

**AMENDMENT NO. 1
FOR
RENTAL HAUL TRUCKS WITH OPERATOR
WITH
DISNEY’S HAPPIEST HOME, LLC**

This AMENDMENT 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 (“County”), Orange County Flood Control District, a body corporate and politic, (“District”), and Disney’s Happiest Home, LLC with a place of business at 1381 S. Walnut St., Anaheim, CA 92802 (“Contractor”), with County and Contractor sometimes referred to as “Party” or collectively as “Parties.”

RECITALS

WHEREAS, Contractor and County entered into Contract MA-080-20011853 for Rental Haul Trucks with Operator, effective September 1, 2020 through August 31, 2023, in the Total Aggregate Amount of \$9,000,000 (“Contract”); and,

WHEREAS, the Parties now desire to include the Orange County Flood Control District as a Party to this Contract; and,

WHEREAS, the Parties now desire to amend Article O; and,

WHEREAS, the Parties now desire to amend Article Z; and,

WHEREAS, the Parties now desire to amend Article 4; and,

WHEREAS, the Parties now desire to amend Article 20; and,

WHEREAS, the Parties now desire to increase the Contract by \$900,000 with a new Total Aggregate Contract Not-to-Exceed Amount of \$9,900,000; and,

WHEREAS, the Parties now desire to amend Attachment B; and,

NOW, THEREFORE, the Parties mutually agree as follows:

AMENDMENT TO CONTRACT ARTICLES

1. The preamble of Contract MA-080-20011853 for Rental Haul Trucks with Operator shall be amended to include Orange County Flood Control District, a body corporate and politic, (“District”) as a party and shall read in its entirety as follows:

THIS CONTRACT, number MA-080-20011853 for Rental Haul Trucks with 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 (“County”), Orange County Flood Control District, a body corporate and politic, (“District”), and Disney’s Happiest Home, LLC, with a place of business at 1381 S. Walnut St., Anaheim, CA 92802 (“Contractor”), with the County, District and Contractor sometimes referred to as “Party” or collectively as “Parties.”

2. Article O of the Contract shall be amended in its entirety as follows:

- O. Insurance Requirements:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the 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.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

1. In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
2. Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
3. The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

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

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

| <u>Coverage</u> | <u>Minimum Limits</u> |
|---|---|
| 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 |
| Employers Liability Insurance | \$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 20 26 04 13 or a form at least as broad naming the ***County of Orange, the Orange County Flood Control District, and their elected and appointed officials, officers, agents and employees*** as Additional Insureds, or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT.***
2. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the ***County of Orange, the Orange County Flood Control District, and their elected and appointed officials, officers, agents and employees*** or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT.***

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, the Orange County Flood Control District, and their elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

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 emailed to OCPWCompliance@ocpw.ocgov.com

If email is not possible, then Insurance certificates should specifically be forwarded to:

OC Public Works
Attn: OCPW Procurement
601 N. Ross Street, 4th Floor
Santa Ana, CA 92701

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Procurement or the agency/department procurement 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 (30) 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.

3. Article Z of the Contract shall be amended in its entirety as follows:

Z. Indemnification: Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, District, their respective 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 concurrent active negligence of County, District or County Indemnites, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

4. Article 4 of the Contract shall be amended in its entirety as follows:

4. Aggregate Contract: This is an Aggregate Contract between Disney’s Happiest Home, LLC and Addison-Miller, Inc. with a Total Aggregate Contract Amount that shall not exceed \$9,900,000.

5. The contact information within “cc:” in Article 20 of the Contract shall be amended as follows:

cc: OC Public Works/Procurement Services
 Attn: Richard Nguyen, County DPA
 601 North Ross Street, 4th Floor
 Santa Ana, CA 92701
 Phone: 714-667-9633
 Email: Richard.Nguyen@ocpw.ocgov.com

6. Attachment B, Section 2. Fees and Charges, Items A and C shall be amended in its entirety as follows:

A. Cost shall be the hourly rate for the Rental Haul Truck with Operator.

| Line | Equipment | Hourly Rate: Regular Work Hours | Hourly Rate: Overtime/ Saturdays | Hourly Rate: Sundays /Holidays |
|------|-----------------------------------|---------------------------------|----------------------------------|--------------------------------|
| 1 | 10 Wheel Dump Truck with Operator | \$93.50 | \$99.00 | \$99.00 |
| 2 | Super Tens with Operator | \$103.40 | \$103.40 | \$103.40 |
| 3 | 20 Yard End Dump with Operator | \$107.80 | \$107.80 | \$107.80 |

C. Total Aggregate Contract Amount Not to Exceed:.....\$9,900,000*

*This is shared between Disney’s Happiest Home, LLC and Addison-Miller, Inc.

7. All other terms and conditions in this Contract shall remain unchanged and with full force and effect.

Signature Page

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment on the date following their respective signatures.

DISNEY'S HAPPIEST HOME, LLC*

| | | | |
|-------------------------|----------------------------|------------------|------------------|
| <i>a. j. Curato Jr.</i> | <i>Anthony CURATO, Jr.</i> | <i>President</i> | <i>7-29-2022</i> |
| Signature | Name | Title | Date |

| | | | |
|-----------|------|-------|------|
| Signature | Name | Title | Date |
|-----------|------|-------|------|

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

COUNTY AUTHORIZED SIGNATURE:

| | | | |
|-----------|------|-------|------|
| Signature | Name | Title | Date |
|-----------|------|-------|------|

ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic

DISTRICT AUTHORIZED SIGNATURE:

| | | | |
|-----------|--------------|-------|------|
| Signature | (Print) Name | Title | Date |
|-----------|--------------|-------|------|

APPROVED AS TO FORM:

County Counsel

By *William Ninh* *william Ninh*
Deputy

Date 8/1/2022

* 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 signee to bind the corporation.