

CONTRACT FOR ROAD MAINTENANCE AND OPERATION
FOR ALTON PARKWAY

THIS CONTRACT (hereinafter "Agreement") is made and entered into this _____ day of _____, 20____, by and between, The CITY OF IRVINE, 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".

RECITALS

WHEREAS, CITY owns portions of Alton Parkway, as roadway easements for the operation and maintenance of Alton Parkway in the CITY OF IRVINE, COUNTY OF ORANGE, State of California, as shown in Attachment A attached hereto ("CITY Property"). COUNTY owns a portion of Alton Parkway located in the unincorporated portion of the COUNTY OF ORANGE, State of California, and known as Alton Parkway, which is more particularly shown on Attachment A attached hereto ("COUNTY Property").

WHEREAS, Alton Parkway consists of various street improvements including, but not limited to: pavement, curb and gutter, medians, sidewalks, drive approaches, street lighting, roadway drainage, signing, striping, irrigation and bioretention systems (collectively, the "Improvements").

WHEREAS, the CITY and COUNTY deem it to their mutual advantage to provide for the reciprocal assumption of the maintenance of the Improvements.

WHEREAS, COUNTY desires the CITY to assume maintenance of the area marked "Unincorporated Orange County Area to be maintained by City of Irvine" as shown on Attachment A. The COUNTY will compensate the CITY for maintenance services, as shown on Attachment B.

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CITY AND COUNTY RESPONSIBILITIES:

A. COUNTY SHALL:

1. COUNTY shall pay all electric charges required for the operation of all street lights within the COUNTY Property.

2. COUNTY shall compensate CITY for entire total cost agreed upon and incurred by CITY for all maintenance, operation, support and contract functions performed within the COUNTY Property by CITY staff or CITY 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 CITY prices, rates, fees and charges at the time work is performed.

3. COUNTY shall compensate CITY invoiced costs by payment due date. Payment due dates are invoice date plus thirty days.

B. CITY SHALL:

1. CITY shall pay all electric charges required for the operation of all street lights within the CITY Property.

2. CITY shall maintain all bioretention systems including existing Filterra systems within the COUNTY Property. CITY shall pay all electric and water charges required for the irrigation to landscape all bioretention systems including existing Filterra systems encompassed within the COUNTY Property

3. CITY shall perform all routine maintenance of curb, gutter and sidewalk within the COUNTY Property. This is to include removal and replacement if needed. CITY shall perform vegetation spray application of curb, gutter, sidewalk and road shoulders. CITY shall perform routine street sweeping within the COUNTY Property.

4. CITY shall perform all pavement maintenance in the COUNTY Property including slurry, and full rehabilitation as well as striping, stenciling, and raised pavement markers.

5. CITY shall perform all routine maintenance of roadway signage within the COUNTY Property.

6. CITY shall perform all routine maintenance of median curbs within COUNTY Property.

7. CITY shall have the right but not the obligation to install landscape and irrigation in medians within the COUNTY Property. If the CITY elects to install said landscape and irrigation, CITY shall obtain an encroachment permit from COUNTY prior to the start of any work within the COUNTY Property and maintain such landscape and irrigation for the full term of this Agreement.

8. CITY shall provide contract administration/inspection services for maintenance work performed by contract or CITY staff.

9. CITY shall 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.

10. CITY shall 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.

11. CITY shall 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.

ARTICLES

A. TERM

The term of this Agreement shall be for twenty-five (25) years commencing on December 1, 2015, through and including December 1, 2040 unless otherwise terminated by either Party as provided in Article

B. TERMINATION

1. 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 six (6) months prior to the date of termination. The terminating Party shall not be obligated to explain its reasons for termination.

2. If CITY begins installing landscape and irrigation in the medians and COUNTY terminates this Agreement prior to the timely completion of the installation, COUNTY shall reimburse CITY any funds

1 which CITY must return to the State of California. CITY'S right to maintain and operate medians within
2 COUNTY Property shall survive the termination of this Agreement if the CITY installs landscape and
3 irrigation improvements within COUNTY Property, for a period of 25 years from the date of execution of
4 this Agreement.

5 **C. COMPENSATION:**

6 1. CITY agrees that the total for all work performed under this Agreement as set forth in the
7 annual Work Plan shall be \$27,864.00 for the first fiscal year 2015-16. Total cost for each subsequent
8 fiscal year after 2015-16 shall be in the amount identified in Attachment B

9 2. CITY shall not perform or be compensated for any services rendered in connection with its
10 performance of this Agreement which are in addition to those set forth herein, unless such additional
11 services are authorized in advance and in writing by the OC Public Works Director or designee. CITY
12 shall perform and be compensated for any additional services in the amounts and in the manner as
13 agreed to by OC Public Works Director or designee and City Manager or designee at the time COUNTY's
14 written authorization is given to CITY for the performance of said services.

15 3. CITY shall submit invoices monthly in the amount identified in Attachment B. Invoices shall
16 be submitted on or about the first business day of each month, for services provided in the previous
17 month.

18 Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the
19 COUNTY disputes any of CITY's fees it shall give written notice to CITY within 30 days of receipt of an
20 invoice of any disputed fees set forth on the invoice.

21 **D. INDEMNIFICATION**

22 COUNTY agrees to indemnify, defend with counsel approved in writing, protect and hold harmless
23 the CITY, its officers, elected or appointed officials, employees and volunteers from and against any and
24 all claims, demands, losses, defense costs or expenses, or liability of any kind or nature which the CITY,
25 its officers, elected or appointed officials, employees and volunteers may sustain or incur or which may be
26 imposed upon them for injury to or death of persons or damage to property arising out of COUNTY's

negligent or wrongful acts in performing under the terms of this Agreement. COUNTY shall defend, at its expense, 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, its officers, elected or appointed officials, employees and volunteers for CITY's negligence or the negligence of CITY's officers, officials, employees or volunteers.

CITY agrees that it will follow its work management system field manual and the California Manual on Uniform Traffic Control Devices (CAMUTCD) for construction and maintenance work zones to avoid or minimize risk of loss.

CITY agrees to indemnify, defend with counsel approved in writing, 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 which arise out of the CITY's negligent or wrongful acts in performing under the terms of this Agreement. The CITY shall not be liable in any way or indemnify the COUNTY, its officers, elected or appointed officials, employees and volunteers for COUNTY's negligence or the negligence of COUNTY's officers, elected or appointed officials, employees or volunteers.

If judgment is entered against CITY and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of CITY or COUNTY, CITY and COUNTY agree that liability will be 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.

E. 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
1 Civic Center Plaza
Irvine, CA 92606

FOR COUNTY: County Contract Administrator
2301 N. Glassell Street
Orange, CA 92865

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F. 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.

G. ENTIRE AGREEMENT

This Agreement contains the entire contract between the Parties with respect to the matters contained herein.

H. 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.

I. 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 unless authorized by COUNTY in writing.

J. 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 this Agreement.

K. 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.

L. FORCE MAJEURE

CITY 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 CITY gives written notice of the cause of the delay to the COUNTY within 36 hours of the start for the delay.

M. 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 affect the meaning hereof.

N. CALENDAR DAYS

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

O. 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.

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

Q. SEVERABILITY

If any term, covenant, 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.

R. DISPUTE

If a dispute arises, the Parties' respective designated representatives shall attempt to resolve the issue. In the event the County Contract Administrator and the City's Project Manager have failed to resolve the issue within twenty working days after the referral of the issue to them, the Parties shall refer the issue to the City Engineer/Director of Public Works and OC Public Works (OCPW) Operations and Maintenance Manager for resolution.

S. 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

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

3 COUNTY OF ORANGE

CITY OF IRVINE

4
5 By _____
6 Chair of the Board of Supervisors

STEVEN S. CHOI, Ph.D.
Mayor of the City of Irvine

7 Date: _____

Date: _____

8
9 SIGNED AND CERTIFIED THAT A COPY OF
10 THIS AGREEMENT HAS BEEN DELIVERED TO
11 THE CHAIR OF THE BOARD

Attest:

12
13 By _____
14 SUSAN NOVAK
15 Clerk of the Board of Supervisors of
Orange County, California

MOLLY MCLAUGHLIN
City Clerk

16 Date: _____

Date: _____

17
18 APPROVED AS TO FORM
19 OFFICE OF THE COUNTY COUNSEL
20 ORANGE COUNTY, CALIFORNIA

Approved As to Form:
RUTAN & TUCKER, LLP

21
22 By  _____
23 Deputy

TODD O. LITFIN
City Attorney

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