

CONTRACT MA-080-12010493
FOR
EQUIPMENT RENTAL WITHOUT OPERATOR

THIS Contract MA-080-12010493 for Equipment Rental Without Operator, (hereinafter referred to as "Contract") is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, and Orange County Flood Control District, a body corporate and politic, (hereinafter referred to as "County") and Quinn Rental Services, with a place of business located at PO Box 22070, Los Angeles, CA 90022 (hereinafter referred to as "Contractor"), with County and Contractor sometimes individually referred to as ("Party"), or collectively referred to as ("Parties").

RECITALS

WHEREAS, County and Contractor are entering into this Contract for Equipment Rental Without Operator under a usage Contract; and,

WHEREAS, County solicited Equipment Rental Without Operator as set forth herein, and Contractor has represented that it is qualified to provide Equipment Rental Without Operator to County as further set forth herein; and,

WHEREAS, Contractor agrees to provide Equipment Rental Without Operator to County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor's Pricing, attached hereto as Attachment B and incorporated herein;

NOW THEREFORE, the Parties mutually agree as follows:

ARTICLES

1. **Scope of Contract:** This Contract, including attachment(s), specifies the contractual terms and conditions by which Contractor will provide Equipment Rental Without Operator under a usage Contract, as set forth in the Scope of Work identified as Attachment A to this Contract.
2. **Term:** ~~The initial term of this Contract shall be effective upon execution of all authorized signatures and shall be in effect for one (1) year from that date unless otherwise terminated as provided herein. This Contract may be renewed upon expiration of the initial term, for four (4) additional years, upon mutual agreement of both Parties. County is not obligated to give a reason or notice if it elects not to renew. Renewal amendments may require approval of the County Board of Supervisors.~~

Contract shall be effective November 1, 2014, and shall continue for one year from that date, unless otherwise terminated as provided herein. This Contract may be renewed upon expiration for one (1) additional year, upon mutual agreement of both parties. The County is not obligated to give a reason if it elects not to renew. Renewal amendments may require County Board of Supervisors approval

3. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not

forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

4. **Precedence:** The Contract documents consist of this Contract and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the attachments.
5. **Contractor's Project Manager and Contractor Personnel:** Contractor shall appoint a Project Manager, as specified in Article 22 to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by County and shall not be changed without the written consent of County's Project Manager, which consent shall not be unreasonably withheld. Contractor's Project Manager and Contractor personnel shall be assigned to this project for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. Contractor personnel are those individuals who report directly to Contractor's Project Manager. Contractor warrants that all Contractor personnel engaged in the performance of work under this Contract shall possess sufficient experience and/education to perform the services requested by the County.
6. **County's Project Manager:** County shall appoint a Project Manager, as specified in Article 22. Notices, to act as liaison between County and Contractor during the term of this Contract. County's Project Manager shall coordinate the activities of County staff assigned to work with Contractor.

County's Project Manager shall have the right to require the removal and replacement of Contractor's Project Manager and Contractor personnel. County's Project Manager shall notify Contractor in writing of such action. Contractor shall accomplish the removal within 14 calendar days after written notice by County's Project Manager. County's Project Manager shall review and approve the appointment of the replacement for Contractor's Project Manager and Contractor personnel. Said approval shall not be unreasonably withheld.

7. **Conditions Affecting Work:** Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to County. County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by County are expressly stated in the Contract.
8. **Usage:** No guarantee is given by County to Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. Contractor agrees to supply services and/or commodities requested, as needed by County, at prices listed in the Contract, regardless of quantity requested. Orders may be placed against this contract at the convenience of the using agency/department.
9. **Usage Reports:** Upon County request, Contractor shall submit usage reports to County which shall include, at minimum, summarized quantities, item descriptions (including Manufacturer/Part No.). The usage report shall be in a format specified by County.
10. **Cooperative Agreement:** The provisions and pricing of this contract may be extended to other California local or state governmental entities. Governmental entities wishing to use

this contract will be responsible for issuing their own purchase documents/price agreements, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any contract entered into with another agency or entity that is entered into as an extension of this Contract a contract clause that will hold harmless the County of Orange from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this contract. Failure to do so will be considered a material breach of this Contract and grounds for immediate Contract termination. The cooperative entities are responsible for obtaining all certificates of insurance and bonds required. Contractor is responsible for providing each cooperative entity a copy of the contract upon request by the cooperative entity. The County of Orange makes no guarantee of usage by other users of this contract.

Contractor shall be required to maintain a list of the cooperative entities using this contract. The list shall report dollar volumes spent annually and shall be provided on an annual basis to County, at County's request.

11. **Conflict of Interest:** Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of County. This obligation shall apply to Contractor; Contractor's employees, agents, and relatives; sub-tier Consultants; and third parties associated with accomplishing work and services hereunder. Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of County.
12. **Child Support Enforcement Requirements:** Contractor is required to comply with the child support enforcement requirements of County. Failure of Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within 60 calendar days of notice from County shall constitute grounds for termination of the Contract.
13. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.
14. **News/Information Release:** Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said news media contact from County through County's Project Manager. Any requests for interviews or information received by the media should be referred directly to County. Contractors are not authorized to serve as a media spokespersons for County projects without first obtaining permission from County Project Manager.
15. **Breach of Contract:** The failure of Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

- a. Afford Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - b. Discontinue payment to Contractor for and during the period in which Contractor is in breach and offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to the above.
 - c. Terminate the Contract immediately without penalty.
16. **Contract Disputes:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by Contractor's Supervisor and County's project manager as specified in Article 23. "Notices" by way of the following process, such matter shall be brought to the attention of County DPA by way of the following process:
- a. Contractor shall submit to County DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless County, on its own initiative, has already rendered such a final decision.
 - b. Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which Contractor believes County is liable.
 - c. Pending the final resolution of any dispute arising under, related to, or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. Contractor's failure to diligently proceed shall be considered a material breach of this Contract. Any final decision of County shall be expressly identified as such, shall be in writing, and shall be signed by County DPA or his designee. If County fails to render a decision within 90 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. County's final decision shall be conclusive and binding regarding the dispute unless Contractor commences action in a court of competent jurisdiction to contest such decision within 90 days following the date of County's final decision or one year following the accrual of the cause of action, whichever is later.
17. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.
18. **Contractor Bankruptcy/Insolvency:** If Contractor should be adjudged bankrupt or should have a general assignment for the benefit of its creditors or if a receiver should be appointed on account of Contractor's insolvency, County may terminate this Contract.
19. **Expenditure Limit:** Contractor shall notify County Project Manager in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. County will not be responsible for any expenditure overruns and will not pay for work exceeding the

dollar limit on the Contract unless an amendment to cover those costs has been issued.

20. **Delivery Parking:** The County of Orange will not provide free parking for delivery services.
21. **Material Safety Data Sheets (MSDS):** Contractor is required to provide a completed Material Safety Data Sheet (MSDS) for each hazardous substance provided to County under the contract. This includes hazardous substances that are not directly included in the contract, but are included in the goods or services provided by Contractor to County. The provision of the MSDS must be in accordance with the requirements of California Labor Code Sections 6380 through 6399, General Industry Safety Order Section 5194, and Title 8, California Code of Regulations. The MSDS for each substance must be sent to County Project Manager and must also be sent to:

County of Orange CEO/Risk Management
Attn: Safety and Loss Prevention Program
PO Box 327
Santa Ana, CA 92702

22. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

County: OC Public Works/Operations & Maintenance
Attn: Shane Lindzy
2301 N. Glassell Street
Orange, CA 92865
Phone: 714.955.0215
Fax: 714.955.0378
Email: shane.lindzy@ocpw.ocgov.com

cc: OC Public Works/Procurement Services
Attn: Lori Hanson, County DPA
2301 N. Glassell Street
Orange, CA 92865
Phone: 714.955.0231
Fax: 714.667.7551
Email: lori.hanson@ocpw.ocgov.com

Contractor: Quinn Rental Services
Attn: John Frazier
PO Box 22070
Los Angeles, CA 90022
Phone: 949.768.4050
Fax: 562.908.7477
Email: jfrazier@qrs-cat.com

23. **Governing Law and Venue:** This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.
24. **Entire Contract:** This Contract, including Attachments which are attached hereto and incorporated herein by this reference, when accepted by Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing County's Purchasing Agent or his designee.
25. **Amendments:** No alteration or variation of the terms of this Contract 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 County unless authorized by County in writing.
26. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
27. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or description, or services that do not conform to the prescribed Scope of Work. Acceptance of any part of the order for goods shall not bind County to accept future shipments, nor deprive it of the right to return goods already accepted, at Contractor's expense. Overshipments and undershipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods, or services, have actually been received and accepted in writing by County.
28. **Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears.
29. **Warranty:** Contractor expressly warrants that the goods/services covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in paragraph "56" below, and as more fully described in paragraph "56", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

30. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "56" below, it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
31. **Assignment or Subcontracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or subcontracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
32. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Anti-Discrimination Law or regulation, including but not limited to, Section 1720 et seq. of the California Labor Code.
33. **Termination:** In addition to any other remedies or rights it may have by law and those set forth in this Contract, County has the right to terminate this Contract without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of Contract, any misrepresentation or fraud on the part of Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations.
34. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such 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.
35. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.
36. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither Contractor, its employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither Contractor, employees nor anyone working for Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.

37. **Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County’s satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.
38. **Insurance Provisions:** Prior to the provisions of services under this Contract, Contractor agrees to purchase all required insurance at Contractor’s expense and to deposit with County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the Country that the insurance provisions of this Contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management.

If Contractor fails to maintain insurance acceptable to County for the full term of this Contract, County may terminate this Contract.

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

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

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

Coverage	Minimum Limits
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers’ Compensation	Statutory
Employer’s Liability	\$1,000,000 per occurrence

Required Coverage Forms

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

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

Required Endorsements

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

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

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

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

All insurance policies required by this contract shall give the County of Orange 30 days notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

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

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

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

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

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

- The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.
39. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph "56" below, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
 40. **Changes:** Contractor shall make no changes in the work or perform any additional work without County's specific written approval.
 41. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County..
 42. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
 43. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
 44. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "56" below, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
 45. **Freight (F.O.B. Destination):** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
 46. **Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in Contractors Pricing attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.

47. **Waiver of Jury Trial:** Each Party acknowledges that it is aware of and has had the opportunity to seek advise of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and /or any other claim of injury or damage.
48. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
49. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
50. **Severability:** If any term, covenant, condition or provision of this Contract 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.
51. **Calendar Days:** Any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
52. **Attorneys Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney’s fees, costs and expenses.
53. **Interpretation:** This Contract has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. 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 Contract 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 Contract against the Party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Contract.
54. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
55. **Employee Eligibility Verification:** 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. 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. Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless,

County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against Contractor or 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.

56. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the negligence willful misconduct of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates shown below their respective signatures below.

QUINN RENTAL SERVICES*

By _____

By _____

Print
Name _____

Print
Name _____

Title _____
Corporate Officer

Title _____
Corporate Officer

Date _____

Date _____

COUNTY OF ORANGE, a political subdivision of
the State of California

By _____

Print
Name _____

Title _____

Date _____

**APPROVED AS TO FORM:
County Counsel**

By _____
Deputy

Date _____

* If the contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signator to bind the corporation.

ATTACHMENT A SCOPE OF WORK

- I. SCOPE OF WORK:** This Contract is for the rental of various types and sizes of equipment without operator (Bare Rental). Contractor shall supply, deliver, pick up, repair, and service all required rental equipment for Equipment Rental Without Operator on an as-needed basis as required by County.
- A. The primary type of work the rental equipment will be utilized for is grading, excavation, backfill, rock rip-rap placement, and daylighting/silt removal on County flood control channels.
 - B. To a lesser degree equipment will be used for various road and flood control maintenance.
 - C. Equipment may be requested under routine daily operations and/or in the event of emergency operations. Therefore, equipment may be required to be delivered during adverse weather conditions (heavy rainfall), in areas of limited access and/or during the night.
 - D. Rental equipment is to supplement OC Public Works/Operations & Maintenance fleet and no guaranty of usage shall be given.
 - E. Equipment will be operated by County personnel. County of Orange is self insured and certificate will be provided upon request.
 - F. Items to be rented are listed on Attachment B “Contractor’s Pricing” and are the most frequently rented. Other pieces of equipment other than those listed may be required.
 - G. Name brand listed on Attachment B “Contractor’s Pricing” is for equipment type and size reference. Bids offering equivalent items meeting the standards of quality specified may be considered, unless otherwise specified, providing the bid clearly describes the article offered and how it differs from the specified brand. Unless bidder specifies otherwise, it is understood that the bidder is offering the brand item as specified. If contractor bids an “equal,” contractor must state the brand name and must submit complete specifications. Determination of equality shall be at the sole discretion of County, and County reserves the right to request a sample for determining equality with the specified brand.
 - H. Miscellaneous like equipment other than those listed in Attachment B “Contractor’s Pricing” may be necessary for rental under this Contract. Contractor shall provide a written quote to Project Manager upon request of miscellaneous equipment and the quote shall include the original price, discount percentage as listed in Attachment B “Contractor’s Pricing”, and total amount.
 - I. During storm emergency operations it may be necessary to run a piece of rental equipment on the beach and in the surf. County may be required to place sand berms to protect the public and private property in coastal locations. County will wash off all equipment with fresh water as soon as possible after encountering salt water conditions.

II. CONTRACTOR REQUIREMENTS:

- A. Contractor shall respond to requests on a 24-hour a day, 7-day a week basis. No award will be made to a vendor not available 24/7.

Attachment B

- B. Contractor shall be responsible for delivering equipment to various Orange County locations as specified at the time of ordering. Contractor shall provide County's Project Manager with an order number at the time of ordering.
- C. Additional moves may be required during any rental period. Contractor is responsible for moving the equipment as requested by County's Project Manager.
- D. Contractor shall allow County to move rental equipment between job sites utilizing County's vehicles as needed. County shall notify Contractor that the equipment is being moved and the new location where the equipment will be used.
- E. Contractor is responsible for scheduling and removing equipment from the job site(s) when notified by County Project Manager.
- F. All rental charges shall stop the day Contractor is notified to pick up the equipment. Contractor shall provide County's Project Manager with a rental cancellation number at the time of cancellation.
- G. County will no longer be responsible for damages, once the equipment is picked up from the job site.
- H. Equipment must be removed from job site within 48 hours of notification to Contractor to pick up equipment unless an extension of time is approved by County's Project Manager.
- I. Contractor assumes full responsibility for obtaining all necessary transportation permits.
- J. Contractor must have equipment delivered to the job site within 3 hours of the order being placed when item is requested in an emergency situation.
- K. Contractor's response time to County's requests for equipment in an emergency situation is critical. Contractor is advised that delivery times need to be precise when given to County's Project Manager at time of ordering. Failure to provide accurate and responsible equipment availability & response times under emergency requests shall be grounds for immediate termination of this Contract.
- L. Contractor shall allow County to pick up equipment at Contractor's facility using County's vehicles upon request by County.
- M. Contractor is required to provide the names and telephone numbers of personnel available 24-hours at the beginning of this Contract and on September 1st of each succeeding year.
- N. The performance of all routine maintenance and repair services shall be the responsibility of the Contractor at no cost to County. Contractor shall schedule routine services during County lunch downtime or after hours.
- O. Contractor shall respond to service calls and request for tire or other repairs within two hours.
- P. Repeated lengthy delay in response to repairs requests or inability to swap out malfunctioning equipment shall be grounds for termination of Contract.

Attachment B

- Q. Contractor shall submit to County a list of owned equipment for each piece of equipment listed in Attachment B "Contractor's Pricing" on September 1st of each year.

III. COUNTY'S REQUIREMENTS:

- A. County's Project Manager will be responsible for ordering and cancelling equipment request with Contractor.
- B. County will place orders for equipment rental at least 24 hours in advance of the required dated and time except for emergency situations.
- C. In the event of a declared emergency move, County will obtain all necessary emergency transportation permits from the California Highway Patrol and/or State as necessary.
- D. County's Project Manager will notify Contractor of any damages sustained to the equipment as a result of operator or County negligence.
- E. County shall assume liability for any damage repairs that have been determined to be the result of operator or County negligence, and reasonable repair costs shall be paid by County upon receipt of Contractor invoice. Contractor shall issue a separate invoice for such charges as these charges may be paid separately from the rental rates in this Contract. Damage Waivers shall not apply and shall not be paid, as County is self-insured.
- F. County shall return all equipment to Contractor with a full tank of fuel. County shall be responsible for reasonable fuel charges if equipment is returned without a full tank of fuel.

Attachment B

ATTACHMENT B CONTRACTOR'S PRICING

- I. Compensation:** This is a usage Contract between County and Contractor for Equipment Rental Without Operator on an as needed basis, as set forth in Attachment A "Scope of Work".

Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration to supply, deliver, pick up, repair, and service all required rental equipment for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder. Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. **County shall have no obligation to pay any sum in excess of the Fixed Prices specified herein unless authorized by amendment in accordance with Paragraphs 25 and 40 of County Contract Terms and Conditions.**

- II. Fees and Charges:** County will pay the following prices in accordance with the provisions of this Contract.

LINE ITEM	EQUIPMENT	DAY	WEEK	MONTH
1	TRACK EXCAVATOR - CAT 314 or equivalent	\$400.00	\$1,600.00	\$4,200.00
2	TRACK EXCAVATOR - CAT 325L (23' DEPTH) or equivalent	\$650.00	\$2,200.00	\$6,300.00
3	TRACK EXCAVATOR - CAT 330L (26' DEPTH) or equivalent	\$800.00	\$2,800.00	\$8,100.00
4	TRACK EXCAVATOR - CAT 320L or equivalent	\$480.00	\$1,750.00	\$4,800.00
5	TRACK EXCAVATOR - CAT 325L or equivalent	\$650.00	\$2,200.00	\$6,300.00
6	DOZER - JD D4C XL WITH ANGLE BLADE & SLOPEBOARD or equivalent	\$360.00	\$1,400.00	\$3,600.00
7	DOZER - CAT D4 SERIES or equivalent	\$340.00	\$1,250.00	\$3,300.00
8	DOZER - CAT D5 SERIES or equivalent	\$360.00	\$1,400.00	\$3,800.00
9	DOZER - CAT D6 SERIES or equivalent	\$460.00	\$1,800.00	\$5,200.00

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10	DOZER - CAT D6 SERIES WITH ANGLE BLADE & SLOPEBOARD or equivalent	\$500.00	\$2,000.00	\$5,500.00
11	DOZER - CAT D8 SERIES or equivalent	\$1,230.00	\$4,950.00	\$13,800.00
12	CRAWLER LOADER - CAT 963 or equivalent	\$700.00	\$2,800.00	\$7,500.00
13	SKIPLOADER - BOBCAT 753 or equivalent	\$150.00	\$500.00	\$1,200.00
14	RUBBER TIRE LOADER - CAT 950F or equivalent	\$500.00	\$1,750.00	\$5,000.00
15	RUBBER TIRE LOADER - CAT 966F or equivalent	\$675.00	\$2,600.00	\$7,650.00
16	RUBBER TIRE LOADER - CAT 980F or equivalent	\$1,000.00	\$4,000.00	\$11,500.00
17	RUBBER TIRE BACKHOE - CAT 436B or equivalent	\$200.00	\$800.00	\$2,300.00
18	RUBBER TIRE BACKHOE - CAT 446B/JD710 or equivalent	\$375.00	\$1,400.00	\$3,800.00
19	BLADE - CAT 12G or equivalent	\$495.00	\$1,980.00	\$5,500.00
20	VOLVO 4X4/CAT D250D ARTICULATING ROCK TRUCK 25 TON or equivalent	\$720.00	\$2,700.00	\$8,100.00
21	VOLVO 4X4 ARTICULATING ROCK TRUCK 30 TON or equivalent	\$900.00	\$3,300.00	\$9,900.00
22	CAT 735 ARTICULATING OFF-HIGHWAY TRUCK or equivalent	\$990.00	\$4,000.00	\$10,500.00
23	4000 GALLON WATER TRUCK	\$320.00	\$1,275.00	\$3,800.00
24	TYMCO 600 – STREET SWEEPER (7.3 CUBIC YARD HOPPER) or equivalent	N/A	N/A	N/A
25	LIGHTING EQUIPMENT - FLOODLIGHT - QUARTZLIGHT (500 - 1000 WATT) or equivalent	\$25.00	\$75.00	\$150.00

Attachment B

26	LIGHTING EQUIPMENT - LIGHT TOWERS – TRAILER MOUNTED 4000 WATT or equivalent	\$45.00	\$135.00	\$305.00
27	FORKLIFT - 4000 LB. - 10 FT. INDUSTRIAL	\$100.00	\$350.00	\$800.00
28	FORKLIFT - 5000 LB. - 11 FT. PROFILE TOWABLE	N/A	N/A	N/A
29	FORKLIFT - 6000 LB. - 15 FT. AND X/SIDE SHAFT	\$125.00	\$400.00	\$900.00
30	FORKLIFT - 6000 LB. - 21 FT. TOWABLE	N/A	N/A	N/A
31	FORKLIFT - 8000 LB. - 30 FT. CONSTRUCTION	\$150.00	\$550.00	\$1,100.00
32	FORKLIFT - 8000 LB. - 15 FT. INDUSTRIAL	\$150.00	\$550.00	\$1,100.00
33	INDUSTRIAL FORKLIFT HARD TIRE - 4000 LB. - 10 FT. - PROPANE	\$100.00	\$350.00	\$800.00
34	26' SCISSOR LIFT, 4WD, 7/8 GALLON PROPANE TANK	\$90.00	\$315.00	\$700.00
35	LIFT - 25' PLATFORM	\$60.00	\$210.00	\$525.00
36	LIFT - 45' KNUCKLE BOOM	\$190.00	\$665.00	\$1,600.00
37	LIFT - 65' KNUCKLE BOOM	\$250.00	\$900.00	\$2,100.00
38	ROLLER - 3 – 5 TON TRAILERABLE	\$125.00	\$475.00	\$1,300.00
39	MISCELLANEOUS EQUIPMENT – NOT LISTED ABOVE	DISCOUNTED:		10%
40	MOVE IN RATE (Non-Permit Load)	HOURLY RATE:		\$45.00
41	MOVE IN RATE (Permit Load)	HOURLY RATE:		\$125.00

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42	MOVE OUT RATE (Non-Permit Load)	HOURLY RATE:	\$45.00
43	MOVE OUT RATE (Permit Load)	HOURLY RATE:	\$125.00
44	EMERGENCY MOVE IN RATE (Non-Permit Load)	HOURLY RATE:	\$125.00
45	EMERGENCY MOVE OUT RATE (Non-Permit Load)	HOURLY RATE:	\$125.00

~~AGGREGATE CONTRACT TOTAL SHALL NOT EXCEED\$ 240,000.00~~

Total Contract Amount (Aggregate amount between 2 Contractors)\$ 240,000.00

- III. Price Increases/Decreases:** No price increases will be permitted during the first period of the Contract. All price decreases will automatically be extended to County. County requires bona fide proof of cost increases on Contracts prior to any price adjustment. A minimum of ninety (90) days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. County may enforce, adjust, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing Contractor’s profit will not be allowed.
- IV. Firm Discount and Pricing Structure:** Contractor guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to County during the term of this Contract not otherwise specified and provided for within this Contract.
- V. Contractor’s Expense:** Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of work and services under this Contract.
- VI. Payment Terms:** Invoices are to be submitted in arrears, after goods have been received. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange. Invoices shall be verified and approved by County and subject to routine processing requirements. The responsibility for providing an acceptable invoice to County for payment rests with Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to Contractor for correction.

Billing shall cover goods not previously invoiced. Contractor shall reimburse the County of Orange for any monies paid to Contractor for goods not provided, or when goods do not meet the contract requirements.

Payments made by County shall not preclude the right of County from thereafter disputing any items involved or billed under this contract and shall not be construed as acceptance of any part of the goods.

Attachment B

VII. Invoicing Instructions: Contractor will provide an invoice on Contractor's letterhead. Each invoice will have a unique number and will include the following information:

Contractor's name and address

- A. Contractor's remittance address, if different from (a), above
- B. Name of County agency/department
- C. Delivery/service address
- D. Contract number
- E. Service Date
- F. Description of Services
- G. Total
- H. Taxpayer ID number

Invoices and support documentation are to be forwarded to:

OC Public Works
OC Fleet & Procurement Services
Attn: Lori Hanson
2301 N. Glassell Street
Orange, CA 92865