

CONTRACT FOR
ROAD MAINTENANCE AND OPERATION

~~THIS CONTRACT (hereinafter "Agreement") is made and entered into this _____ day of _____, 20____, by and between The CITY OF LAKE FOREST, a municipal corporation, hereinafter designated as "**CITY**" and The COUNTY OF ORANGE, a political subdivision of the State of California, specifically the OC Public Works Department through its Operations and Maintenance Section, hereinafter referred to as "**COUNTY**" which may be referred individually as "Party" or collectively as "Parties".~~

This Amendment to Road Maintenance and Operations Agreement Number D11-003 is made and effective as of July 1, 2016, by and between the CITY OF LAKE FOREST, a municipal corporation, hereinafter referred to as "CITY" and the COUNTY OF ORANGE, a political subdivision of the State of California, hereinafter referred to as "COUNTY", which may hereinafter be referred to individually as "Party" or collectively as "Parties".

RECITALS

~~WHEREAS, CITY and COUNTY entered into contract number D05-080 for COUNTY to provide road maintenance and operation functions for the public streets located within the CITY limits for the term of July 1, 2006 through and including June 30, 2011;~~

~~_____ WHEREAS, CITY desires COUNTY to continue to provide those services;~~

~~_____ WHEREAS, COUNTY is willing to continue to perform 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;~~

~~_____ WHEREAS, the aforesaid road maintenance and operation functions will be set forth in the annual fiscal year's work plan developed by October 1 of the preceding fiscal year~~

~~("Work Plan"), which is attached hereto as Exhibit A and more fully described at Section A below (particularly Sections A.2 and A.12); and~~

~~WHEREAS, the Parties are desirous of entering into an agreement to continue services and supersede agreement number D05-080.~~

WHEREAS, CITY and COUNTY entered into Agreement D11-003, effective July 1, 2011 through June 30, 2016; and,

NOW THEREFORE, the Parties agree as follows:

AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

COUNTY AND CITY RESPONSIBILITIES:

A. COUNTY SHALL:

1. Each fiscal year develop an annual Work Plan and Budget for manpower, equipment, materials and contracts for CITY to provide normal maintenance and operation activities utilizing COUNTY's Maintenance Management System (MMS).

2. Develop a preliminary annual Work Plan to provide field operations, contract effort and support operations required to provide the level of maintenance requested by the CITY and within the "not to exceed" amount specified in 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 fiscal year scheduled to begin July 1. The annual Work Plan shall be finalized by October 1, consistent with CITY recommendations and available resources. 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 Exhibit A, which will amend Exhibit A on an annual basis. COUNTY will fully staff the positions identified in the annual work plan and budget without delay regardless of COUNTY hiring freezes and other personnel regulations that may prevent or unduly delay staffing vacant positions assigned to the CITY.

3. Perform general right-of-way maintenance and operation functions in 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 contract, or a combination of the two.

4. 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.

COUNTY shall provide resources and manpower to respond to City emergencies and provide preventative inspection assistance during major storm events and provide the appropriate resources to respond to flooding within the CITY. COUNTY shall provide the same level of emergency response to CITY in the event of regional disasters.

5. 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.

6. 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.

7. 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.

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

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

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

b. Provide scheduling services for preparation of work assignments based upon inspection reports and/or input from CITY in accordance with the annual Work Plan. Any work scheduled at quantities less than those listed on Exhibit B will be reimbursed at the time and materials prices, rates and fees described in the annual Work Plan unless otherwise negotiated by both Parties. Develop and maintain a backlog report for activities for the CITY area to track work performed, and prepare reports of project costs for those projects where special reimbursement is possible.

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

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

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

10. Include CITY requested special road maintenance work (i.e., slurry seal or overlay – with associated subgrade repairs/surface preparation work) in formally bid COUNTY contracts for slurry seal and A/C overlay work on County-owned roads and streets.

This includes the following:

a. Provide contract design, preparation and administration inspection service.

b. Submit plans and specifications for contract work to CITY for review and approval by the CITY engineer or designee, hereinafter referred to as “**CITY ENGINEER**”, for contracts with CITY portion estimated to exceed \$10,000. Plans and specifications are submitted for approval of design and construction features.

c. During the period of construction, have jurisdiction over the construction area for the purposes of construction and maintenance only.

d. Obtain the written concurrence of CITY ENGINEER prior to issuing contract change orders affecting contract design.

e. Request the CITY participate in the final inspection of contract work; consider the CITY comments on the quality and quantity of contract work prior to COUNTY filing the Notice of Completion.

f. Furnish and deliver to CITY, if requested, all documents required in connection with the construction and completion of the contract.

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

12. For the fiscal year July 1, 2011 through June 30, 2016, perform all of the work as requested by CITY listed on annual Work Plan for the respective 2011-2016 fiscal year.

The Work Plan is a schedule of specific activities for street maintenance and repair that the CITY intends to have accomplished during fiscal year on which is stated the quantities of particular activities that are required to accomplish the road maintenance and repair. Each fiscal year's annual Work Plan shall have the prices, rates and fees set forth charges incurred by the CITY during that fiscal year based upon the projected material, labor, burden, overhead, equipment and contracted services for the upcoming fiscal year. In addition to the prices, rates and fees set forth in the annual Work Plan, the COUNTY shall charge CITY an additional four (4) percent of all billed costs for Risk Management Services. The COUNTY is self insured. Therefore this additional cost will cover liability issues arising from any claims pursuant to terms listed in section E of this Agreement. In addition, COUNTY shall prepare a report, subject to review and approval of the CITY's Director of Public Works, which describes each of the activities listed on the annual Work Plan and provides guidelines for the performance of each activity, which is attached hereto as Exhibit B.

B. CITY SHALL:

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

2. Meet periodically with COUNTY to discuss the annual Work Plan and services being provided. Review with COUNTY cost overruns associated with deviations from the

Work Plan and develop strategies for budget and/or service levels commensurate with available funding.

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

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

5. 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. The CITY may take a discount from the monthly billing statement for early payment. Any payment received by the COUNTY twenty (20) days or more before the payment due date shall be entitled to a discount of one-quarter of one percent (0.25%). If the discount taken, and the payment is received by the COUNTY less than twenty (20) days before the payment due date, COUNTY staff shall immediately notify the CITY by telephone that the discount should not have been taken and that the balance is due by the original payment due date. If the balance is not received by the COUNTY in accordance with the dates as specified in Sections V-6 and V-7, applicable late charges shall be calculated on the balance due.

9. 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.

10. Be and is hereby designated the Lead Agency for purposes of the California Environmental Quality Act (CEQA) for all construction, maintenance and operations under this Agreement. .

COMPENSATION AND TERM

C. COMPENSATION:

~~1. CITY agrees that the total for all work performed under this Agreement shall not exceed \$1,773,000 for the first fiscal year 2011-12. Total cost for each subsequent fiscal~~

~~year after 2011-2012 shall not increase or decrease by more than 10% of the preceding year without mutual consent of the Parties as set forth in a written amendment to this Agreement. However, in the event the COUNTY provides emergency road maintenance necessitated by accidents, storms or other weather conditions or CITY requests specific tasks, these additional services will be provided on a time and materials basis. COUNTY shall be compensated by CITY in accordance with established COUNTY prices, rates, fees and charges at the time work is performed. The COUNTY may provide services to the CITY beyond the level of the annual Work Plan based on a request from the CITY and the availability of COUNTY work force or contract capability.~~

2. Section "C. Compensation-1" of the Agreement shall be amended to read in its entirety as follows:

1. CITY agrees that the total for all work performed under this Amendment shall not exceed \$300,000 for the term of July 1, 2016 through December 31, 2016. However, in the event the COUNTY provides emergency road maintenance necessitated by accidents, storms or other weather conditions or CITY requests specific tasks, these additional services will be provided on a time and materials basis. COUNTY shall be compensated by CITY in accordance with established COUNTY prices, rates, fees and charges at the time work is performed. The COUNTY may provide services to the CITY beyond the level of the annual Work Plan based on a request from the CITY and the availability of COUNTY work force or contract capability

2. The CITY may reduce or revise level of force account services provided under this agreement during the year to not less than 75% of the projected force account portion of Exhibit A to accommodate changes in the CITY budget and may utilize alternative source or

sources for services beyond the level of service in the projected plan. Projected contract work, including the special pavement maintenance shall be included in the Work Program and Budget.

D. TERM

~~That the term of this Agreement shall be for five (5) years commencing on July 1, 2011, through and including June 30, 2016, unless otherwise terminated by either Party as provided in Paragraph B. In the event that COUNTY or CITY desires to renew or extend this Agreement past the initial 5-year term ending on June 30, 2016, that Party shall notify the other Party in writing by July 1, 2015.~~

1. The term of the Agreement shall be extended for a period of six (6) months through December 31, 2016.

MISCELLANEOUS PROVISIONS

E. 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 ~~thirty 30 days~~ ~~six (6) months~~ prior to the date of termination. ~~The terminating Party shall not be obligated to explain its reasons for termination.~~ Upon receipt of said notice, the non-terminating Party shall ~~immediately~~ cease all work under this Agreement, unless the notice provides otherwise. If the terminating Party terminates a portion of this Agreement, such termination shall not make void or invalidate the remainder of this Agreement.

Except as otherwise specifically provided in this Amendment No. 1, all other terms and provisions of the Agreement shall remain unchanged and with full force and effect.

F. INDEMNIFICATION

COUNTY agrees to defend, indemnify, protect and hold harmless the CITY, its officers,

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

The COUNTY further agrees to defend and indemnify the CITY for any enforcement action by a California Regional Water Quality Board subjecting the CITY to penalties or civil liabilities as a result of the COUNTY's failure to clear the CITY's storm drains within the timeframes specified in the CITY's DAMP/LIP. This does not include responsibility for meeting storm water standards in any MS4 permit.

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

CITY agrees to defend, indemnify, protect and hold harmless the COUNTY, its officers, elected or appointed officials, employees and volunteers from and against any and all claims, demands, losses, defense cost or expenses, or liability of any kind or nature which the COUNTY, its officers, elected or appointed officials, employees or volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons or damage to property arising out of the CITY's negligent or wrongful acts or omission in performing under the terms of this Agreement. The CITY shall not be liable in any way or indemnify the COUNTY for COUNTY's negligence or the negligence of COUNTY's officers, elected or appointed officials, employees or volunteers.

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 or not included as part of the County's work under this agreement which results in a 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.

G. NOTICES

Any and all notices 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;

FOR CITY: Director of Public Works – Public Works Manager
25550 Commercentre Drive, Suite 100
Lake Forest, CA 92630

FOR COUNTY: City Contract Manager
2301 N. Glassell Street
Orange, CA 92865

H. 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.

I. ENTIRE AGREEMENT

This Agreement along with each fiscal year's annual Work Plan, which shall be incorporated by this reference, contains the entire contract between the Parties relating to the obligations of the Parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each Party is entered into this Agreement based solely upon the representations set forth herein and upon each Party's own independent investigation of any and all facts such Party deems material.

J. 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 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.

K. AMENDMENTS

No alternation or vitiation 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 bind on the COUNTY unless authorized by COUNTY in writing. All Work Plans for each fiscal year and the terms, prices, rates and fees set forth therein are incorporated by this reference.

L. ASSIGNMENT

Neither Party shall assign its performance of this Agreement, no any part thereof, within 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.

M. 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 shall be 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.

N. 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.

O. HEADINGS

The various heading 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.

P. CALENDAR DAYS

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

Q. ATTORNEY FEES

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

R. INTERPRETATION

This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Agreement by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law, (including California Civil Code section 1654) or legal decision that would require

interpretation of any ambiguities in this Agreement against the Party that drafted it is not applicable and it deemed waived.

The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purpose of the Parties to this Agreement.

S. SEVERABILITY

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

T. DISPUTE

If a dispute arises, the Parties' respective designated representatives shall attempt to resolve the issue. If such issue cannot be promptly resolved the Director of Public Works and the City Contracts Manager shall discuss and endeavor to resolve such issue within twenty working days. In the event the Director of Public Works and the City Contracts Manager have failed to resolve the issue within twenty (20) working days after the referral of the issue to them, the Parties shall refer the issue to the Director of Public Works and OC Public Works Operations Manager for resolution.

U. AUTHORITY TO EXECUTE THIS AGREEMENT

The Parties to this Agreement represent and warrant that this Agreement has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

IN WITNESS WHEREOF, CITY has caused this Agreement to be executed by its Mayor and attested by its Clerk, and COUNTY has caused this contract Agreement to be executed by the Chairman of its Board of Supervisors and attested by its Clerk, all thereunto duly authorized by the CITY Council and the Board of Supervisors, respectfully.

COUNTY OF ORANGE

CITY OF LAKE FOREST

By Bill Campbell

Pat Hyatt
Mayor

Date: 6-1-11

Date: 4/1/11

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

By Darlene J. Bloom
DARLENE J. BLOOM
Clerk of the Board of Supervisors of Orange County, California



Attest: Stephanie D. Smith
CITY Clerk

Date: 4/1/11

Date: 4/1/11

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

By [Signature]
Deputy

Approved As to Form: [Signature]
CITY Attorney