

CITY OF MISSION VIEJO

AGREEMENT  
FOR COUNTY SERVICES  
OVER \$30,000  
**CONTRACT FOR**

**ROAD MAINTENANCE AND OPERATION**

~~THIS AGREEMENT~~ THIS CONTRACT (hereinafter "Agreement") is made and ~~effective as~~  
of entered into this \_\_\_\_ day of \_\_\_\_, 20 \_\_\_\_, ~~July 1, 2013,~~ by and between, The CITY OF  
MISSION VIEJO, a municipal corporation, hereinafter designated as ("CITY") and The COUNTY OF  
ORANGE, a political subdivision of the State of California, hereinafter referred to as ("COUNTY") with  
CITY and COUNTY sometimes individually referred to as "Party" or collectively referred to as "Parties". In  
consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

**RECITALS**

WHEREAS, CITY and COUNTY entered into contract number D13-007 for COUNTY to provide  
certain road maintenance and operation functions for the public streets located within the CITY limits for  
the term of July 1, 2013 through and including June 30, 2015.

WHEREAS, COUNTY is willing to continue to perform certain road maintenance and operation  
functions for those public streets located within the CITY plus any new public streets accepted by CITY  
and accept payment from CITY for the cost of those services; and

WHEREAS, the Parties are desirous of entering into an agreement to continue services and  
supersede agreement number D13-007.

NOW, THEREFORE, the Parties mutually agree as follows:

**ARTICLES**

**A. DEFINITIONS**

1. Work Plan: For the purposes of this Agreement, the term Work Plan shall mean the  
CITY's annual fiscal year's Work Plan and budget. The Work Plan for July 1, 2015 through June 30, 2016  
("Year 1") is hereby attached as Attachment A. The Work Plan for July 1, 2016 through and including  
June 30, 2017 ("Year 2") shall be provided to COUNTY by October 1, 2015.

2. Force Account: For the purposes of this Agreement, the term Force Account shall mean in house County labor resources.

4. **B. TERM**

~~2. This Agreement shall commence on July 1, 2013, and shall remain and continue in effect until tasks described herein are completed, but in no event later than June 30, 2015, unless sooner terminated pursuant to the provisions of this Agreement. The term of this Agreement shall be for two (2) years commencing on July 1, 2015, through and including June 30, 2017 with an option for one (1), two (2) year extension upon mutual agreement by both parties, unless otherwise terminated by either Party as provided in paragraph C.~~

~~3. SERVICES. COUNTY shall perform the tasks described according to the schedule of performance as set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full.~~

~~4. PERFORMANCE. COUNTY shall at all time faithfully, competently and to the best of its ability, experience, and talent, performs all tasks described herein. COUNTY represents to the CITY that it has the qualifications necessary to perform the tasks described herein. COUNTY shall employ, at minimum, generally accepted standards and practices utilized by contractors engaged in providing similar services as are required of COUNTY hereunder in meeting its obligations under this Agreement.~~

5. PAYMENT.

~~a. The CITY agrees to pay COUNTY monthly, for actual expenses incurred while performing the tasks identified on Exhibit A. This amount shall not exceed nine hundred and eighty seven thousand, six hundred twelve dollars (\$987,612) per year for the total term of the Agreement unless additional payments are approved in this Agreement. Any terms or conditions set forth on Exhibit A which do not describe the work to be performed, the payment rates and terms, or the payment schedule have not been agreed to by the CITY and shall not be deemed a part of this Agreement.~~

~~b. COUNTY shall not perform or be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional~~

1 services are authorized in advance and in writing by the City Manager, or his or her designee. COUNTY  
2 shall perform and be compensated for any additional services in the amounts and in the manner as  
3 agreed to by City Manager and COUNTY at the time CITY's written authorization is given to COUNTY for  
4 the performance of said services. The City Manager may approve additional work not to exceed 10% of  
5 the contract amount approved by City Council or \$15,000 whichever is less. Any additional work in excess  
6 of this amount shall be approved by the City Council.

7 c. COUNTY shall submit invoices monthly for actual services performed. Invoices shall be  
8 submitted on or about the first business day of each month, for services provided in the previous month.  
9 Payment shall be made within thirty (30) days of receipt of each invoice as to all nondisputed fees. If the  
10 CITY disputes any of COUNTY's fees it shall give written notice to COUNTY within 30 days of receipt of  
11 an invoice of any disputed fees set forth on the invoice.

12 ~~6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE.~~

13 a. Either party may at any time, for any reason, with or without cause, terminate this  
14 Agreement, or any portion, by serving upon the non-terminating party a Notice of Termination at least  
15 thirty (30) days prior to the date of termination. The terminating party shall not be obligated to explain its  
16 reasons for termination. Upon receipt of said notice, the non-terminating party shall immediately cease all  
17 work under this Agreement, unless the notice provides otherwise. If the terminating party terminates a  
18 portion of this Agreement, such termination shall not make void or invalidate the remainder of this  
19 Agreement.

20 b. In the event this Agreement is terminated pursuant to this Section, the CITY shall pay to  
21 COUNTY the actual value of the work performed up to the time of termination. Upon termination of the  
22 Agreement pursuant to this Section, the COUNTY will submit an invoice to the CITY pursuant to Section 3.

23 ~~6. DEFAULT.~~

24 a. The COUNTY's failure to comply with the provisions of this Agreement may constitute  
25 default. In the event that COUNTY is in default for cause under the terms of this Agreement, CITY shall  
26 have no obligation or duty to continue compensating COUNTY for any work performed after the date of

1 default and can terminate this Agreement immediately by written notice to COUNTY. If such failure by  
2 COUNTY to make progress in the performance of work hereunder arises out of causes beyond  
3 COUNTY's control, and without fault or negligence of COUNTY, it shall not be considered a default.

4       b. ~~If the City Manager or his or her delegate determines that the COUNTY is in default in the~~  
5 ~~performance of any of the terms or conditions of this Agreement, it shall serve the COUNTY with written~~  
6 ~~notice of the default. The COUNTY shall have (10) days after service upon it of said notice in which to~~  
7 ~~cure the default by rendering a satisfactory performance. In the event that COUNTY fails to cure its~~  
8 ~~default within such period of time, the CITY shall have the right, notwithstanding any other provision of this~~  
9 ~~Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy~~  
10 ~~to which it may be entitled at law, in equity or under this Agreement.~~

11       c. ~~The CITY's failure to comply with the provisions of this Agreement may constitute default.~~  
12 ~~In the event the CITY is in default for cause under the terms of this Agreement, COUNTY shall have no~~  
13 ~~obligation or duty to continue to perform any of its obligations or duties under this Agreement after the date~~  
14 ~~of default and may terminate this Agreement immediately by written notice to CITY. If the COUNTY's~~  
15 ~~Director of OCPW, or his designee, determines that CITY is in default in the performance of any of the~~  
16 ~~terms or conditions of this Agreement, then the OCPW Director or his designee shall cause to be served~~  
17 ~~on CITY written notice stating the nature of the default. CITY shall have Ten (10) days after service upon~~  
18 ~~it of said notice in which to cure the default by rendering satisfactory performance. In the event that CITY~~  
19 ~~fails to cure its default within such period of time, COUNTY shall have the right, notwithstanding any other~~  
20 ~~provision of this Agreement, to terminate this Agreement without further notice and without prejudice to~~  
21 ~~any other remedy to which it may be entitled at law, in equity or under this Agreement.~~

22       7. ~~OWNERSHIP OF DOCUMENTS.~~

23       a. ~~COUNTY shall maintain complete and accurate records with respect to sales, costs,~~  
24 ~~expenses, receipts and other such information required by CITY that relate to the performance of services~~  
25  
26 ~~under this Agreement. COUNTY shall maintain adequate records of services provided in sufficient detail~~

to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Unless prohibited by law, COUNTY shall provide free access to the representatives of CITY or its designees (including Public Records Act requestors) at reasonable times to such books and records, shall permit CITY to make transcripts therefrom as necessary, and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment. All examinations, inspections and auditing by CITY of the books, records and other work, data, documents, proceedings and activities COUNTY maintains or performs for this Agreement shall be during COUNTY's regular business hours and subject to at least forty-eight (48) hours advance written notice.

b. Unless prohibited by law, upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the CITY and may be used, reused or otherwise disposed of by the CITY without the permission of COUNTY. With respect to computer files, unless prohibited by law, COUNTY shall make available to the CITY, upon reasonable written request by the CITY, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

c. With respect to the design of public improvements, COUNTY shall not be liable for any injuries or property damage resulting from the reuse of the design at a location other than that specified in Exhibit A without the written consent of COUNTY.

## **C. TERMINATION**

Either Party may at any time, for any reason, with or without cause terminate this Agreement, or any portion, by serving upon the non-terminating Party a written Notice of Termination at least 30 days prior to the date of termination. The terminating Party shall not be obligated to explain its reasons for termination. If the terminating Party terminates a portion of this Agreement, such termination shall not make void or invalidate the remainder of this Agreement.

**D. COMPENSATION:**

1. CITY agrees that the total of all COUNTY invoices for work performed during Year 1 per the Year 1 Work Plan (Attachment A) shall not exceed \$987,612 (which is the total dollar figure in the Year 1 Work Plan). The total of all COUNTY invoices for work it performed during Year 2 that will be listed in the Year 2 Work Plan shall not exceed the total dollar figure in the Year 2 Work Plan, provided that such figure does not exceed 110% of the Year 1 Work Plan's total dollar figure. If the Parties agree to a Year 2 total dollar figure that exceeds 110% of the Year 1 Work Plan's total dollar figure, they must prepare a written amendment to this Agreement."

2. COUNTY shall not perform or be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager or designee. COUNTY shall perform and be compensated for any additional services in the amounts and in the manner as agreed to by City Manager or designee and OC Public Works Director or designee at the time CITY's written authorization is given to COUNTY for the performance of said services. The City Manager or designee may approve additional work not to exceed 10% of the contract amount approved by City Council or \$15,000 whichever is less. Any additional work in excess of this amount shall be approved by the City Council.

3. COUNTY shall submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the CITY disputes any of COUNTY's fees it shall give written notice to COUNTY within 30 days of receipt of an invoice of any disputed fees set forth on the invoice.

~~8. INDEMNIFICATION.~~ **E. INDEMNIFICATION**

COUNTY agrees to ~~defend~~, indemnify, defend with counsel approved in writing, protect and hold harmless the CITY, its officers, elected and appointed officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, or liability of any kind or nature which the CITY, its officers, elected and appointed officials, employees and volunteers may sustain or

1 incur or which may be imposed upon them for injury to or death of persons, or damage to property arising  
2 out of COUNTY's negligent or wrongful acts ~~or omissions~~ in performing ~~or failing to perform~~ under the  
3 terms of this Agreement, ~~excepting only liability arising out of the negligence of the CITY.~~ COUNTY shall  
4 defend, at its expense, including attorney fees, CITY, its officers, agents, employees, independent  
5 contractors and volunteers in any legal action or claim of any kind based upon such alleged acts or  
6 omissions. The COUNTY shall not be liable in any way or indemnify the CITY, its officers, elected or  
7 appointed officials, employees and volunteers for CITY's negligence or the negligence of CITY's officers,  
8 officials, employees or volunteers.

9 COUNTY agrees that it will follow its work management system field manual and the CalTrans  
10 manual of traffic controls for construction and maintenance work zones to avoid or minimize risk of loss.

11 CITY agrees to indemnify, defend with counsel approved in writing ~~by COUNTY,~~ protect and hold  
12 harmless the COUNTY, its officers, elected ~~and~~ or appointed officials, ~~officers,~~ employees ~~and~~  
13 volunteers, ~~agents and those special districts and agencies which COUNTY's Board of Supervisors acts~~  
14 ~~as the governing Board ("COUNTY INDEMNITEES")~~ harmless from ~~and against~~ any ~~and all~~ claims,  
15 demands, losses, defense cost or expenses, or liability of any kind or nature which the COUNTY, its  
16 officers, elected or appointed officials, employees or volunteers may sustain or incur or which may be  
17 imposed upon them for injury to or death of persons or damage to property arising out of the CITY's  
18 negligent or wrongful acts in performing under the terms of this Agreement, ~~including but not limited to~~  
19 ~~personal injury or property damage, arising from or related to CITY's negligence or wrongful acts or~~  
20 ~~omissions in performing or failing to perform under the terms of this Agreement, excepting only liability~~  
21 ~~arising out of the negligence of COUNTY.~~ The CITY shall not be liable in any way or indemnify the  
22 COUNTY, its officers, elected or appointed officials, employees and volunteers for COUNTY's negligence  
23 or the negligence of COUNTY's officers, elected or appointed officials, employees or volunteers.

24 If judgment is entered against CITY and COUNTY by a court of competent jurisdiction because of  
25 the concurrent active negligence of CITY and COUNTY, CITY and COUNTY agree that liability will be  
26 apportioned as determined by the court. Neither party shall request a jury apportionment.

Without limiting the foregoing, CITY indemnification also extends to COUNTY employees or agents serving as inspectors in the CITY whose duties include recurring inspection to identify maintenance and repair needs. The failure to identify a hazard not currently involved in maintenance or repair which results in claim shall not transfer responsibility for the hazard to the COUNTY. COUNTY responsibility includes maintenance and repair work in progress by COUNTY employees or contract work under COUNTY administration.

Each Party agrees to fully cooperate with the other and assist the other Party hereto in all matters relating to losses covered by the terms of this Agreement, and more specifically but not being limited thereby, each Party will:

1. Give prompt notification of all occurrences covered or likely to be covered by the terms hereof, together with the particulars thereof the other part hereto;

2. If claim is made, or suit is brought against a Party on occurrences covered or likely to be covered by the terms hereof, such party shall immediately forward every claim, demand, notice, summons or other process received by it to the other Party hereto.

CITY may, at its own expense, participate in the defense of any suit, or in the prosecution of any appeal affecting matters herein involved where the duty of defense or prosecution is imposed on COUNTY, and where COUNTY has consented thereto.

~~COUNTY acknowledges that CITY is self-insured and a member of a public agency insurance pool and will be subject to the terms of all such insurance coverage.~~

~~9. INSURANCE REQUIREMENTS. COUNTY shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by COUNTY, its agents, representatives, or employees.~~

~~\_\_\_\_\_ If COUNTY uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth herein, COUNTY agrees to amend, supplement or endorse the existing coverage to do so.~~



1 ~~CITY acknowledges that COUNTY is self-insured. COUNTY may fulfill all or any portion of its~~  
2 ~~insurance obligations under this Agreement by providing CITY with written evidence reasonably~~  
3 ~~satisfactory to CITY of said self-insurance. COUNTY acknowledges that CITY is self-insured and a~~  
4 ~~member of a public agency insurance pool and is subject to the terms and conditions of its insurance~~  
5 ~~policies.~~

6  
7 ~~10. INDEPENDENT CONTRACTOR.~~

8 ~~a. COUNTY is and shall at all times remain as to the CITY a wholly independent contractor.~~  
9 ~~The personnel performing the services under this Agreement on behalf of COUNTY shall at all times be~~  
10 ~~under COUNTY's exclusive direction and control. Neither CITY nor any of its officers, employees or~~  
11 ~~agents shall have control over the conduct of COUNTY or any of COUNTY's officers, employees or~~  
12 ~~agents, except as set forth in this Agreement. COUNTY shall not at any time or in any manner represent~~  
13 ~~that it or any of its officers, employees or agents are in any manner officers, employees or agents of the~~  
14 ~~CITY. COUNTY shall not incur or have the power to incur any debt, obligation or liability whatever against~~  
15 ~~CITY, or bind CITY in any manner.~~

16 ~~b. No employee benefits shall be available to COUNTY in connection with the performance of~~  
17 ~~this Agreement. Except for the fees paid to COUNTY as provided in the Agreement, CITY shall not pay~~  
18 ~~salaries, wages, or other compensation to COUNTY for performing services hereunder for CITY. CITY~~  
19 ~~shall not be liable for compensation or indemnification to COUNTY for injury or sickness arising out of~~  
20 ~~performing services hereunder.~~

21 ~~11. LEGAL RESPONSIBILITIES. The COUNTY shall keep itself informed of State and Federal~~  
22 ~~laws and regulations which in any manner affect those employed by it or in any way affect the~~  
23 ~~performance of its service pursuant to this Agreement. The COUNTY shall at all times observe and~~  
24 ~~comply with all such laws and regulations. The CITY, and its officers and employees, shall not be liable at~~  
25 ~~law or in equity occasioned by failure of the COUNTY to comply with this section.~~

26 ~~12. RELEASE OF INFORMATION. CITY acknowledges that COUNTY has advised CITY that~~  
~~COUNTY is a public body subject to the California Public Records Act (Govt. Code Section 6250 et. seq.)~~

(the "Act"). COUNTY acknowledges that CITY has advised COUNTY that CITY is also a public body subject to California Public Records Act; therefore the parties agree that all provisions in this Section 12 equally apply to CITY as well as COUNTY for all purposes. Accordingly, all information gained by COUNTY in the performance of this Agreement is subject to disclosure as may be required under the Act. In the event COUNTY receives a request for public records under the Act, COUNTY shall notify CITY. In the event CITY objects to the release of the alleged public record by COUNTY, COUNTY shall comply with all orders from courts of competent jurisdiction, including any court order obtained by CITY that enjoins COUNTY from releasing the alleged public record. CITY shall obtain said order, if at all, within the time limit provided to COUNTY under the Act to respond to public record requests. All costs associated with obtaining said temporary or permanent order shall be borne by CITY.

a. COUNTY shall use its best efforts to promptly notify CITY should COUNTY, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admission or other discovery request, court order or subpoena from any person regarding this Agreement and the work performed thereunder. CITY retains the right, but has no obligation, to represent COUNTY and/or be present at any deposition, hearing or similar proceeding. COUNTY agrees to cooperate fully with CITY and to provide CITY with the opportunity to review any response to discovery requests provided by COUNTY. However, CITY's right to review any such response does not imply or mean the right by CITY to control, direct, or rewrite said response.

b. CITY shall use its best efforts to promptly notify COUNTY should CITY, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admission or other discovery request, court order or subpoena from any person regarding this Agreement and the work performed thereunder. COUNTY retains the right, but has no obligation, to represent CITY and/or be present at any deposition, hearing or similar proceeding. CITY agrees to cooperate fully with COUNTY and to provide COUNTY with the opportunity to review any response to discovery requests provided by CITY. However, COUNTY's

right to review any such response does not imply or mean the right by COUNTY to control, direct, or  
rewrite said response.

13. **F. NOTICES.**

Any **and all** notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice permitted or required to be given hereunder shall be deemed duly given 1) upon actual delivery, if delivery is by hand; or 2) upon delivery by the United States Mail if delivery is by postage paid registered or certified return receipt requested mail. Each such notice shall be sent to the respective Party at the address indicated below;

To City: **FOR CITY:**                      ~~City of Mission Viejo~~ **Manager**  
200 Civic Center  
Mission Viejo, California 92691  
~~Attention: City Manager~~

~~To COUNTY:~~ **FOR COUNTY:**      ~~County of Orange~~ Contract Administrator  
~~OC Public Work/OC Engineering~~  
~~OC Operations & Maintenance~~  
2301 N. Glassell Street  
Orange, California 92865

**G. PROJECT MANAGER**

The CITY shall appoint a Project Manager to act as liaison between the COUNTY and CITY during the term of this Agreement. The CITY's Project Manager shall coordinate the activities of the CITY staff assigned to work with COUNTY. COUNTY shall appoint a Contract Administrator. COUNTY's

Contract Administrator shall direct the COUNTY's efforts in fulfilling COUNTY's obligations under this Agreement.

**H. ENTIRE AGREEMENT**

This Agreement along with each fiscal year's annual Work Plan contains the entire contract between the Parties with respect to the matters contained herein.

**I. GOVERNING LAW AND VENUE**

The CITY and COUNTY understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the Parties to this Agreement and also govern the interpretation of this Agreement. 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 hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.

**J. AMENDMENTS**

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties, no oral understanding or agreement not incorporated herein shall be binding on either of the Parties, and no exceptions, alternatives, substitutes or revisions are valid or binding on the COUNTY or CITY unless authorized in writing.

~~14.~~ **K. ASSIGNMENT.**

Neither party shall assign its performance of this Agreement, nor any part thereof, without the prior written consent of the non-assigning party. Any attempt by either Party to assign this Agreement or any portion thereof without the express written consent of the non-assigning Party shall be invalid and constitute a breach of contract.

~~15.~~ **L. CONSENT TO BREACH NOT WAIVER.**

No term or provision of this Agreement shall be deemed waived and no breach excused, unless such a waiver or consent is in writing and 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 consent to, waiver of, or excuse for any other different or subsequent breach.

~~16.~~ **M. FORCE MAJEURE.**

COUNTY shall not be assessed with damages or penalties for unsatisfactory performance during any delay in the performance of any work under this Agreement caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided COUNTY gives written notice of the cause of the delay to the CITY within 24 hours of the start for the delay. Dedicated City crew provided through this Agreement and as defined in the Work Plan and Budget shall remain assigned to the City throughout any such event or situation.

~~17.~~ **N. HEADINGS.**

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

~~18.~~ **O. CALENDAR DAYS.**

Any reference to the word "day" or "days" shall mean calendar day or calendar days respectively, unless otherwise expressly provided.

~~19. LICENSES. At all times during the term of this Agreement, COUNTY shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.~~

~~20. GOVERNING LAW. The CITY and COUNTY understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. 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 to hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.~~

1       ~~21. **LITIGATION.** Any litigation concerning this Agreement shall take place in a court of competent~~  
2 ~~jurisdiction located in Orange County, California. In any action or proceeding to enforce or interpret any~~  
3 ~~provision of this Agreement, or where any provision hereof is validly asserted as a defense, each party~~  
4 ~~shall bear its own attorney's fees, costs and expenses.~~

5       ~~22. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding between the~~  
6 ~~parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous~~  
7 ~~agreements, understandings, representations and statements, oral or written, are merged into this~~  
8 ~~Agreement and shall be of no further force or effect. Each party is entering into this Agreement based~~  
9 ~~solely upon the representations set forth herein and upon each party's own independent investigation of~~  
10 ~~any and all facts such party deems material.~~

11       **P. ATTORNEY FEES**

12       In any action or proceeding to enforce or interpret any provision of this Agreement or where any  
13 provisions hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs  
14 and expenses.

15       ~~23.~~       **Q. INTERPRETATION.**

16       This Agreement has been negotiated at arm's length and between persons sophisticated and  
17 knowledgeable in the matters dealt with in this Agreement. In addition, each Party has been represented  
18 by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly  
19 declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party  
20 further acknowledges that they have not been influenced to any extent whatsoever in executing this  
21 Agreement by any other Party hereto or by any person representing them, or both. Accordingly, any rule  
22 of law, (including California Civil Code section 1654) or legal decision that would require interpretation of  
23 any ambiguities in this Agreement against the Party that drafted it is not applicable and is deemed waived.  
24 The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purpose of the  
25 Parties to this Agreement.

26       ~~24.~~       **R. SEVERABILITY.**

1 If any term, **covenant**, condition, provision or article of this Agreement is held by a court of competent  
2 jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full  
3 force and effect and shall in no way be affected, impaired or invalidated thereby.

4 ~~25.~~ **S. DISPUTE.**

5 If a dispute arises, the Parties' respective designated representatives shall attempt to resolve the  
6 issue. ~~If such issue cannot be promptly resolved the Public Services Operations Manager and the City~~  
7 ~~Contracts Manager shall discuss and endeavor to resolve such issue within twenty working days. In the~~  
8 ~~event the Public Services Operations manager~~ **County Contract Administrator** and the ~~City Contracts~~  
9 ~~Manager~~ **City's Project Manager** have failed to resolve the issue within twenty working days after the  
10 referral of the issue to them, the Parties shall refer the issue to the ~~Director of Public Works and OC Public~~  
11 ~~Works Operations Manager~~ **City Engineer/Director of Public Works and OC Public Works (OCPW)**  
12 **Operations Manager** for resolution.

13 ~~26.~~ **T. AUTHORITY TO EXECUTE THIS AGREEMENT.**

14 ~~The person or persons executing this Agreement on behalf of COUNTY warrants and represents that~~  
15 ~~he or she has the authority to execute this Agreement on behalf of the COUNTY and has the authority to~~  
16 ~~bind COUNTY to the performance of its obligations hereunder.~~

17 ~~The person or persons executing this Agreement on behalf of CITY warrants and represents that~~  
18 ~~he or she has the authority to execute his Agreement on behalf of CITY and has the authority to bind~~  
19 ~~CITY to the performance of its obligations hereunder.~~ **The individuals executing this Agreement represent**  
20 **and warrant that this Agreement has been duly authorized, and executed by, and constitutes the legally**  
21 **binding obligation of, their respective organization or entity, enforceable in accordance with its terms.**

22 **CITY AND COUNTY RESPONSIBILITIES:**

23 **U. COUNTY SHALL:**

24 **1. Develop a preliminary annual Work Plan for Year 2 to provide field operations, contract**  
25 **effort and support operations required to provide the level of maintenance requested by the CITY and**  
26 **within the "not to exceed" amount established by this Agreement. The preliminary Work Plan will include**  
**estimates for manpower and equipment. This Work Plan will be based on the historical maintenance**

workload in the CITY, discussions with CITY staff of future priority and emphasis and changes in the composition of the COUNTY work force and contract capability. COUNTY shall submit the preliminary annual Work Plan to CITY for review by August 1 of each year for the next fiscal year scheduled to begin July 1. The annual Work Plan shall be finalized by October 1 of each year for the next fiscal year scheduled to begin July 1, consistent with CITY recommendations and available resources. The Work Plan shall include an allowance for miscellaneous work to respond to emergencies. The final annual Work Plan for each fiscal year shall be incorporated into and attached as part of this Agreement as Attachment A.

2. Perform road maintenance and operation functions in general accordance with the annual Work Plan but based upon specific inspection reports of required maintenance activities, requests from CITY staff for specific work and the established schedule of cyclical maintenance activities. Road maintenance activities may be performed by COUNTY either by force account or competitively bid contract, or a combination of the two.

3. Perform emergency or special road maintenance and operation functions necessitated by accidents, storms or other weather conditions, slides, settlements, or other unusual or unexpected damage to a roadway, structure, or facility.

4. Be and is hereby designated as project engineer, contract and construction agent to do and perform all things necessary in order to design and accomplish road maintenance tasks by contract.

5. Prepare general and specific work schedules. General schedule shall indicate work to be accomplished by contract and work to be accomplished by force account. Provide copy of specific work schedule for COUNTY force account work to CITY on a biweekly basis and shall include within the two-week schedule the CITY service requests.

6. Submit monthly progress updates to the CITY in the form of activity status reports, contract status and backlog reports. Meet periodically with CITY to discuss the annual Work Plan and services being provided. Notify CITY in advance of cost overruns associated with deviations from the Work Plan and work with CITY to implement strategies for budget and/or service level adjustments commensurate with available funding. For work being performed by force account pursuant to Section



1 U.3 above, COUNTY shall notify the CITY in advance of any cost overruns being incurred and obtain the  
2 CITY's approval before incurring such cost overruns (CITY shall not unreasonably withhold its approval).  
3 For work being performed by competitively bid contract pursuant to Section U.3 above, COUNTY shall  
4 notify the CITY of any proposed change order submitted by the contractor and obtain the CITY's approval  
5 of any change order before approving it (CITY shall not unreasonably withhold its approval). CITY shall  
6 not be responsible for any cost overruns or change orders incurred by COUNTY that CITY did not  
7 approve pursuant to this section.

8 7. Submit to CITY Maintenance Inspection Reports of identified work including activities not  
9 covered by the annual Work Plan or that would exceed levels set forth in the plan to CITY. Work  
10 exceeding the annual Work Plan will be the subject of separate discussion regarding funding, scheduling  
11 and accomplishment.

12 8. Provide support operations required for providing normal maintenance operations in  
13 accordance with the annual Work Plan. This includes the following operations and functions:

14 a. Provide inspection of road facilities within CITY, preparation of standard  
15 Maintenance Inspection Reports (MIR) to initiate maintenance work, investigation of complaints from the  
16 public and CITY representatives and routine investigation of the Public Works maintenance aspects of  
17 claims made against the CITY.

18 b. Provide scheduling services for preparation of work assignments based upon  
19 inspection reports and/or input from CITY in accordance with the annual Work Plan. Develop and  
20 maintain a backlog report for activities for the CITY area to track work performed, and prepare reports of  
21 project costs for those projects where special reimbursement is possible.

22 c. Provide all routine service, supplies and logistical support for performance of  
23 maintenance and operations functions for COUNTY crews in accordance with its standard warehouse  
24 operating procedures.

25 d. Provide contract administration/inspection services for maintenance work  
26 performed by contract in CITY at COUNTY direction.

1 e. Provide logistical support COUNTY crews including contract administration of  
2 specialty contractors, support contracts, special materials and services.

3 9. Provide all supervision and management required for the annual Work Plan

4 10. For the fiscal year July 1, 2015 through June 30, 2016, perform all of the work as  
5 requested by CITY listed on annual Work Plan for the 2015-16 fiscal year. The Work Plan is a schedule  
6 of specific activities for street maintenance and repair that the CITY intends to have accomplished during  
7 fiscal year on which is stated the quantities of particular activities that are required to accomplish the road  
8 maintenance and repair. Each fiscal year's annual Work Plan shall have the prices, rates and fees set  
9 forth charges incurred by the CITY during that fiscal year based upon the projected material, labor,  
10 burden, overhead, equipment and contracted services for the upcoming fiscal year. In addition to the  
11 prices, rates and fees set forth in the annual Work Plan, the COUNTY shall charge CITY an additional  
12 four (4) percent of all billed costs for Risk Management Services. The COUNTY is self-insured.  
13 Therefore this additional cost will cover liability issues arising from any claims pursuant to terms listed in  
14 section E of this Agreement. In addition, COUNTY shall prepare a report, subject to review and approval  
15 of the CITY's Streets Manager, which describes each of the activities listed on the annual Work Plan.

16 **V. CITY SHALL:**

17 1. Review service levels contained within COUNTY's preliminary annual Work Plan, and  
18 make adjustments by October 1, based upon CITY's budget and desired service levels and consistent  
19 with available COUNTY resources and contract capability.

20 2. Meet periodically with COUNTY to discuss the annual Work Plan and services being  
21 provided. Review with COUNTY cost overruns associated with deviations from the Work Plan and  
22 develop strategies for budget and/or service levels commensurate with available funding.

23 3. Notify COUNTY of priority service requests to be included within the following two-week  
24 work schedule. Review work schedule for force account and contract work.

25 4. Designate an individual or individuals authorized to submit service and designate that the  
26 individual or individuals authorized to review and approve contract documents as the CITY ENGINEER.

5. Except as otherwise provided in this Agreement, pay COUNTY for entire total cost incurred by COUNTY for maintenance, operation, support and contract functions performed within CITY by COUNTY staff or COUNTY administered contract to include all costs for labor, equipment, materials, service contracts, special maintenance contracts, repair contracts, and all applicable overhead and supervisory expenses in accordance with established COUNTY prices, rates, fees and charges at the time work is performed.

6. Pay COUNTY invoiced costs by payment due date. Payment due dates are invoice date plus thirty days.

7. Pay late charges for invoices not paid within thirty (30) days after receipt in accordance with the following schedule:

a. Over-the-counter payments will be assessed a late charge if any payment is not received by the COUNTY by the payment due date.

b. Payments transmitted to the COUNTY via the U.S. Mail that have payer's postage meter mark will be assessed a late charge if any payment is not received by the COUNTY by the payment due date plus one day.

c. Payments transmitted to the COUNTY via the U.S. Mail that have a U.S. Post Office postmark dated after the payment due date will be assessed a late charge.

d. The late charge assessed in each of these situations shall be three-quarters of one percent (0.75%) of the payment due and unpaid plus \$100.00 for late payments made within thirty (30) days of the payment due date. An additional charge of three-quarters of one percent (0.75%) of said payment shall be added for each additional thirty (30) day period that the payment remains unpaid. Late charges shall be added to the payment and invoiced to the contracting entity.

8. Serve as liaison with individual homeowners, homeowner association's citizen groups and other concerning performance of work and levels of service provided under this Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

COUNTY OF ORANGE

CITY OF MISSION VIEJO

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

~~Rhonda Reardon~~ Cathy Schlicht  
Mayor

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

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

SIGNED AND CERTIFIED THAT A COPY OF  
THIS AGREEMENT HAS BEEN DELIVERED TO  
THE CHAIR OF THE BOARD PER G.C. Sec 25103  
Reso 79-1535

Attest:

Attest:

By \_\_\_\_\_  
~~SUSAN NOVAK~~ Robin Stieler  
Interim Clerk of the Board of Supervisors of  
Orange County, California

Karen Hamman  
City Clerk

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

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

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

Approved As to Form:

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

William P. Curley, III  
City Attorney