically contained herein are null and void. Any amendments hereto shall be made in writing, signed by both parties.

***SIGNATURE PAGE FOLLOWS***

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written.

Dated: \_\_\_\_\_

COUNTY OF ORANGE  
a political subdivision of the State of California



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

SIGNED AND CERIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE BOARD OF SUPERVISORS

Attest:

\_\_\_\_\_  
Robin Stieler  
Interim Clerk of the Board  
County of Orange, California

\_\_\_\_\_  
"CONTRACTOR"

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

**IMPORTANT NOTICE FOR CORPORATIONS:**

Based on California Corporations Code Section 313: One of the following two methods must be used by a corporation when it enters into a contract with the County:

1. The document must be signed by two people. One of them must be the chairman of the board, the president or any vice president. The other must be the secretary, any assistant secretary, the chief financial officer or any assistant treasurer.
2. One corporate officer may sign the Document, providing that written evidence of the officer's authority to bind the corporation with only his or her signature must be provided. This evidence would ideally be a corporate resolution.

APPROVED AS TO FORM:  
County Counsel

Signature: 

By: JAMES STEINMANN

Dated: 5.5.15