

# ORANGE COUNTY BOARD OF SUPERVISORS

## A g e n d a   R e v i s i o n s   a n d   S u p p l e m e n t a l s

Note: *This supplemental agenda is updated daily showing items that have been added, continued, deleted or modified.*

*No new supplemental items will be added to the agenda following close of business on Friday.*

January 11, 2022

### PRESENTATION (9:00 A.M)

Chairman Do will be presenting a resolution to Orange County Clerk-Recorder recognizing their accomplishment of winning 2021 California State Association of Counties Innovation Award for an urban County

### CONSENT

7. Deleted
  
12. Revised Title to read:  
**Auditor-Controller** - Approve contract MA-003-22010575 with Intueor Consulting Inc., for *assessment and analysis of CAPS+ Advantage Finance/Procurement, Human Resources/Payroll and Performance Budgeting software systems and provide recommendations for upgrade/replacement strategy*, five-month term (\$399,000); and authorize County Procurement Officer or *authorized* Deputy to execute contract - All Districts
  
18. Revised Title to read:  
**John Wayne Airport** - Approve amendment 2 to extend concession leases with Bambuza South Waterfront, LLC, dba Bambuza OC Ventures, LLC, dba the Coffee Bean & Tea Leaf, California Coast Food & Beverage, LLC, Mission Yogurt, Inc. and Greenleaf JWA, LLC for ~~two~~ *three* additional years; renewable for ~~one~~ *two* additional one-year lease extensions - District 2 5 (Continued from 12/14/21, Item 26)

### DISCUSSION

24. Revised Title to read:  
**OC Public Works** - Approve amendment 1 to aggregate contract MA-080-20011275 with John Flynn Orange Coast Plumbing Inc. dba Orange Coast Plumbing, Pro-Craft Construction, Inc. and Verne's Plumbing, Inc. for maintenance, repairs and alterations for plumbing systems, ~~12/14/21~~ *1/11/22* - 7/10/23; and authorize County Procurement Officer or authorized Deputy to execute amendments - All Districts (Continued from 12/14/21, Item 29)

# ORANGE COUNTY BOARD OF SUPERVISORS

## Agenda Revisions and Supplementals

Note: *This supplemental agenda is updated daily showing items that have been added, continued, deleted or modified.*

*No new supplemental items will be added to the agenda following close of business on Friday.*

31. **County Executive Office** - Approve recommended positions on introduced or amended legislation and consider other legislative subject matters; *and approve 2022 County sponsored legislation proposals – All Districts*
  
32. Revised Title to read:  
**County Executive Office** - Approve grant applications/awards submitted by *Sheriff Coroner and OC Community Resources and retroactive grant application/award submitted by Health Care Agency and ratify grant application/award submitted by Probation* in 1/11/22 grant report and other actions as recommended; *adopt resolution authorizing Sheriff-Coroner or designee to execute and submit application and grant assurances to California Office of Emergency Services for FY 2021 Emergency Management Performance Grant (\$770,032) and approving related actions under certain conditions; adopt resolution authorizing Sheriff-Coroner or designee to accept from California Department of Justice, Gun Violence Reeducation Program Grant award (\$316,285) and execute Memorandum of Understanding, related documents and amendments; adopt resolution authorizing OCCR Director or designee to conduct all negotiations, execute and submit all documents and amendments with State Department of Parks and Recreation for administration of Regional Park Grant Program for Mile Square Regional Park Golf Course Conversion and Ted Craig Regional Park Bike Facility projects - All Districts*

### THE FOLLOWING AGENDA ITEMS HAVE HAD CHANGES TO THEIR RECOMMENDED ACTIONS SINCE RELEASE OF THE AGENDA TO THE PUBLIC:

Items: 18, 24, 31 and 32

### Supplemental Item(s)

- S33A. CONTINUED TO 1/25/22, 9:30 a.m.  
**Chairman Do** - Orange County Cemetery District - Reappoint Maribel Marroquin-Waldram, Santa Ana, for term ending 1/5/26
  
- S33B. **Health Care Agency** - Approve retroactive amendment 1 to contract MA-042-22010739 with The Illumination Foundation for temporary isolation shelter services, 1/1/22 - 3/31/22 (\$1,283,250; cumulative total \$3,759,054); and authorize County Procurement Officer or authorized Deputy to execute amendment - All Districts
  
- S33C. **County Executive Office** - Authorize CEO or designee to administer 2022 Emergency Paid Sick Leave Program to provide employees up to 40 hours of paid sick leave for qualifying COVID related absences, effective 12/31/21 - 4/7/22; and authorize discretion for CEO to add up to 40 additional hours and extend program to 6/30/22, and administer future state and/or federal statutorily required leave programs under certain conditions - All Districts
  
- S33D. **Supervisor Wagner** - Authorize OC Public Works to submit request to United States Department of Agriculture, Natural Resources Conservation Service Emergency Watershed Protection Program to act as local sponsor to remove debris and obstructions in Silverado and Anderson Creeks upstream of Kitterman Bridge and to remove debris and other material in Silverado and Wildcat Creeks upstream of Silverado Canyon Road culvert; authorize Director or designee to apply for funding and negotiate agreement

**REVISIONS AND SUPPLEMENTALS TO JANUARY 11, 2022 AGENDA - PAGE 2 OF 3**

# ORANGE COUNTY BOARD OF SUPERVISORS

## A g e n d a   R e v i s i o n s   a n d   S u p p l e m e n t a l s

Note: *This supplemental agenda is updated daily showing items that have been added, continued, deleted or modified.*


*No new supplemental items will be added to the agenda following close of business on Friday.*

SCS2. **County Counsel** - CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION - Pursuant to Government Code Section 54956.9(d)(1):

Name of Case: Maxwell v. County of Orange Case Number: ADJ2575493



# Continuation or Deletion Request

**Date:** January 3, 2022  
**To:** Clerk of the Board of Supervisors  
**From:** James Treadaway, OC Public Works Director   
**Re:** ASR Control #: 21-000886, Meeting Date 1/11/22 Agenda Item No. # 7  
**Subject:** Approve Certification of County of Orange Maintained Road Mileage

---

Request to continue Agenda Item No. # \_\_\_\_\_ to the \_\_\_\_\_ Board Meeting.

Comments:

Request deletion of Agenda Item No. # 7

Comments: The item will be brought to the Board for approval at a later date.

RECEIVED  
2022 JAN -4 AM 9:51  
CLERK OF THE BOARD  
ORANGE COUNTY  
BOARD OF SUPERVISORS



# CLERK OF THE BOARD

MEMORANDUM

January 6, 2022

To: Honorable Board of Supervisors

From: Jamie Ross, Assistant Clerk of the Board *R*

Subject: January 11, 2022 Board Agenda, Item 12

RECEIVED  
2022 JAN -6 AM 7:30  
CLERK OF THE BOARD  
ORANGE COUNTY  
BOARD OF SUPERVISORS

---

A title change has been made in order to clarify the request by the Auditor-Controller.

The title now reads:

**Auditor-Controller** - Approve contract MA-003-22010575 with Intueor Consulting Inc., for *assessment and analysis of CAPS+ Advantage Finance/Procurement, Human Resources/Payroll and Performance Budgeting software systems and provide recommendations for upgrade/replacement strategy*, five-month term (\$399,000); and authorize County Procurement Officer or *authorized* Deputy to execute contract - All Districts

cc.: Frank Kim, CEO  
Leon Page, County Counsel



# Revision to ASR and/or Attachments

RECEIVED

2022 JAN -4 PM 2:07

CLERK OF THE BOARD  
ORANGE COUNTY  
BOARD OF SUPERVISORS

**Date:** 01/03/2022  
**To:** Clerk of the Board of Supervisors  
**CC:** County Executive Office *Frank*  
**From:** Richard Francis, Interim Airport Director, John Wayne Airport  
**Re:** ASR Control #: 21-000954, Meeting Date 01/11/2022, Item No. # 18  
**Subject:** Approve Amendment Number Two to Concession Leases

Digitally signed by Frank Kim  
DN: cn=Frank Kim, ou=County of Orange,  
ou=CLC, email=frank.kim@ocnet.com,  
c=US  
Date: 2022.01.03 14:24:08Z

## Explanation:

The Lease terms and Board of Supervisors District have changed. Please update the Board of Supervisors District, Recommended Action, and Background section of the Agenda Staff Report. Please replace Attachments A, B, C, and D with those provided.

Revised Recommended Action(s)

Approve and execute Amendment Number Two to the Food and Beverage Leases with Bambuza South Waterfront, LLC dba Bambuza OC Ventures, LLC dba the Coffee Bean & Tea Leaf, California Coast Food & Beverage, LLC, Mission Yogurt, Inc. and Greenleaf JWA, LLC to extend the leases for an additional ~~three~~ two-years with ~~two~~ a-one-year lease extensions at the Airport Director's discretion.

Make modifications to the:

Subject     Background Information     Summary     Financial Impact

**Board of Supervisors District(s):** 25

**BACKGROUND INFORMATION:**

Lease Terms

The current Lease term is 10 years beginning on the date of beneficial occupancy; the annual rent is the greater of: (a) ~~1/12 of the~~ Minimum Annual Guarantee (MAG) of \$100 per square foot ~~per month~~; or (b) a percentage of gross receipts from gross sales conducted from the leased premises. The Leases require an Initial Capital Investment and the Tenants will be required to complete a midterm concession refurbishment, with a capital investment of fifty percent of the initial concession investment, subject to the Airport Director's or designee's review and approval.

Proposed Lease Amendment Terms

The proposed Lease Amendment is a ~~three~~ ~~two~~-year extension to the Phase I leases with ~~two~~ ~~an~~ additional one-year lease extensions at the Airport Director's discretion upon review of available financial and economic data pertaining to the Tenants' operations at JWA.

JWA seeks Board approval to extend the Leases for an additional ~~three~~ ~~two~~-years with ~~two~~ ~~a~~ one-year options to extend. Approval of these amendments will allow Phase I Concession Development food and beverage Tenants to amortize rising construction costs throughout the term of their Leases. JWA expects that the new concepts will open in the fourth quarter of FY 2021-22.

Revised Attachments (attach revised attachment(s) and redlined copy(s))

Attachment A – Amendment Number Two to Food & Beverage Lease with Bambuza South Waterfront, LLC dba Bambuza OC Ventures, LLC dba the Coffee Bean & Tea Leaf

Attachment A – Amendment Number Two to Food & Beverage Lease with Bambuza South Waterfront, LLC dba Bambuza OC Ventures, LLC dba the Coffee Bean & Tea Leaf (Redline)

Attachment B – Amendment Number Two to Food & Beverage Lease with California Coast Food & Beverage, LLC

Attachment B – Amendment Number Two to Food & Beverage Lease with California Coast Food & Beverage, LLC (Redline)

Attachment C – Amendment Number Two to Food & Beverage Lease with Mission Yogurt, Inc.

*January 3, 2022*

**Attachment C – Amendment Number Two to Food & Beverage Lease with Mission Yogurt, Inc. (Redline)**

**Attachment D – Amendment Number Two to Food & Beverage Lease with Greenleaf JWA, LLC**

**Attachment D – Amendment Number Two to Food & Beverage Lease with Greenleaf JWA, LLC (Redline)**

**AMENDMENT NUMBER TWO TO SPECIALTY COFFEE CONCESSION LEASE**

THIS SECOND AMENDMENT TO SPECIALTY COFFEE CONCESSION LEASE (“Amendment”) is made and entered into as of \_\_\_\_\_, 2021, by and between the COUNTY OF ORANGE, a political subdivision of the State of California (“County”) and BAMBUZA SOUTH WATERFRONT, LLC DBA BAMBUZA OC VENTURES, LLC DBA THE COFFEE BEAN & TEA LEAF (“Tenant”). County and Tenant may sometimes hereinafter individually be referred to as “Party” or jointly as “Parties.”

**RECITALS**

WHEREAS, County and Tenant entered into a Specialty Coffee Concession Lease, dated August 27, 2019 (“Existing Lease”); and

WHEREAS, County, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport (“JWA” or “Airport”), located in the County of Orange, State of California, and operates and maintains the Airport as a governmental function for the primary purpose of providing air transportation to the public; and

WHEREAS, County and Tenant executed the First Amendment, dated December 10, 2019, to adjust the Tenant Infrastructure Fee; and

WHEREAS, County and Tenant now desire to further amend the Existing Lease, as amended by the First Amendment, to extend the Lease term ~~two-three~~ (23) years, and authorize the Airport Director to execute up to ~~three-two~~ (23) additional one-year Lease extensions.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Tenant hereby agree as follows:

**AGREEMENTS**

1. **Term of Lease.** Section 2.01 shall be deleted and replaced in its entirety with the following:

**“SECTION 2.01 TERM OF LEASE**

This Lease shall be effective upon the signing of the Lease by the COUNTY, the “Effective Date.” The term of this Lease shall be ~~twelve-thirteen~~ (123) years from the Rent Commencement Date.”

2. **Option to Extend Term.** Section 2.04 shall be added as follows:

**“SECTION 2.04 OPTION TO EXEND TERM**

Within the first six (6) months of the final year of the Lease term, Tenant may request an additional one-year Lease extension. If Tenant requests a Lease

extension, Tenant shall furnish to Airport Director certified profit and loss/operating statements regarding its operation at the Airport. Airport Director, at his or her sole discretion, may authorize up to ~~three-two~~ (32) additional one-year Lease extensions.”

3. **Federal Grant Assurances and Requirements.** Section 11.01 shall be deleted and replaced in its entirety with the following:

**“SECTION 11.01 CIVIL RIGHTS AND NONDISCRIMINATION**

A. Tenant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Tenant transfers its obligation to another, the transferee is obligated in the same manner as Tenant.

This provision obligates Tenant for the period during which the property is owned, used or possessed by Tenant and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

B. Tenant, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:

- 1) **Compliance with Regulations:** Tenant will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.
- 2) **Nondiscrimination:** Tenant, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Tenant will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- 3) **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by Tenant for work to be performed under a subcontract, including procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Tenant of the Tenant’s obligations

under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

- 4) **Information and Reports:** Tenant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Tenant will so certify to the County or the FAA, as appropriate, and will set forth what efforts it has made to obtain this information.
- 5) **Sanctions for Noncompliance:** In the event of the Tenant's noncompliance with the non-discrimination provisions of this Lease, the County will impose such sanctions as it or the FAA may determine to be appropriate, including, but not limited to: withholding payments under the contract until the Tenant complies, and/or cancelling, terminating, or suspending a contract, in whole or in part.
- 6) **Incorporation of Provisions:** The Tenant will include the provisions of paragraphs one through six in every sublease or subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Tenant will take action with respect to any sublease, subcontract or procurement as the County or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Tenant becomes involved in, or is threatened with litigation by a subtenant, subcontractor, or supplier because of such direction, the Tenant may request the County to enter into any litigation to protect the interests of the County. In addition, the Tenant may request the United States to enter into the litigation to protect the interests of the United States.

C. Tenant, for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

- 1) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Tenant will

maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- 2) No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- 3) In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.
- 4) Tenant will use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.

D. Tenant shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.

E. Tenant, for itself, its assignees, and successors in interest agrees to comply with the following Nondiscrimination Acts and Authorities, including but not limited to:

- 1) Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 2) 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- 3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- 4) Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of

- disability); and 49 CFR part 27;
- 5) The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
  - 6) Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
  - 7) The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
  - 8) Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
  - 9) The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
  - 10) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
  - 11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
  - 12) Title IX of the Education Amendments of 1972, as amended,

which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq*).

- F. In the event of breach of any of the above nondiscrimination covenants, the County shall have the right to terminate the Lease and to enter, re-enter, and repossess said lands and the facilities thereon, and hold the same as if said Lease had never been made or issued.”

**4. No Other Amendments; This Second Amendment Governs and Controls.**

Except as expressly modified by this Second Amendment, the Existing Lease, as amended by the First Amendment, shall remain unmodified and in full force and effect and is hereby reinstated, ratified, and affirmed. To the extent any of the provisions of this Second Amendment are inconsistent with any of the provisions set forth in the Existing Lease and First Amendment, the provisions of this Second Amendment shall govern and control. Any reference to the “Agreement,” “hereunder,” “hereof,” “herein,” or words of like import in the Existing Lease, First Amendment, and this Second Amendment shall mean and be a reference to the Existing Lease as hereby amended, and the Existing Lease, First Amendment, and this Second Amendment shall be read and interpreted as if it was one agreement.

**5. Authority.** Each Party represents to the other Party or Parties that the individual executing this Second Amendment on behalf of such Party has the capacity and authority to execute and deliver this Second Amendment on behalf of such Party, and that this Second Amendment, once executed and delivered, is the legal, valid and binding obligation of such Party.

**6. Governing Law.** This Second Amendment shall be governed by and construed in accordance with the laws of the State of California.

**7. Counterparts and Execution.** This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document. The delivery of an executed counterpart of this Second Amendment by facsimile or as a Portable Document Format (“PDF”) or similar attachment to an e-mail shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

**8. Severability.** If any provision of this Second Amendment is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Second Amendment shall nonetheless remain in full force and effect.

**9. Contractual Obligations.** Tenant shall be current on all contractual obligations, including but not limited to, MAG, Percentage Rent, Insurance, Security Deposit, late fees, penalties, and fines through September 30, 2021, except as otherwise provided for herein. Tenant shall maintain JWA-approved concession locations and hours of operation.

[Signatures appear on following pages]

IN WITNESS WHEREOF, County and Tenant have executed this Second Amendment as of the day and year first above written.

TENANT: Bambuza South Waterfront, LLC dba Bambuza OC Ventures, LLC dba The Coffee Bean & Tea Leaf

By: \_\_\_\_\_

Its: \_\_\_\_\_

Name: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Name: \_\_\_\_\_

APPROVED AS TO FORM:

County Counsel

By: \_\_\_\_\_

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: \_\_\_\_\_

RECOMMENDED FOR APPROVAL:

John Wayne Airport

By: \_\_\_\_\_

Richard Francis  
Interim Airport Director

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535  
Attest:

COUNTY

COUNTY OF ORANGE

By: \_\_\_\_\_

Chairman, Board of Supervisors

\_\_\_\_\_  
Robin Stieler  
Clerk of the Board of Supervisors

**AMENDMENT NUMBER TWO TO SPECIALTY COFFEE CONCESSION LEASE**

THIS SECOND AMENDMENT TO SPECIALTY COFFEE CONCESSION LEASE (“Amendment”) is made and entered into as of \_\_\_\_\_, 2021, by and between the COUNTY OF ORANGE, a political subdivision of the State of California (“County”) and BAMBUZA SOUTH WATERFRONT, LLC DBA BAMBUZA OC VENTURES, LLC DBA THE COFFEE BEAN & TEA LEAF (“Tenant”). County and Tenant may sometimes hereinafter individually be referred to as “Party” or jointly as “Parties.”

**RECITALS**

WHEREAS, County and Tenant entered into a Specialty Coffee Concession Lease, dated August 27, 2019 (“Existing Lease”); and

WHEREAS, County, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport (“JWA” or “Airport”), located in the County of Orange, State of California, and operates and maintains the Airport as a governmental function for the primary purpose of providing air transportation to the public; and

WHEREAS, County and Tenant executed the First Amendment, dated December 10, 2019, to adjust the Tenant Infrastructure Fee; and

WHEREAS, County and Tenant now desire to further amend the Existing Lease, as amended by the First Amendment, to extend the Lease term three (3) years, and authorize the Airport Director to execute up to two (2) additional one-year Lease extensions.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Tenant hereby agree as follows:

**AGREEMENTS**

1. **Term of Lease.** Section 2.01 shall be deleted and replaced in its entirety with the following:

**“SECTION 2.01 TERM OF LEASE**

This Lease shall be effective upon the signing of the Lease by the COUNTY, the “Effective Date.” The term of this Lease shall be thirteen (13) years from the Rent Commencement Date.”

2. **Option to Extend Term.** Section 2.04 shall be added as follows:

**“SECTION 2.04 OPTION TO EXEND TERM**

Within the first six (6) months of the final year of the Lease term, Tenant may request an additional one-year Lease extension. If Tenant requests a Lease

extension, Tenant shall furnish to Airport Director certified profit and loss/operating statements regarding its operation at the Airport. Airport Director, at his or her sole discretion, may authorize up to two (2) additional one-year Lease extensions.”

3. **Federal Grant Assurances and Requirements.** Section 11.01 shall be deleted and replaced in its entirety with the following:

**“SECTION 11.01 CIVIL RIGHTS AND NONDISCRIMINATION**

A. Tenant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Tenant transfers its obligation to another, the transferee is obligated in the same manner as Tenant.

This provision obligates Tenant for the period during which the property is owned, used or possessed by Tenant and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

B. Tenant, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:

- 1) **Compliance with Regulations:** Tenant will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.
- 2) **Nondiscrimination:** Tenant, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Tenant will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- 3) **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by Tenant for work to be performed under a subcontract, including procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Tenant of the Tenant’s obligations

under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

- 4) **Information and Reports:** Tenant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Tenant will so certify to the County or the FAA, as appropriate, and will set forth what efforts it has made to obtain this information.
- 5) **Sanctions for Noncompliance:** In the event of the Tenant's noncompliance with the non-discrimination provisions of this Lease, the County will impose such sanctions as it or the FAA may determine to be appropriate, including, but not limited to: withholding payments under the contract until the Tenant complies, and/or cancelling, terminating, or suspending a contract, in whole or in part.
- 6) **Incorporation of Provisions:** The Tenant will include the provisions of paragraphs one through six in every sublease or subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Tenant will take action with respect to any sublease, subcontract or procurement as the County or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Tenant becomes involved in, or is threatened with litigation by a subtenant, subcontractor, or supplier because of such direction, the Tenant may request the County to enter into any litigation to protect the interests of the County. In addition, the Tenant may request the United States to enter into the litigation to protect the interests of the United States.

C. Tenant, for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

- 1) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Tenant will

maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- 2) No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- 3) In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.
- 4) Tenant will use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.

D. Tenant shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.

E. Tenant, for itself, its assignees, and successors in interest agrees to comply with the following Nondiscrimination Acts and Authorities, including but not limited to:

- 1) Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 2) 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- 3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- 4) Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of

- disability); and 49 CFR part 27;
- 5) The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
  - 6) Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
  - 7) The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
  - 8) Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
  - 9) The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
  - 10) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
  - 11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
  - 12) Title IX of the Education Amendments of 1972, as amended,

which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq*).

- F. In the event of breach of any of the above nondiscrimination covenants, the County shall have the right to terminate the Lease and to enter, re-enter, and repossess said lands and the facilities thereon, and hold the same as if said Lease had never been made or issued.”

**4. No Other Amendments; This Second Amendment Governs and Controls.**

Except as expressly modified by this Second Amendment, the Existing Lease, as amended by the First Amendment, shall remain unmodified and in full force and effect and is hereby reinstated, ratified, and affirmed. To the extent any of the provisions of this Second Amendment are inconsistent with any of the provisions set forth in the Existing Lease and First Amendment, the provisions of this Second Amendment shall govern and control. Any reference to the “Agreement,” “hereunder,” “hereof,” “herein,” or words of like import in the Existing Lease, First Amendment, and this Second Amendment shall mean and be a reference to the Existing Lease as hereby amended, and the Existing Lease, First Amendment, and this Second Amendment shall be read and interpreted as if it was one agreement.

**5. Authority.** Each Party represents to the other Party or Parties that the individual executing this Second Amendment on behalf of such Party has the capacity and authority to execute and deliver this Second Amendment on behalf of such Party, and that this Second Amendment, once executed and delivered, is the legal, valid and binding obligation of such Party.

**6. Governing Law.** This Second Amendment shall be governed by and construed in accordance with the laws of the State of California.

**7. Counterparts and Execution.** This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document. The delivery of an executed counterpart of this Second Amendment by facsimile or as a Portable Document Format (“PDF”) or similar attachment to an e-mail shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

**8. Severability.** If any provision of this Second Amendment is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Second Amendment shall nonetheless remain in full force and effect.

**9. Contractual Obligations.** Tenant shall be current on all contractual obligations, including but not limited to, MAG, Percentage Rent, Insurance, Security Deposit, late fees, penalties, and fines through September 30, 2021, except as otherwise provided for herein. Tenant shall maintain JWA-approved concession locations and hours of operation.

*[Signatures appear on following page]*

IN WITNESS WHEREOF, County and Tenant have executed this Second Amendment as of the day and year first above written.

TENANT: Bambuza South Waterfront, LLC dba Bambuza OC Ventures, LLC dba The Coffee Bean & Tea Leaf

By: [Signature]  
Its: cab  
Name: Daniel Nguyen

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Name: \_\_\_\_\_

APPROVED AS TO FORM:

County Counsel

By: [Signature]

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: [Signature]

RECOMMENDED FOR APPROVAL:

John Wayne Airport

By: [Signature]  
Richard Francis  
Interim Airport Director

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535  
Attest:

COUNTY

COUNTY OF ORANGE

By: \_\_\_\_\_  
Chairman, Board of Supervisors

\_\_\_\_\_  
Robin Stieler  
Clerk of the Board of Supervisors

**AMENDMENT NUMBER TWO TO QUICK SERVE RESTAURANT CONCESSION  
LEASE**

THIS SECOND AMENDMENT TO QUICK SERVE RESTAURANT CONCESSION LEASE (“Amendment”) is made and entered into as of \_\_\_\_\_, 2021, by and between the COUNTY OF ORANGE, a political subdivision of the State of California (“County”) and CALIFORNIA COAST FOOD & BEVERAGE, LLC (“Tenant”). County and Tenant may sometimes hereinafter individually be referred to as “Party” or jointly as “Parties.”

**RECITALS**

WHEREAS, County and Tenant entered into a Quick Serve Restaurant Concession Lease, dated August 27, 2019 (“Existing Lease”); and

WHEREAS, County, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport (“JWA” or “Airport”), located in the County of Orange, State of California, and operates and maintains the Airport as a governmental function for the primary purpose of providing air transportation to the public; and

WHEREAS, County and Tenant executed the First Amendment, dated December 10, 2019, to adjust the Tenant Infrastructure Fee; and

WHEREAS, County and Tenant now desire to further amend the Existing Lease, as amended by the First Amendment, to extend the Lease term ~~two-three~~ (23) years, and authorize the Airport Director to execute up to ~~three-two~~ (32) additional one-year Lease extensions.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Tenant hereby agree as follows:

**AGREEMENTS**

1. **Term of Lease.** Section 2.01 shall be deleted and replaced in its entirety with the following:

**“SECTION 2.01 TERM OF LEASE**

This Lease shall be effective upon the signing of the Lease by the COUNTY, the “Effective Date.” The term of this Lease shall be ~~twelve-thirteen~~ (123) years, from the Rent Commencement Date.”

2. **Option to Extend Term.** Section 2.04 shall be added as follows:

**“SECTION 2.04 OPTION TO EXTEND TERM**

Within the first six (6) months of the final year of the Lease term, Tenant may request an additional one-year Lease extension. If Tenant requests a Lease

extension, Tenant shall furnish to Airport Director certified profit and loss/operating statements regarding its operation at the Airport. Airport Director, at his or her sole discretion, may authorize up to ~~three-two~~ (32) additional one-year Lease extensions.”

3. **Federal Grant Assurances and Requirements.** Section 11.01 shall be deleted and replaced in its entirety with the following:

**“SECTION 11.01 CIVIL RIGHTS AND NONDISCRIMINATION**

A. Tenant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Tenant transfers its obligation to another, the transferee is obligated in the same manner as Tenant.

This provision obligates Tenant for the period during which the property is owned, used or possessed by Tenant and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

B. Tenant, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:

- 1) **Compliance with Regulations:** Tenant will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.
- 2) **Nondiscrimination:** Tenant, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Tenant will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- 3) **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by Tenant for work to be performed under a subcontract, including procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Tenant of the Tenant’s obligations

under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

- 4) **Information and Reports:** Tenant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Tenant will so certify to the County or the FAA, as appropriate, and will set forth what efforts it has made to obtain this information.
- 5) **Sanctions for Noncompliance:** In the event of the Tenant's noncompliance with the non-discrimination provisions of this Lease, the County will impose such sanctions as it or the FAA may determine to be appropriate, including, but not limited to: withholding payments under the contract until the Tenant complies, and/or cancelling, terminating, or suspending a contract, in whole or in part.
- 6) **Incorporation of Provisions:** The Tenant will include the provisions of paragraphs one through six in every sublease or subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Tenant will take action with respect to any sublease, subcontract or procurement as the County or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Tenant becomes involved in, or is threatened with litigation by a subtenant, subcontractor, or supplier because of such direction, the Tenant may request the County to enter into any litigation to protect the interests of the County. In addition, the Tenant may request the United States to enter into the litigation to protect the interests of the United States.

C. Tenant, for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

- 1) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Tenant will

maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- 2) No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- 3) In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.
- 4) Tenant will use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.

D. Tenant shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.

E. Tenant, for itself, its assignees, and successors in interest agrees to comply with the following Nondiscrimination Acts and Authorities, including but not limited to:

- 1) Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 2) 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- 3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- 4) Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of

- disability); and 49 CFR part 27;
- 5) The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
  - 6) Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
  - 7) The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
  - 8) Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
  - 9) The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
  - 10) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
  - 11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
  - 12) Title IX of the Education Amendments of 1972, as amended,

which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq*).

- F. In the event of breach of any of the above nondiscrimination covenants, the County shall have the right to terminate the Lease and to enter, re-enter, and repossess said lands and the facilities thereon, and hold the same as if said Lease had never been made or issued.”

**4. No Other Amendments; This Second Amendment Governs and Controls.**

Except as expressly modified by this Second Amendment, the Existing Lease, as amended by the First Amendment, shall remain unmodified and in full force and effect and is hereby reinstated, ratified and affirmed. To the extent any of the provisions of this Second Amendment are inconsistent with any of the provisions set forth in the Existing Lease and First Amendment, the provisions of this Second Amendment shall govern and control. Any reference to the “Agreement,” “hereunder,” “hereof,” “herein,” or words of like import in the Existing Lease, First Amendment, and this Second Amendment shall mean and be a reference to the Existing Lease as hereby amended, and the Existing Lease, First Amendment, and this Second Amendment shall be read and interpreted as if it was one agreement.

**5. Authority.** Each Party represents to the other Party or Parties that the individual executing this Second Amendment on behalf of such Party has the capacity and authority to execute and deliver this Second Amendment on behalf of such Party, and that this Second Amendment, once executed and delivered, is the legal, valid and binding obligation of such Party.

**6. Governing Law.** This Second Amendment shall be governed by and construed in accordance with the laws of the State of California.

**7. Counterparts and Execution.** This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document. The delivery of an executed counterpart of this Second Amendment by facsimile or as a Portable Document Format (“PDF”) or similar attachment to an e-mail shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

**8. Severability.** If any provision of this Second Amendment is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Second Amendment shall nonetheless remain in full force and effect.

**9. Contractual Obligations.** Tenant shall be current on all contractual obligations, including but not limited to, MAG, Percentage Rent, Insurance, Security Deposit, late fees, penalties, and fines through September 30, 2021, except as otherwise provided for herein. Tenant shall maintain JWA-approved concession locations and hours of operation.

[Signatures appear on following pages]

IN WITNESS WHEREOF, County and Tenant have executed this Second Amendment as of the day and year first above written.

TENANT: California Coast Food & Beverage, LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Name: \_\_\_\_\_

APPROVED AS TO FORM:

County Counsel

By: \_\_\_\_\_

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: \_\_\_\_\_

RECOMMENDED FOR APPROVAL:

John Wayne Airport

By: \_\_\_\_\_

Richard Francis  
Interim Airport Director

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535  
Attest:

COUNTY

COUNTY OF ORANGE

By: \_\_\_\_\_  
Chairman, Board of Supervisors

\_\_\_\_\_  
Robin Stieler  
Clerk of the Board of Supervisors

**AMENDMENT NUMBER TWO TO QUICK SERVE RESTAURANT CONCESSION  
LEASE**

THIS SECOND AMENDMENT TO QUICK SERVE RESTAURANT CONCESSION LEASE ("Amendment") is made and entered into as of \_\_\_\_\_, 2021, by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("County") and CALIFORNIA COAST FOOD & BEVERAGE, LLC ("Tenant"). County and Tenant may sometimes hereinafter individually be referred to as "Party" or jointly as "Parties."

**RECITALS**

WHEREAS, County and Tenant entered into a Quick Serve Restaurant Concession Lease, dated August 27, 2019 ("Existing Lease"); and

WHEREAS, County, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport ("JWA" or "Airport"), located in the County of Orange, State of California, and operates and maintains the Airport as a governmental function for the primary purpose of providing air transportation to the public; and

WHEREAS, County and Tenant executed the First Amendment, dated December 10, 2019, to adjust the Tenant Infrastructure Fee; and

WHEREAS, County and Tenant now desire to further amend the Existing Lease, as amended by the First Amendment, to extend the Lease term three (3) years, and authorize the Airport Director to execute up to two (2) additional one-year Lease extensions.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Tenant hereby agree as follows:

**AGREEMENTS**

1. **Term of Lease.** Section 2.01 shall be deleted and replaced in its entirety with the following:

**“SECTION 2.01 TERM OF LEASE**

This Lease shall be effective upon the signing of the Lease by the COUNTY, the “Effective Date.” The term of this Lease shall be thirteen (13) years, from the Rent Commencement Date.”

2. **Option to Extend Term.** Section 2.04 shall be added as follows:

**“SECTION 2.04 OPTION TO EXTEND TERM**

Within the first six (6) months of the final year of the Lease term, Tenant may request an additional one-year Lease extension. If Tenant requests a Lease

extension, Tenant shall furnish to Airport Director certified profit and loss/operating statements regarding its operation at the Airport. Airport Director, at his or her sole discretion, may authorize up to two (2) additional one-year Lease extensions.”

3. **Federal Grant Assurances and Requirements**. Section 11.01 shall be deleted and replaced in its entirety with the following:

**“SECTION 11.01 CIVIL RIGHTS AND NONDISCRIMINATION**

A. Tenant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Tenant transfers its obligation to another, the transferee is obligated in the same manner as Tenant.

This provision obligates Tenant for the period during which the property is owned, used or possessed by Tenant and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

B. Tenant, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:

- 1) **Compliance with Regulations:** Tenant will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.
- 2) **Nondiscrimination:** Tenant, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Tenant will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- 3) **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by Tenant for work to be performed under a subcontract, including procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Tenant of the Tenant’s obligations

under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

- 4) **Information and Reports:** Tenant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Tenant will so certify to the County or the FAA, as appropriate, and will set forth what efforts it has made to obtain this information.
  - 5) **Sanctions for Noncompliance:** In the event of the Tenant's noncompliance with the non-discrimination provisions of this Lease, the County will impose such sanctions as it or the FAA may determine to be appropriate, including, but not limited to: withholding payments under the contract until the Tenant complies, and/or cancelling, terminating, or suspending a contract, in whole or in part.
  - 6) **Incorporation of Provisions:** The Tenant will include the provisions of paragraphs one through six in every sublease or subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Tenant will take action with respect to any sublease, subcontract or procurement as the County or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Tenant becomes involved in, or is threatened with litigation by a subtenant, subcontractor, or supplier because of such direction, the Tenant may request the County to enter into any litigation to protect the interests of the County. In addition, the Tenant may request the United States to enter into the litigation to protect the interests of the United States.
- C. Tenant, for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:
- 1) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Tenant will

maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- 2) No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
  - 3) In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.
  - 4) Tenant will use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.
- D. Tenant shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.
- E. Tenant, for itself, its assignees, and successors in interest agrees to comply with the following Nondiscrimination Acts and Authorities, including but not limited to:
- 1) Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
  - 2) 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
  - 3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
  - 4) Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of

- disability); and 49 CFR part 27;
- 5) The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
  - 6) Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
  - 7) The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
  - 8) Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
  - 9) The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
  - 10) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
  - 11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
  - 12) Title IX of the Education Amendments of 1972, as amended,

which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq*).

- F. In the event of breach of any of the above nondiscrimination covenants, the County shall have the right to terminate the Lease and to enter, re-enter, and repossess said lands and the facilities thereon, and hold the same as if said Lease had never been made or issued.”

**4. No Other Amendments; This Second Amendment Governs and Controls.**

Except as expressly modified by this Second Amendment, the Existing Lease, as amended by the First Amendment, shall remain unmodified and in full force and effect and is hereby reinstated, ratified and affirmed. To the extent any of the provisions of this Second Amendment are inconsistent with any of the provisions set forth in the Existing Lease and First Amendment, the provisions of this Second Amendment shall govern and control. Any reference to the “Agreement,” “hereunder,” “hereof,” “herein,” or words of like import in the Existing Lease, First Amendment, and this Second Amendment shall mean and be a reference to the Existing Lease as hereby amended, and the Existing Lease, First Amendment, and this Second Amendment shall be read and interpreted as if it was one agreement.

**5. Authority.** Each Party represents to the other Party or Parties that the individual executing this Second Amendment on behalf of such Party has the capacity and authority to execute and deliver this Second Amendment on behalf of such Party, and that this Second Amendment, once executed and delivered, is the legal, valid and binding obligation of such Party.

**6. Governing Law.** This Second Amendment shall be governed by and construed in accordance with the laws of the State of California.

**7. Counterparts and Execution.** This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document. The delivery of an executed counterpart of this Second Amendment by facsimile or as a Portable Document Format (“PDF”) or similar attachment to an e-mail shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

**8. Severability.** If any provision of this Second Amendment is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Second Amendment shall nonetheless remain in full force and effect.

**9. Contractual Obligations.** Tenant shall be current on all contractual obligations, including but not limited to, MAG, Percentage Rent, Insurance, Security Deposit, late fees, penalties, and fines through September 30, 2021, except as otherwise provided for herein. Tenant shall maintain JWA-approved concession locations and hours of operation.

*[Signatures appear on following page]*

IN WITNESS WHEREOF, County and Tenant have executed this Second Amendment as of the day and year first above written.

TENANT: California Coast Food & Beverage, LLC

By: [Signature]  
 Its: PRESIDENT  
 Name: CHAU HAUER

By: [Signature]  
 Its: VICE PRESIDENT  
 Name: CHAU HAUER

APPROVED AS TO FORM:

County Counsel

By: [Signature]

by: [Signature]  
 secretary  
 Jeany Lee

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: [Signature]

by: [Signature]  
TREASURER  
NGA TRAN

RECOMMENDED FOR APPROVAL:

John Wayne Airport

By: [Signature]  
 Richard Francis  
 Interim Airport Director

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535  
 Attest:

COUNTY

COUNTY OF ORANGE

\_\_\_\_\_  
 Robin Stieler  
 Clerk of the Board of Supervisors

By: \_\_\_\_\_  
 Chairman, Board of Supervisors

**AMENDMENT NUMBER TWO TO CASUAL DINING & BAR CONCESSION LEASE**

THIS SECOND AMENDMENT TO CASUAL DINING & BAR CONCESSION LEASE (“Amendment”) is made and entered into as of \_\_\_\_\_, 2021, by and between the COUNTY OF ORANGE, a political subdivision of the State of California (“County”) and MISSION YOGURT, INC. (“Tenant”). County and Tenant may sometimes hereinafter individually be referred to as “Party” or jointly as “Parties.”

**RECITALS**

WHEREAS, County and Tenant entered into a Casual Dining & Bar Concession Lease, dated August 27, 2019 (“Existing Lease”); and

WHEREAS, County, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport (“JWA” or “Airport”), located in the County of Orange, State of California, and operates and maintains the Airport as a governmental function for the primary purpose of providing air transportation to the public; and

WHEREAS, County and Tenant executed the First Amendment, dated December 10, 2019, to adjust the Tenant Infrastructure Fee; and

WHEREAS, County and Tenant now desire to further amend the Existing Lease, as amended by the First Amendment, to extend the Lease term ~~two-three~~ (23) years, and authorize the Airport Director to execute up to ~~three-two~~ (32) additional one-year Lease extensions.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Tenant hereby agree as follows:

**AGREEMENTS**

1. **Term of Lease.** Section 2.01 shall be deleted and replaced in its entirety with the following:

**“SECTION 2.01 TERM OF LEASE**

This Lease shall be effective upon the signing of the Lease by the COUNTY, the “Effective Date.” The term of this Lease shall be ~~twelve-thirteen~~ (123) years from the Rent Commencement Date.”

2. **Option to Extend Term.** Section 2.04 shall be added as follows:

**“SECTION 2.04 OPTION TO EXEND TERM**

Within the first six (6) months of the final year of the Lease term, Tenant may request an additional one-year Lease extension. If Tenant requests a Lease extension, Tenant shall furnish to Airport Director certified profit and

loss/operating statements regarding its operation at the Airport. Airport Director, at his or her sole discretion, may authorize up to ~~three-two~~ (32) additional one-year Lease extensions.”

3. **Federal Grant Assurances and Requirements**. Section 11.01 shall be deleted and replaced in its entirety with the following:

**“SECTION 11.01 CIVIL RIGHTS AND NONDISCRIMINATION**

A. Tenant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Tenant transfers its obligation to another, the transferee is obligated in the same manner as Tenant.

This provision obligates Tenant for the period during which the property is owned, used or possessed by Tenant and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

B. Tenant, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:

- 1) **Compliance with Regulations:** Tenant will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.
- 2) **Nondiscrimination:** Tenant, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Tenant will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- 3) **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by Tenant for work to be performed under a subcontract, including procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Tenant of the Tenant’s obligations

under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

- 4) **Information and Reports:** Tenant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Tenant will so certify to the County or the FAA, as appropriate, and will set forth what efforts it has made to obtain this information.
- 5) **Sanctions for Noncompliance:** In the event of the Tenant's noncompliance with the non-discrimination provisions of this Lease, the County will impose such sanctions as it or the FAA may determine to be appropriate, including, but not limited to: withholding payments under the contract until the Tenant complies, and/or cancelling, terminating, or suspending a contract, in whole or in part.
- 6) **Incorporation of Provisions:** The Tenant will include the provisions of paragraphs one through six in every sublease or subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Tenant will take action with respect to any sublease, subcontract or procurement as the County or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Tenant becomes involved in, or is threatened with litigation by a subtenant, subcontractor, or supplier because of such direction, the Tenant may request the County to enter into any litigation to protect the interests of the County. In addition, the Tenant may request the United States to enter into the litigation to protect the interests of the United States.

C. Tenant, for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

- 1) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Tenant will

maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- 2) No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- 3) In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.
- 4) Tenant will use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.

D. Tenant shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.

E. Tenant, for itself, its assignees, and successors in interest agrees to comply with the following Nondiscrimination Acts and Authorities, including but not limited to:

- 1) Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 2) 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- 3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- 4) Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of

- disability); and 49 CFR part 27;
- 5) The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
  - 6) Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
  - 7) The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
  - 8) Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
  - 9) The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
  - 10) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
  - 11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
  - 12) Title IX of the Education Amendments of 1972, as amended,

which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq*).

- F. In the event of breach of any of the above nondiscrimination covenants, the County shall have the right to terminate the Lease and to enter, re-enter, and repossess said lands and the facilities thereon, and hold the same as if said Lease had never been made or issued.”

**4. No Other Amendments; This Second Amendment Governs and Controls.**

Except as expressly modified by this Second Amendment, the Existing Lease, as amended by the First Amendment, shall remain unmodified and in full force and effect and is hereby reinstated, ratified and affirmed. To the extent any of the provisions of this Second Amendment are inconsistent with any of the provisions set forth in the Existing Lease and First Amendment, the provisions of this Second Amendment shall govern and control. Any reference to the “Agreement,” “hereunder,” “hereof,” “herein,” or words of like import in the Existing Lease, First Amendment, and this Second Amendment shall mean and be a reference to the Existing Lease as hereby amended, and the Existing Lease, First Amendment, and this Second Amendment shall be read and interpreted as if it was one agreement.

**5. Authority.** Each Party represents to the other Party or Parties that the individual executing this Second Amendment on behalf of such Party has the capacity and authority to execute and deliver this Second Amendment on behalf of such Party, and that this Second Amendment, once executed and delivered, is the legal, valid and binding obligation of such Party.

**6. Governing Law.** This Second Amendment shall be governed by and construed in accordance with the laws of the State of California.

**7. Counterparts and Execution.** This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document. The delivery of an executed counterpart of this Second Amendment by facsimile or as a Portable Document Format (“PDF”) or similar attachment to an e-mail shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

**8. Severability.** If any provision of this Second Amendment is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Second Amendment shall nonetheless remain in full force and effect.

**9. Contractual Obligations.** Tenant shall be current on all contractual obligations, including but not limited to, MAG, Percentage Rent, Insurance, Security Deposit, late fees, penalties, and fines through September 30, 2021, except as otherwise provided for herein. Tenant shall maintain JWA-approved concession locations and hours of operation.

*[Signatures appear on following page]*

IN WITNESS WHEREOF, County and Tenant have executed this Second Amendment as of the day and year first above written.

TENANT: Mission Yogurt, Inc.

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Name: \_\_\_\_\_

APPROVED AS TO FORM:

County Counsel

By: \_\_\_\_\_

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: \_\_\_\_\_

RECOMMENDED FOR APPROVAL:

John Wayne Airport

By: \_\_\_\_\_

Richard Francis  
Interim Airport Director

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535

Attest:

COUNTY

COUNTY OF ORANGE

By: \_\_\_\_\_  
Chairman, Board of Supervisors

\_\_\_\_\_  
Robin Stieler  
Clerk of the Board of Supervisors

**AMENDMENT NUMBER TWO TO CASUAL DINING & BAR CONCESSION LEASE**

THIS SECOND AMENDMENT TO CASUAL DINING & BAR CONCESSION LEASE (“Amendment”) is made and entered into as of \_\_\_\_\_, 2021, by and between the COUNTY OF ORANGE, a political subdivision of the State of California (“County”) and MISSION YOGURT, INC. (“Tenant”). County and Tenant may sometimes hereinafter individually be referred to as “Party” or jointly as “Parties.”

**RECITALS**

WHEREAS, County and Tenant entered into a Casual Dining & Bar Concession Lease, dated August 27, 2019 (“Existing Lease”); and

WHEREAS, County, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport (“JWA” or “Airport”), located in the County of Orange, State of California, and operates and maintains the Airport as a governmental function for the primary purpose of providing air transportation to the public; and

WHEREAS, County and Tenant executed the First Amendment, dated December 10, 2019, to adjust the Tenant Infrastructure Fee; and

WHEREAS, County and Tenant now desire to further amend the Existing Lease, as amended by the First Amendment, to extend the Lease term three (3) years, and authorize the Airport Director to execute up to two (2) additional one-year Lease extensions.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Tenant hereby agree as follows:

**AGREEMENTS**

1. **Term of Lease.** Section 2.01 shall be deleted and replaced in its entirety with the following:

**“SECTION 2.01 TERM OF LEASE**

This Lease shall be effective upon the signing of the Lease by the COUNTY, the “Effective Date.” The term of this Lease shall be thirteen (13) years from the Rent Commencement Date.”

2. **Option to Extend Term.** Section 2.04 shall be added as follows:

**“SECTION 2.04 OPTION TO EXEND TERM**

Within the first six (6) months of the final year of the Lease term, Tenant may request an additional one-year Lease extension. If Tenant requests a Lease extension, Tenant shall furnish to Airport Director certified profit and

loss/operating statements regarding its operation at the Airport. Airport Director, at his or her sole discretion, may authorize up to two (2) additional one-year Lease extensions.”

3. **Federal Grant Assurances and Requirements**. Section 11.01 shall be deleted and replaced in its entirety with the following:

**“SECTION 11.01 CIVIL RIGHTS AND NONDISCRIMINATION**

A. Tenant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Tenant transfers its obligation to another, the transferee is obligated in the same manner as Tenant.

This provision obligates Tenant for the period during which the property is owned, used or possessed by Tenant and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

B. Tenant, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:

- 1) **Compliance with Regulations:** Tenant will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.
- 2) **Nondiscrimination:** Tenant, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Tenant will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- 3) **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by Tenant for work to be performed under a subcontract, including procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Tenant of the Tenant’s obligations

under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

- 4) **Information and Reports:** Tenant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Tenant will so certify to the County or the FAA, as appropriate, and will set forth what efforts it has made to obtain this information.
  - 5) **Sanctions for Noncompliance:** In the event of the Tenant's noncompliance with the non-discrimination provisions of this Lease, the County will impose such sanctions as it or the FAA may determine to be appropriate, including, but not limited to: withholding payments under the contract until the Tenant complies, and/or cancelling, terminating, or suspending a contract, in whole or in part.
  - 6) **Incorporation of Provisions:** The Tenant will include the provisions of paragraphs one through six in every sublease or subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Tenant will take action with respect to any sublease, subcontract or procurement as the County or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Tenant becomes involved in, or is threatened with litigation by a subtenant, subcontractor, or supplier because of such direction, the Tenant may request the County to enter into any litigation to protect the interests of the County. In addition, the Tenant may request the United States to enter into the litigation to protect the interests of the United States.
- C. Tenant, for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:
- 1) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Tenant will

maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- 2) No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
  - 3) In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.
  - 4) Tenant will use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.
- D. Tenant shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.
- E. Tenant, for itself, its assignees, and successors in interest agrees to comply with the following Nondiscrimination Acts and Authorities, including but not limited to:
- 1) Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
  - 2) 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
  - 3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
  - 4) Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of

- disability); and 49 CFR part 27;
- 5) The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
  - 6) Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
  - 7) The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
  - 8) Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
  - 9) The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
  - 10) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
  - 11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
  - 12) Title IX of the Education Amendments of 1972, as amended,

which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq*).

- F. In the event of breach of any of the above nondiscrimination covenants, the County shall have the right to terminate the Lease and to enter, re-enter, and repossess said lands and the facilities thereon, and hold the same as if said Lease had never been made or issued.”

**4. No Other Amendments; This Second Amendment Governs and Controls.** Except as expressly modified by this Second Amendment, the Existing Lease, as amended by the First Amendment, shall remain unmodified and in full force and effect and is hereby reinstated, ratified and affirmed. To the extent any of the provisions of this Second Amendment are inconsistent with any of the provisions set forth in the Existing Lease and First Amendment, the provisions of this Second Amendment shall govern and control. Any reference to the “Agreement,” “hereunder,” “hereof,” “herein,” or words of like import in the Existing Lease, First Amendment, and this Second Amendment shall mean and be a reference to the Existing Lease as hereby amended, and the Existing Lease, First Amendment, and this Second Amendment shall be read and interpreted as if it was one agreement.

**5. Authority.** Each Party represents to the other Party or Parties that the individual executing this Second Amendment on behalf of such Party has the capacity and authority to execute and deliver this Second Amendment on behalf of such Party, and that this Second Amendment, once executed and delivered, is the legal, valid and binding obligation of such Party.

**6. Governing Law.** This Second Amendment shall be governed by and construed in accordance with the laws of the State of California.

**7. Counterparts and Execution.** This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document. The delivery of an executed counterpart of this Second Amendment by facsimile or as a Portable Document Format (“PDF”) or similar attachment to an e-mail shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

**8. Severability.** If any provision of this Second Amendment is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Second Amendment shall nonetheless remain in full force and effect.

**9. Contractual Obligations.** Tenant shall be current on all contractual obligations, including but not limited to, MAG, Percentage Rent, Insurance, Security Deposit, late fees, penalties, and fines through September 30, 2021, except as otherwise provided for herein. Tenant shall maintain JWA-approved concession locations and hours of operation.

*[Signatures appear on following page]*

IN WITNESS WHEREOF, County and Tenant have executed this Second Amendment as of the day and year first above written.

TENANT: Mission Yogurt, Inc.

By: *Rodrick A. Tafra*  
Its: President  
Name: RODRICK J. TAFRA

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Name: \_\_\_\_\_

APPROVED AS TO FORM:

County Counsel

By: *[Signature]*

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: *[Signature]*

RECOMMENDED FOR APPROVAL:

John Wayne Airport

By: *[Signature]*  
Richard Francis  
Interim Airport Director

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535  
Attest:

COUNTY

COUNTY OF ORANGE

By: \_\_\_\_\_  
Chairman, Board of Supervisors

\_\_\_\_\_  
Robin Stieler  
Clerk of the Board of Supervisors

**AMENDMENT NUMBER TWO TO CASUAL DINING & BAR CONCESSION LEASE**

THIS SECOND AMENDMENT TO CASUAL DINING & BAR CONCESSION LEASE (“Amendment”) is made and entered into as of \_\_\_\_\_, 2021, by and between the COUNTY OF ORANGE, a political subdivision of the State of California (“County”) and GREENLEAF JWA, LLC (“Tenant”). County and Tenant may sometimes hereinafter individually be referred to as “Party” or jointly as “Parties.”

**RECITALS**

WHEREAS, County and Tenant entered into a Casual Dining & Bar Concession Lease, dated August 27, 2019 (“Existing Lease”); and

WHEREAS, County, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport (“JWA” or “Airport”), located in the County of Orange, State of California, and operates and maintains the Airport as a governmental function for the primary purpose of providing air transportation to the public; and

WHEREAS, County and Tenant executed the First Amendment, dated December 10, 2019, to adjust the Tenant Infrastructure Fee; and

WHEREAS, County and Tenant now desire to further amend the Existing Lease, as amended by the First Amendment, to extend the Lease ~~two-three~~ (23) years, and authorize the Airport Director to execute up to ~~three-two~~ (32) additional one-year Lease extensions.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Tenant hereby agree as follows:

**AGREEMENTS**

1. **Term of Lease.** Section 2.01 shall be deleted and replaced in its entirety with the following:

**“SECTION 2.01 TERM OF LEASE**

This Lease shall be effective upon the signing of the Lease by the COUNTY, the “Effective Date.” The term of this Lease shall be ~~twelve-thirteen~~ (123) years, from the Rent Commencement Date.”

2. **Option to Extend Term.** Section 2.04 shall be added as follows:

**“SECTION 2.04 OPTION TO EXTEND TERM**

Within the first six (6) months of the final year of the Lease term, Tenant may request an additional one-year Lease extension. If Tenant requests a Lease extension, Tenant shall furnish to Airport Director certified profit and

loss/operating statements regarding its operation at the Airport. Airport Director, at his or her sole discretion, may authorize up to ~~three-two~~ (32) additional one-year Lease extensions.”

3. **Tenant’s Legal Name.** The Existing Lease is hereby amended to reflect Tenant’s true legal name and all references to “Greenleaf, JWA” shall be replaced with “Greenleaf JWA, LLC.”

4. **Federal Grant Assurances and Requirements.** Section 11.01 shall be deleted and replaced in its entirety with the following:

**“SECTION 11.01 CIVIL RIGHTS AND NONDISCRIMINATION**

A. Tenant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Tenant transfers its obligation to another, the transferee is obligated in the same manner as Tenant.

This provision obligates Tenant for the period during which the property is owned, used or possessed by Tenant and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

B. Tenant, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:

1) **Compliance with Regulations:** Tenant will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.

2) **Nondiscrimination:** Tenant, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Tenant will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3) **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by Tenant for work to be performed under a subcontract, including procurement of

materials, or leases of equipment, each potential subcontractor or supplier will be notified by Tenant of the Tenant's obligations under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

- 4) **Information and Reports:** Tenant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Tenant will so certify to the County or the FAA, as appropriate, and will set forth what efforts it has made to obtain this information.
- 5) **Sanctions for Noncompliance:** In the event of the Tenant's noncompliance with the non-discrimination provisions of this Lease, the County will impose such sanctions as it or the FAA may determine to be appropriate, including, but not limited to: withholding payments under the contract until the Tenant complies, and/or cancelling, terminating, or suspending a contract, in whole or in part.
- 6) **Incorporation of Provisions:** The Tenant will include the provisions of paragraphs one through six in every sublease or subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Tenant will take action with respect to any sublease, subcontract or procurement as the County or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Tenant becomes involved in, or is threatened with litigation by a subtenant, subcontractor, or supplier because of such direction, the Tenant may request the County to enter into any litigation to protect the interests of the County. In addition, the Tenant may request the United States to enter into the litigation to protect the interests of the United States.

C. Tenant, for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

- 1) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a FAA

activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Tenant will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- 2) No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- 3) In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.
- 4) Tenant will use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.

D. Tenant shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.

E. Tenant, for itself, its assignees, and successors in interest agrees to comply with the following Nondiscrimination Acts and Authorities, including but not limited to:

- 1) Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 2) 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- 3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

- 4) Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- 5) The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- 6) Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- 7) The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- 8) Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- 9) The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- 10) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- 11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

12) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq*).

F. In the event of breach of any of the above nondiscrimination covenants, the County shall have the right to terminate the Lease and to enter, re-enter, and repossess said lands and the facilities thereon, and hold the same as if said Lease had never been made or issued.”

**5. No Other Amendments; This Second Amendment Governs and Controls.**

Except as expressly modified by this Second Amendment, the Existing Lease, as amended by the First Amendment, shall remain unmodified and in full force and effect and is hereby reinstated, ratified and affirmed. To the extent any of the provisions of this Second Amendment are inconsistent with any of the provisions set forth in the Existing Lease and First Amendment, the provisions of this Second Amendment shall govern and control. Any reference to the “Agreement,” “hereunder,” “hereof,” “herein,” or words of like import in the Existing Lease, First Amendment, and this Second Amendment shall mean and be a reference to the Existing Lease as hereby amended, and the Existing Lease, First Amendment, and this Second Amendment shall be read and interpreted as if it was one agreement.

**6. Authority.** Each Party represents to the other Party or Parties that the individual executing this Second Amendment on behalf of such Party has the capacity and authority to execute and deliver this Second Amendment on behalf of such Party, and that this Second Amendment, once executed and delivered, is the legal, valid and binding obligation of such Party.

**7. Governing Law.** This Second Amendment shall be governed by and construed in accordance with the laws of the State of California.

**8. Counterparts and Execution.** This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document. The delivery of an executed counterpart of this Second Amendment by facsimile or as a Portable Document Format (“PDF”) or similar attachment to an e-mail shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart

**9. Severability.** If any provision of this Second Amendment is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Second Amendment shall nonetheless remain in full force and effect.

**10. Contractual Obligations.** Tenant shall be current on all contractual obligations, including but not limited to, MAG, Percentage Rent, Insurance, Security Deposit, late fees, penalties, and fines through September 30, 2021, except as otherwise provided for herein. Tenant shall maintain JWA-approved concession locations and hours of operation.

| *[Signatures appear on following page~~s~~]*

IN WITNESS WHEREOF, County and Tenant have executed this Second Amendment as of the day and year first above written.

TENANT: Greenleaf JWA, LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Name: \_\_\_\_\_

APPROVED AS TO FORM:

County Counsel

By: \_\_\_\_\_

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: \_\_\_\_\_

RECOMMENDED FOR APPROVAL:

John Wayne Airport

By: \_\_\_\_\_

Richard Francis  
Interim Airport Director

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535  
Attest:

COUNTY

COUNTY OF ORANGE

By: \_\_\_\_\_  
Chairman, Board of Supervisors

\_\_\_\_\_  
Robin Stieler  
Clerk of the Board of Supervisors

**AMENDMENT NUMBER TWO TO CASUAL DINING & BAR CONCESSION LEASE**

THIS SECOND AMENDMENT TO CASUAL DINING & BAR CONCESSION LEASE (“Amendment”) is made and entered into as of \_\_\_\_\_, 2021, by and between the COUNTY OF ORANGE, a political subdivision of the State of California (“County”) and GREENLEAF JWA, LLC (“Tenant”). County and Tenant may sometimes hereinafter individually be referred to as “Party” or jointly as “Parties.”

**RECITALS**

WHEREAS, County and Tenant entered into a Casual Dining & Bar Concession Lease, dated August 27, 2019 (“Existing Lease”); and

WHEREAS, County, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport (“JWA” or “Airport”), located in the County of Orange, State of California, and operates and maintains the Airport as a governmental function for the primary purpose of providing air transportation to the public; and

WHEREAS, County and Tenant executed the First Amendment, dated December 10, 2019, to adjust the Tenant Infrastructure Fee; and

WHEREAS, County and Tenant now desire to further amend the Existing Lease, as amended by the First Amendment, to extend the Lease three (3) years, and authorize the Airport Director to execute up to two (2) additional one-year Lease extensions.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Tenant hereby agree as follows:

**AGREEMENTS**

1. **Term of Lease.** Section 2.01 shall be deleted and replaced in its entirety with the following:

**“SECTION 2.01 TERM OF LEASE**

This Lease shall be effective upon the signing of the Lease by the COUNTY, the “Effective Date.” The term of this Lease shall be thirteen (13) years, from the Rent Commencement Date.”

2. **Option to Extend Term.** Section 2.04 shall be added as follows:

**“SECTION 2.04 OPTION TO EXTEND TERM**

Within the first six (6) months of the final year of the Lease term, Tenant may request an additional one-year Lease extension. If Tenant requests a Lease extension, Tenant shall furnish to Airport Director certified profit and

loss/operating statements regarding its operation at the Airport. Airport Director, at his or her sole discretion, may authorize up to two (2) additional one-year Lease extensions.”

3. **Tenant’s Legal Name.** The Existing Lease is hereby amended to reflect Tenant’s true legal name and all references to “Greenleaf, JWA” shall be replaced with “Greenleaf JWA, LLC.”

4. **Federal Grant Assurances and Requirements.** Section 11.01 shall be deleted and replaced in its entirety with the following:

**“SECTION 11.01 CIVIL RIGHTS AND NONDISCRIMINATION**

A. Tenant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Tenant transfers its obligation to another, the transferee is obligated in the same manner as Tenant.

This provision obligates Tenant for the period during which the property is owned, used or possessed by Tenant and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

B. Tenant, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:

- 1) **Compliance with Regulations:** Tenant will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.
- 2) **Nondiscrimination:** Tenant, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Tenant will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- 3) **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by Tenant for work to be performed under a subcontract, including procurement of

materials, or leases of equipment, each potential subcontractor or supplier will be notified by Tenant of the Tenant's obligations under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

- 4) **Information and Reports:** Tenant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Tenant will so certify to the County or the FAA, as appropriate, and will set forth what efforts it has made to obtain this information.
  - 5) **Sanctions for Noncompliance:** In the event of the Tenant's noncompliance with the non-discrimination provisions of this Lease, the County will impose such sanctions as it or the FAA may determine to be appropriate, including, but not limited to: withholding payments under the contract until the Tenant complies, and/or cancelling, terminating, or suspending a contract, in whole or in part.
  - 6) **Incorporation of Provisions:** The Tenant will include the provisions of paragraphs one through six in every sublease or subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Tenant will take action with respect to any sublease, subcontract or procurement as the County or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Tenant becomes involved in, or is threatened with litigation by a subtenant, subcontractor, or supplier because of such direction, the Tenant may request the County to enter into any litigation to protect the interests of the County. In addition, the Tenant may request the United States to enter into the litigation to protect the interests of the United States.
- C. Tenant, for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:
- 1) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a FAA

activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Tenant will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- 2) No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
  - 3) In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.
  - 4) Tenant will use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.
- D. Tenant shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.
- E. Tenant, for itself, its assignees, and successors in interest agrees to comply with the following Nondiscrimination Acts and Authorities, including but not limited to:
- 1) Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
  - 2) 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
  - 3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

- 4) Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- 5) The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- 6) Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- 7) The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- 8) Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- 9) The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- 10) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- 11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

12) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq*).

F. In the event of breach of any of the above nondiscrimination covenants, the County shall have the right to terminate the Lease and to enter, re-enter, and repossess said lands and the facilities thereon, and hold the same as if said Lease had never been made or issued.”

**5. No Other Amendments; This Second Amendment Governs and Controls.**

Except as expressly modified by this Second Amendment, the Existing Lease, as amended by the First Amendment, shall remain unmodified and in full force and effect and is hereby reinstated, ratified and affirmed. To the extent any of the provisions of this Second Amendment are inconsistent with any of the provisions set forth in the Existing Lease and First Amendment, the provisions of this Second Amendment shall govern and control. Any reference to the “Agreement,” “hereunder,” “hereof,” “herein,” or words of like import in the Existing Lease, First Amendment, and this Second Amendment shall mean and be a reference to the Existing Lease as hereby amended, and the Existing Lease, First Amendment, and this Second Amendment shall be read and interpreted as if it was one agreement.

6. **Authority.** Each Party represents to the other Party or Parties that the individual executing this Second Amendment on behalf of such Party has the capacity and authority to execute and deliver this Second Amendment on behalf of such Party, and that this Second Amendment, once executed and delivered, is the legal, valid and binding obligation of such Party.

7. **Governing Law.** This Second Amendment shall be governed by and construed in accordance with the laws of the State of California.

8. **Counterparts and Execution.** This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document. The delivery of an executed counterpart of this Second Amendment by facsimile or as a Portable Document Format (“PDF”) or similar attachment to an e-mail shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart

9. **Severability.** If any provision of this Second Amendment is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Second Amendment shall nonetheless remain in full force and effect.

10. **Contractual Obligations.** Tenant shall be current on all contractual obligations, including but not limited to, MAG, Percentage Rent, Insurance, Security Deposit, late fees, penalties, and fines through September 30, 2021, except as otherwise provided for herein. Tenant shall maintain JWA-approved concession locations and hours of operation.

*[Signatures appear on following page]*

IN WITNESS WHEREOF, County and Tenant have executed this Second Amendment as of the day and year first above written.

TENANT: Greenleaf JWA, LLC

By: Jonathan Kollo  
Its: CEO  
Name: Jonathan Kollo

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Name: \_\_\_\_\_

APPROVED AS TO FORM:

County Counsel

By: [Signature]

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: [Signature]

RECOMMENDED FOR APPROVAL:

John Wayne Airport

By: [Signature]  
Richard Francis  
Interim Airport Director

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535  
Attest:

COUNTY

COUNTY OF ORANGE

By: \_\_\_\_\_  
Chairman, Board of Supervisors

\_\_\_\_\_  
Robin Stieler  
Clerk of the Board of Supervisors



# Revision to ASR and/or Attachments

**Date:** December 28, 2021  
**To:** Clerk of the Board of Supervisors  
**CC:** County Executive Office *Frank Kim*  
**From:** *James Treadaway* James Treadaway, Director of OC Public Works *K. Omura*  
**Re:** ASR Control #: 21-000887 Meeting Date, 1/11/2022 Item No. # 24  
**Subject:** Amend Contracts for Maintenance, Repairs and Alterations for Plumbing Services

Digitally signed by Frank Kim  
 DN: cn=Frank Kim, o=County of Orange, ou=CEO,  
 email=frank.kim@ocgov.com,  
 c=US  
 Date: 2022.01.03 10:23:39 -0800

2022 JAN -5 AM 10:27  
 CLERK OF THE BOARD  
 ORANGE COUNTY  
 BOARD OF SUPERVISORS

RECEIVED

Explanation: OC Public Works requires revisions to Recommended Actions, Background Information and Attachments A-G to address a correction to the following section of the contract: Article F. Miscellaneous Item Mark Up Structure.

Revised Recommended Action(s)

Authorize the County Procurement Officer or authorized Deputy to execute Amendment No. 1 to the aggregate contract with John Flynn Orange Coast Plumbing, Inc. dba Orange Coast Plumbing, Pro-Craft Construction, Inc. and Verne's Plumbing, Inc. to Perform Maintenance, Repairs and Alterations for Plumbing Systems, effective ~~December 14, 2021~~ January 11, 2022, through July 10, 2023, to amend the contract section for Miscellaneous Item Mark Up Structure with no contract cost increase.

Make modifications to:

Subject      Background Information      Summary      Financial Impact

Previous Request 7/11/2020 – 7/10/2023			Current Request <del>12/14/2021</del> 1/11/2022 – 7/10/2023		
Contractors	Requested Contract Amount	Usage as of 10/15/2021	Contractors	Requested Contract Increase	Anticipated Usage
3	\$1.2 million	\$24,380	3	No contract cost increase	N/A

OC Public Works is recommending Board approval to authorize the County Procurement Officer or authorized deputy to execute Amendment No. 1 to the aggregate Contract with the Contractors, effective ~~December 14, 2021~~ January 11, 2022, through July 10, 2023, to amend the contract section for Miscellaneous Item Mark Up Structure with no contract cost increase.

Revised Attachments (attach revised attachment(s) and redlined copy(s))

Revisions to Attachments A-C are to remove the following sentence from **Amendment to Contract Articles**:

F. Miscellaneous Item Mark Up Structure:

Miscellaneous Items may be purchased against the Contract. Miscellaneous Item purchases shall not exceed \$5,000 per invoice, including tax, unless the following process is followed.

Miscellaneous Items ranging between \$5,000 and \$25,000, including tax, must be pre-approved by the County Project Manager or Designee prior to processing. The County will obtain price quotes from Contractor for all Miscellaneous Items purchased between \$5,000 and \$25,000. ~~The Contractor shall provide the list price and discount price on all invoice(s) for all Miscellaneous Items.~~

Revisions to Attachments D-F are so that the redlines align with the changes made to their corresponding contracts (Attachments A-C).

Revisions to Attachment G are so that the Contract Operating Expenses section of the Contract Summary Forms align with the changes made to the contracts (Attachments A-C) and redlines (Attachments D-F).

*County of Orange, OC Public Works*  
*John Flynn Orange Coast Plumbing Inc. DBA Orange Coast Plumbing*

*MA-080-20011275*

**AMENDMENT NO. 1  
FOR  
PERFORM MAINTENANCE, REPAIRS AND ALTERATIONS FOR PLUMBING SYSTEMS**

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") and John Flynn Orange Coast Plumbing Inc. DBA Orange Coast Plumbing, with a place of business at 1506 N. Clinton Ave., Santa Ana, CA 92703 ("Contractor"), with County and Contractor sometimes individually referred to as "Party" or collectively referred to as "Parties".

**RECITALS**

WHEREAS, County and Contractor entered into Contract MA-080-20011275 for Perform Maintenance, Repairs and Alterations for Plumbing Systems, effective July 11, 2020 through July 10, 2023, in the Total Aggregate Contract Amount of \$400,000 per year, ("Contract"); and,

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

NOW THEREFORE, the Parties agree as follows:

**AMENDMENT TO CONTRACT ARTICLES**

1. Attachment B, Section 2, Item F shall be amended to read in its entirety as follows:

**F. Miscellaneous Item Mark Up Structure:**

Miscellaneous Items may be purchased against the Contract. Miscellaneous Item purchases shall not exceed \$5,000 per invoice, including tax, unless the following process is followed.

Miscellaneous Items ranging between \$5,000 and \$25,000, including tax, must be pre-approved by the County Project Manager or Designee prior to processing. The County will obtain price quotes from Contractor for all Miscellaneous Items purchased between \$5,000 and \$25,000.

Cost Plus 20% Mark Up

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

County of Orange, OC Public Works  
John Flynn Orange Coast Plumbing Inc. DBA Orange Coast Plumbing

MA-080-20011275

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

JOHN FLYNN ORANGE COAST PLUMBING INC.  
DBA ORANGE COAST PLUMBING\*

By: [Signature]  
Print Name: John Flynn  
Title: President  
Corporate Officer  
Date: Dec. 9, 2021

By: [Signature]  
Print Name: Joseph Flynn  
Title: Chief Financial Officer  
Corporate Officer  
Date: Dec. 9, 2021

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

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: Deputy Purchasing Agent  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

County Counsel

By: William Ninh                      william Ninh  
Deputy  
Date: 12/13/2021

\* 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.

*County of Orange, OC Public Works  
Pro-Craft Construction, Inc.*

*MA-080-20011275*

**AMENDMENT NO. 1  
FOR  
PERFORM MAINTENANCE, REPAIRS AND ALTERATIONS FOR PLUMBING SYSTEMS**

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”) and Pro-Craft Construction, Inc., with a place of business at 500 Iowa St., Redlands, CA 92373 (“Contractor”), with County and Contractor sometimes individually referred to as “Party” or collectively referred to as “Parties”.

**RECITALS**

WHEREAS, County and Contractor entered into Contract MA-080-20011275 for Perform Maintenance, Repairs and Alterations for Plumbing Systems, effective July 11, 2020 through July 10, 2023, in the Total Aggregate Contract Amount of \$400,000 per year, (“Contract”); and,

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

NOW THEREFORE, the Parties agree as follows:

**AMENDMENT TO CONTRACT ARTICLES**

1. Attachment B, Section 2, Item F shall be amended to read in its entirety as follows:

**F. Miscellaneous Item Mark Up Structure:**

Miscellaneous Items may be purchased against the Contract. Miscellaneous Item purchases shall not exceed \$5,000 per invoice, including tax, unless the following process is followed.

Miscellaneous Items ranging between \$5,000 and \$25,000, including tax, must be pre-approved by the County Project Manager or Designee prior to processing. The County will obtain price quotes from Contractor for all Miscellaneous Items purchased between \$5,000 and \$25,000.

Cost Plus 15% Mark Up

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



*County of Orange, OC Public Works  
Verne's Plumbing, Inc.*

*MA-080-20011275*

**AMENDMENT NO. 1  
FOR  
PERFORM MAINTENANCE, REPAIRS AND ALTERATIONS FOR PLUMBING SYSTEMS**

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") and Verne's Plumbing, Inc., with a place of business at 8561 Whitaker St., Buena Park, CA 90621 ("Contractor"), with County and Contractor sometimes individually referred to as "Party" or collectively referred to as "Parties".

**RECITALS**

WHEREAS, County and Contractor entered into Contract MA-080-20011275 for Perform Maintenance, Repairs and Alterations for Plumbing Systems, effective July 11, 2020 through July 10, 2023, in the Total Aggregate Contract Amount of \$400,000 per year, ("Contract"); and,

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

NOW THEREFORE, the Parties agree as follows:

**AMENDMENT TO CONTRACT ARTICLES**

1. Attachment B, Section 2, Item F shall be amended to read in its entirety as follows:

**F. Miscellaneous Item Mark Up Structure:**

Miscellaneous Items may be purchased against the Contract. Miscellaneous Item purchases shall not exceed \$5,000 per invoice, including tax, unless the following process is followed.

Miscellaneous Items ranging between \$5,000 and \$25,000, including tax, must be pre-approved by the County Project Manager or Designee prior to processing. The County will obtain price quotes from Contractor for all Miscellaneous Items purchased between \$5,000 and \$25,000.

Cost Plus 15% Mark Up

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

County of Orange, OC Public Works  
Verne's Plumbing, Inc.

MA-080-20011275

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

**VERNE'S PLUMBING, INC.\***

By: LAURENCE VERNE  
Print Name: LAWRENCE VERNE  
Title: President  
Corporate Officer  
Date: 12/7/2021

By: SHARI FERGUSON  
Print Name: SHARI FERGUSON  
Title: Secretary  
Corporate Officer  
Date: 12/7/2021

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

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: Deputy Purchasing Agent  
Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

County Counsel

By William Ninh William Ninh  
Deputy  
Date 12/13/2021

\* 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.

**CONTRACT MA-080-20011275**

**TO**

**PERFORM MAINTENANCE, REPAIRS AND ALTERATIONS FOR PLUMBING  
SYSTEMS**

**BETWEEN**

**OC PUBLIC WORKS**

**AND**

**JOHN FLYNN ORANGE COAST PLUMBING INC. DBA  
ORANGE COAST PLUMBING**



**CONTRACT MA-080-20011275  
WITH  
JOHN FLYNN ORANGE COAST PLUMBING INC. DBA ORANGE COAST  
PLUMBING  
TO  
PERFORM MAINTENANCE, REPAIRS AND ALTERATIONS FOR PLUMBING  
SYSTEMS**

THIS CONTRACT MA-080-20011275 to Perform Maintenance, Repairs and Alterations for Plumbing Systems (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, (hereinafter referred to as "County") and John Flynn Orange Coast Plumbing Inc. DBA Orange Coast Plumbing, with a place of business at 1506 N. Clinton Ave, Santa Ana, CA 92703 (hereinafter referred to as "Contractor"), with a County and Contractor sometimes referred to as "Party" or collectively as "Parties".

**ATTACHMENTS**

This Contract is comprised of this document and the following Attachments, which are attached hereto and incorporated by reference into this Contract:

Attachment A – Scope of Work

Attachment B – Payment/Compensation

Attachment C – Vendor Clearance Process

**RECITALS**

WHEREAS, Contractor and County are entering into this Contract to Perform Maintenance, Repairs and Alterations for Plumbing Systems under a usage Contract; and,

WHEREAS, County solicited Contract to Perform Maintenance, Repairs and Alterations for Plumbing Systems as set forth herein, and Contractor represented that it is qualified to Perform Maintenance, Repairs and Alterations for Plumbing Systems to the County as further set forth here; and,

WHEREAS, Contractor agrees to Perform Maintenance, Repairs and Alterations for Plumbing Systems to the County as further set forth in the Scope of Work, attached hereto as Attachment A; and,

WHEREAS, County agrees to pay Contractor based on the schedule of fees set forth in Payment/Compensation, attached hereto as Attachment B; and,

WHEREAS, the County Board of Supervisors has authorized the Procurement Officer or designee to enter into a Contract to Perform Maintenance, Repairs and Alterations for Plumbing Systems with the Contractor; and,

NOW, THEREFORE, the Parties mutually agree as follows:

**DEFINITIONS**

DPA shall mean the Deputy Purchasing Agent assigned to this Contract.

ARTICLESGeneral Terms and Conditions:

- A. **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 adjudication to another county.
- B. **Entire Contract:** This Contract 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 by County's Procurement Officer or designee.
- C. **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.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.
- E. **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 descriptions or services that do not conform to the prescribed statement 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. Over shipments and under shipments 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.
- F. **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 after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the goods 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 **article "Z"** below, and as more fully described in **article "Z,"** 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.

- H. **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 **article "Z"** below, it shall indemnify, defend and hold County and County Indemnitees 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, costs and expenses but not including attorney's fees.
- I. **Assignment:** 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 by Contractor without the express written consent of County. Any attempt by Contractor to assign 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.
- J. **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 penalties pursuant to Section 1741 of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.
- L. **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.
- M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- N. **Performance Warranty:** Contractor shall warrant 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 the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, 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. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

**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. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. 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.

Upon notice of any actual or alleged claim or loss arising out of subcontractor's work hereunder, subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Contractor and Additional Insureds.

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	\$3,000,000 per occurrence \$3,000,000 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 00 12, CA 00 20, or a substitute form providing liability 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 and agents** as Additional Insureds, or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT**.
- 2) A primary non-contributing endorsement 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.
- 3) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO form CG2010 (ed. 11/85).

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the **County of Orange, its elected and appointed officials, officers, employees and agents** or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT** when acting within the scope of their appointment or employment.

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, employees and agents 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 (standard in the ISO CG 001 policy).

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

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified Contractor.

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 in any way to reduce the policy coverage and limits available from the insurer.

P. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.

Q. **Change of Ownership/Name, Litigation Status, Conflicts with County Interests:**

Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and obligations contained in this Contract, and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor

and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

- R. **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.
- S. **Confidentiality:** Contractor agrees to maintain the confidentiality of all 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.
- T. **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 **article "Z"** 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.
- U. **Freight:** Prior to the County's express acceptance of delivery of products. 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.
- V. **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.
- W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.
- X. **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 had 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 or 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.

- Y. **Employee Eligibility Verification:** The 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. The 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. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the 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.
- Z. **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 concurrent active negligence 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.
- AA. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the County's project manager.

- BB. **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.
- CC. **Expenditure Limit:** The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

**Additional Terms and Conditions:**

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure and the Contractor will Perform Maintenance, Repairs and Alterations for Plumbing Systems from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as "Attachment A".
2. **Term of Contract:** The term of this Contract shall be effective upon execution of all authorized signatures or approval by the Orange County Board of Supervisors, whichever occurs later, and shall continue for three (3) calendar years from that date, unless otherwise terminated by County. This Contract may be renewed as set forth in article 3 below.
3. **Renewal:** This Contract may be renewed by mutual written agreement of both Parties for two (2) additional one (1) year terms. The County does not have to give reason if it elects not to renew. Renewal periods may be subject to approval by the County of Orange Board of Supervisors.
4. **Aggregate Contract:** This is an aggregate Contract with John Flynn Orange Coast Plumbing Inc. DBA Orange Coast Plumbing, Pro-Craft Construction, Inc., and Verne's Plumbing, Inc., with a total aggregate contract amount not to exceed \$400,000.00 per year.
5. **Adjustments – Scope of Work:** No adjustments made to the Scope of Work will be authorized without prior written approval of the County assigned Deputy Purchasing Agent.
6. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
  - a) Terminate the Contract immediately, pursuant to Section K herein;
  - b) Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
  - c) Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and

- d) Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
7. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
8. **Conflict of Interest – Contractor’s Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor’s employees, agents, and subcontractors associated with accomplishing work and services hereunder. The Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.
9. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
10. **Contractor’s Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County’s Project Manager, which consent shall not be unreasonably withheld.
- The Contractor’s Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s Project Manager from providing services to the County under this Contract. The County’s Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within five (5) business days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor’s Project Manager from providing further services under the Contract.
11. **Contractor Personnel – Reference Checks:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract. Contractor’s employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.
12. **Contractor’s Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.

13. **Contractor Personnel – Uniform/Badges/Identification:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility under this Contract.

All Contractor's employees shall be required to wear uniforms, badges, or other means of identification which are to be furnished by the Contractor and must be work at all times while working on County property. The assigned Deputy Purchasing Agent must be notified in writing, within seven (7) days of notification of award of Contract of the uniform and/or badges and/or other identification to be worn by employees prior to beginning work and notified in writing seven (7) days prior to any changes in this procedure.

14. **Conditions Affecting Work:** The 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 the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The 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 the County are expressly stated in the Contract.

15. **Cooperative Agreement:** The provisions and pricing of this Contract will be extended to other California local or state governmental entities. Governmental entities wishing to use the pre-negotiated prices and terms in this Contract will be responsible for issuing their own purchase documents/contracts, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any contract entered into with another department or entity that is entered into and incorporates by reference the pre-negotiated prices and terms of this Contract a contractual 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 by Contractor and grounds for immediate Contract termination. Departments or entities making use of the pre-negotiated prices and terms of this Contract are responsible for obtaining all certificates of insurance and bonds required when entering into their own contract. The 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.

The 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 the County, at the County's request.

16. **Data – Title To:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.

17. **Default – Reprourement Costs:** In case of Contract breach by Contractor, resulting in termination by the County, the County may procure the goods and/or services from other sources. If the cost for those goods and/or services is higher than under the terms of the existing Contract, Contractor will be responsible for paying the County the difference between the Contract cost and the price paid, and the County may deduct this cost from any unpaid balance due the Contractor.

The price paid by the County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.

**18. Disputes – Contract:**

- A. 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 the Contractor’s Project Manager and the County’s Project Manager, as specified in Article 25. “Notices,” such matter shall be brought to the attention of the County Deputy Purchasing Agent by way of the following process:
  - 1. The Contractor shall submit to the agency/department assigned Deputy Purchasing Agent 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 the County, on its own initiative, has already rendered such a final decision.
  - 2. The Contractor’s written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the 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 the Contractor believes the County is liable.
- B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor’s failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Deputy Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor’s demand, it shall be deemed a final decision adverse to the Contractor’s contentions. Nothing in this section shall be construed as affecting the County’s right to terminate the Contract for cause or termination for convenience as stated in section K herein.

**19. Drug-Free Workplace:** The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:

- 1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).
- 2. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
  - a. The dangers of drug abuse in the workplace;
  - b. The organization’s policy of maintaining a drug-free workplace;
  - c. Any available counseling, rehabilitation and employee assistance programs; and

- d. Penalties that may be imposed upon employees for drug abuse violations.
3. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:
  - a. Will receive a copy of the company's drug-free policy statement; and
  - b. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County contracts if the County determines that any of the following has occurred:

1. The Contractor has made false certification, or
  2. The Contractor violates the certification by failing to carry out the requirements as noted above.
20. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, the County of Orange is required to file in accordance with subdivision (a) of Section 6041A of the Internal Revenue Code for services received from a "service provider" to whom the County pays \$600 or more or with whom the County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subarticle B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent Contractors. An independent Contractor is defined as "an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a contract for services performed for that ... government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at [http://www.edd.ca.gov/Employer\\_Services.htm](http://www.edd.ca.gov/Employer_Services.htm)

21. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as project manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as

a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

22. **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

23. **Hazardous Conditions:** Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall provide flagmen and furnish, erect and maintain control devices as are necessary to prevent accidents or damage or injury to the public at Contractor's expense and without cost to the County. The Contractor shall comply with County directives regarding potential hazards.

Emergency lights and traffic cones must also be readily available at all times and must be used in any hazardous condition. Emergency traffic cones must be placed in front of and behind vehicles to warn oncoming traffic.

Signs, lights, flags, and other warning and safety devices shall conform to the requirements set forth in Chapter 6 of the current traffic manual, Traffic Control for Construction and Maintenance Work Zones, published by the state of California Department of Transportation.

24. **News/Information Release:** The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County's Project Manager.

25. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), 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 (4) 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.

Contractor: John Flynn Orange Coast Plumbing Inc. DBA Orange Coast Plumbing  
Attn: Joe Flynn  
1506 N. Clinton Ave.  
Santa Ana, CA 92703  
Phone: 714-953-1111  
Email: ocp@orangecoastplumbing.net

County's Project Manager: OC Public Works/OC Facilities  
Attn: Dale Vermillion  
1143 E. Fruit Street  
Santa Ana, CA 92701  
Phone: 714-667-4963  
Email: Dale.Vermillion@ocpw.ocgov.com

cc: OC Public Works/Procurement Section  
Attn: Carlos Corona, County DPA  
601 N. Ross Street  
Santa Ana, CA 92701  
Phone: 714-667-9694  
Email: Carlos.Corona@ocpw.ocgov.com

26. **Payroll Records:** Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide, in summary:

- 1.1.1. Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.
- 1.1.2. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
  - (a) The information contained in the payroll record is true and correct.
  - (b) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
- 1.1.3. The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.

- 1.1.4 Contractor shall inform County of the location of the payroll records, including the street address, city and county, and shall, within five working days, provide a notice of any change of location and address of the records.
- 1.1.5 Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have 10 days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit \$100, or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at [www.dir.ca.gov](http://www.dir.ca.gov). If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.

27. **Precedence:** The Contract documents consist of this Contract and its exhibits 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 exhibits and attachments.
28. **Project Manager, County:** The County shall appoint a project manager to act as liaison between the County and the Contractor during the term of this Contract. The County's project manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County's project manager shall have the right to require the removal and replacement of the Contractor's project manager and key personnel. The County's project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice from the County's project manager. The County's project manager shall review and approve the appointment of the replacement for the Contractor's project manager and key personnel. Said approval shall not be unreasonably withheld. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.

29. **Registration of Contractor:** All contractors and subcontractors must comply with the requirements of Labor Code Section 1771.1(a), pertaining to registration of contractors pursuant to Section 1725.5. Bids cannot be accepted from unregistered contractors except as provided in Section 1771.1. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. After award of the contract, Contractor and each Subcontractor shall furnish electronic payroll records directly to the Labor Commissioner in the manner specified in Labor Code Section 1771.4.

30. **Safety Data Sheets (SDS):** The Contractor is required to provide a completed Safety Data Sheet (SDS) for each hazardous substance provided to the County under the Contractor's Contract with the County. This includes hazardous substances that are not directly included in the Contract, but are included in the goods or services provided by the Contractor to the County. The provision of the SDSs 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 SDSs for each substance must be sent to the place of shipment or provision of goods/service.
31. **Subcontracting:** No performance of this Contract or any portion thereof may be subcontracted by the Contractor without the express written consent of the County. Any attempt by the Contractor to subcontract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract.

In the event that the Contractor is authorized by the County to subcontract, this Contract shall take precedence over the terms of the Contract between Contractor and subcontractor, and shall incorporate by reference the terms of this Contract. The County shall look to the Contractor for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange.

32. **Termination – Orderly:** After receipt of a termination notice from the County of Orange, the Contractor may submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. 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 performance of the Contract.
33. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at rates/prices listed in the Contract, regardless of quantity requested.
34. **Usage Reports:** The Contractor shall submit usage reports on an annual basis to the assigned Deputy Purchasing Agent of the County of Orange user agency/department. The usage report shall be in a format specified by the user agency/department and shall be submitted 90 days prior to the expiration date of the contract term, or any subsequent renewal term, if applicable.
35. **Wage Rates:** Contractor shall post a copy of the wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the Board of Supervisors has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Contract from the Director of the Department of Industrial Relations. These rates are on file with the Clerk of the Board of Supervisors. Copies may be obtained at cost at the office of County's OC Public Works/OC Facilities & Asset Management/A&E Project Management or visit the website of the Department of Industrial Relations, Prevailing Wage Unit at [www.dir.ca.gov/DLSR/PWD](http://www.dir.ca.gov/DLSR/PWD). The Contractor shall comply with the provisions of Sections 1774, 1775, 1776 and 1813 of the Labor Code.

36. **Payment and Performance Bonds:** A payment bond and performance is required for a public works contract involving expenditure in excess of twenty-five thousand dollars (\$25,000) and no work can be commenced prior to both bonds being approved the County.

The Contractor shall furnish, at time of signing the Contract, one surety bond which shall protect the laborers and material men and shall be for \$60,000, in accordance with *Section 9554 of the Civil Code*, and one surety bond in the amount of \$60,000, guaranteeing the faithful performance of the Contract. If at any time the value of the total task orders is expected to exceed \$60,000, the Contractor shall furnish, in a manner acceptable to the County, evidence that the Contractor is bonded to the expected total value of outstanding task orders for both the faithful performance and laborers and material men bonds. Contractor shall not be entitled to, nor shall County authorize, task orders when the total outstanding value of the task orders under this contract exceeds the bond values for which the County is an obligee. Said bonds to be approved by the office of the County Counsel and the County Executive Office of Orange County. Such bonds shall be the forms provided in these specifications and issued and executed by an admitted surety insurer (authorized to transact surety insurance in California). (e.g., if the bonds are issued through a surplus line broker, both the surplus line broker and the insurer with whom he is doing business for purposes of this project must be licensed in California to issue such bonds.)

The faithful performance bond shall be issued by a Surety company with a minimum insurance rating of A- (Secure 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](http://ambest.com). The Surety Company must also be authorized to write in California by the Department of the Treasury, and must be listed on the most current edition of the Department of Treasury's Listing of Approved Securities.

If any surety upon any bond furnished in connection with this Contract becomes unacceptable to the County, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by OC Public Works, the Contractor shall promptly furnish such additional security as may be required by OC Public Works or the Board of Supervisors from time to time to protect the interests of the County and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.

If the County increases the total Contract amount the Contractor is to provide a new bond for the new total Contract amount or a bond for the difference.

37. **Execution of the Agreement and Notice to Proceed:** County will not execute the Contract or issue a Notice to Proceed with the work until Bidder has submitted and County has approved Bidder's Faithful Performance and Labor and Material Payment Bonds, proof of insurance, and initial job progress schedule. All such submittals must be received by County within 10 calendar days of award of the Contract. Any claims by Contractor for adjustments in time and/or cost for delays in issuing the Notice to Proceed due to Contractor's failure to deliver bonds, insurance, and initial job progress schedule acceptable to County will not be considered.
38. **Apprenticeship Requirements:** The Contractor shall comply with Section 230.1(A), California Code of Regulations as required by the Department of Industrial Relations, Division of Apprenticeship Standards by submitting DAS Form to the Joint Apprenticeship Committee of the craft or trade in the area of the site.

**Signature Page follows**

**Signature Page**

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

**JOHN FLYNN ORANGE COAST PLUMBING INC. DBA ORANGE COAST PLUMBING\***

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

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

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

**COUNTY AUTHORIZED SIGNATURE:**

Signature	(Print) Name	Title	Date
		Deputy Purchasing Agent	

**APPROVED AS TO FORM:  
County Counsel**

By \_\_\_\_\_  
Mark Sanchez

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 signee to bind the corporation.

**ATTACHMENT A  
SCOPE OF WORK**

**I. SCOPE OF WORK:** Contractor shall provide maintenance, repairs, alterations and installation of plumbing systems located in or adjacent to various County facilities including remotely located installations, on an as needed basis, as part of this Contract. Services shall include, but are not limited to: Perform Maintenance, Repairs and Alterations for Plumbing Systems; Water Supply and Waste Removal County Wide. Maintenance services shall be used on an on-call basis. Service request involving, repairs and/or alterations shall not exceed \$60,000.

**II. MINIMUM QUALIFICATIONS**

- A. The Contractor shall provide current, up to date listing of prevailing wages to be paid to each appropriate trade that the contractor will be performing labor with under this Contract.
- B. For any Steam and Water Boiler work performed as part of this Contract, the Contractor shall possess a valid C-36, Plumbing Contractor's License issued by the California State Contractor's License Board at the time the bid is submitted and shall maintain the license in full for the term of the contract. Any and all electrical work shall be performed according to the National Electric Code (NEC) and Jurisdiction Having Authority.
- C. Contractor shall be registered and in good standing with the Department of Industrial Relations (DIR) through the full term of this Contract, and the contractor's registration number shall be clearly visible and legible.

**III. CONTRACTOR REQUIREMENTS:****Contractor shall:**

- A. Provide at his/her expense, all tools and equipment necessary to perform the work. This includes ladders, lift equipment, scaffolding and planking which are to be OSHA approved for the type of work being performed.
- B. Repair/replace all types of water supply and waste removal systems to include potable and non-potable water supply systems, steam and water boiler, hot water heaters and ancillary piping, valves, strainers, steam traps, insulation and mechanical supports associated directly with the equipment to be maintained, repaired, altered and/or installed.
- C. Hook-up, testing and troubleshooting of large commercial/institutional equipment used in the preparation and sanitation large quantities of food.
- D. Install and maintain commercial/institutional grease traps/interceptors used in large volume kitchens.
- E. Repair/replace floor sinks and/or floor drains and have a working knowledge of codes for the location of installation of these items when used in conjunction with drains on combination sinks used in a commercial/institutional setting or any location where an air gap is in use.
- F. Provide and make use of camera system for detecting blockages in waste lines.
- G. Provide and make use of leak detection equipment for locating under slab leaks in supply piping.
- H. Repair, replacement and service of backflow valves; proper certification required.
- I. Remove and proper legal disposal of boilers, hot water heaters, piping, valves, insulation and other pieces of like or associated equipment, meeting any County requirements for disposition

- meeting all State/County Mandates for disposal and recycling requirements of equipment, materials or debris.
- J. Layout and install water heating equipment and associated piping to intake and discharge with special attention being given to manufacturers specifications for lengths of piping, strainers, bends and restrictions that may affect proper functioning of the equipment as reflected in the Delta-T required by the manufacturer.
  - K. Restore to sufficient levels water treatment chemicals in systems that are affected by the breakdown, repair, maintenance or installation of boilers and or hot water heaters.
  - L. Contractor is responsible for straining of debris or particulate out of any looped water system that required maintenance, repair, alteration and/or installation of boilers, hot water heaters, piping, valves or strainers, and for any other circumstance that required the contractor to open the system and expose it to external impurities.
  - M. Add and remove as necessary refrigerants, oils or lubricants, using proper documentation for recording all such transfers and disposals, with all documentation be given the County for proper record keeping.
  - N. Be responsible for bleeding down of any system that has been maintained, repaired, altered or installed for proper function and reduced possibility of damage to the heated water system, and the facility.
  - O. Follow all guidelines and sequences of operations established as Industry Standards for the troubleshooting, maintenance, repair, and installation of steam and water boilers, water heating equipment that are currently considered Best Practices methodology for this type of work on this type of equipment.
  - P. Provide service or replacement of steam and water boilers, water heating equipment, piping, valves, strainers, insulation, pumps or other ancillary parts at various County facilities throughout the term of this contract, upon written approval from the County.
  - Q. Provide emergency repairs upon written approval from the County. The specific scope of work and schedule will be determined at the time such work is initiated. Contractor to be available for emergency call out services between the hours of 6:00 pm and 6:00 am Monday through Sunday, and must respond with a two (2) hour time frame.
  - R. Aware that all work which interferes with normal County operations shall be performed on Saturdays, Sundays or holidays and the schedule shall be arranged by the County and the Contractor prior to starting work.
  - S. Identify and notify/advise the County Project Manager in writing of any additional repair or maintenance work that may be required or advisable to maintain the efficient operation and useful life of the equipment.
  - T. NOT perform additional repair of maintenance without receiving prior written approval from the County Project Manager.
  - U. Employ and utilize personnel who are qualified, knowledgeable, and experienced to perform the specific type of service on the specific type of equipment listed in this contract.
  - V. Provide at least one (1) journeyman plumber.
  - W. Provide additional non-journeymen staff to adequately, efficiently and safely perform the work specified as part of this contract. All journeyman level electricians shall possess a certificate identifying them as journeyman electricians by the State of California.

- X. It will be the sole discretion of the County Project Manager to determine whether the Contractor has adequate journeyman level staffing on each project; the Contractor will adjust staffing as required by the County to either increase or decrease staffing levels for tradesmen on site.
- Y. Provide and maintain a telephone answering system which provides for contact twenty-four (24) hours per day, seven (7) days per week, capable of contacting and dispatching service personnel within one (1) hour after receipt of notification from the County.
- Z. Perform all work in strict accordance with the Jurisdiction Having Authority, Uniform Building Code (UBC), all local codes and/or ordinances and with all CAL-OSHA laws and regulations.
- AA. Perform all work in accordance with generally accepted industry standards and practices for safe and efficient operation unless a stricter standard is adopted by the County for this type of work.
- BB. Furnish and maintain all power sources, lighting, etc., required to perform the work during any power outages.
- CC. Furnish and maintain any and all warning devices, i.e., barricades, cones, etc., required to adequately protect the public, County staff, and other workers during the performance of this work.
- DD. Maintain at all times throughout the term of the Contract a staff of qualified personnel that have undergone and passed the vendor clearance process detailed in Attachment C, "Vendor Clearance Process" that are available to respond to emergency and call out services as needed at secured Probation Department facilities.

**IV. GENERAL REQUIREMENTS**

- A. All workers performing work on County premises shall be paid prevailing wages pursuant to the Department of Industrial Relations and the State of California. The Contractor shall provide with his/her bid package a list of trades expected to be supplied as part of the Contract, along with the current, up to date listing of prevailing wages to be paid to each appropriate trade that the contractor will be performing labor with under this Contract.
- B. All invoices submitted shall be accompanied by with a record of time spent working on the subject project by tradesmen to include name, trade specific type of work provided and craft level designation (Journeyman etc.), and receipts for all materials purchased.
- C. Many locations throughout the County that require the services of the Contractor are secured facilities, and as such, the Contractor and Contractor's staff that enter these facilities are required to participate in a background clearance check per Attachment C, "Vendor Clearance Process." Some of the required documents that the Contractor and his/her staff will be required to submit are a birth certificate, driver's license or California ID, Social security Card, Passport, business card etc., which will be copied and returned to the submitter. Clearance time will be a minimum of two weeks. Those who do not pass the background check will not be admitted to the facilities. The reasons for failure to pass the background check will not be disclosed.

**V. CONTRACTOR PROJECT MANAGER SHALL:**

- A. Coordinate schedule, entry, and completion of work with County on-site staff.
- B. Coordinate all hot water heating equipment shutdowns with County and on-site County staff. Shutdowns will only be permitted once an action/work plan is thoroughly discussed, understood and agreed to by all parties involved and/or affected by the shutdown.
- C. Notify on site County staff upon completion of boiler and hot water heating service/repairs/installations work and resumption of normal operating conditions to the facility.

**VI. GENERAL CONDITIONS**

- A. All work shall be subject to inspection and approval of the County, either by the Contract Manager or his/her designee at each facility prior to acceptance and approval for payment.
- B. The County reserves the right to use alternate sources for completion of the work, to obtain competitive prices on any preventative maintenance, service or repair, and to utilize information obtained under this contract relative to necessary materials and repairs it deems appropriate.
- C. Contractor's employees shall be civil and respectful to the Public and County Staff at these facilities, but shall only be responsive to the requests of the Contract Manager or his/her designee. All other requests or inquiries shall be directed to the Contract Manager or his/her designee. Exception: Specific requests that involve public safety or the security of the specific facility.
- D. Contractor shall replace or repair or have the cost of replacement or repair deducted from its payment, at the option of the Contract Manager or his/her designee, all damage sustained to County equipment or facilities as a result of the Contractor's performance under the Contract.

**VII. MATERIALS**

- A. The Contractor shall maintain a supply of spare parts common to this type of work.
- B. The Contractor shall maintain a reasonable supply system for acquisition of additional parts which will provide all of the additional parts either immediately or with minimal delay.
- C. All parts shall be new, and shall meet or exceed the original equipment parts provided by the original manufacturer.
- D. If the Contractor proposes to furnish and install any part that will not be supplied by the original equipment manufacturer, it shall furnish all documentation, upon request, required by the County to verify that it is an equal value part. If the part is not found to be of equal quality by the County, the Contractor shall furnish an original equipment part.
- E. Contractor shall warrant all materials and labor for one (1) year after the completion of installation/repairs (or in accordance with manufacturer's warranty if longer).

**VIII. PERFORMANCE**

- A. Scheduled Maintenance and Repairs: Contractor shall meet with the County Project Manager prior to any scheduled maintenance and repair project to discuss details of the project to ensure that proper notification to the specific facility has occurred, and schedules have been coordinated. Contractor shall review manufacturer's service manuals for equipment specifications and proper testing/repair procedures.
- B. County Project Manager will provide in writing the required Scope of Work and arrange for access to the facility where work is to be performed.

**ATTACHMENT B  
PAYMENT/COMPENSATION**

1. **Compensation:** This is a usage Contract between the County and Contractor to Perform Maintenance, Repair and Alterations for Plumbing Systems on an as needed basis, as set forth in Attachment A “Scope of Work”.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services and furnishing all staffing and materials required, 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 the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. **The County shall have no obligation to pay any sum in excess of the Fixed Prices and Total Contract Amount specified herein unless authorized by amendment in accordance with Articles C and P of the County Contract Terms and Conditions, which may require approval by the County Board of Supervisors.**

2. **Fees and Charges:** County will pay the following fees in accordance with the provisions of this Contract. The hourly rates must include wages (in accordance with established general prevailing wage rate requirements), overhead, general and administrative expenses, and profit. Payment shall be as follows:

**A. Plumbing Service Rates.**

Description	Rate	Per	Notes
Service Charge	\$ 0.00	Invoice	
Journeyman Service Tech	\$ 85.00	Hour	8am – 5pm
Journeyman OT Service Tech	\$ 110.00	Hour*	5pm – 8am
Journeyman DT Service Tech	\$ 130.00	Hour*	Sundays & Holidays
Apprentice Service Tech	\$ 85.00	Hour	8am – 5pm
Apprentice OT Service Tech	\$ 110.00	Hour*	5pm – 8am
Apprentice DT Service Tech	\$ 130.00	Hour*	Sundays & Holidays
Foreman Supervisor	\$ 85.00	Hour	

**\*2HR min.**

**B. Backflow Testing & Repair Rates.**

Description	Rate	Per	Notes
Estimate	\$ 85.00	Quote	Will apply to quote
Backflow Repair Tech	\$ 85.00	Hour	8am – 5pm
Backflow Preventer Test & Certification	\$ 49.50	Device	
1” Backflow Test & Certification	\$ 49.50	Each	
2”+ Backflow Test	\$ 49.50	Each	
Backflow in Vault	\$ 74.25		Minimum
Backflow Test Cock	\$ 130.00	Each	

**\*2HR min.**

**C. Drain Machine & Equipment Charges.**

Description	Rate	Per
Main Line Machine	\$ 175.00	Daily
Each Additional Drum	\$ 0.00	Daily
Kitchen Machine	\$ 150.00	Daily
Hand Machine	\$ 103.00	Daily
Jetter 4000PSI	\$ 202.00	Hour*
Jetter 3000PSI	\$ 202.00	Hour*
Jetter Mini Propane	\$ 202.00	Hour*
Jetter Mini Electric	\$ 202.00	Hour*
Jetter Vacuum (4000PSI Jetter Only)	\$ 0.00	Hour*
Pipe Locations/Pipescope	\$ 285.00	Hour*
Leak Detection	\$ 285.00	Daily*
Sump Pump	\$ 50.00	Daily
Copper-Press Tools ½" – 1"	\$ 0.00	Daily
Copper-Press Tools ½" – 4"	\$ 0.00	Daily
Generator	\$ 150.00	Daily
Air Compressor	\$ 300.00	Daily
Threading Machine	\$ 125.00	Daily
Jack Hammer/Drill	\$ 85.00	Daily
Welding Machine	\$ 0.00	Daily
Backhoe + Operator + P-Up & Delivery	\$ 750.00	Daily
Wacker Compactor	\$ 85.00	Daily
Freezing Tool	\$ 300.00	Daily

**\*Fee Includes 1-HR labor**

**D. Markup.**

Contractor shall be reimbursed for materials, equipment or tool rentals, and subcontractors as needed and approved by the County on a Cost Plus percentage markup. Such markup percentage(s) shall be as follows:

Description	Markup
Materials:	20%
Equipment & Tool Rental(s):	20%
Subcontractor:	20%

**E. Video Camera Charges:**

Description	Rate
6:00 a.m. to 5:00 p.m. Monday thru Friday <u>Normal Working Hours</u>	\$ 200.00
5:01 p.m. to 5:59 a.m. Monday thru Friday and Sat/Sun/Holidays <u>Other than Normal Working Hours</u>	\$ 200.00

Description	Rate
Video CD/DVD/Memory Stick	
<u>Must provide if charging for Camera service</u>	\$12.00

All invoices submitted shall be accompanied by a record of time spent working on the project by tradesmen to include name, trade specific type of work provided and craft level designation (Journeyman etc.), and receipts for all materials purchased including total amount of taxes paid for merchandise. Labor hours shall be charged on the basis of actual time spent on each job, not on a portal-to-portal basis and shall be computed to the nearest one-quarter (1/4) hour.

For all rental equipment, a copy of the Contractor's invoice is required for reimbursement which shall be submitted with the extended cost multiplied by the mark-up listed below. The maximum percentage mark-up allowed for rental equipment is 20%. Mark-up is prior to tax.

No additional compensation will be allowed for emergency call out services.

**Amendment No. 1 – Revise Article F**

**F. Miscellaneous Item Mark Up Structure:**

Miscellaneous Items may be purchased against the Contract. Miscellaneous Item purchases shall not exceed \$5,000 per invoice, including tax, unless the following process is followed.

Miscellaneous Items ranging between \$5,000 and \$25,000, including tax, must be pre-approved by the County Project Manager or Designee prior to processing. The County will obtain price quotes from Contractor for all Miscellaneous Items purchased between \$5,000 and \$25,000.

Cost Plus 20% Mark Up

~~Miscellaneous Item Discount Structure:~~

~~Miscellaneous Items may be purchased against the Contract. Miscellaneous Item purchases shall not exceed \$5,000 per invoice, including tax, unless the following process is followed.~~

~~Miscellaneous Items ranging between \$5,000 and \$25,000, including tax, must be pre-approved by the County Project Manager or Designee prior to processing. The County will obtain price quotes from Contractor for all Miscellaneous Items purchased between \$5,000 and \$25,000. The Contractor shall provide original cost receipts of all items cost of \$100 or more.~~

~~Cost Plus 10% Mark up~~

**G. TOTAL AGGREGATE CONTRACT AMOUNT NOT TO EXCEED: . \$ 400,000.00/Per Year**

3. **Price Increase/Decreases:** No price increases will be permitted during the first period of the Contract. The County requires documented proof of cost increases on Contracts prior to any price adjustment. A minimum of one hundred eighty 180-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. All price decreases will automatically be extended to the County of Orange. The County may enforce, 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 the Contractor's profit will not be allowed.
4. **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 the County during the term of this Contract not otherwise specified and provided for within this Contract.
5. **Contractor's Expense:** The 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.
6. **Payment Terms – Payment in Arrears:** Invoices are to be submitted in arrears to the user agency/department to the ship-to address, unless otherwise directed in this Contract. Contractor shall reference Contract number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Contract requirements.

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

7. **Taxpayer ID Number:** The Contractor shall include its taxpayer ID number on all invoices submitted to the County for payment to ensure compliance with IRS requirements and to expedite payment processing.
8. **Payment – Invoicing Instructions:** The Contractor will provide an invoice on the Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:
  - A. Contractor's name and address
  - B. Contractor's remittance address, if different from A above
  - C. Contractor's Taxpayer ID Number
  - D. Name of County Agency/Department
  - E. Delivery/service address
  - F. Master Agreement (MA) or Purchase Order (PO) number
  - G. Agency/Department's Account Number
  - H. Date of invoice
  - I. Product/service description, quantity, and prices
  - J. Sales tax, if applicable

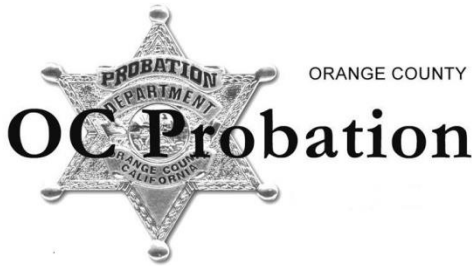
- K. Freight/delivery charges, if applicable
- L. Total

Invoices and support documentation are to be forwarded to:

OC Public Works/Facility Operations  
 Attn: Accounts Payable  
 1143 E. Fruit St.  
 Santa Ana, CA 92701

Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the DPA.

**ATTACHMENT C**  
**ATTACHMENT C: VENDOR CLEARANCE PROCESS**



**STEVEN J. SENTMAN**  
 CHIEF PROBATION OFFICER  
 TELEPHONE: (714) 569-2000  
 1055 N. MAIN STREET, 5<sup>TH</sup> FLOOR SANTA ANA, CA 92701  
 MAILING ADDRESS:  
 P.O. BOX 10260  
 SANTA ANA, CA 92711-0260

**VENDOR BACKGROUND APPOINTMENT  
 INFORMATION 1535 EAST ORANGEWOOD  
 AVE.  
 ANAHEIM, CA. 92805**

All individuals who perform work in Probation Department facilities or on Probation Department property are required to undergo and pass a security clearance that includes being fingerprinted.

***NOTE: A number of situations will prevent you from clearing this process, including, but not limited to: current or recent grant of probation or parole; active warrant for your arrest; or pending criminal matters, use of false or altered documents, or dishonesty when providing requested information.***

On the day of your appointment, report to:

**Orange County Probation Department – North County Field Services Office  
 1535 EAST ORANGEWOOD AVE., ANAHEIM CA. 92805**

Please use the stairs adjacent to the ramp in the front of the building to enter. You may bypass the “Do Not Enter” sign posted on the door. You do not need to wait in the weapons screening line on the ramp. Please provide a photo ID to the Sheriff’s Special Officer and

explain you are here for a background appointment with PSD. Once inside the building, please also check in with reception and ask for **Jocelyn Garcia 714-937-4734** or **Adriana Montanez 714-937-4714**.

**Bring the following *required* documents with you to your appointment:**

- California driver's license or ID; *no copies will be accepted.*
- Social Security Card; *no copies will be accepted.*
- Documents that establish employment authorization (*whichever applies below*):
  - If born in the U.S., bring original birth certificate *or* U.S. passport; *no copies, abstracts, or hospital-issued certificates will be accepted; no passports from U.S. Territories: American Samoa, Swain Islands, and Northern Mariana Islands will be accepted.*
  - If you became an American Citizen, bring original U.S. Certificate of Naturalization *or* U.S. passport; *no copies will be accepted.*
  - If you are *not* an American Citizen, *bring original and valid* U.S. Permanent Resident Card (Green Card) or *original and valid* Employment Authorization Document (Work Permit); *no copies will be accepted.*

**Please bring employer's business card to the appointment.**

*All documents need to be **original and valid**. Only the documents listed above will be accepted.*

*If you do not have the required documents, you will not be permitted to proceed with the clearance process.*

**The results will be provided to your employer once the background is complete.**

**CONTRACT MA-080-20011275**

**TO**

**PERFORM MAINTENANCE, REPAIRS AND ALTERATIONS FOR PLUMBING  
SYSTEMS**

**BETWEEN**

**OC PUBLIC WORKS**

**AND**

**PRO-CRAFT CONSTRUCTION, INC.**



**CONTRACT MA-080-20011275  
WITH  
PRO-CRAFT CONSTRUCTION, INC.  
TO  
PERFORM MAINTENANCE, REPAIRS AND ALTERATIONS FOR PLUMBING  
SYSTEMS**

THIS CONTRACT MA-080-20011275 to Perform Maintenance, Repairs and Alterations for Plumbing Systems (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, (hereinafter referred to as “County”) and Pro-Craft Construction, Inc., with a place of business at 500 Iowa St., Redlands, CA 92373 (hereinafter referred to as “Contractor”), with a County and Contractor sometimes referred to as “Party” or collectively as “Parties”.

**ATTACHMENTS**

This Contract is comprised of this document and the following Attachments, which are attached hereto and incorporated by reference into this Contract:

Attachment A – Scope of Work

Attachment B – Payment/Compensation

Attachment C – Vendor Clearance Process

**RECITALS**

WHEREAS, Contractor and County are entering into this Contract to Perform Maintenance, Repairs and Alterations for Plumbing Systems under a usage Contract; and,

WHEREAS, County solicited Contract to Perform Maintenance, Repairs and Alterations for Plumbing Systems as set forth herein, and Contractor represented that it is qualified to Perform Maintenance, Repairs and Alterations for Plumbing Systems to the County as further set forth here; and,

WHEREAS, Contractor agrees to Perform Maintenance, Repairs and Alterations for Plumbing Systems to the County as further set forth in the Scope of Work, attached hereto as Attachment A; and,

WHEREAS, County agrees to pay Contractor based on the schedule of fees set forth in Payment/Compensation, attached hereto as Attachment B; and,

WHEREAS, the County Board of Supervisors has authorized the Procurement Officer or designee to enter into a Contract to Perform Maintenance, Repairs and Alterations for Plumbing Systems with the Contractor; and,

NOW, THEREFORE, the Parties mutually agree as follows:

**DEFINITIONS**

DPA shall mean the Deputy Purchasing Agent assigned to this Contract.

ARTICLESGeneral Terms and Conditions:

- A. **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 adjudication to another county.
- B. **Entire Contract:** This Contract 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 by County's Procurement Officer or designee.
- C. **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.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.
- E. **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 descriptions or services that do not conform to the prescribed statement 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. Over shipments and under shipments 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.
- F. **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 after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the goods 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 **article "Z"** below, and as more fully described in **article "Z,"** 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.

- H. **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 **article “Z”** below, it shall indemnify, defend and hold County and County Indemnitees 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, costs and expenses but not including attorney’s fees.
- I. **Assignment:** 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 by Contractor without the express written consent of County. Any attempt by Contractor to assign 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.
- J. **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 penalties pursuant to Section 1741 of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days’ written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.
- L. **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.
- M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers’ compensation or other fringe benefits of any kind through County.
- N. **Performance Warranty:** Contractor shall warrant 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 the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, 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. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

**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. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. 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.

Upon notice of any actual or alleged claim or loss arising out of subcontractor's work hereunder, subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Contractor and Additional Insureds.

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	\$3,000,000 per occurrence \$3,000,000 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 00 12, CA 00 20, or a substitute form providing liability 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 and agents** as Additional Insureds, or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT**.
- 2) A primary non-contributing endorsement 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.
- 3) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO form CG2010 (ed. 11/85).

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the **County of Orange, its elected and appointed officials, officers, employees and agents** or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT** when acting within the scope of their appointment or employment.

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, employees and agents 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 (standard in the ISO CG 001 policy).

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

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified Contractor.

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 in any way to reduce the policy coverage and limits available from the insurer.

P. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.

Q. **Change of Ownership/Name, Litigation Status, Conflicts with County Interests:**

Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and obligations contained in this Contract, and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor

and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

- R. **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.
- S. **Confidentiality:** Contractor agrees to maintain the confidentiality of all 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.
- T. **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 **article "Z"** 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.
- U. **Freight:** Prior to the County's express acceptance of delivery of products. 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.
- V. **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.
- W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.
- X. **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 had 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 or 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.

- Y. **Employee Eligibility Verification:** The 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. The 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. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the 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.
- Z. **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 concurrent active negligence 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.
- AA. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the County's project manager.

- BB. **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.
- CC. **Expenditure Limit:** The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

**Additional Terms and Conditions:**

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure and the Contractor will Perform Maintenance, Repairs and Alterations for Plumbing Systems from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as "Attachment A".
2. **Term of Contract:** The term of this Contract shall be effective upon execution of all authorized signatures or approval by the Orange County Board of Supervisors, whichever occurs later, and shall continue for three (3) calendar years from that date, unless otherwise terminated by County. This Contract may be renewed as set forth in article 3 below.
3. **Renewal:** This Contract may be renewed by mutual written agreement of both Parties for two (2) additional one (1) year terms. The County does not have to give reason if it elects not to renew. Renewal periods may be subject to approval by the County of Orange Board of Supervisors.
4. **Aggregate Contract:** This is an aggregate Contract with John Flynn Orange Coast Plumbing Inc. DBA Orange Coast Plumbing, Pro-Craft Construction, Inc., and Verne's Plumbing, Inc., with a total aggregate contract amount not to exceed \$400,000.00 per year.
5. **Adjustments – Scope of Work:** No adjustments made to the Scope of Work will be authorized without prior written approval of the County assigned Deputy Purchasing Agent.
6. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
  - a) Terminate the Contract immediately, pursuant to Section K herein;
  - b) Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
  - c) Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and

- d) Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
7. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
8. **Conflict of Interest – Contractor’s Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor’s employees, agents, and subcontractors associated with accomplishing work and services hereunder. The Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.
9. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
10. **Contractor’s Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County’s Project Manager, which consent shall not be unreasonably withheld.
- The Contractor’s Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s Project Manager from providing services to the County under this Contract. The County’s Project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within five (5) business days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor’s Project Manager from providing further services under the Contract.
11. **Contractor Personnel – Reference Checks:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract. Contractor’s employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.
12. **Contractor’s Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.

13. **Contractor Personnel – Uniform/Badges/Identification:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility under this Contract.

All Contractor's employees shall be required to wear uniforms, badges, or other means of identification which are to be furnished by the Contractor and must be work at all times while working on County property. The assigned Deputy Purchasing Agent must be notified in writing, within seven (7) days of notification of award of Contract of the uniform and/or badges and/or other identification to be worn by employees prior to beginning work and notified in writing seven (7) days prior to any changes in this procedure.

14. **Conditions Affecting Work:** The 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 the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The 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 the County are expressly stated in the Contract.

15. **Cooperative Agreement:** The provisions and pricing of this Contract will be extended to other California local or state governmental entities. Governmental entities wishing to use the pre-negotiated prices and terms in this Contract will be responsible for issuing their own purchase documents/contracts, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any contract entered into with another department or entity that is entered into and incorporates by reference the pre-negotiated prices and terms of this Contract a contractual 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 by Contractor and grounds for immediate Contract termination. Departments or entities making use of the pre-negotiated prices and terms of this Contract are responsible for obtaining all certificates of insurance and bonds required when entering into their own contract. The 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.

The 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 the County, at the County's request.

16. **Data – Title To:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.

17. **Default – Reprourement Costs:** In case of Contract breach by Contractor, resulting in termination by the County, the County may procure the goods and/or services from other sources. If the cost for those goods and/or services is higher than under the terms of the existing Contract, Contractor will be responsible for paying the County the difference between the Contract cost and the price paid, and the County may deduct this cost from any unpaid balance due the Contractor.

The price paid by the County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.

**18. Disputes – Contract:**

- A. 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 the Contractor’s Project Manager and the County’s Project Manager, as specified in Article 25. “Notices,” such matter shall be brought to the attention of the County Deputy Purchasing Agent by way of the following process:
  - 1. The Contractor shall submit to the agency/department assigned Deputy Purchasing Agent 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 the County, on its own initiative, has already rendered such a final decision.
  - 2. The Contractor’s written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the 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 the Contractor believes the County is liable.
- B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor’s failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Deputy Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor’s demand, it shall be deemed a final decision adverse to the Contractor’s contentions. Nothing in this section shall be construed as affecting the County’s right to terminate the Contract for cause or termination for convenience as stated in section K herein.

**19. Drug-Free Workplace:** The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:

- 1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).
- 2. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
  - a. The dangers of drug abuse in the workplace;
  - b. The organization’s policy of maintaining a drug-free workplace;
  - c. Any available counseling, rehabilitation and employee assistance programs; and

- d. Penalties that may be imposed upon employees for drug abuse violations.
3. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:
  - a. Will receive a copy of the company's drug-free policy statement; and
  - b. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County contracts if the County determines that any of the following has occurred:

1. The Contractor has made false certification, or
  2. The Contractor violates the certification by failing to carry out the requirements as noted above.
20. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, the County of Orange is required to file in accordance with subdivision (a) of Section 6041A of the Internal Revenue Code for services received from a "service provider" to whom the County pays \$600 or more or with whom the County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subarticle B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent Contractors. An independent Contractor is defined as "an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a contract for services performed for that ... government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at [http://www.edd.ca.gov/Employer\\_Services.htm](http://www.edd.ca.gov/Employer_Services.htm)

21. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as project manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as

a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

22. **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

23. **Hazardous Conditions:** Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall provide flagmen and furnish, erect and maintain control devices as are necessary to prevent accidents or damage or injury to the public at Contractor's expense and without cost to the County. The Contractor shall comply with County directives regarding potential hazards.

Emergency lights and traffic cones must also be readily available at all times and must be used in any hazardous condition. Emergency traffic cones must be placed in front of and behind vehicles to warn oncoming traffic.

Signs, lights, flags, and other warning and safety devices shall conform to the requirements set forth in Chapter 6 of the current traffic manual, Traffic Control for Construction and Maintenance Work Zones, published by the state of California Department of Transportation.

24. **News/Information Release:** The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County's Project Manager.

25. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), 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 (4) 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.

Contractor: Pro-Craft Construction, Inc.  
Attn: Tyler Eschrich  
500 Iowa St..  
Redlands, CA 92373  
Phone: 909-790-5222  
Email: Teschrich@procraftci.com

County's Project Manager: OC Public Works/OC Facilities  
Attn: Dale Vermillion  
1143 E. Fruit Street  
Santa Ana, CA 92701  
Phone: 714-667-4963  
Email: Dale.Vermillion@ocpw.ocgov.com

cc: OC Public Works/Procurement Section  
Attn: Carlos Corona, County DPA  
601 N. Ross Street  
Santa Ana, CA 92701  
Phone: 714-667-9694  
Email: Carlos.Corona@ocpw.ocgov.com

26. **Payroll Records:** Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide, in summary:

- 1.1.1. Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.
- 1.1.2. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
  - (a) The information contained in the payroll record is true and correct.
  - (b) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
- 1.1.3. The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.
- 1.1.4. Contractor shall inform County of the location of the payroll records, including the street address, city and county, and shall, within five working days, provide a notice of any change of location and address of the records.

1.1.5. Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have 10 days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit \$100, or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at [www.dir.ca.gov](http://www.dir.ca.gov). If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.

27. **Precedence:** The Contract documents consist of this Contract and its exhibits 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 exhibits and attachments.
28. **Project Manager, County:** The County shall appoint a project manager to act as liaison between the County and the Contractor during the term of this Contract. The County's project manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County's project manager shall have the right to require the removal and replacement of the Contractor's project manager and key personnel. The County's project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice from the County's project manager. The County's project manager shall review and approve the appointment of the replacement for the Contractor's project manager and key personnel. Said approval shall not be unreasonably withheld. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.

29. **Registration of Contractor:** All contractors and subcontractors must comply with the requirements of Labor Code Section 1771.1(a), pertaining to registration of contractors pursuant to Section 1725.5. Bids cannot be accepted from unregistered contractors except as provided in Section 1771.1. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. After award of the contract, Contractor and each Subcontractor shall furnish electronic payroll records directly to the Labor Commissioner in the manner specified in Labor Code Section 1771.4.
30. **Safety Data Sheets (SDS):** The Contractor is required to provide a completed Safety Data Sheet (SDS) for each hazardous substance provided to the County under the Contractor's Contract with the County. This includes hazardous substances that are not directly included in the Contract, but

are included in the goods or services provided by the Contractor to the County. The provision of the SDSs 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 SDSs for each substance must be sent to the place of shipment or provision of goods/service.

31. **Subcontracting:** No performance of this Contract or any portion thereof may be subcontracted by the Contractor without the express written consent of the County. Any attempt by the Contractor to subcontract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract.

In the event that the Contractor is authorized by the County to subcontract, this Contract shall take precedence over the terms of the Contract between Contractor and subcontractor, and shall incorporate by reference the terms of this Contract. The County shall look to the Contractor for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange.

32. **Termination – Orderly:** After receipt of a termination notice from the County of Orange, the Contractor may submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. 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 performance of the Contract.
33. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at rates/prices listed in the Contract, regardless of quantity requested.
34. **Usage Reports:** The Contractor shall submit usage reports on an annual basis to the assigned Deputy Purchasing Agent of the County of Orange user agency/department. The usage report shall be in a format specified by the user agency/department and shall be submitted 90 days prior to the expiration date of the contract term, or any subsequent renewal term, if applicable.
35. **Wage Rates:** Contractor shall post a copy of the wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the Board of Supervisors has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Contract from the Director of the Department of Industrial Relations. These rates are on file with the Clerk of the Board of Supervisors. Copies may be obtained at cost at the office of County's OC Public Works/OC Facilities & Asset Management/A&E Project Management or visit the website of the Department of Industrial Relations, Prevailing Wage Unit at [www.dir.ca.gov/DLSR/PWD](http://www.dir.ca.gov/DLSR/PWD). The Contractor shall comply with the provisions of Sections 1774, 1775, 1776 and 1813 of the Labor Code.
36. **Payment and Performance Bonds:** A payment bond and performance is required for a public works contract involving expenditure in excess of twenty-five thousand dollars (\$25,000) and no work can be commenced prior to both bonds being approved the County.

The Contractor shall furnish, at time of signing the Contract, one surety bond which shall protect the laborers and material men and shall be for \$60,000, in accordance with *Section 9554 of the Civil Code*, and one surety bond in the amount of \$60,000, guaranteeing the faithful performance of the Contract. If at any time the value of the total task orders is expected to exceed \$60,000, the Contractor shall furnish, in a manner acceptable to the County, evidence that the Contractor is bonded to the expected total value of outstanding task orders for both the faithful performance and laborers and material men bonds. Contractor shall not be entitled to, nor shall County authorize, task orders when the total outstanding value of the task orders under this contract exceeds the bond values for which the County is an obligee. Said bonds to be approved by the office of the County Counsel and the County Executive Office of Orange County. Such bonds shall be the forms provided in these specifications and issued and executed by an admitted surety insurer (authorized to transact surety insurance in California). (e.g., if the bonds are issued through a surplus line broker, both the surplus line broker and the insurer with whom he is doing business for purposes of this project must be licensed in California to issue such bonds.)

The faithful performance bond shall be issued by a Surety company with a minimum insurance rating of A- (Secure 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](http://ambest.com). The Surety Company must also be authorized to write in California by the Department of the Treasury, and must be listed on the most current edition of the Department of Treasury's Listing of Approved Securities.

If any surety upon any bond furnished in connection with this Contract becomes unacceptable to the County, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by OC Public Works, the Contractor shall promptly furnish such additional security as may be required by OC Public Works or the Board of Supervisors from time to time to protect the interests of the County and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.

If the County increases the total Contract amount the Contractor is to provide a new bond for the new total Contract amount or a bond for the difference.

37. **Execution of the Agreement and Notice to Proceed:** County will not execute the Contract or issue a Notice to Proceed with the work until Bidder has submitted and County has approved Bidder's Faithful Performance and Labor and Material Payment Bonds, proof of insurance, and initial job progress schedule. All such submittals must be received by County within 10 calendar days of award of the Contract. Any claims by Contractor for adjustments in time and/or cost for delays in issuing the Notice to Proceed due to Contractor's failure to deliver bonds, insurance, and initial job progress schedule acceptable to County will not be considered.
38. **Apprenticeship Requirements:** The Contractor shall comply with Section 230.1(A), California Code of Regulations as required by the Department of Industrial Relations, Division of Apprenticeship Standards by submitting DAS Form to the Joint Apprenticeship Committee of the craft or trade in the area of the site.

**Signature Page follows**

**Signature Page**

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

**PRO-CRAFT CONSTRUCTION, INC.\***

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

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

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

**COUNTY AUTHORIZED SIGNATURE:**

Signature	(Print) Name	Title	Date
		Deputy Purchasing Agent	

**APPROVED AS TO FORM:**

**County Counsel**

By \_\_\_\_\_  
Mark Sanchez

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 signee to bind the corporation.

## ATTACHMENT A SCOPE OF WORK

**I. SCOPE OF WORK:** Contractor shall provide maintenance, repairs, alterations and installation of plumbing systems located in or adjacent to various County facilities including remotely located installations, on an as needed basis, as part of this Contract. Services shall include, but are not limited to: Perform Maintenance, Repairs and Alterations for Plumbing Systems; Water Supply and Waste Removal County Wide. Maintenance services shall be used on an on-call basis. Service request involving, repairs and/or alterations shall not exceed \$60,000.

**II. MINIMUM QUALIFICATIONS**

- A. The Contractor shall provide current, up to date listing of prevailing wages to be paid to each appropriate trade that the contractor will be performing labor with under this Contract.
- B. For any Steam and Water Boiler work performed as part of this Contract, the Contractor shall possess a valid C-36, Plumbing Contractor's License issued by the California State Contractor's License Board at the time the bid is submitted and shall maintain the license in full for the term of the contract. Any and all electrical work shall be performed according to the National Electric Code (NEC) and Jurisdiction Having Authority.
- C. Contractor shall be registered and in good standing with the Department of Industrial Relations (DIR) through the full term of this Contract, and the contractor's registration number shall be clearly visible and legible.

**III. CONTRACTOR REQUIREMENTS:**

**Contractor shall:**

- A. Provide at his/her expense, all tools and equipment necessary to perform the work. This includes ladders, lift equipment, scaffolding and planking which are to be OSHA approved for the type of work being performed.
- B. Repair/replace all types of water supply and waste removal systems to include potable and non-potable water supply systems, steam and water boiler, hot water heaters and ancillary piping, valves, strainers, steam traps, insulation and mechanical supports associated directly with the equipment to be maintained, repaired, altered and/or installed.
- C. Hook-up, testing and troubleshooting of large commercial/institutional equipment used in the preparation and sanitation large quantities of food.
- D. Install and maintain commercial/institutional grease traps/interceptors used in large volume kitchens.
- E. Repair/replace floor sinks and/or floor drains and have a working knowledge of codes for the location of installation of these items when used in conjunction with drains on combination sinks used in a commercial/institutional setting or any location where an air gap is in use.
- F. Provide and make use of camera system for detecting blockages in waste lines.
- G. Provide and make use of leak detection equipment for locating under slab leaks in supply piping.
- H. Repair, replacement and service of backflow valves; proper certification required.
- I. Remove and proper legal disposal of boilers, hot water heaters, piping, valves, insulation and other pieces of like or associated equipment, meeting any County requirements for disposition

- meeting all State/County Mandates for disposal and recycling requirements of equipment, materials or debris.
- J. Layout and install water heating equipment and associated piping to intake and discharge with special attention being given to manufacturers specifications for lengths of piping, strainers, bends and restrictions that may affect proper functioning of the equipment as reflected in the Delta-T required by the manufacturer.
  - K. Restore to sufficient levels water treatment chemicals in systems that are affected by the breakdown, repair, maintenance or installation of boilers and or hot water heaters.
  - L. Contractor is responsible for straining of debris or particulate out of any looped water system that required maintenance, repair, alteration and/or installation of boilers, hot water heaters, piping, valves or strainers, and for any other circumstance that required the contractor to open the system and expose it to external impurities.
  - M. Add and remove as necessary refrigerants, oils or lubricants, using proper documentation for recording all such transfers and disposals, with all documentation be given the County for proper record keeping.
  - N. Be responsible for bleeding down of any system that has been maintained, repaired, altered or installed for proper function and reduced possibility of damage to the heated water system, and the facility.
  - O. Follow all guidelines and sequences of operations established as Industry Standards for the troubleshooting, maintenance, repair, and installation of steam and water boilers, water heating equipment that are currently considered Best Practices methodology for this type of work on this type of equipment.
  - P. Provide service or replacement of steam and water boilers, water heating equipment, piping, valves, strainers, insulation, pumps or other ancillary parts at various County facilities throughout the term of this contract, upon written approval from the County.
  - Q. Provide emergency repairs upon written approval from the County. The specific scope of work and schedule will be determined at the time such work is initiated. Contractor to be available for emergency call out services between the hours of 6:00 pm and 6:00 am Monday through Sunday, and must respond with a two (2) hour time frame.
  - R. Aware that all work which interferes with normal County operations shall be performed on Saturdays, Sundays or holidays and the schedule shall be arranged by the County and the Contractor prior to starting work.
  - S. Identify and notify/advise the County Project Manager in writing of any additional repair or maintenance work that may be required or advisable to maintain the efficient operation and useful life of the equipment.
  - T. NOT perform additional repair of maintenance without receiving prior written approval from the County Project Manager.
  - U. Employ and utilize personnel who are qualified, knowledgeable, and experienced to perform the specific type of service on the specific type of equipment listed in this contract.
  - V. Provide at least one (1) journeyman plumber.
  - W. Provide additional non-journeymen staff to adequately, efficiently and safely perform the work specified as part of this contract. All journeyman level electricians shall possess a certificate identifying them as journeyman electricians by the State of California.

- X. It will be the sole discretion of the County Project Manager to determine whether the Contractor has adequate journeyman level staffing on each project; the Contractor will adjust staffing as required by the County to either increase or decrease staffing levels for tradesmen on site.
- Y. Provide and maintain a telephone answering system which provides for contact twenty-four (24) hours per day, seven (7) days per week, capable of contacting and dispatching service personnel within one (1) hour after receipt of notification from the County.
- Z. Perform all work in strict accordance with the Jurisdiction Having Authority, Uniform Building Code (UBC), all local codes and/or ordinances and with all CAL-OSHA laws and regulations.
- AA. Perform all work in accordance with generally accepted industry standards and practices for safe and efficient operation unless a stricter standard is adopted by the County for this type of work.
- BB. Furnish and maintain all power sources, lighting, etc., required to perform the work during any power outages.
- CC. Furnish and maintain any and all warning devices, i.e., barricades, cones, etc., required to adequately protect the public, County staff, and other workers during the performance of this work.
- DD. Maintain at all times throughout the term of the Contract a staff of qualified personnel that have undergone and passed the vendor clearance process detailed in Attachment C, "Vendor Clearance Process" that are available to respond to emergency and call out services as needed at secured Probation Department facilities.

**IV. GENERAL REQUIREMENTS**

- A. All workers performing work on County premises shall be paid prevailing wages pursuant to the Department of Industrial Relations and the State of California. The Contractor shall provide with his/her bid package a list of trades expected to be supplied as part of the Contract, along with the current, up to date listing of prevailing wages to be paid to each appropriate trade that the contractor will be performing labor with under this Contract.
- B. All invoices submitted shall be accompanied by with a record of time spent working on the subject project by tradesmen to include name, trade specific type of work provided and craft level designation (Journeyman etc.), and receipts for all materials purchased.
- C. Many locations throughout the County that require the services of the Contractor are secured facilities, and as such, the Contractor and Contractor's staff that enter these facilities are required to participate in a background clearance check per Attachment C, "Vendor Clearance Process." Some of the required documents that the Contractor and his/her staff will be required to submit are a birth certificate, driver's license or California ID, Social security Card, Passport, business card etc., which will be copied and returned to the submitter. Clearance time will be a minimum of two weeks. Those who do not pass the background check will not be admitted to the facilities. The reasons for failure to pass the background check will not be disclosed.

**V. CONTRACTOR PROJECT MANAGER SHALL:**

- A. Coordinate schedule, entry, and completion of work with County on-site staff.
- B. Coordinate all hot water heating equipment shutdowns with County and on-site County staff. Shutdowns will only be permitted once an action/work plan is thoroughly discussed, understood and agreed to by all parties involved and/or affected by the shutdown.
- C. Notify on site County staff upon completion of boiler and hot water heating service/repairs/installations work and resumption of normal operating conditions to the facility.

**VI. GENERAL CONDITIONS**

- A. All work shall be subject to inspection and approval of the County, either by the Contract Manager or his/her designee at each facility prior to acceptance and approval for payment.
- B. The County reserves the right to use alternate sources for completion of the work, to obtain competitive prices on any preventative maintenance, service or repair, and to utilize information obtained under this contract relative to necessary materials and repairs it deems appropriate.
- C. Contractor's employees shall be civil and respectful to the Public and County Staff at these facilities, but shall only be responsive to the requests of the Contract Manager or his/her designee. All other requests or inquiries shall be directed to the Contract Manager or his/her designee. Exception: Specific requests that involve public safety or the security of the specific facility.
- D. Contractor shall replace or repair or have the cost of replacement or repair deducted from its payment, at the option of the Contract Manager or his/her designee, all damage sustained to County equipment or facilities as a result of the Contractor's performance under the Contract.

**VII. MATERIALS**

- A. The Contractor shall maintain a supply of spare parts common to this type of work.
- B. The Contractor shall maintain a reasonable supply system for acquisition of additional parts which will provide all of the additional parts either immediately or with minimal delay.
- C. All parts shall be new, and shall meet or exceed the original equipment parts provided by the original manufacturer.
- D. If the Contractor proposes to furnish and install any part that will not be supplied by the original equipment manufacturer, it shall furnish all documentation, upon request, required by the County to verify that it is an equal value part. If the part is not found to be of equal quality by the County, the Contractor shall furnish an original equipment part.
- E. Contractor shall warrant all materials and labor for one (1) year after the completion of installation/repairs (or in accordance with manufacturer's warranty if longer).

**VIII. PERFORMANCE**

- A. Scheduled Maintenance and Repairs: Contractor shall meet with the County Project Manager prior to any scheduled maintenance and repair project to discuss details of the project to ensure that proper notification to the specific facility has occurred, and schedules have been coordinated. Contractor shall review manufacturer's service manuals for equipment specifications and proper testing/repair procedures.
- B. County Project Manager will provide in writing the required Scope of Work and arrange for access to the facility where work is to be performed.

**ATTACHMENT B  
PAYMENT/COMPENSATION**

1. **Compensation:** This is a usage Contract between the County and Contractor to Perform Maintenance, Repair and Alterations for Plumbing Systems on an as needed basis, as set forth in Attachment A “Scope of Work”.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services and furnishing all staffing and materials required, 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 the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. **The County shall have no obligation to pay any sum in excess of the Fixed Prices and Total Contract Amount specified herein unless authorized by amendment in accordance with Articles C and P of the County Contract Terms and Conditions, which may require approval by the County Board of Supervisors.**

2. **Fees and Charges:** County will pay the following fees in accordance with the provisions of this Contract. The hourly rates must include wages (in accordance with established general prevailing wage rate requirements), overhead, general and administrative expenses, and profit. Payment shall be as follows:

**A. Plumbing Service Rates.**

Description	Rate	Per	Notes
Service Charge	\$ 25.00	Invoice	
Journeyman Service Tech	\$ 140.00	Hour	8am – 5pm
Journeyman OT Service Tech	\$ 180.00	Hour*	5pm – 8am
Journeyman DT Service Tech	\$ 218.00	Hour*	Sundays & Holidays
Apprentice Service Tech	\$ 90.00	Hour	8am – 5pm
Apprentice OT Service Tech	\$ 119.00	Hour*	5pm – 8am
Apprentice DT Service Tech	\$ 124.00	Hour*	Sundays & Holidays
Foreman Supervisor	\$ 140.00	Hour	

**\*2HR min.**

**B. Backflow Testing & Repair Rates.**

Description	Rate	Per	Notes
Estimate	\$ 25.00	Quote	Will apply to quote
Backflow Repair Tech	\$ 140.00	Hour	8am – 5pm
Backflow Preventer Test & Certification	\$ 100.00	Device	
1” Backflow Test & Certification	\$ 75.00	Each	
2”+ Backflow Test	\$ 125.00	Each	
Backflow in Vault	\$ 300.00		Minimum
Backflow Test Cock	\$ 22.00	Each	

**\*2HR min.**

## C. Drain Machine &amp; Equipment Charges.

Description	Rate	Per
Main Line Machine	\$ 250.00	Daily
Each Additional Drum	\$ 75.00	Daily
Kitchen Machine	\$ 50.00	Daily
Hand Machine	\$ 50.00	Daily
Jetter 4000PSI	\$ 360.00	Hour*
Jetter 3000PSI	\$ 360.00	Hour*
Jetter Mini Propane	N/A	Hour*
Jetter Mini Electric	N/A	Hour*
Jetter Vacuum (4000PSI Jetter Only)	\$ 360.00	Hour*
Pipe Locations/Pipescope	\$ 290.00	Hour*
Leak Detection	\$ 365.00	Daily*
Sump Pump	\$ 110.00	Daily
Copper-Press Tools ½" – 1"	\$ 50.00	Daily
Copper-Press Tools ½" – 4"	\$ 130.00	Daily
Generator	\$ 140.00	Daily
Air Compressor	\$ 120.00	Daily
Threading Machine	\$ 220.00	Daily
Jack Hammer/Drill	\$ 140.00	Daily
Welding Machine	\$ 345.00	Daily
Backhoe + Operator + P-Up & Delivery	\$ 1,575.00	Daily
Wacker Compactor	\$ 210.00	Daily
Freezing Tool	\$ 230.00	Daily

**\*Fee Includes 1-HR labor**

N/A=Not Available

## D. Markup.

Contractor shall be reimbursed for materials, equipment or tool rentals, and subcontractors as needed and approved by the County on a Cost Plus percentage markup. Such markup percentage(s) shall be as follows:

Description	Markup
Materials:	15%
Equipment & Tool Rental(s):	15%
Subcontractor:	15%

## E. Video Camera Charges:

Description	Rate
6:00 a.m. to 5:00 p.m. Monday thru Friday <u>Normal Working Hours</u>	\$ 240.00
5:01 p.m. to 5:59 a.m. Monday thru Friday and Sat/Sun/Holidays <u>Other than Normal Working Hours</u>	\$ 360.00

Description	Rate
Video CD/DVD/Memory Stick	
<u>Must provide if charging for Camera service</u>	\$25.00

All invoices submitted shall be accompanied by a record of time spent working on the project by tradesmen to include name, trade specific type of work provided and craft level designation (Journeyman etc.), and receipts for all materials purchased including total amount of taxes paid for merchandise. Labor hours shall be charged on the basis of actual time spent on each job, not on a portal-to-portal basis and shall be computed to the nearest one-quarter (1/4) hour.

For all rental equipment, a copy of the Contractor's invoice is required for reimbursement which shall be submitted with the extended cost multiplied by the mark-up listed below. The maximum percentage mark-up allowed for rental equipment is 15%. Mark-up is prior to tax.

No additional compensation will be allowed for emergency call out services.

**Amendment No. 1 – Revise Article F**

**F. Miscellaneous Item Mark Up Structure:**

Miscellaneous Items may be purchased against the Contract. Miscellaneous Item purchases shall not exceed \$5,000 per invoice, including tax, unless the following process is followed.

Miscellaneous Items ranging between \$5,000 and \$25,000, including tax, must be pre-approved by the County Project Manager or Designee prior to processing. The County will obtain price quotes from Contractor for all Miscellaneous Items purchased between \$5,000 and \$25,000.

Cost Plus 15% Mark Up

~~Miscellaneous Item Discount Structure:~~

~~Miscellaneous Items may be purchased against the Contract. Miscellaneous Item purchases shall not exceed \$5,000 per invoice, including tax, unless the following process is followed.~~

~~Miscellaneous Items ranging between \$5,000 and \$25,000, including tax, must be pre-approved by the County Project Manager or Designee prior to processing. The County will obtain price quotes from Contractor for all Miscellaneous Items purchased between \$5,000 and \$25,000. The Contractor shall provide original cost receipts of all items cost of \$100 or more.~~

~~Cost Plus 10% Mark up~~

**G. TOTAL AGGREGATE CONTRACT AMOUNT NOT TO EXCEED: . \$ 400,000.00/Per Year**

3. **Price Increase/Decreases:** No price increases will be permitted during the first period of the Contract. The County requires documented proof of cost increases on Contracts prior to any price adjustment. A minimum of one hundred eighty 180-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. All price decreases will automatically be extended to the County of Orange. The County may enforce, 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 the Contractor's profit will not be allowed.
4. **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 the County during the term of this Contract not otherwise specified and provided for within this Contract.
5. **Contractor's Expense:** The 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.
6. **Payment Terms – Payment in Arrears:** Invoices are to be submitted in arrears to the user agency/department to the ship-to address, unless otherwise directed in this Contract. Contractor shall reference Contract number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Contract requirements.

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

7. **Taxpayer ID Number:** The Contractor shall include its taxpayer ID number on all invoices submitted to the County for payment to ensure compliance with IRS requirements and to expedite payment processing.
8. **Payment – Invoicing Instructions:** The Contractor will provide an invoice on the Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:
  - A. Contractor's name and address
  - B. Contractor's remittance address, if different from A above
  - C. Contractor's Taxpayer ID Number
  - D. Name of County Agency/Department
  - E. Delivery/service address
  - F. Master Agreement (MA) or Purchase Order (PO) number
  - G. Agency/Department's Account Number
  - H. Date of invoice
  - I. Product/service description, quantity, and prices
  - J. Sales tax, if applicable

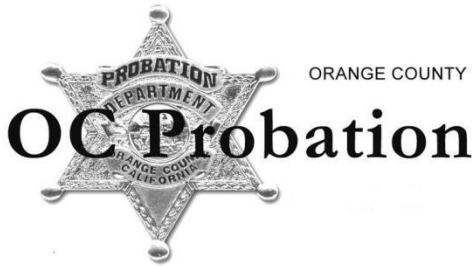
- K. Freight/delivery charges, if applicable
- L. Total

Invoices and support documentation are to be forwarded to:

OC Public Works/Facility Operations  
 Attn: Accounts Payable  
 1143 E. Fruit St.  
 Santa Ana, CA 92701

Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the DPA.

**ATTACHMENT C**  
**ATTACHMENT C: VENDOR CLEARANCE PROCESS**



ORANGE COUNTY



**STEVEN J. SENTMAN**  
 CHIEF PROBATION  
 OFFICER  
 TELEPHONE: (714) 569-  
 2000  
 1055 N. MAIN STREET, 5<sup>TH</sup>  
 FLOOR SANTA ANA, CA  
 92701

MAILING ADDRESS:  
 P.O. BOX 10260  
 SANTA ANA, CA 92711-0260

**VENDOR BACKGROUND APPOINTMENT  
 INFORMATION 1535 EAST ORANGEWOOD  
 AVE.  
 ANAHEIM, CA. 92805**

All individuals who perform work in Probation Department facilities or on Probation Department property are required to undergo and pass a security clearance that includes being fingerprinted.

***NOTE: A number of situations will prevent you from clearing this process, including, but not limited to: current or recent grant of probation or parole; active warrant for your arrest; or pending criminal matters, use of false or altered documents, or dishonesty when providing requested information.***

On the day of your appointment, report to:

**Orange County Probation Department – North County Field Services Office  
 1535 EAST ORANGEWOOD AVE., ANAHEIM CA. 92805**

Please use the stairs adjacent to the ramp in the front of the building to enter. You may bypass the “Do Not Enter” sign posted on the door. You do not need to wait in the weapons screening line on the ramp. Please provide a photo ID to the Sheriff’s Special Officer and

explain you are here for a background appointment with PSD. Once inside the building, please also check in with reception and ask for **Jocelyn Garcia 714-937-4734** or **Adriana Montanez 714-937-4714**.

**Bring the following *required* documents with you to your appointment:**

- California driver's license or ID; ***no copies will be accepted.***
- Social Security Card; ***no copies will be accepted.***
- Documents that establish employment authorization (*whichever applies below*):
  - If born in the U.S., bring original birth certificate *or* U.S. passport; ***no copies, abstracts, or hospital-issued certificates will be accepted; no passports from U.S. Territories: American Samoa, Swain Islands, and Northern Mariana Islands will be accepted.***
  - If you became an American Citizen, bring original U.S. Certificate of Naturalization *or* U.S. passport; ***no copies will be accepted.***
  - If you are *not* an American Citizen, ***bring original and valid*** U.S. Permanent Resident Card (Green Card) or ***original and valid*** Employment Authorization Document (Work Permit); ***no copies will be accepted.***

**Please bring employer's business card to the appointment.**

*All documents need to be **original and valid.** Only the documents listed above will be accepted.*

*If you do not have the required documents, you will not be permitted to proceed with the clearance process.*

**The results will be provided to your employer once the background is complete.**

**CONTRACT MA-080-20011275**

**TO**

**PERFORM MAINTENANCE, REPAIRS AND ALTERATIONS FOR PLUMBING  
SYSTEMS**

**BETWEEN**

**OC PUBLIC WORKS**

**AND**

**VERNE'S PLUMBING, INC.**



**CONTRACT MA-080-20011275  
WITH  
VERNE'S PLUMBING, INC.  
TO  
PERFORM MAINTENANCE, REPAIRS AND ALTERATIONS FOR PLUMBING  
SYSTEMS**

THIS CONTRACT MA-080-20011275 to Perform Maintenance, Repairs and Alterations for Plumbing Systems (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, (hereinafter referred to as "County") and Verne's Plumbing, Inc. , with a place of business at 8561 Whitaker St., Buena Park, CA 90621 (hereinafter referred to as "Contractor"), with a County and Contractor sometimes referred to as "Party" or collectively as "Parties".

**ATTACHMENTS**

This Contract is comprised of this document and the following Attachments, which are attached hereto and incorporated by reference into this Contract:

Attachment A – Scope of Work

Attachment B – Payment/Compensation

Attachment C – Vendor Clearance Process

**RECITALS**

WHEREAS, Contractor and County are entering into this Contract to Perform Maintenance, Repairs and Alterations for Plumbing Systems under a usage Contract; and,

WHEREAS, County solicited Contract to Perform Maintenance, Repairs and Alterations for Plumbing Systems as set forth herein, and Contractor represented that it is qualified to Perform Maintenance, Repairs and Alterations for Plumbing Systems to the County as further set forth here; and,

WHEREAS, Contractor agrees to Perform Maintenance, Repairs and Alterations for Plumbing Systems to the County as further set forth in the Scope of Work, attached hereto as Attachment A; and,

WHEREAS, County agrees to pay Contractor based on the schedule of fees set forth in Payment/Compensation, attached hereto as Attachment B; and,

WHEREAS, the County Board of Supervisors has authorized the Procurement Officer or designee to enter into a Contract to Perform Maintenance, Repairs and Alterations for Plumbing Systems with the Contractor; and,

NOW, THEREFORE, the Parties mutually agree as follows:

**DEFINITIONS**

DPA shall mean the Deputy Purchasing Agent assigned to this Contract.

ARTICLESGeneral Terms and Conditions:

- A. **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 adjudication to another county.
- B. **Entire Contract:** This Contract 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 by County's Procurement Officer or designee.
- C. **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.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.
- E. **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 descriptions or services that do not conform to the prescribed statement 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. Over shipments and under shipments 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.
- F. **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 after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the goods 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 **article "Z"** below, and as more fully described in **article "Z,"** 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.

- H. **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 **article "Z"** below, it shall indemnify, defend and hold County and County Indemnitees 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, costs and expenses but not including attorney's fees.
- I. **Assignment:** 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 by Contractor without the express written consent of County. Any attempt by Contractor to assign 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.
- J. **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 penalties pursuant to Section 1741 of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.
- L. **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.
- M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- N. **Performance Warranty:** Contractor shall warrant 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 the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, 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. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

**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. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. 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.

Upon notice of any actual or alleged claim or loss arising out of subcontractor's work hereunder, subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Contractor and Additional Insureds.

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	\$3,000,000 per occurrence \$3,000,000 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 00 12, CA 00 20, or a substitute form providing liability 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 and agents*** as Additional Insureds, or provide blanket coverage which shall state ***AS REQUIRED BY WRITTEN CONTRACT***.
- 2) A primary non-contributing endorsement 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.
- 3) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO form CG2010 (ed. 11/85).

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers, employees and agents*** or provide blanket coverage which shall state ***AS REQUIRED BY WRITTEN CONTRACT*** when acting within the scope of their appointment or employment.

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, employees and agents 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 (standard in the ISO CG 001 policy).

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

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified Contractor.

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 in any way to reduce the policy coverage and limits available from the insurer.

P. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.

Q. **Change of Ownership/Name, Litigation Status, Conflicts with County Interests:**

Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and obligations contained in this Contract, and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor

and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

- R. **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.
- S. **Confidentiality:** Contractor agrees to maintain the confidentiality of all 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.
- T. **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 **article "Z"** 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.
- U. **Freight:** Prior to the County's express acceptance of delivery of products. 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.
- V. **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.
- W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.
- X. **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 had 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 or 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.

- Y. **Employee Eligibility Verification:** The 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. The 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. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the 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.
- Z. **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 concurrent active negligence 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.
- AA. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the County's project manager.

- BB. **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.
- CC. **Expenditure Limit:** The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

**Additional Terms and Conditions:**

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure and the Contractor will Perform Maintenance, Repairs and Alterations for Plumbing Systems from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as "Attachment A".
2. **Term of Contract:** The term of this Contract shall be effective upon execution of all authorized signatures or approval by the Orange County Board of Supervisors, whichever occurs later, and shall continue for three (3) calendar years from that date, unless otherwise terminated by County. This Contract may be renewed as set forth in article 3 below.
3. **Renewal:** This Contract may be renewed by mutual written agreement of both Parties for two (2) additional one (1) year terms. The County does not have to give reason if it elects not to renew. Renewal periods may be subject to approval by the County of Orange Board of Supervisors.
4. **Aggregate Contract:** This is an aggregate Contract with John Flynn Orange Coast Plumbing Inc. DBA Orange Coast Plumbing, Pro-Craft Construction, Inc., and Verne's Plumbing, Inc., with a total aggregate contract amount not to exceed \$400,000.00 per year.
5. **Adjustments – Scope of Work:** No adjustments made to the Scope of Work will be authorized without prior written approval of the County assigned Deputy Purchasing Agent.
6. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
  - a) Terminate the Contract immediately, pursuant to Section K herein;
  - b) Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
  - c) Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and

- d) Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
7. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
8. **Conflict of Interest – Contractor’s Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor’s employees, agents, and subcontractors associated with accomplishing work and services hereunder. The Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.
9. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
10. **Contractor’s Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County’s Project Manager, which consent shall not be unreasonably withheld.
- The Contractor’s Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s Project Manager from providing services to the County under this Contract. The County’s Project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within five (5) business days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor’s Project Manager from providing further services under the Contract.
11. **Contractor Personnel – Reference Checks:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract. Contractor’s employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.
12. **Contractor’s Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.

13. **Contractor Personnel – Uniform/Badges/Identification:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility under this Contract.

All Contractor's employees shall be required to wear uniforms, badges, or other means of identification which are to be furnished by the Contractor and must be work at all times while working on County property. The assigned Deputy Purchasing Agent must be notified in writing, within seven (7) days of notification of award of Contract of the uniform and/or badges and/or other identification to be worn by employees prior to beginning work and notified in writing seven (7) days prior to any changes in this procedure.

14. **Conditions Affecting Work:** The 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 the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The 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 the County are expressly stated in the Contract.

15. **Cooperative Agreement:** The provisions and pricing of this Contract will be extended to other California local or state governmental entities. Governmental entities wishing to use the pre-negotiated prices and terms in this Contract will be responsible for issuing their own purchase documents/contracts, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any contract entered into with another department or entity that is entered into and incorporates by reference the pre-negotiated prices and terms of this Contract a contractual 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 by Contractor and grounds for immediate Contract termination. Departments or entities making use of the pre-negotiated prices and terms of this Contract are responsible for obtaining all certificates of insurance and bonds required when entering into their own contract. The 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.

The 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 the County, at the County's request.

16. **Data – Title To:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.

17. **Default – Reprourement Costs:** In case of Contract breach by Contractor, resulting in termination by the County, the County may procure the goods and/or services from other sources. If the cost for those goods and/or services is higher than under the terms of the existing Contract, Contractor will be responsible for paying the County the difference between the Contract cost and the price paid, and the County may deduct this cost from any unpaid balance due the Contractor.

The price paid by the County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.

**18. Disputes – Contract:**

- A. 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 the Contractor’s Project Manager and the County’s Project Manager, as specified in Article 25. “Notices,” such matter shall be brought to the attention of the County Deputy Purchasing Agent by way of the following process:
  - 1. The Contractor shall submit to the agency/department assigned Deputy Purchasing Agent 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 the County, on its own initiative, has already rendered such a final decision.
  - 2. The Contractor’s written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the 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 the Contractor believes the County is liable.
- B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor’s failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Deputy Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor’s demand, it shall be deemed a final decision adverse to the Contractor’s contentions. Nothing in this section shall be construed as affecting the County’s right to terminate the Contract for cause or termination for convenience as stated in section K herein.

**19. Drug-Free Workplace:** The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:

- 1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).
- 2. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
  - a. The dangers of drug abuse in the workplace;
  - b. The organization’s policy of maintaining a drug-free workplace;
  - c. Any available counseling, rehabilitation and employee assistance programs; and

- d. Penalties that may be imposed upon employees for drug abuse violations.
3. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:
  - a. Will receive a copy of the company's drug-free policy statement; and
  - b. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County contracts if the County determines that any of the following has occurred:

1. The Contractor has made false certification, or
  2. The Contractor violates the certification by failing to carry out the requirements as noted above.
20. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, the County of Orange is required to file in accordance with subdivision (a) of Section 6041A of the Internal Revenue Code for services received from a "service provider" to whom the County pays \$600 or more or with whom the County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subarticle B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent Contractors. An independent Contractor is defined as "an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a contract for services performed for that ... government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at [http://www.edd.ca.gov/Employer\\_Services.htm](http://www.edd.ca.gov/Employer_Services.htm)

21. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as project manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as

a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

22. **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

23. **Hazardous Conditions:** Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall provide flagmen and furnish, erect and maintain control devices as are necessary to prevent accidents or damage or injury to the public at Contractor's expense and without cost to the County. The Contractor shall comply with County directives regarding potential hazards.

Emergency lights and traffic cones must also be readily available at all times and must be used in any hazardous condition. Emergency traffic cones must be placed in front of and behind vehicles to warn oncoming traffic.

Signs, lights, flags, and other warning and safety devices shall conform to the requirements set forth in Chapter 6 of the current traffic manual, Traffic Control for Construction and Maintenance Work Zones, published by the state of California Department of Transportation.

24. **News/Information Release:** The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County's Project Manager.

25. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), 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 (4) 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.

Contractor: Verne's Plumbing, Inc.  
Attn: Eric Verne  
8561 Whitaker St.  
Buena Park, CA 90621  
Phone: 714-994-1971  
Email: Eric@vernesplumbing.com

County's Project Manager: OC Public Works/OC Facilities  
Attn: Dale Vermillion  
1143 E. Fruit Street  
Santa Ana, CA 92701  
Phone: 714-667-4963  
Email: Dale.Vermillion@ocpw.ocgov.com

cc: OC Public Works/Procurement Section  
Attn: Carlos Corona, County DPA  
601 N. Ross Street  
Santa Ana, CA 92701  
Phone: 714-667-9694  
Email: Carlos.Corona@ocpw.ocgov.com

26. **Payroll Records:** Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide, in summary:

- 1.1.1. Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.
- 1.1.2. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
  - (a) The information contained in the payroll record is true and correct.
  - (b) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
- 1.1.3. The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.
- 1.1.4. Contractor shall inform County of the location of the payroll records, including the street address, city and county, and shall, within five working days, provide a notice of any change of location and address of the records.

1.1.5. Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have 10 days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit \$100, or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at [www.dir.ca.gov](http://www.dir.ca.gov). If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.

27. **Precedence:** The Contract documents consist of this Contract and its exhibits 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 exhibits and attachments.
28. **Project Manager, County:** The County shall appoint a project manager to act as liaison between the County and the Contractor during the term of this Contract. The County's project manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County's project manager shall have the right to require the removal and replacement of the Contractor's project manager and key personnel. The County's project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice from the County's project manager. The County's project manager shall review and approve the appointment of the replacement for the Contractor's project manager and key personnel. Said approval shall not be unreasonably withheld. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.

29. **Registration of Contractor:** All contractors and subcontractors must comply with the requirements of Labor Code Section 1771.1(a), pertaining to registration of contractors pursuant to Section 1725.5. Bids cannot be accepted from unregistered contractors except as provided in Section 1771.1. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. After award of the contract, Contractor and each Subcontractor shall furnish electronic payroll records directly to the Labor Commissioner in the manner specified in Labor Code Section 1771.4.
30. **Safety Data Sheets (SDS):** The Contractor is required to provide a completed Safety Data Sheet (SDS) for each hazardous substance provided to the County under the Contractor's Contract with the County. This includes hazardous substances that are not directly included in the Contract, but

are included in the goods or services provided by the Contractor to the County. The provision of the SDSs 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 SDSs for each substance must be sent to the place of shipment or provision of goods/service.

31. **Subcontracting:** No performance of this Contract or any portion thereof may be subcontracted by the Contractor without the express written consent of the County. Any attempt by the Contractor to subcontract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract.

In the event that the Contractor is authorized by the County to subcontract, this Contract shall take precedence over the terms of the Contract between Contractor and subcontractor, and shall incorporate by reference the terms of this Contract. The County shall look to the Contractor for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange.

32. **Termination – Orderly:** After receipt of a termination notice from the County of Orange, the Contractor may submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. 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 performance of the Contract.

33. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at rates/prices listed in the Contract, regardless of quantity requested.

34. **Usage Reports:** The Contractor shall submit usage reports on an annual basis to the assigned Deputy Purchasing Agent of the County of Orange user agency/department. The usage report shall be in a format specified by the user agency/department and shall be submitted 90 days prior to the expiration date of the contract term, or any subsequent renewal term, if applicable.

35. **Wage Rates:** Contractor shall post a copy of the wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the Board of Supervisors has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Contract from the Director of the Department of Industrial Relations. These rates are on file with the Clerk of the Board of Supervisors. Copies may be obtained at cost at the office of County's OC Public Works/OC Facilities & Asset Management/A&E Project Management or visit the website of the Department of Industrial Relations, Prevailing Wage Unit at [www.dir.ca.gov/DLSR/PWD](http://www.dir.ca.gov/DLSR/PWD). The Contractor shall comply with the provisions of Sections 1774, 1775, 1776 and 1813 of the Labor Code.

36. **Payment and Performance Bonds:** A payment bond and performance is required for a public works contract involving expenditure in excess of twenty-five thousand dollars (\$25,000) and no work can be commenced prior to both bonds being approved the County.

The Contractor shall furnish, at time of signing the Contract, one surety bond which shall protect the laborers and material men and shall be for \$60,000, in accordance with *Section 9554 of the Civil Code*, and one surety bond in the amount of \$60,000, guaranteeing the faithful performance of the Contract. If at any time the value of the total task orders is expected to exceed \$60,000, the Contractor shall furnish, in a manner acceptable to the County, evidence that the Contractor is bonded to the expected total value of outstanding task orders for both the faithful performance and laborers and material men bonds. Contractor shall not be entitled to, nor shall County authorize, task orders when the total outstanding value of the task orders under this contract exceeds the bond values for which the County is an obligee. Said bonds to be approved by the office of the County Counsel and the County Executive Office of Orange County. Such bonds shall be the forms provided in these specifications and issued and executed by an admitted surety insurer (authorized to transact surety insurance in California). (e.g., if the bonds are issued through a surplus line broker, both the surplus line broker and the insurer with whom he is doing business for purposes of this project must be licensed in California to issue such bonds.)

The faithful performance bond shall be issued by a Surety company with a minimum insurance rating of A- (Secure 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](http://ambest.com). The Surety Company must also be authorized to write in California by the Department of the Treasury, and must be listed on the most current edition of the Department of Treasury's Listing of Approved Securities.

If any surety upon any bond furnished in connection with this Contract becomes unacceptable to the County, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by OC Public Works, the Contractor shall promptly furnish such additional security as may be required by OC Public Works or the Board of Supervisors from time to time to protect the interests of the County and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.

If the County increases the total Contract amount the Contractor is to provide a new bond for the new total Contract amount or a bond for the difference.

37. **Execution of the Agreement and Notice to Proceed:** County will not execute the Contract or issue a Notice to Proceed with the work until Bidder has submitted and County has approved Bidder's Faithful Performance and Labor and Material Payment Bonds, proof of insurance, and initial job progress schedule. All such submittals must be received by County within 10 calendar days of award of the Contract. Any claims by Contractor for adjustments in time and/or cost for delays in issuing the Notice to Proceed due to Contractor's failure to deliver bonds, insurance, and initial job progress schedule acceptable to County will not be considered.
38. **Apprenticeship Requirements:** The Contractor shall comply with Section 230.1(A), California Code of Regulations as required by the Department of Industrial Relations, Division of Apprenticeship Standards by submitting DAS Form to the Joint Apprenticeship Committee of the craft or trade in the area of the site.

**Signature Page follows**



## ATTACHMENT A SCOPE OF WORK

**I. SCOPE OF WORK:** Contractor shall provide maintenance, repairs, alterations and installation of plumbing systems located in or adjacent to various County facilities including remotely located installations, on an as needed basis, as part of this Contract. Services shall include, but are not limited to: Perform Maintenance, Repairs and Alterations for Plumbing Systems; Water Supply and Waste Removal County Wide. Maintenance services shall be used on an on-call basis. Service request involving, repairs and/or alterations shall not exceed \$60,000.

**II. MINIMUM QUALIFICATIONS**

- A. The Contractor shall provide current, up to date listing of prevailing wages to be paid to each appropriate trade that the contractor will be performing labor with under this Contract.
- B. For any Steam and Water Boiler work performed as part of this Contract, the Contractor shall possess a valid C-36, Plumbing Contractor's License issued by the California State Contractor's License Board at the time the bid is submitted and shall maintain the license in full for the term of the contract. Any and all electrical work shall be performed according to the National Electric Code (NEC) and Jurisdiction Having Authority.
- C. Contractor shall be registered and in good standing with the Department of Industrial Relations (DIR) through the full term of this Contract, and the contractor's registration number shall be clearly visible and legible.

**III. CONTRACTOR REQUIREMENTS:**

**Contractor shall:**

- A. Provide at his/her expense, all tools and equipment necessary to perform the work. This includes ladders, lift equipment, scaffolding and planking which are to be OSHA approved for the type of work being performed.
- B. Repair/replace all types of water supply and waste removal systems to include potable and non-potable water supply systems, steam and water boiler, hot water heaters and ancillary piping, valves, strainers, steam traps, insulation and mechanical supports associated directly with the equipment to be maintained, repaired, altered and/or installed.
- C. Hook-up, testing and troubleshooting of large commercial/institutional equipment used in the preparation and sanitation large quantities of food.
- D. Install and maintain commercial/institutional grease traps/interceptors used in large volume kitchens.
- E. Repair/replace floor sinks and/or floor drains and have a working knowledge of codes for the location of installation of these items when used in conjunction with drains on combination sinks used in a commercial/institutional setting or any location where an air gap is in use.
- F. Provide and make use of camera system for detecting blockages in waste lines.
- G. Provide and make use of leak detection equipment for locating under slab leaks in supply piping.
- H. Repair, replacement and service of backflow valves; proper certification required.
- I. Remove and proper legal disposal of boilers, hot water heaters, piping, valves, insulation and other pieces of like or associated equipment, meeting any County requirements for disposition

- meeting all State/County Mandates for disposal and recycling requirements of equipment, materials or debris.
- J. Layout and install water heating equipment and associated piping to intake and discharge with special attention being given to manufacturers specifications for lengths of piping, strainers, bends and restrictions that may affect proper functioning of the equipment as reflected in the Delta-T required by the manufacturer.
  - K. Restore to sufficient levels water treatment chemicals in systems that are affected by the breakdown, repair, maintenance or installation of boilers and or hot water heaters.
  - L. Contractor is responsible for straining of debris or particulate out of any looped water system that required maintenance, repair, alteration and/or installation of boilers, hot water heaters, piping, valves or strainers, and for any other circumstance that required the contractor to open the system and expose it to external impurities.
  - M. Add and remove as necessary refrigerants, oils or lubricants, using proper documentation for recording all such transfers and disposals, with all documentation be given the County for proper record keeping.
  - N. Be responsible for bleeding down of any system that has been maintained, repaired, altered or installed for proper function and reduced possibility of damage to the heated water system, and the facility.
  - O. Follow all guidelines and sequences of operations established as Industry Standards for the troubleshooting, maintenance, repair, and installation of steam and water boilers, water heating equipment that are currently considered Best Practices methodology for this type of work on this type of equipment.
  - P. Provide service or replacement of steam and water boilers, water heating equipment, piping, valves, strainers, insulation, pumps or other ancillary parts at various County facilities throughout the term of this contract, upon written approval from the County.
  - Q. Provide emergency repairs upon written approval from the County. The specific scope of work and schedule will be determined at the time such work is initiated. Contractor to be available for emergency call out services between the hours of 6:00 pm and 6:00 am Monday through Sunday, and must respond with a two (2) hour time frame.
  - R. Aware that all work which interferes with normal County operations shall be performed on Saturdays, Sundays or holidays and the schedule shall be arranged by the County and the Contractor prior to starting work.
  - S. Identify and notify/advise the County Project Manager in writing of any additional repair or maintenance work that may be required or advisable to maintain the efficient operation and useful life of the equipment.
  - T. NOT perform additional repair of maintenance without receiving prior written approval from the County Project Manager.
  - U. Employ and utilize personnel who are qualified, knowledgeable, and experienced to perform the specific type of service on the specific type of equipment listed in this contract.
  - V. Provide at least one (1) journeyman plumber.
  - W. Provide additional non-journeymen staff to adequately, efficiently and safely perform the work specified as part of this contract. All journeyman level electricians shall possess a certificate identifying them as journeyman electricians by the State of California.

- X. It will be the sole discretion of the County Project Manager to determine whether the Contractor has adequate journeyman level staffing on each project; the Contractor will adjust staffing as required by the County to either increase or decrease staffing levels for tradesmen on site.
- Y. Provide and maintain a telephone answering system which provides for contact twenty-four (24) hours per day, seven (7) days per week, capable of contacting and dispatching service personnel within one (1) hour after receipt of notification from the County.
- Z. Perform all work in strict accordance with the Jurisdiction Having Authority, Uniform Building Code (UBC), all local codes and/or ordinances and with all CAL-OSHA laws and regulations.
- AA. Perform all work in accordance with generally accepted industry standards and practices for safe and efficient operation unless a stricter standard is adopted by the County for this type of work.
- BB. Furnish and maintain all power sources, lighting, etc., required to perform the work during any power outages.
- CC. Furnish and maintain any and all warning devices, i.e., barricades, cones, etc., required to adequately protect the public, County staff, and other workers during the performance of this work.
- DD. Maintain at all times throughout the term of the Contract a staff of qualified personnel that have undergone and passed the vendor clearance process detailed in Attachment C, "Vendor Clearance Process" that are available to respond to emergency and call out services as needed at secured Probation Department facilities.

**IV. GENERAL REQUIREMENTS**

- A. All workers performing work on County premises shall be paid prevailing wages pursuant to the Department of Industrial Relations and the State of California. The Contractor shall provide with his/her bid package a list of trades expected to be supplied as part of the Contract, along with the current, up to date listing of prevailing wages to be paid to each appropriate trade that the contractor will be performing labor with under this Contract.
- B. All invoices submitted shall be accompanied by with a record of time spent working on the subject project by tradesmen to include name, trade specific type of work provided and craft level designation (Journeyman etc.), and receipts for all materials purchased.
- C. Many locations throughout the County that require the services of the Contractor are secured facilities, and as such, the Contractor and Contractor's staff that enter these facilities are required to participate in a background clearance check per Attachment C, "Vendor Clearance Process." Some of the required documents that the Contractor and his/her staff will be required to submit are a birth certificate, driver's license or California ID, Social security Card, Passport, business card etc., which will be copied and returned to the submitter. Clearance time will be a minimum of two weeks. Those who do not pass the background check will not be admitted to the facilities. The reasons for failure to pass the background check will not be disclosed.

**V. CONTRACTOR PROJECT MANAGER SHALL:**

- A. Coordinate schedule, entry, and completion of work with County on-site staff.
- B. Coordinate all hot water heating equipment shutdowns with County and on-site County staff. Shutdowns will only be permitted once an action/work plan is thoroughly discussed, understood and agreed to by all parties involved and/or affected by the shutdown.
- C. Notify on site County staff upon completion of boiler and hot water heating service/repairs/installations work and resumption of normal operating conditions to the facility.

**VI. GENERAL CONDITIONS**

- A. All work shall be subject to inspection and approval of the County, either by the Contract Manager or his/her designee at each facility prior to acceptance and approval for payment.
- B. The County reserves the right to use alternate sources for completion of the work, to obtain competitive prices on any preventative maintenance, service or repair, and to utilize information obtained under this contract relative to necessary materials and repairs it deems appropriate.
- C. Contractor's employees shall be civil and respectful to the Public and County Staff at these facilities, but shall only be responsive to the requests of the Contract Manager or his/her designee. All other requests or inquiries shall be directed to the Contract Manager or his/her designee. Exception: Specific requests that involve public safety or the security of the specific facility.
- D. Contractor shall replace or repair or have the cost of replacement or repair deducted from its payment, at the option of the Contract Manager or his/her designee, all damage sustained to County equipment or facilities as a result of the Contractor's performance under the Contract.

**VII. MATERIALS**

- A. The Contractor shall maintain a supply of spare parts common to this type of work.
- B. The Contractor shall maintain a reasonable supply system for acquisition of additional parts which will provide all of the additional parts either immediately or with minimal delay.
- C. All parts shall be new, and shall meet or exceed the original equipment parts provided by the original manufacturer.
- D. If the Contractor proposes to furnish and install any part that will not be supplied by the original equipment manufacturer, it shall furnish all documentation, upon request, required by the County to verify that it is an equal value part. If the part is not found to be of equal quality by the County, the Contractor shall furnish an original equipment part.
- E. Contractor shall warrant all materials and labor for one (1) year after the completion of installation/repairs (or in accordance with manufacturer's warranty if longer).

**VIII. PERFORMANCE**

- A. Scheduled Maintenance and Repairs: Contractor shall meet with the County Project Manager prior to any scheduled maintenance and repair project to discuss details of the project to ensure that proper notification to the specific facility has occurred, and schedules have been coordinated. Contractor shall review manufacturer's service manuals for equipment specifications and proper testing/repair procedures.
- B. County Project Manager will provide in writing the required Scope of Work and arrange for access to the facility where work is to be performed.

**ATTACHMENT B  
PAYMENT/COMPENSATION**

1. **Compensation:** This is a usage Contract between the County and Contractor to Perform Maintenance, Repair and Alterations for Plumbing Systems on an as needed basis, as set forth in Attachment A “Scope of Work”.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services and furnishing all staffing and materials required, 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 the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. **The County shall have no obligation to pay any sum in excess of the Fixed Prices and Total Contract Amount specified herein unless authorized by amendment in accordance with Articles C and P of the County Contract Terms and Conditions, which may require approval by the County Board of Supervisors.**

2. **Fees and Charges:** County will pay the following fees in accordance with the provisions of this Contract. The hourly rates must include wages (in accordance with established general prevailing wage rate requirements), overhead, general and administrative expenses, and profit. Payment shall be as follows:

**A. Plumbing Service Rates.**

Description	Rate	Per	Notes
Service Charge	\$ 75.00	Invoice	
Journeyman Service Tech	\$ 115.00	Hour	8am – 5pm
Journeyman OT Service Tech	\$ 172.00	Hour*	5pm – 8am
Journeyman DT Service Tech	\$ 230.00	Hour*	Sundays & Holidays
Apprentice Service Tech	\$ 85.00	Hour	8am – 5pm
Apprentice OT Service Tech	\$ 127.50	Hour*	5pm – 8am
Apprentice DT Service Tech	\$ 170.00	Hour*	Sundays & Holidays
Foreman Supervisor	\$ 125.00	Hour	

**\*2HR min.**

**B. Backflow Testing & Repair Rates.**

Description	Rate	Per	Notes
Estimate	\$ 115.00	Quote	Will apply to quote
Backflow Repair Tech	\$ 115.00	Hour	8am – 5pm
Backflow Preventer Test & Certification	\$ 95.00	Device	
1” Backflow Test & Certification	\$ 95.00	Each	
2”+ Backflow Test	\$ 95.00	Each	
Backflow in Vault	\$ 35.00		Minimum
Backflow Test Cock	\$ 15.00	Each	

**\*2HR min.**

## C. Drain Machine &amp; Equipment Charges.

Description	Rate	Per
Main Line Machine	\$ 50.00	Daily
Each Additional Drum	\$ 25.00	Daily
Kitchen Machine	\$ 35.00	Daily
Hand Machine	\$ 25.00	Daily
Jetter 4000PSI	\$ 400.00	Hour*
Jetter 3000PSI	\$ 300.00	Hour*
Jetter Mini Propane	\$ 200.00	Hour*
Jetter Mini Electric	\$ 200.00	Hour*
Jetter Vacuum (4000PSI Jetter Only)	\$ 400.00	Hour*
Pipe Locations/Pipescope	\$ 300.00	Hour*
Leak Detection	\$ 300.00	Daily*
Sump Pump	\$ 65.00	Daily
Copper-Press Tools ½" – 1"	\$ 75.00	Daily
Copper-Press Tools ½" – 4"	\$ 150.00	Daily
Generator	\$ 85.00	Daily
Air Compressor	\$ 50.00	Daily
Threading Machine	\$ 135.00	Daily
Jack Hammer/Drill	\$ 150.00	Daily
Welding Machine	\$ 200.00	Daily
Backhoe + Operator + P-Up & Delivery	\$ 325.00	Daily
Wacker Compactor	\$ 250.00	Daily
Freezing Tool	\$ 375.00	Daily

**\*Fee Includes 1-HR labor**

## D. Markup.

Contractor shall be reimbursed for materials, equipment or tool rentals, and subcontractors as needed and approved by the County on a Cost Plus percentage markup. Such markup percentage(s) shall be as follows:

Description	Markup
Materials:	15%
Equipment & Tool Rental(s):	15%
Subcontractor:	15%

## E. Video Camera Charges:

Description	Rate
6:00 a.m. to 5:00 p.m. Monday thru Friday <u>Normal Working Hours</u>	\$ 300.00
5:01 p.m. to 5:59 a.m. Monday thru Friday and Sat/Sun/Holidays <u>Other than Normal Working Hours</u>	\$ 300.00

Description	Rate
Video CD/DVD/Memory Stick	
<u>Must provide if charging for Camera service</u>	\$50.00

All invoices submitted shall be accompanied by a record of time spent working on the project by tradesmen to include name, trade specific type of work provided and craft level designation (Journeyman etc.), and receipts for all materials purchased including total amount of taxes paid for merchandise. Labor hours shall be charged on the basis of actual time spent on each job, not on a portal-to-portal basis and shall be computed to the nearest one-quarter (1/4) hour.

For all rental equipment, a copy of the Contractor's invoice is required for reimbursement which shall be submitted with the extended cost multiplied by the mark-up listed below. The maximum percentage mark-up allowed for rental equipment is 15%. Mark-up is prior to tax.

No additional compensation will be allowed for emergency call out services.

**Amendment No. 1 – Revise Article F**

**F. Miscellaneous Item Mark Up Structure:**

Miscellaneous Items may be purchased against the Contract. Miscellaneous Item purchases shall not exceed \$5,000 per invoice, including tax, unless the following process is followed.

Miscellaneous Items ranging between \$5,000 and \$25,000, including tax, must be pre-approved by the County Project Manager or Designee prior to processing. The County will obtain price quotes from Contractor for all Miscellaneous Items purchased between \$5,000 and \$25,000.

Cost Plus 15% Mark Up

~~**Miscellaneous Item Discount Structure:**~~

~~Miscellaneous Items may be purchased against the Contract. Miscellaneous Item purchases shall not exceed \$5,000 per invoice, including tax, unless the following process is followed.~~

~~Miscellaneous Items ranging between \$5,000 and \$25,000, including tax, must be pre-approved by the County Project Manager or Designee prior to processing. The County will obtain price quotes from Contractor for all Miscellaneous Items purchased between \$5,000 and \$25,000. The Contractor shall provide original cost receipts of all items cost of \$100 or more.~~

~~Cost Plus 10% Mark up~~

**G. TOTAL AGGREGATE CONTRACT AMOUNT NOT TO EXCEED: . \$ 400,000.00/Per Year**

3. **Price Increase/Decreases:** No price increases will be permitted during the first period of the Contract. The County requires documented proof of cost increases on Contracts prior to any price adjustment. A minimum of one hundred eighty 180-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. All price decreases will automatically be extended to the County of Orange. The County may enforce, 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 the Contractor's profit will not be allowed.
4. **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 the County during the term of this Contract not otherwise specified and provided for within this Contract.
5. **Contractor's Expense:** The 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.
6. **Payment Terms – Payment in Arrears:** Invoices are to be submitted in arrears to the user agency/department to the ship-to address, unless otherwise directed in this Contract. Contractor shall reference Contract number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Contract requirements.

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

7. **Taxpayer ID Number:** The Contractor shall include its taxpayer ID number on all invoices submitted to the County for payment to ensure compliance with IRS requirements and to expedite payment processing.
8. **Payment – Invoicing Instructions:** The Contractor will provide an invoice on the Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:
  - A. Contractor's name and address
  - B. Contractor's remittance address, if different from A above
  - C. Contractor's Taxpayer ID Number
  - D. Name of County Agency/Department
  - E. Delivery/service address
  - F. Master Agreement (MA) or Purchase Order (PO) number
  - G. Agency/Department's Account Number
  - H. Date of invoice
  - I. Product/service description, quantity, and prices
  - J. Sales tax, if applicable

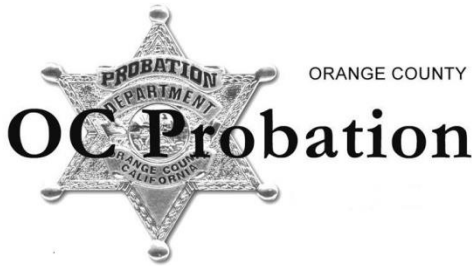
- K. Freight/delivery charges, if applicable
- L. Total

Invoices and support documentation are to be forwarded to:

OC Public Works/Facility Operations  
 Attn: Accounts Payable  
 1143 E. Fruit St.  
 Santa Ana, CA 92701

Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the DPA.

**ATTACHMENT C**  
**ATTACHMENT C: VENDOR CLEARANCE PROCESS**



**STEVEN J. SENTMAN**  
 CHIEF PROBATION OFFICER  
 TELEPHONE: (714) 569-2000  
 1055 N. MAIN STREET, 5<sup>TH</sup> FLOOR SANTA ANA, CA 92701  
 MAILING ADDRESS:  
 P.O. BOX 10260  
 SANTA ANA, CA 92711-0260

**VENDOR BACKGROUND APPOINTMENT  
 INFORMATION 1535 EAST ORANGEWOOD  
 AVE.  
 ANAHEIM, CA. 92805**

All individuals who perform work in Probation Department facilities or on Probation Department property are required to undergo and pass a security clearance that includes being fingerprinted.

***NOTE: A number of situations will prevent you from clearing this process, including, but not limited to: current or recent grant of probation or parole; active warrant for your arrest; or pending criminal matters, use of false or altered documents, or dishonesty when providing requested information.***

On the day of your appointment, report to:

**Orange County Probation Department – North County Field Services Office  
 1535 EAST ORANGEWOOD AVE., ANAHEIM CA. 92805**

Please use the stairs adjacent to the ramp in the front of the building to enter. You may bypass the “Do Not Enter” sign posted on the door. You do not need to wait in the weapons screening line on the ramp. Please provide a photo ID to the Sheriff’s Special Officer and

explain you are here for a background appointment with PSD. Once inside the building, please also check in with reception and ask for **Jocelyn Garcia 714-937-4734** or **Adriana Montanez 714-937-4714**.

**Bring the following *required* documents with you to your appointment:**

- California driver's license or ID; *no copies will be accepted.*
- Social Security Card; *no copies will be accepted.*
- Documents that establish employment authorization (*whichever applies below*):
  - If born in the U.S., bring original birth certificate *or* U.S. passport; *no copies, abstracts, or hospital-issued certificates will be accepted; no passports from U.S. Territories: American Samoa, Swain Islands, and Northern Mariana Islands will be accepted.*
  - If you became an American Citizen, bring original U.S. Certificate of Naturalization *or* U.S. passport; *no copies will be accepted.*
  - If you are *not* an American Citizen, *bring original and valid* U.S. Permanent Resident Card (Green Card) *or original and valid* Employment Authorization Document (Work Permit); *no copies will be accepted.*

**Please bring employer's business card to the appointment.**

*All documents need to be **original and valid**. Only the documents listed above will be accepted.*

*If you do not have the required documents, you will not be permitted to proceed with the clearance process.*

**The results will be provided to your employer once the background is complete.**

## Contract Summary Form

John Flynn Orange Coast Plumbing Inc. DBA Orange Coast Plumbing  
1506 N. Clinton Ave., Santa Ana, CA 92703

### SUMMARY OF SIGNIFICANT CHANGES

- Attachment B: revise Article F Page 27

### SUBCONTRACTORS

- This contract, due to the nature of the services, could require the addition of subcontractors. In order to add subcontractor(s) to the contract, the provider/contractor must seek express consent from the department. Should the addition of a subcontractor impact the scope of work and/or contract amount, the department will bring the item back to the Board of Supervisors for approval. In the past, subcontractors have not been used for this contract.

Subcontractor Name Unknown at this time	Services Unknown at this time	Amount Amount for services is unknown at this time since the use of subcontractors is not anticipated at this point.
--	----------------------------------	---

### CONTRACT OPERATING EXPENSES

#### A. Plumbing Service Rates.

Description	Rate	Per	Notes
Service Charge	\$ 0.00	Invoice	
Journeyman Service Tech	\$ 85.00	Hour	8am – 5pm
Journeyman OT Service Tech	\$ 110.00	Hour*	5pm – 8am
Journeyman DT Service Tech	\$ 130.00	Hour*	Sundays & Holidays
Apprentice Service Tech	\$ 85.00	Hour	8am – 5pm
Apprentice OT Service Tech	\$ 110.00	Hour*	5pm – 8am
Apprentice DT Service Tech	\$ 130.00	Hour*	Sundays & Holidays
Foreman Supervisor	\$ 85.00	Hour	

**\*2HR min.**

#### B. Backflow Testing & Repair Rates.

Description	Rate	Per	Notes
Estimate	\$ 85.00	Quote	Will apply to quote
Backflow Repair Tech	\$ 85.00	Hour	8am – 5pm
Backflow Preventer Test & Certification	\$ 49.50	Device	
1" Backflow Test & Certification	\$ 49.50	Each	
2"+ Backflow Test	\$ 49.50	Each	
Backflow in Vault	\$ 74.25		Minimum
Backflow Test Cock	\$ 130.00	Each	

**\*2HR min.****C. Drain Machine & Equipment Charges.**

Description	Rate	Per
Main Line Machine	\$ 175.00	Daily
Each Additional Drum	\$ 0.00	Daily
Kitchen Machine	\$ 150.00	Daily
Hand Machine	\$ 103.00	Daily
Jetter 4000PSI	\$ 202.00	Hour*
Jetter 3000PSI	\$ 202.00	Hour*
Jetter Mini Propane	\$ 202.00	Hour*
Jetter Mini Electric	\$ 202.00	Hour*
Jetter Vacuum (4000PSI Jetter Only)	\$ 0.00	Hour*
Pipe Locations/Pipescope	\$ 285.00	Hour*
Leak Detection	\$ 285.00	Daily*
Sump Pump	\$ 50.00	Daily
Copper-Press Tools ½" – 1"	\$ 0.00	Daily
Copper-Press Tools ½" – 4"	\$ 0.00	Daily
Generator	\$ 150.00	Daily
Air Compressor	\$ 300.00	Daily
Threading Machine	\$ 125.00	Daily
Jack Hammer/Drill	\$ 85.00	Daily
Welding Machine	\$ 0.00	Daily
Backhoe + Operator + P-Up & Delivery	\$ 750.00	Daily
Wacker Compactor	\$ 85.00	Daily
Freezing Tool	\$ 300.00	Daily

**\*Fee Includes 1-HR labor****D. Markup.**

Contractor shall be reimbursed for materials, equipment or tool rentals, and subcontractors as needed and approved by the County on a Cost Plus percentage markup. Such markup percentage(s) shall be as follows:

Description	Markup
Materials:	20%
Equipment & Tool Rental(s):	20%
Subcontractor:	20%

**E. Video Camera Charges:**

Description	Rate
6:00 a.m. to 5:00 p.m. Monday thru Friday <u>Normal Working Hours</u>	\$ 200.00

Description	Rate
5:01 p.m. to 5:59 a.m. Monday thru Friday and Sat/Sun/Holidays <u>Other than Normal Working Hours</u>	\$ 200.00
Video CD/DVD/Memory Stick  <u>Must provide if charging for Camera service</u>	\$12.00

All invoices submitted shall be accompanied by a record of time spent working on the project by tradesmen to include name, trade specific type of work provided and craft level designation (Journeyman etc.), and receipts for all materials purchased including total amount of taxes paid for merchandise. Labor hours shall be charged on the basis of actual time spent on each job, not on a portal-to-portal basis and shall be computed to the nearest one-quarter (1/4) hour.

For all rental equipment, a copy of the Contractor's invoice is required for reimbursement which shall be submitted with the extended cost multiplied by the mark-up listed below. The maximum percentage mark-up allowed for rental equipment is 20%. Mark-up is prior to tax.

No additional compensation will be allowed for emergency call out services.

**F. Miscellaneous Item Mark Up Structure:**

Miscellaneous Items may be purchased against the Contract. Miscellaneous Item purchases shall not exceed \$5,000 per invoice, including tax, unless the following process is followed.

Miscellaneous Items ranging between \$5,000 and \$25,000, including tax, must be pre-approved by the County Project Manager or Designee prior to processing. The County will obtain price quotes from Contractor for all Miscellaneous Items purchased between \$5,000 and \$25,000.

Cost Plus 20% Mark Up

## Contract Summary Form

Pro-Craft Construction, Inc.  
500 Iowa St., Redlands, CA 92373

### SUMMARY OF SIGNIFICANT CHANGES

- Attachment B: revise Article F Page 27

### SUBCONTRACTORS

- This contract, due to the nature of the services, could require the addition of subcontractors. In order to add subcontractor(s) to the contract, the provider/contractor must seek express consent from the department. Should the addition of a subcontractor impact the scope of work and/or contract amount, the department will bring the item back to the Board of Supervisors for approval. In the past, subcontractors have not been used for this contract.

Subcontractor Name Unknown at this time	Services Unknown at this time	Amount Amount for services is unknown at this time since the use of subcontractors is not anticipated at this point.
--	----------------------------------	---

### CONTRACT OPERATING EXPENSES

#### A. Plumbing Service Rates.

Description	Rate	Per	Notes
Service Charge	\$ 25.00	Invoice	
Journeyman Service Tech	\$ 140.00	Hour	8am – 5pm
Journeyman OT Service Tech	\$ 180.00	Hour*	5pm – 8am
Journeyman DT Service Tech	\$ 218.00	Hour*	Sundays & Holidays
Apprentice Service Tech	\$ 90.00	Hour	8am – 5pm
Apprentice OT Service Tech	\$ 119.00	Hour*	5pm – 8am
Apprentice DT Service Tech	\$ 124.00	Hour*	Sundays & Holidays
Foreman Supervisor	\$ 140.00	Hour	

**\*2HR min.**

#### B. Backflow Testing & Repair Rates.

Description	Rate	Per	Notes
Estimate	\$ 25.00	Quote	Will apply to quote
Backflow Repair Tech	\$ 140.00	Hour	8am – 5pm
Backflow Preventer Test & Certification	\$ 100.00	Device	
1" Backflow Test & Certification	\$ 75.00	Each	
2"+ Backflow Test	\$ 125.00	Each	
Backflow in Vault	\$ 300.00		Minimum
Backflow Test Cock	\$ 22.00	Each	

**\*2HR min.****C. Drain Machine & Equipment Charges.**

Description	Rate	Per
Main Line Machine	\$ 250.00	Daily
Each Additional Drum	\$ 75.00	Daily
Kitchen Machine	\$ 50.00	Daily
Hand Machine	\$ 50.00	Daily
Jetter 4000PSI	\$ 360.00	Hour*
Jetter 3000PSI	\$ 360.00	Hour*
Jetter Mini Propane	N/A	Hour*
Jetter Mini Electric	N/A	Hour*
Jetter Vacuum (4000PSI Jetter Only)	\$ 360.00	Hour*
Pipe Locations/Pipescope	\$ 290.00	Hour*
Leak Detection	\$ 365.00	Daily*
Sump Pump	\$ 110.00	Daily
Copper-Press Tools ½" – 1"	\$ 50.00	Daily
Copper-Press Tools ½" – 4"	\$ 130.00	Daily
Generator	\$ 140.00	Daily
Air Compressor	\$ 120.00	Daily
Threading Machine	\$ 220.00	Daily
Jack Hammer/Drill	\$ 140.00	Daily
Welding Machine	\$ 345.00	Daily
Backhoe + Operator + P-Up & Delivery	\$ 1,575.00	Daily
Wacker Compactor	\$ 210.00	Daily
Freezing Tool	\$ 230.00	Daily

**\*Fee Includes 1-HR labor**

N/A=Not Available

**D. Markup.**

Contractor shall be reimbursed for materials, equipment or tool rentals, and subcontractors as needed and approved by the County on a Cost Plus percentage markup. Such markup percentage(s) shall be as follows:

Description	Markup
Materials:	15%
Equipment & Tool Rental(s):	15%
Subcontractor:	15%

**E. Video Camera Charges:**

Description	Rate
6:00 a.m. to 5:00 p.m. Monday thru Friday <u>Normal Working Hours</u>	\$ 240.00

Description	Rate
<b>5:01 p.m. to 5:59 a.m. Monday thru Friday and Sat/Sun/Holidays <u>Other than Normal Working Hours</u></b>	<b>\$ 360.00</b>
<b>Video CD/DVD/Memory Stick <u>Must provide if charging for Camera service</u></b>	<b>\$25.00</b>

All invoices submitted shall be accompanied by a record of time spent working on the project by tradesmen to include name, trade specific type of work provided and craft level designation (Journeyman etc.), and receipts for all materials purchased including total amount of taxes paid for merchandise. Labor hours shall be charged on the basis of actual time spent on each job, not on a portal-to-portal basis and shall be computed to the nearest one-quarter (1/4) hour.

For all rental equipment, a copy of the Contractor's invoice is required for reimbursement which shall be submitted with the extended cost multiplied by the mark-up listed below. The maximum percentage mark-up allowed for rental equipment is 15%. Mark-up is prior to tax.

**No additional compensation will be allowed for emergency call out services.**

#### **Miscellaneous Item Mark Up Structure:**

Miscellaneous Items may be purchased against the Contract. Miscellaneous Item purchases shall not exceed \$5,000 per invoice, including tax, unless the following process is followed.

Miscellaneous Items ranging between \$5,000 and \$25,000, including tax, must be pre-approved by the County Project Manager or Designee prior to processing. The County will obtain price quotes from Contractor for all Miscellaneous Items purchased between \$5,000 and \$25,000.

Cost Plus 15% Mark Up

## Contract Summary Form

Verne's Plumbing, Inc.  
8561 Whitaker St., Buena Park, CA 90621

### SUMMARY OF SIGNIFICANT CHANGES

- Attachment B: revise Article F Page 27

### SUBCONTRACTORS

- This contract, due to the nature of the services, could require the addition of subcontractors. In order to add subcontractor(s) to the contract, the provider/contractor must seek express consent from the department. Should the addition of a subcontractor impact the scope of work and/or contract amount, the department will bring the item back to the Board of Supervisors for approval. In the past, subcontractors have not been used for this contract.

Subcontractor Name Unknown at this time	Services Unknown at this time	Amount Amount for services is unknown at this time since the use of subcontractors is not anticipated at this point.
--	----------------------------------	---

### CONTRACT OPERATING EXPENSES

#### A. Plumbing Service Rates.

Description	Rate	Per	Notes
Service Charge	\$ 75.00	Invoice	
Journeyman Service Tech	\$ 115.00	Hour	8am – 5pm
Journeyman OT Service Tech	\$ 172.00	Hour*	5pm – 8am
Journeyman DT Service Tech	\$ 230.00	Hour*	Sundays & Holidays
Apprentice Service Tech	\$ 85.00	Hour	8am – 5pm
Apprentice OT Service Tech	\$ 127.50	Hour*	5pm – 8am
Apprentice DT Service Tech	\$ 170.00	Hour*	Sundays & Holidays
Foreman Supervisor	\$ 125.00	Hour	

**\*2HR min.**

#### B. Backflow Testing & Repair Rates.

Description	Rate	Per	Notes
Estimate	\$ 115.00	Quote	Will apply to quote
Backflow Repair Tech	\$ 115.00	Hour	8am – 5pm
Backflow Preventer Test & Certification	\$ 95.00	Device	
1" Backflow Test & Certification	\$ 95.00	Each	
2"+ Backflow Test	\$ 95.00	Each	
Backflow in Vault	\$ 35.00		Minimum
Backflow Test Cock	\$ 15.00	Each	

**\*2HR min.****C. Drain Machine & Equipment Charges.**

Description	Rate	Per
Main Line Machine	\$ 50.00	Daily
Each Additional Drum	\$ 25.00	Daily
Kitchen Machine	\$ 35.00	Daily
Hand Machine	\$ 25.00	Daily
Jetter 4000PSI	\$ 400.00	Hour*
Jetter 3000PSI	\$ 300.00	Hour*
Jetter Mini Propane	\$ 200.00	Hour*
Jetter Mini Electric	\$ 200.00	Hour*
Jetter Vacuum (4000PSI Jetter Only)	\$ 400.00	Hour*
Pipe Locations/Pipescope	\$ 300.00	Hour*
Leak Detection	\$ 300.00	Daily*
Sump Pump	\$ 65.00	Daily
Copper-Press Tools ½" – 1"	\$ 75.00	Daily
Copper-Press Tools ½" – 4"	\$ 150.00	Daily
Generator	\$ 85.00	Daily
Air Compressor	\$ 50.00	Daily
Threading Machine	\$ 135.00	Daily
Jack Hammer/Drill	\$ 150.00	Daily
Welding Machine	\$ 200.00	Daily
Backhoe + Operator + P-Up & Delivery	\$ 325.00	Daily
Wacker Compactor	\$ 250.00	Daily
Freezing Tool	\$ 375.00	Daily

**\*Fee Includes 1-HR labor****D. Markup.**

Contractor shall be reimbursed for materials, equipment or tool rentals, and subcontractors as needed and approved by the County on a Cost Plus percentage markup. Such markup percentage(s) shall be as follows:

Description	Markup
Materials:	15%
Equipment & Tool Rental(s):	15%
Subcontractor:	15%

**E. Video Camera Charges:**

Description	Rate
6:00 a.m. to 5:00 p.m. Monday thru Friday <u>Normal Working Hours</u>	\$ 300.00

Description	Rate
<b>5:01 p.m. to 5:59 a.m. Monday thru Friday and Sat/Sun/Holidays <u>Other than Normal Working Hours</u></b>	<b>\$ 300.00</b>
<b>Video CD/DVD/Memory Stick <u>Must provide if charging for Camera service</u></b>	<b>\$50.00</b>

All invoices submitted shall be accompanied by a record of time spent working on the project by tradesmen to include name, trade specific type of work provided and craft level designation (Journeyman etc.), and receipts for all materials purchased including total amount of taxes paid for merchandise. Labor hours shall be charged on the basis of actual time spent on each job, not on a portal-to-portal basis and shall be computed to the nearest one-quarter (1/4) hour.

For all rental equipment, a copy of the Contractor's invoice is required for reimbursement which shall be submitted with the extended cost multiplied by the mark-up listed below. The maximum percentage mark-up allowed for rental equipment is 15%. Mark-up is prior to tax.

**No additional compensation will be allowed for emergency call out services.**

**F. Miscellaneous Item Mark Up Structure:**

Miscellaneous Items may be purchased against the Contract. Miscellaneous Item purchases shall not exceed \$5,000 per invoice, including tax, unless the following process is followed.

Miscellaneous Items ranging between \$5,000 and \$25,000, including tax, must be pre-approved by the County Project Manager or Designee prior to processing. The County will obtain price quotes from Contractor for all Miscellaneous Items purchased between \$5,000 and \$25,000.

Cost Plus 15% Mark Up



# AGENDA STAFF REPORT

Agenda Item

# 32

ASR Control 21-000448

**MEETING DATE:** 01/11/22  
**LEGAL ENTITY TAKING ACTION:** Board of Supervisors  
**BOARD OF SUPERVISORS DISTRICT(S):** All Districts  
**SUBMITTING AGENCY/DEPARTMENT:** County Executive Office (Approved)  
**DEPARTMENT CONTACT PERSON(S):** Peter DeMarco (714) 834-5777  
 Julie Bechtol (714) 834-2009

**SUBJECT:** Grant Applications/Awards Report

**CEO CONCUR**  
Concur

**COUNTY COUNSEL REVIEW**  
Approved Resolution to Form

**CLERK OF THE BOARD**  
Discussion  
3 Votes Board Majority

**Budgeted:** N/A

**Current Year Cost:** N/A

**Annual Cost:** N/A

**Staffing Impact:** No

**# of Positions:**

**Sole Source:** N/A

**Current Fiscal Year Revenue:** N/A

**Funding Source:** N/A

**County Audit in last 3 years:** No

**Prior Board Action:** N/A

**RECOMMENDED ACTION(S):**

Approve grant applications/awards as proposed and other actions as recommended.

1.	Approve Retroactive Grant Award – Health Care Agency – Refugee Health Assessment Program– \$257,746
2.	Approve Ratified Grant Award – Probation – Community Action Partnership of Orange County (CAPOC) – \$56,792
3.	Approve Grant Application and Adopt Resolution – OC Sheriff Coroner – Emergency Management Performance Grant – \$84,054
4.	Approve Grant Application – OC Sheriff Coroner – Selective Traffic Enforcement Program (STEP) – \$800,000
5.	Approve Grant Award and Adopt Resolution – OC Sheriff Coroner – Gun Violence Reduction Program (GVRP) – \$316,285
6.	Approve Grant Award – OC Sheriff Coroner – Capacity Enhancement for Backlog Reduction (CEBR) – \$429,769

7.	Approve Grant Application – OC Community Resources – Sustaining Cultural Heritage Collections Grant – \$350,000
8.	Approve Grant Application and Adopt Resolution – OC Community Resources – Regional Parks Program Grant – \$5,000,000
9.	Approve Grant Award – OC Community Resources – Veterans’ Affairs Supportive Housing Program – \$458,341
10.	Approve Grant Award – OC Community Resources – California Microbusiness COVID-19 Relief Grant – \$3,975,481.68
11.	Receive and File Grants Report.

**SUMMARY:**

See the attached Grants Report.

**BACKGROUND INFORMATION:**

See the attached Grants Report.

**FINANCIAL IMPACT:**

N/A

**STAFFING IMPACT:**

N/A

**ATTACHMENT(S):**

- Attachment A - Grants Report
- Attachment B - OCSD Emergency Management Resolution
- Attachment B - OCSD Gun Violence Reduction Resolution
- Attachment B - OCCR Regional Parks Resolution



# Grants Report

**DRAFT**

County Executive Office/Legislative Affairs

January 11, 2022

Item No: 32

## County of Orange Report on Grant Applications/Awards

*The Grants Report is a condensed list of grant requests by County Agencies/Departments that allows the Board of Supervisors to discuss and approve grant submittals in one motion at a Board meeting. County policy dictates that the Board of Supervisors must approve all grant applications prior to submittal to the grantor. This applies to grants of all amounts, as well as to new grants and those that have been received by the County for many years as part of an ongoing grant. Receipt of grants \$50,000 or less is delegated to the County Executive Officer. Grant awards greater than \$50,000 must be presented to the Board of Supervisors for receipt of funds. This report allows for better tracking of county grant requests, the success rate of our grants, and monitoring of County's grants activities. It also serves to inform Orange County's Sacramento and Washington, D.C. advocates of County grant activities involving the State or Federal Governments.*

On January 11, 2022 the Board of Supervisors will consider the following actions:

### RECOMMENDED ACTIONS

Approve grant applications/awards as proposed and other actions as recommended.

### ACTION ITEMS:

1. Approve Retroactive Grant Award – Health Care Agency – Refugee Health Assessment Program– \$257,746
2. Approve Ratified Grant Award – Probation – Community Action Partnership of Orange County (CAPOC) – \$56,792
3. Approve Grant Application and Adopt Resolution – OC Sheriff Coroner – Emergency Management Performance Grant – \$84,054
4. Approve Grant Application – OC Sheriff Coroner – Selective Traffic Enforcement Program (STEP) – \$800,000
5. Approve Grant Award and Adopt Resolution – OC Sheriff Coroner – Gun Violence Reduction Program (GVRP) – \$316,285
6. Approve Grant Award – OC Sheriff Coroner – Capacity Enhancement for Backlog Reduction (CEBR) – \$429,769
7. Approve Grant Application – OC Community Resources – Sustaining Cultural Heritage Collections Grant – \$350,000
8. Approve Grant Application and Adopt Resolution – OC Community Resources – Regional Parks Program Grant – \$5,000,000
9. Approve Grant Award – OC Community Resources – Veterans' Affairs Supportive Housing Program – \$458,341

10. Approve Grant Award – OC Community Resources – California Microbusiness COVID-19 Relief Grant – \$3,975,481.68

11. Receive and File Grants Report.

If you or your staff have any questions or require additional information on any of the items in this report, please contact Julie Bechtol at 714-834-2009.



**CEO-Legislative Affairs Office  
Grant Authorization eForm**

GRANT APPLICATION /  GRANT AWARD

<b>Today's Date:</b>	12/07/2021
<b>Requesting Agency/Department:</b>	Health Care Agency / Public Health
<b>Grant Name and Project Title:</b>	Refugee Health Assessment Program (RHAP)
<b>Sponsoring Organization/Grant Source:</b> <small>(If the grant source is not a government entity, please provide a brief description of the organization/foundation)</small>	California Department of Public Health (CDPH) – Office of Refugee Health (ORH)
<b>Application Amount Requested:</b>	
<b>Application Due Date:</b>	N/A
<b>Board Date when Board Approved this Application:</b>	
<b>Awarded Funding Amount:</b>	\$257,746
<b>Notification Date of Funding Award:</b>	11/19/21
<b>Is this an Authorized Retroactive Grant Application/Award?</b> <small>(If yes, attach memo to CEO)</small>	
<b>Recurrence of Grant</b>	New <input checked="" type="checkbox"/> Recurrent <input type="checkbox"/> Other <input type="checkbox"/> Explain:
<b>If this is a recurring grant, please list the funding amount applied for and awarded in the past:</b>	
<b>Does this grant require CEQA findings?</b>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>What Type of Grant is this?</b>	Competitive <input type="checkbox"/> Other Type <input checked="" type="checkbox"/> Explain: Formula Based
<b>County Match?</b>	Yes <input type="checkbox"/> Amount _____ or _____ %      No <input checked="" type="checkbox"/>
<b>How will the County Match be Fulfilled?</b> <small>(Please include the specific budget)</small>	N/A
<b>Will the grant/program create new part or full-time positions?</b>	No
<b>Purpose of Grant Funds:</b>	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.
<p>The California Department of Public Health Office of Refugee Health is allocating funds to HCA to establish the Refugee Health Assessment Program. The goal of the RHAP is to provide a comprehensive health assessment to newly arrived refugees, asylees and other eligible entrants.</p> <p>With the influx of Afghan refugees in the County of Orange, the completion of the health assessment is essential to meeting RHAP's goal. Funds will be used for the screening of and prevention of communicable diseases; early identification and diagnosis of chronic diseases and other important conditions; assessment of immunization status for children and adults; mental health screening; and referral to health providers for further medical evaluation, treatment, and follow-up.</p>	
<b>Board Resolution Required?</b> <small>(Please attach document to eForm)</small>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>Deputy County Counsel Name:</b> <small>(Please list the Deputy County Counsel that approved the Resolution)</small>	



## CEO-Legislative Affairs Office Grant Authorization eForm

### Recommended Action/Special Instructions

(Please specify below)

The Health Care Agency requests that the Board of Supervisors approve the Recommended Action authorizing the Agency to accept this grant award for the term of November 19, 2021 through September 30, 2022, along with all required documents, and delegate authority to the HCA Director, or designee, to sign and execute all required forms and future amendments to the Agreement that do not change the Agreement amount by more than 10% of the original amount and/or make immaterial changes to the scope of work.

#### Department Contact :

List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.

Margaret Bredehoft DrPH, (714) 834-3882 MBredehoft@ochca.com

#### Name of the individual attending the Board Meeting:

List the name of the individual who will be attending the Board Meeting for this Grant Item:

Margaret Bredehoft and Clayton Chau



CLAYTON CHAU, MD PhD  
DIRECTOR/COUNTY HEALTH OFFICER


MINDY WINTERSWYK, PT, DPT, PCS  
INTERIM ASSISTANT AGENCY DIRECTOR

OFFICE OF THE DIRECTOR

405 W. 5<sup>TH</sup> STREET, 7<sup>TH</sup> FLOOR  
SANTA ANA, CA 92701  
[www.ocalthinfo.com](http://www.ocalthinfo.com)

**DATE:** December 13, 2021

**TO:** Frank Kim, County Executive Officer

  
Digitally signed by Frank Kim  
DN: cn=Frank Kim, o=County of Orange, ou=CEO,  
email=frankkim@ocgov.com,  
c=US  
Date: 2021.12.21 09:02:21 -08'00'

**FROM:** Clayton Chau, MD, PhD, Agency Director/County Health Officer  
Mindy Winterswyk, PT, DPT, PCS, Interim Assistant Agency Director

DS  


**SUBJECT:** Retroactive Request to Approve Grant Award – Refugee Health Assessment Program Federal Fiscal Year (FFY) 2021-22

This memo is being submitted to request that the County Executive Officer place the subject grant award on the January 11, 2022, Board of Supervisors Meeting Agenda.

On November 19, 2021, the California Department of Public Health Office of Refugee Health awarded the Orange County Health Care Agency (HCA) the Refugee Health Assessment Program (RHAP) award for a total of \$257,647. The grant award is for the period November 19, 2021 through September 30, 2022.

The grant award is allocating funds to HCA to establish the RHAP with the goal of providing comprehensive health assessments to newly arrived refugees, asylees and other eligible entrants. RHAP focuses on screening of and prevention of communicable diseases; early identification and diagnosis of chronic diseases and other important conditions; assessment of immunization status for children and adults; mental health screening; and referral to health providers for further medical evaluation, treatment, and follow-up.

There is an urgent need and time sensitivities to complete the health assessments in response to the influx of Afghan refugees in the County of Orange. RHAP health assessments need to be initiated 30 days upon arrival and completed within 90 days. The Coalition of Orange County Community Health Centers has been identified to partner with HCA for their network of Federally Qualified Health Centers and Community Clinics across Orange County, past experience in refugee resettlement medical screening and language capabilities as well as past working relations with HCA. They will coordinate the health assessments to be performed by their affiliate health centers that will enable HCA to meet the RHAP’s goal and ensure that the assessments are completed in a timely manner.

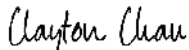
**Retroactive Request to Approve Grant Award – Refugee Health Assessment Program  
Federal Fiscal Year (FFY) 2021-22**

December 13, 2021

Page 2 of 2

If you have any questions about this grant, please contact Margaret Bredehoff, DrPH, Chief of Public Health Services at (714) 834-3882.

Thank you for your consideration of this request.

DocuSigned by:  
  
AFEE619990EB464...

Clayton Chau, MD, PhD  
Agency Director/County Health Officer



CEO-Legislative Affairs Office  
Grant Authorization eForm

GRANT APPLICATION /  GRANT AWARD

<b>Today's Date:</b>	12/22/2021
<b>Requesting Agency/Department:</b>	Probation
<b>Grant Name and Project Title:</b>	Young Adult Court
<b>Sponsoring Organization/Grant Source:</b> (If the grant source is not a government entity, please provide a brief description of the organization/foundation)	Community Action Partnership of Orange County (CAPOC)
<b>Application Amount Requested:</b>	N/A
<b>Application Due Date:</b>	N/A
<b>Board Date when Board Approved this Application:</b>	N/A
<b>Awarded Funding Amount:</b>	\$56,792
<b>Notification Date of Funding Award:</b>	December 1, 2021
<b>Is this an Authorized Retroactive Grant Application/Award?</b> (If yes, attach memo to CEO)	
<b>Recurrence of Grant</b>	New <input type="checkbox"/> Recurrent <input type="checkbox"/> Other <input checked="" type="checkbox"/> Explain: see below
<b>If this is a recurring grant, please list the funding amount applied for and awarded in the past:</b>	This is an amendment to increase an existing grant award of \$77,000 by \$56,792 and extend the term of the grant agreement from December 21, 2021 through May 31, 2022
<b>Does this grant require CEQA findings?</b>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>What Type of Grant is this?</b>	Competitive <input type="checkbox"/> Other Type <input checked="" type="checkbox"/> Explain: Amendment to current grant
<b>County Match?</b>	Yes <input type="checkbox"/> Amount _____ or _____ % No <input checked="" type="checkbox"/>
<b>How will the County Match be Fulfilled?</b> (Please include the specific budget)	N/A
<b>Will the grant/program create new part or full-time positions?</b>	No
<b>Purpose of Grant Funds:</b>	Provide a summary and brief background on why the Board of Supervisors should accept this grant application/award, and how the grant will be implemented.
<p>On November 3, 2020, the Board approved a grant award of \$77,000 to the Probation Department to support a portion of a Deputy Probation Officer (DPO) assigned to the Youth Adult Court (YAC) program operated by the University of California, Irvine, in partnership with CAPOC. The federal Community Services Block Grant funding was awarded to CAPOC, a community action agency that addresses root causes of poverty, which passed funding through to Probation as a sub-recipient.</p> <p>The funding period for this grant was November 20, 2020 to December 21, 2021. However, on December 1, 2021, Probation was notified by CAPOC that an additional \$56,792 is available to extend the grant period to May 31, 2022. This funding would reimburse the Department for salary and benefit costs for a DPO assigned to the YAC, which is not a new position/employee.</p>	
<b>Board Resolution Required?</b> (Please attach document to eForm)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>Deputy County Counsel Name:</b> (Please list the Deputy County Counsel that approved the Resolution)	



## CEO-Legislative Affairs Office Grant Authorization eForm

<b>Recommended Action/Special Instructions</b> <small>(Please specify below)</small>	
<p>1. Ratify and authorize Probation to execute an amendment to the sub-contract with the Community Action Partnership of Orange County (CAPOC) to accept additional funding in the amount of \$56,792, for a new total of \$133,792, and to extend the expiration term of the agreement to May 31, 2022 for funding associated with the Young Adult Court.</p>	
<b>Department Contact :</b>	<small>List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.</small>
Dana Schultz                      (714) 645-7005                      Dana.Schultz@prob.ocgov.com	
<b>Name of the individual attending the Board Meeting:</b>	<small>List the name of the individual who will be attending the Board Meeting for this Grant Item:</small>
Steven J. Sentman, CPO                      (714) 645-7001                      Steven.Sentman@prob.ocgov.com	
Or	
Catherine Stiver, CDPO                      (714) 645 – 7013                      Catherine.Stiver@prob.ocgov.com	



**STEVEN J. SENTMAN**  
CHIEF PROBATION OFFICER

**BRYAN PRIETO**  
ASSISTANT CHIEF PROBATION OFFICER

TELEPHONE: (714) 569-2000

1055 N. MAIN STREET, 5<sup>TH</sup> FLOOR  
SANTA ANA, CA 92701

MAILING ADDRESS:  
P.O. BOX 10260  
SANTA ANA, CA 92711-0260

## MEMORANDUM

**DATE:** December 23, 2021

**TO:** Frank Kim, County Executive Officer

**FROM:** Steven J. Sentman, Chief Probation Officer  
(TG for SS)

**SUBJECT:** Ratified Request to Accept Young Adult Court Funding

---

**Ratified Request to Accept Funding for the Youth Adult Court from the federal Community Services Block Grant awarded to the Community Action Partnership of Orange County (CAPOC) and passed through to Orange County Probation (Probation) via a sub-contract.**

This memo is submitted to request that the CEO place the subject grant application on the January 11, 2022, Board of Supervisors (Board) Meeting Agenda. Probation requests ratified approval to accept additional funds to be reallocated to Probation by CAPOC that was underspent in other budget categories.

On November 3, 2020, the Board approved a grant sub-award of \$77,000 to the Probation Department to support a portion of a Deputy Probation Officer (DPO) assigned to the Youth Adult Court (YAC) program operated by the University of California, Irvine, in partnership with CAPOC. The federal Community Services Block Grant funding was awarded to CAPOC, a community action agency that addresses root causes of poverty, which passed funding through to Probation as a sub-recipient. Upon Board approval, Probation executed a sub-contract with CAPOC to accept the funds for the period of November 20, 2020 to December 21, 2021, with the option to extend the agreement through May 31, 2022.

On December 1, 2021, Probation was contacted by CAPOC notifying Probation that additional funding was available to be reallocated to Probation that was not spent in other grant budget categories. CAPOC inquired as to Probation's desire to accept the additional funding (\$56,792) and to extend the grant period to May 31, 2022. Probation notified CAPOC of their desire to accept additional funding, pending approval first by the Board.

Probation requests approval to accept the funding and execute an amended sub-contract to extend the term and accept the reallocated funds.

If you have any further questions about the grant, please contact Dana Schultz, Administrative and Fiscal Division Director, at (714) 645-7005.

*Todd Graham* for Chief Sentman  
Department Head or Designee

X *Frank Kim*  
County Executive Officer or Designee



**CEO-Legislative Affairs Office  
Grant Authorization eForm**

Attachment

**GRANT APPLICATION** /  **GRANT AWARD**

<b>Today's Date:</b>	December 30, 2021
<b>Requesting Agency/Department:</b>	Sheriff-Coroner Department
<b>Grant Name and Project Title:</b>	Emergency Management Performance Grant, CFDA 97.042
<b>Sponsoring Organization/Grant Source:</b> <small>(If the grant source is not a government entity, please provide a brief description of the organization/foundation)</small>	Department of Homeland Security; California Office of Emergency Services
<b>Application Amount Requested:</b>	\$84,054
<b>Application Due Date:</b>	December 31, 2021
<b>Board Date when Board Approved this Application:</b>	N/A
<b>Awarded Funding Amount:</b>	
<b>Notification Date of Funding Award:</b>	
<b>Is this an Authorized Retroactive Grant Application/Award?</b> <small>(If yes, attach memo to CEO)</small>	No
<b>Recurrence of Grant</b>	New <input type="checkbox"/> Recurrent <input type="checkbox"/> Other <input checked="" type="checkbox"/> Explain: While there is an annual EMPG award, this is a new and separate funding allocation under the American Rescue Plan Act.
<b>If this is a recurring grant, please list the funding amount applied for and awarded in the past:</b>	
<b>Does this grant require CEQA findings?</b>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>What Type of Grant is this?</b>	Competitive <input type="checkbox"/> Other Type <input checked="" type="checkbox"/> Explain: Offered by federal government to previous recipients
<b>County Match?</b>	Yes <input checked="" type="checkbox"/> 100 % No <input type="checkbox"/>
<b>How will the County Match be Fulfilled?</b> <small>(Please include the specific budget)</small>	Net County Cost Cash Match
<b>Will the grant/program create new part or full-time positions?</b>	No
<b>Purpose of Grant Funds:</b>	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.

On December 27, 2020, the President signed Public Law 116-260, authorizing the 2021 Emergency Management Performance Grant (EMPG) under the U.S. Department of Homeland Security (DHS). Subsequently, the American Rescue Plan Act (ARPA) of 2021 provided \$100 million in additional funding for the Fiscal Year (FY) 2021 Emergency Management Performance Grant (EMPG) Program. For fund tracking and accountability purposes, DHS/FEMA is requiring eligible applicants to submit two separate EMPG Program applications: one for the original FY 2021 EMPG Program allocation; the other for the EMPG ARPA supplemental allocation.

In February 2021, the DHS issued guidance and budget allocations to the States. In California, the administering agency is the California Office of Emergency Services (CalOES), which issues guidance to eligible applicants (Operational Areas). In September 2021, CalOES issued a "Fiscal Year 2021



**CEO-Legislative Affairs Office  
Grant Authorization eForm**

*Emergency Management Performance Grant (EMPG) and American Rescue Plan Act (EMPG-ARPA): California Supplement to the Federal Notice of Funding Opportunity* with allocations for each Operational Area. The Orange County Sheriff’s Department is responsible for administering and distributing the grant funds on behalf of the Orange County Operational Area. The anticipated award date is unknown at this time. The anticipated award amount from the ARPA funding is \$84,054.

The purpose of the EMPG Program is to provide federal funds to states to assist state, local, and tribal governments in preparing for all hazards. Funds provided under the EMPG must be used to support activities that contribute to the Operational Area’s capability to prevent, prepare for, mitigate against, respond to, and recover from emergencies and disasters, whether natural or man-made. The grant-funded activities are a continuation of services funded by previous grant cycles. The goals described within the grant application relate to emergency management organizational and enterprise enhancement, managing risk and vulnerabilities, and enhancing customer and stakeholder services.

The EMPG-ARPA grant will not include subawards to cities as is done with the annual EMPG awards. Instead these funds will be allocated exclusively to support emergency management equipment and training costs that benefit the Operational Area. The Operational Area Executive Board reviewed and approved the proposed application budget at their quarterly meeting on November 10, 2021.

The federal performance period of the award is October 1, 2020 through September 30, 2023.

This grant has not been reviewed under the County Audit in the last 3 years.

ATTACHMENT(S): Resolution

**Board Resolution Required?**  
(Please attach document to eForm)

Yes

No

**Deputy County Counsel Name:**  
(Please list the Deputy County Counsel that approved the Resolution)

Wendy Phillips, Deputy County Counsel, has reviewed and approved the attached draft Board Resolution.

**Recommended Action/Special Instructions**  
(Please specify below)

1. Authorize Sheriff-Coroner, or designee, to sign all necessary application documents required for the submission of the application and supporting documentation to CalOES.
2. Adopt a resolution authorizing the Sheriff, or specified designee, to execute any actions necessary for the purposes of obtaining federal financial assistance provided by DHS and sub-granted through CalOES, if those actions do not materially change the terms or amount of the County’s commitment as it is reflected in the above-referenced grant application and assurances.

A Board of Supervisors Resolution is required to appoint an agent authorized to execute any actions necessary for the submission of the application and supporting documentation.

**Department Contact :**

List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.

Michelle Anderson 714-628-7158; manderson@ocsheriff.gov

**Name of the individual attending the Board Meeting:**

List the name of the individual who will be attending the Board Meeting for this Grant Item:

Michelle Anderson or designee

RESOLUTION OF THE BOARD OF SUPERVISORS OF  
ORANGE COUNTY, CALIFORNIA

January xx, 2021

WHEREAS, the U.S. Department of Homeland Security, through the California Office of Emergency Services, is providing Fiscal Year 2021 Emergency Management Performance Grant funding to local Operational Areas to provide resources to sustain and enhance all-hazards emergency management capabilities;

NOW, THEREFORE, BE IT RESOLVED this Board authorizes the following positions to execute and submit to the California Office of Emergency Services, on behalf of the County of Orange, the Fiscal Year 2021 Emergency Management Performance Grant Application for assistance in the amount of \$770,032 and grant assurances:

- Sheriff-Coroner
- Undersheriff
- Assistant Sheriff
- Executive Director

BE IT FURTHER RESOLVED this Board authorizes the above-listed positions to execute, on behalf of the County of Orange, a public entity established under the laws of the State of California, any actions necessary for the purpose of obtaining federal financial assistance provided by the U.S. Department of Homeland Security and sub-granted through the State of California, if those actions do not materially change the terms or amounts of the County's commitment as it is reflected in the above-referenced grant application and assurances.

BE IT FURTHER RESOLVED that this Board will provide 100% funding match to any grant funds awarded to and retained by the County of Orange if a grant award is approved and received.



**CEO-Legislative Affairs Office  
Grant Authorization eForm**

**GRANT APPLICATION** /  **GRANT AWARD**

<b>Today's Date:</b>	January 01, 2022																		
<b>Requesting Agency/Department:</b>	Orange County Sheriff-Coroner Department																		
<b>Grant Name and Project Title:</b>	Selective Traffic Enforcement Program (STEP) Grant (CDFA#20.600)																		
<b>Sponsoring Organization/Grant Source:</b> <small>(If the grant source is not a government entity, please provide a brief description of the organization/foundation)</small>	State of California Office of Traffic Safety																		
<b>Application Amount Requested:</b>	\$800,000																		
<b>Application Due Date:</b>	January 31, 2022																		
<b>Board Date when Board Approved this Application:</b>																			
<b>Awarded Funding Amount:</b>																			
<b>Notification Date of Funding Award:</b>																			
<b>Is this an Authorized Retroactive Grant Application/Award?</b> <small>(If yes, attach memo to CEO)</small>																			
<b>Recurrence of Grant</b>	New <input type="checkbox"/> Recurrent <input checked="" type="checkbox"/> Other <input type="checkbox"/> Explain:																		
<b>If this is a recurring grant, please list the funding amount applied for and awarded in the past:</b>	<table border="1"> <thead> <tr> <th>Grant Term</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>10/01/14 – 09/30/15</td> <td>\$330,620</td> </tr> <tr> <td>10/01/15 – 09/30/16</td> <td>\$424,328</td> </tr> <tr> <td>10/01/16 – 09/30/17</td> <td>\$510,000</td> </tr> <tr> <td>10/01/17 – 09/30/18</td> <td>\$521,000</td> </tr> <tr> <td>10/01/18 – 09/30/19</td> <td>\$350,000</td> </tr> <tr> <td>10/01/19 – 09/30/20</td> <td>\$394,000</td> </tr> <tr> <td>10/01/20 – 09/30/21</td> <td>\$450,370</td> </tr> <tr> <td>10/01/21 – 09/30/22</td> <td>\$500,500</td> </tr> </tbody> </table>	Grant Term	Amount	10/01/14 – 09/30/15	\$330,620	10/01/15 – 09/30/16	\$424,328	10/01/16 – 09/30/17	\$510,000	10/01/17 – 09/30/18	\$521,000	10/01/18 – 09/30/19	\$350,000	10/01/19 – 09/30/20	\$394,000	10/01/20 – 09/30/21	\$450,370	10/01/21 – 09/30/22	\$500,500
	Grant Term	Amount																	
	10/01/14 – 09/30/15	\$330,620																	
	10/01/15 – 09/30/16	\$424,328																	
	10/01/16 – 09/30/17	\$510,000																	
	10/01/17 – 09/30/18	\$521,000																	
	10/01/18 – 09/30/19	\$350,000																	
	10/01/19 – 09/30/20	\$394,000																	
10/01/20 – 09/30/21	\$450,370																		
10/01/21 – 09/30/22	\$500,500																		
<b>Does this grant require CEQA findings?</b>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>																		
<b>What Type of Grant is this?</b>	Competitive <input checked="" type="checkbox"/> Other Type <input type="checkbox"/> Explain:																		
<b>County Match?</b>	Yes <input type="checkbox"/> Amount _____ or _____ % No <input checked="" type="checkbox"/>																		
<b>How will the County Match be Fulfilled?</b> <small>(Please include the specific budget)</small>	N/A																		
<b>Will the grant/program create new part or full-time positions?</b>	No																		
<b>Purpose of Grant Funds:</b>	Provide a summary and brief background on why the Board of Supervisors should accept this grant application/award, and how the grant will be implemented.																		
<p>The Selective Traffic Enforcement Program (STEP) grant provides funds intended to reduce the number of persons killed and injured in traffic crashes through enforcement, public education, and training for law enforcement. Best practice strategies will be utilized such as conducting DUI/Driver License Checkpoints, DUI Saturation Patrols to apprehend drunk drivers, traffic enforcement that will target primary crash factors (speeding, signal/sign violations, etc.), distracted driving, motorcycle safety, bicycle safety, and pedestrian safety.</p> <p>The STEP grant includes an intensive media campaign. Participating law enforcement agencies throughout the county and state will conduct additional DUI enforcement and traffic enforcement during state and nationwide campaigns such as Distracted Driving Awareness Month, Motorcycle Safety Awareness Month, Summer and Winter DUI Mobilizations, and the Click it or Ticket Mobilization. In addition to the media campaigns, traffic safety presentations and events will be used to increase public education and awareness regarding impaired driving and traffic safety.</p>																			



## CEO-Legislative Affairs Office Grant Authorization eForm

The STEP grant has provided funds for the Orange County Sheriff's Department to conduct training courses for its own personnel as well as other law enforcement agencies throughout the county regarding alcohol and drug impaired driving. The funds assist with the cost of instructors as well as tuition for the Orange County Sheriff's Department personnel to attend these and similar courses.

Over the years, the STEP grant's enforcement operations, public education, and training have proven to be beneficial to our ongoing efforts to increase public safety and education. This grant period is October 1, 2022 through September 30, 2023.

The Sheriff plans to return to the Board with a request to accept funding, if the grant application is accepted.

**Board Resolution Required?**

(Please attach document to eForm)

Yes

No

**Deputy County Counsel Name:**

(Please list the Deputy County Counsel that approved the Resolution)

**Recommended Action/Special Instructions**

(Please specify below)

Authorize the Sheriff-Coroner to apply for the Selective Traffic Enforcement Program Grant.

**Department Contact :**

List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.

Sergeant Ryan Dierckman, [rdierckman@ocsheriff.gov](mailto:rdierckman@ocsheriff.gov), (949) 425-1886

**Name of the individual attending the Board Meeting:**

List the name of the individual who will be attending the Board Meeting for this Grant Item:

Sergeant Ryan Dierckman or designee



**CEO-Legislative Affairs Office  
Grant Authorization eForm**

GRANT APPLICATION /  GRANT AWARD

<b>Today's Date:</b>	January 4, 2022
<b>Requesting Agency/Department:</b>	Sheriff-Coroner Department
<b>Grant Name and Project Title:</b>	Gun Violence Reduction Program (GVRP) Grant
<b>Sponsoring Organization/Grant Source:</b> <small>(If the grant source is not a government entity, please provide a brief description of the organization/foundation)</small>	State of California Department of Justice, Gun Violence Reduction Program
<b>Application Amount Requested:</b>	\$999,501
<b>Application Due Date:</b>	November 12, 2021
<b>Board Date when Board Approved this Application:</b>	December 7, 2021
<b>Awarded Funding Amount:</b>	\$316,285
<b>Notification Date of Funding Award:</b>	December 21, 2021
<b>Is this an Authorized Retroactive Grant Application/Award? No</b> <small>(If yes, attach memo to CEO)</small>	
<b>Recurrence of Grant</b>	New <input checked="" type="checkbox"/> Recurrent <input type="checkbox"/> Other <input type="checkbox"/> Explain:
<b>If this is a recurring grant, please list the funding amount applied for and awarded in the past:</b>	N/A.
<b>Does this grant require CEQA findings?</b>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>What Type of Grant is this?</b>	Competitive <input checked="" type="checkbox"/> Other Type <input type="checkbox"/> Explain:
<b>County Match?</b>	Yes <input type="checkbox"/> Amount ____ or ____ %      No <input checked="" type="checkbox"/>
<b>How will the County Match be Fulfilled?</b> <small>(Please include the specific budget)</small>	Not Applicable
<b>Will the grant/program create new part or full-time positions?</b>	No
<b>Purpose of Grant Funds:</b>	Provide a summary and brief background on why the Board of Supervisors should accept this grant application/award, and how the grant will be implemented.

The California Department of Justice (DOJ) is funding programs aimed to the Gun Violence Reduction Program. This program supports local law enforcement agencies in conducting activities related to the seizure of weapons and ammunition from persons who are prohibited from possessing them, including efforts based upon entries in the Department's Armed Prohibited Persons System (APPS).

The APPS, an initiative of the California Department of Justice, is an electronic database that agencies use to identify firearm owners among persons who have become subject to firearm prohibitions under California or federal law and then seeks to recover those firearms. Success of this program depends upon the proper resources to ensure compliance and remove firearms from those possessing them in violation of the law.

The funds will assist the Sheriff's Department in the important effort to automatically cross-reference the state's firearm registry with the names of individuals legally prohibited from firearm ownership. The funds will help designate a team of deputies to partner with the Department of Justice to conduct



**CEO-Legislative Affairs Office  
Grant Authorization eForm**

APPS enforcement operations in Orange County. This team will have the ability to increase APPS operations by collaborating with the Department of Justice or acting independently.

**Board Resolution Required?**

(Please attach document to eForm)

Yes

No

**Deputy County Counsel Name:**

(Please list the Deputy County Counsel that approved the Resolution)

Nicole Sims, Supervising, Deputy County Counsel, reviewed and approved as to form the draft Board resolution and Memorandum of Understanding.

**Recommended Action/Special Instructions**

(Please specify below)

- Adopt the resolution to accept the grant award funding in the amount of \$316,285 from the California Department of Justice for the grant period commencing on January 1, 2022 and ending on January 1, 2024, and to authorize the Sheriff-Coroner or designee to execute the Memorandum of Understanding with the California Department of Justice and all documents required to accept the grant award funding

**Department Contact :**

List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.

Monique Vansuch, Grant Manager  
Financial Administrative/Services Division  
[MVansuch@ocsheriff.gov](mailto:MVansuch@ocsheriff.gov)

**Name of the individual attending the Board Meeting:**

List the name of the individual who will be attending the Board Meeting for this Grant Item:

Shane Millhollon, Sergeant  
Advanced Surveillance and Protection (ASAP) SWAT|JHAT  
[JSMillhollon@ocsheriff.gov](mailto:JSMillhollon@ocsheriff.gov)

Michael McAloney, Investigator  
Special Investigations Bureau/Advanced Surveillance and Protection  
[MSMcaloney@ocsheriff.gov](mailto:MSMcaloney@ocsheriff.gov)

RESOLUTION OF THE BOARD OF SUPERVISORS OF  
ORANGE COUNTY, CALIFORNIA

January 11, 2022

WHEREAS, the County of Orange, Sheriff-Coroner, applied to the State of California Department of Justice, Division of Operations Local Assistance Unit for the Gun Violence Reduction Program funds for the Sheriff-Coroner of the County of Orange; and

WHEREAS, the State of California Department of Justice has approved the Sheriff-Coroner of the County of Orange to receive \$316,285 for the Gun Violence Reduction Program and now requires a resolution accepting these grant funds; and

NOW, THEREFORE, BE IT RESOLVED that this Board of Supervisors of the County of Orange does hereby authorize Sheriff-Coroner Don Barnes, on behalf of the County of Orange, to accept from the State of California Department of Justice, the Gun Violence Reduction Program Grant award in the amount of \$316,285 for activities related to the seizure of weapons and ammunition from persons who are prohibited from possessing them, including efforts based upon entries in Department of Justice's Armed Prohibited Persons System (APPS) database.

BE IT FURTHER RESOLVED, that the Board authorizes the following positions to execute, on behalf of the County of Orange, the Memorandum of Understanding with the California Department of Justice and all documents necessary to accept the grant:

- Sheriff-Coroner
- Undersheriff
- Assistant Sheriff
- Captain
- Executive Director
- Administrative Manager

Resolution No. \_\_\_\_\_ Item No. \_\_\_\_\_  
Gun Violence Reduction Program (GVRP) Grant

BE IT FURTHER RESOLVED, that the Board authorizes, the Sheriff-Coroner, or designee to execute, on behalf of the County of Orange, any future documents necessary for receipt of the grant funds from the State of California Department of Justice, Division of Operations Local Assistance Unit, if those actions do not materially change the terms or amounts of the County's commitment as it is reflected in all above-referenced grant application and Memorandum of Understanding.

BE IT FURTHER RESOLVED that this Board will not provide specific matching funds for the grant award.

BE IT FURTHER RESOLVED that the County of Orange will not use grant funds to supplant expenditures controlled by the Board of Supervisors.



**CEO-Legislative Affairs Office  
Grant Authorization eForm**

GRANT APPLICATION /  GRANT AWARD

<b>Today's Date:</b>	December 15, 2021														
<b>Requesting Agency/Department:</b>	Sheriff-Coroner Department														
<b>Grant Name and Project Title:</b>	Bureau of Justice Assistance (BJA) FY 2021 DNA Capacity Enhancement for Backlog Reduction (CEBR) Program (CDFA#16.741)														
<b>Sponsoring Organization/Grant Source:</b> <small>(If the grant source is not a government entity, please provide a brief description of the organization/foundation)</small>	U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance														
<b>Application Amount Requested:</b>	\$500,000														
<b>Application Due Date:</b>	June 22, 2021														
<b>Board Date when Board Approved this Application:</b>	May 25, 2021														
<b>Awarded Funding Amount:</b>	\$429,769														
<b>Notification Date of Funding Award:</b>	December 9, 2021														
<b>Is this an Authorized Retroactive Grant Application/Award?</b> No <small>(If yes, attach memo to CEO)</small>															
<b>Recurrence of Grant</b>	New <input type="checkbox"/> Recurrent <input checked="" type="checkbox"/> Other <input type="checkbox"/> Explain:														
<b>If this is a recurring grant, please list the funding amount applied for and awarded in the past:</b>	<table border="1"> <thead> <tr> <th>Year</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>2020</td> <td>\$405,643</td> </tr> <tr> <td>2019</td> <td>\$391,936</td> </tr> <tr> <td>2018</td> <td>\$531,869</td> </tr> <tr> <td>2017</td> <td>\$293,808</td> </tr> <tr> <td>2016</td> <td>\$282,734</td> </tr> <tr> <td>2015</td> <td>\$358,919</td> </tr> </tbody> </table>	Year	Amount	2020	\$405,643	2019	\$391,936	2018	\$531,869	2017	\$293,808	2016	\$282,734	2015	\$358,919
Year	Amount														
2020	\$405,643														
2019	\$391,936														
2018	\$531,869														
2017	\$293,808														
2016	\$282,734														
2015	\$358,919														
<b>Does this grant require CEQA findings?</b>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>														
<b>What Type of Grant is this?</b>	Competitive <input checked="" type="checkbox"/> Other Type <input type="checkbox"/> Explain:														
<b>County Match?</b>	Yes <input type="checkbox"/> Amount _____ or _____ %      No <input checked="" type="checkbox"/>														
<b>How will the County Match be Fulfilled?</b> <small>(Please include the specific budget)</small>	N/A														
<b>Will the grant/program create new part or full-time positions?</b>	N/A														
<b>Purpose of Grant Funds:</b>	Provide a summary and brief background on why the Board of Supervisors should accept this grant application/award, and how the grant will be implemented.														

BJA's Fiscal Year 2021 DNA Capacity Enhancement for Backlog Reduction (CEBR) Program provides funding to states and units of local government with existing crime laboratories that conduct DNA analysis to increase the capacity of publicly funded forensic DNA and DNA database laboratories to process more DNA samples. This program reduces the backlog of forensic and database DNA samples. The Sheriff-Coroner has applied for this competitive program since 2004. In 2020, this CEBR grant was transferred to the Bureau of Justice Assistance from the National Institute of Justice Program catalog.

This grant provides both formula and discretionary allocations aimed at reducing evidence backlogs and improve the quality and timeliness of forensic science and medical examiner services. Awarded agencies may utilize funds



## CEO-Legislative Affairs Office Grant Authorization eForm

to hire additional full-time or part-time laboratory employees to directly perform capacity enhancement-specific activities, such as validating new DNA analysis technologies for the forensic DNA laboratory and/or the laboratory responsible for analyzing DNA database samples. Matching funds are not required.

The Sheriff-Coroner Department plans to fund overtime to process backlogged DNA casework at the Orange County Crime Laboratory, continue education for the DNA analysts, purchase new microscopes, and upgrade computer equipment for the laboratory.

**Board Resolution Required?**

(Please attach document to eForm)

Yes

No

**Deputy County Counsel Name:**

(Please list the Deputy County Counsel that approved the Resolution)

Nicole Sims, Supervising Deputy County Counsel, has reviewed and approved the grant award documents.

**Recommended Action/Special Instructions**

(Please specify below)

Accept the BJA FY 2021 DNA Capacity Enhancement for Backlog Reduction (CEBR) Program Grant award in the amount of \$429,769 for the period of October 1, 2021 through September 30, 2023 and authorize the Sheriff-Coroner or designee to execute the DNA Capacity Enhancement for Backlog Reduction (CEBR) Program Grant Agreement.

**Department Contact :**

List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.

Bruce Houlihan, Director  
Orange County Crime Lab  
[BHoulihan@ocsheriff.gov](mailto:BHoulihan@ocsheriff.gov)  
(714) 834-6380

**Name of the individual attending the Board Meeting:**

List the name of the individual who will be attending the Board Meeting for this Grant Item:

Bruce Houlihan, Director  
Orange County Crime Lab  
[BHoulihan@ocsheriff.gov](mailto:BHoulihan@ocsheriff.gov)

Steven Guluzian, Senior Forensic Scientist  
Orange County Crime Lab  
[Sguluzian@ocsheriff.gov](mailto:Sguluzian@ocsheriff.gov)





## CEO-Legislative Affairs Office Grant Authorization eForm

<b>Board Resolution Required?</b> (Please attach document to eForm)	Yes <input type="checkbox"/> <span style="margin-left: 200px;">No <input checked="" type="checkbox"/></span>
<b>Deputy County Counsel Name:</b> (Please list the Deputy County Counsel that approved the Resolution)	N/A
<b>Recommended Action/Special Instructions</b> (Please specify below)	
1. Authorize the OC Community Resources Director or designee to apply for the National Endowment for the Humanities (NEH) Sustaining Cultural Heritage Collections Grant and to sign all documents required for participation in the program including the Grant Agreement as reviewed and approved as to form by County Council.	
<b>Department Contact :</b>	List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.
Sue McIntire, OC Parks Grants Manager- (714) 478-3421; <a href="mailto:sue.mcintire@ocparks.com">sue.mcintire@ocparks.com</a>	
<b>Name of the individual attending the Board Meeting:</b>	List the name of the individual who will be attending the Board Meeting for this Grant Item:
Dylan Wright, OC Community Resources, Director	



**CEO-Legislative Affairs Office  
Grant Authorization eForm**

**GRANT APPLICATION** /  **GRANT AWARD**

<b>Today's Date:</b>	1/11/2022
<b>Requesting Agency/Department:</b>	OC Community Resources/OC Parks
<b>Grant Name and Project Title:</b>	Regional Parks Program Grant, two projects- <ul style="list-style-type: none"> <li>• Mile Square Regional Park Golf Course Conversion</li> <li>• Ted Craig Regional Park- Bike Facility</li> </ul>
<b>Sponsoring Organization/Grant Source:</b> <small>(If the grant source is not a government entity, please provide a brief description of the organization/foundation)</small>	California Department of Parks and Recreation/ Proposition 68
<b>Application Amount Requested:</b>	\$5,000,000
<b>Application Due Date:</b>	January 20, 2022
<b>Board Date when Board Approved this Application:</b>	N/A
<b>Awarded Funding Amount:</b>	N/A
<b>Notification Date of Funding Award:</b>	N/A
<b>Is this an Authorized Retroactive Grant Application/Award?</b>	<b>No</b> <small>(If yes, attach memo to CEO)</small>
<b>Recurrence of Grant</b>	New <input checked="" type="checkbox"/> Recurrent <input type="checkbox"/> Other <input type="checkbox"/> Explain:
<b>If this is a recurring grant, please list the funding amount applied for and awarded in the past:</b>	N/A
<b>Does this grant require CEQA findings?</b>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<b>What Type of Grant is this?</b>	Competitive <input checked="" type="checkbox"/> Other Type <input type="checkbox"/> Explain..
<b>County Match?</b>	Yes <input type="checkbox"/> Amount ___ %      No <input checked="" type="checkbox"/> not required
<b>How will the County Match be Fulfilled?</b> <small>(Please include the specific budget)</small>	N/A
<b>Will the grant/program create new part or full-time positions?</b>	No
<b>Purpose of Grant Funds:</b>	<small>Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.</small>
<p>If approved, grant funds would be used to complete two large scale improvement projects in OC Parks facilities:</p> <ol style="list-style-type: none"> <li>1. \$3,000,000 would be used to fund phase IB (phase) of the 93-acre Mile Square Regional Park golf course conversion project. This phase includes the creation of a mile-long multi-use trail, modification of an existing pond, and connections to the existing park. Completion of phase I will result in the public opening of the new acreage. Future phases may result in the closure of project specific areas of the park as needed.</li> <li>2. Up to \$2,000,000 would be used to fund the creation of a 9.7-acre mountain bike skills course facility in Ted Craig Regional Park. The facility would include bicycle-optimized trails, skills development features, a children's track, rest/observation areas and other bicycle specific amenities. If funded, this will be the first mountain bike park facility of its kind in Orange County.</li> </ol>	



## CEO-Legislative Affairs Office Grant Authorization eForm

<b>Board Resolution Required?</b> (Please attach document to eForm)	Yes <input checked="" type="checkbox"/> <span style="margin-left: 200px;">No <input type="checkbox"/></span>
<b>Deputy County Counsel Name:</b> (Please list the Deputy County Counsel that approved the Resolution)	Mark Batarse
<b>Recommended Action/Special Instructions</b> (Please specify below)	
<ol style="list-style-type: none"> <li>1. Authorize the OC Community Resources Director or designee to apply for two State of California Department of Parks and Recreation, Prop 68 Regional Parks Grants and to sign all documents required for participation in the program including, but not limited to agreements, deed restrictions, and amendments as reviewed and approved as to form by County Counsel.</li>   <li>2. Adopt the attached Resolution for the California Department of Parks and Recreation Regional Parks Grant Program.</li> </ol>	
<b>Department Contact:</b>	List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.
Sue McIntire, OC Parks Grants Manager- (714) 478-3421; <a href="mailto:sue.mcintire@ocparks.com">sue.mcintire@ocparks.com</a>	
<b>Name of the individual attending the Board Meeting:</b>	List the name of the individual who will be attending the Board Meeting for this Grant Item:
Dylan Wright, OC Community Resources, Director	

**RESOLUTION OF THE BOARD OF SUPERVISORS OF  
ORANGE COUNTY, CALIFORNIA**

**January 11, 2022**

Approving two OC Parks Applications for REGIONAL PARK PROGRAM GRANT FUNDS

WHEREAS, the State Department of Parks and Recreation has been delegated the responsibility by the Legislature of the State of California for the administration of the Regional Park Grant Program, setting up necessary procedures governing the application; and

WHEREAS, said procedures established by the State Department of Parks and Recreation require the Applicant to certify by resolution the approval of the application before submission of said application to the State; and

WHEREAS, successful Applicants will enter into a contract with the State of California to complete the Grant Scope project;

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors hereby:

APPROVE THE FILING OF TWO APPLICATIONS FOR THE Mile Square Regional Park Golf Course Conversion project and the Ted Craig Regional Park Bike Facility project; AND

1. Certifies that said Applicant has or will have available, prior to commencement of any work on the project included in this application, the sufficient funds to complete the project; and
2. Certifies that if the project is awarded, the Applicant has or will have sufficient funds to operate and maintain the project, and
3. Certifies that the Applicant has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Grant Administration Guide; and
4. Delegates the authority to OC Parks Director or designee to conduct all negotiations, sign and submit all documents, including, but not limited to applications, agreements, amendments, deed restrictions and payment requests, which may be necessary for the completion of the Grant Scope; and
5. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.
6. Will consider promoting inclusion per Public Resources Code §80001(b)(8 A-G).

Resolution No. \_\_\_\_, Item No. \_\_\_\_

California Department of Parks and Recreation, Regional Parks Grant Program



**CEO-Legislative Affairs Office  
Grant Authorization eForm**

GRANT APPLICATION /  GRANT AWARD

<b>Today's Date:</b>	January 11, 2022										
<b>Requesting Agency/Department:</b>	OC Community Resources/Orange County Housing Authority										
<b>Grant Name and Project Title:</b>	2021 US Department of Housing & Urban Development Veterans' Affairs Supportive Housing Program										
<b>Sponsoring Organization/Grant Source:</b> <small>(If the grant source is not a government entity, please provide a brief description of the organization/foundation)</small>	U.S. Department of Housing and Urban Development										
<b>Application Amount Requested:</b>	30 VASH Vouchers										
<b>Application Due Date:</b>	November 15, 2021										
<b>Board Date when Board Approved this Application:</b>	May 11, 2021										
<b>Awarded Funding Amount:</b>	\$458,341										
<b>Notification Date of Funding Award:</b>	December 20, 2021										
<b>Is this an Authorized Retroactive Grant Application/Award? No</b> <small>(If yes, attach memo to CEO)</small>											
<b>Recurrence of Grant</b>	New <input type="checkbox"/> Recurrent <input checked="" type="checkbox"/> Other <input type="checkbox"/> Explain:										
<b>If this is a recurring grant, please list the funding amount applied for and awarded in the past:</b>	The Orange County Housing Authority (OCHA) was initially awarded \$745,382 in 2009 for 70 Veterans Affairs Supportive Housing (VASH) vouchers. Since then, HUD has awarded OCHA additional VASH vouchers as follows: <table border="0"> <tr> <td>150 in 2010 \$1,667,412</td> <td>44 in 2015 \$ 487,450</td> </tr> <tr> <td>75 in 2011 \$ 927,747</td> <td>133 in 2016 \$1,471,512</td> </tr> <tr> <td>75 in 2012 \$ 884,560</td> <td>100 in 2017 \$1,114,872</td> </tr> <tr> <td>100 in 2013 \$1,117,272</td> <td>100 in 2018 \$1,137,656</td> </tr> <tr> <td>110 in 2014 \$1,181,836</td> <td>30 in 2021 \$ 458,341</td> </tr> </table>	150 in 2010 \$1,667,412	44 in 2015 \$ 487,450	75 in 2011 \$ 927,747	133 in 2016 \$1,471,512	75 in 2012 \$ 884,560	100 in 2017 \$1,114,872	100 in 2013 \$1,117,272	100 in 2018 \$1,137,656	110 in 2014 \$1,181,836	30 in 2021 \$ 458,341
150 in 2010 \$1,667,412	44 in 2015 \$ 487,450										
75 in 2011 \$ 927,747	133 in 2016 \$1,471,512										
75 in 2012 \$ 884,560	100 in 2017 \$1,114,872										
100 in 2013 \$1,117,272	100 in 2018 \$1,137,656										
110 in 2014 \$1,181,836	30 in 2021 \$ 458,341										
<b>Does this grant require CEQA findings?</b>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>										
<b>What Type of Grant is this?</b>	Competitive <input checked="" type="checkbox"/> Other Type <input type="checkbox"/> Explain:										
<b>County Match?</b>	Yes <input type="checkbox"/> Amount _____ or _____ % No <input checked="" type="checkbox"/>										
<b>How will the County Match be Fulfilled?</b> <small>(Please include the specific budget)</small>	N/A										
<b>Will the grant/program create new part or full-time positions?</b>	No										
<b>Purpose of Grant Funds:</b>	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.										
<p>The U.S. Department of Housing and Urban Development (HUD) –Veterans' Affairs Supportive Housing (VASH) program combines HUD Housing Choice Voucher (HCV) rental assistance for homeless veterans with case management and clinical services provided by the Department of Veterans' Affairs. Authorizing acceptance of these funds will provide Orange County Housing Authority (OCHA) the funding necessary to further contribute to the reduction of veteran homelessness.</p> <p>On December 20, 2021, HUD notified OCHA of this funding awarded of 30 Vouchers from HUD-Veterans Affairs Supportive Housing under NOTICE PIH2021-21 allocation. If approved, this award brings OCHA's total VASH program to 1019 vouchers.</p>											
<b>Board Resolution Required?</b> <small>(Please attach document to eForm)</small>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>										
<b>Deputy County Counsel Name:</b>											



## CEO-Legislative Affairs Office Grant Authorization eForm

(Please list the Deputy County Counsel that approved the Resolution)	
<b>Recommended Action/Special Instructions</b>	
(Please specify below)	
Authorize OC Community Resources Director or designee to sign documents applicable to this award, accept funding and administer the VASH Program utilizing said funds.	
<b>Department Contact :</b>	List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.
Julia Bidwell, Julia.Bidwell@occr.ocgov.com, (714)480-2991	
<b>Name of the individual attending the Board Meeting:</b>	List the name of the individual who will be attending the Board Meeting for this Grant Item:
Julia Bidwell, Julia.Bidwell@occr.ocgov.com, (714) 480-2991	



**CEO-Legislative Affairs Office  
Grant Authorization eForm**

GRANT APPLICATION /  GRANT AWARD

<b>Today's Date:</b>	01/11/2022
<b>Requesting Agency/Department:</b>	OC Community Resources/OC Community Services (OCCS)
<b>Grant Name and Project Title:</b>	California Microbusiness COVID-19 Relief Grant Program (MBCRG)
<b>Sponsoring Organization/Grant Source:</b> <small>(If the grant source is not a government entity, please provide a brief description of the organization/foundation)</small>	Governor's Office of Business and Economic Development/Office of the Small Business Advocate (OSBA)
<b>Application Amount Requested:</b>	\$3,975,481.68
<b>Application Due Date:</b>	11/30/2021
<b>Board Date when Board Approved this Application:</b>	11/16/2021
<b>Awarded Funding Amount:</b>	\$3,975,481.68
<b>Notification Date of Funding Award:</b>	12/22/2021
<b>Is this an Authorized Retroactive Grant Application/Award?</b> No <small>(If yes, attach memo to CEO)</small>	
<b>Recurrence of Grant</b>	New <input checked="" type="checkbox"/> Recurrent <input type="checkbox"/> Other <input type="checkbox"/> Explain:
<b>If this is a recurring grant, please list the funding amount applied for and awarded in the past:</b>	N/A
<b>Does this grant require CEQA findings?</b>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>What Type of Grant is this?</b>	Competitive <input checked="" type="checkbox"/> Other Type <input type="checkbox"/> Explain:
<b>County Match?</b>	Yes <input type="checkbox"/> Amount _____ or _____ %      No <input checked="" type="checkbox"/>
<b>How will the County Match be Fulfilled?</b> <small>(Please include the specific budget)</small>	N/A
<b>Will the grant/program create new part or full-time positions?</b>	No
<b>Purpose of Grant Funds:</b>	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.

The California Microbusiness COVID-19 Relief Grant Program (MBCRG) was created by Senate Bill No. 151 to assist qualified microbusinesses that have been significantly impacted by the COVID-19 pandemic in California. On October 11, 2021, the Office of the Small Business Advocate (OSBA) released a Request for Proposal (RFP) for the MBCRG program. OC Community Resources/OC Community Services (OCCS) submitted an application for this grant funding on November 30, 2021. The purpose of the funding is to provide relief, in the form of one-time \$2,500 payments, to the hardest to reach microbusinesses and entrepreneurs that face systemic barriers to access capital, which include businesses owned by women, minorities, veterans, individuals without documentation, individuals with limited English proficiency and business owners located in low wealth communities. Eligibility requirements include having less than 5 employees and less than \$50,000 in revenue for 2019, in operation prior to December 31, 2019, and was significantly impacted by COVID-19.

OSBA has awarded \$3,975,481.68 to OCCS to serve approximately 1,470 eligible business owners with relief payments. Up to \$300,000 of the grant award can be used for administrative expenses, which may include salaries, call center expenses, program related technology, and outreach services. This program will be modeled after previous successful COVID-19 relief programs administered by OCCS. OCCS staff will use an online portal to accept and review applications and supporting



## CEO-Legislative Affairs Office Grant Authorization eForm

documentation and disperse funds to qualified applicants. Applicants will provide receipts to verify that payments were used for eligible expenses. OCCS will leverage an established network of community partners and organizations in order to get the word out to hard-to-reach small business owners. Funding must be distributed to eligible business owners by November 30, 2022. This grant provides 7.5% administrative funding, while average OCCS administrative costs is 18%. OCCR will work with CEO budget to identify additional funding to cover any difference in administrative costs.

**Board Resolution Required?**

(Please attach document to eForm)

Yes

No

**Deputy County Counsel Name:**

(Please list the Deputy County Counsel that approved the Resolution)

**Recommended Action/Special Instructions**

(Please specify below)

Authorize OC Community Resources Director or designee to accept \$3,975,481.68, in funding for the California Microbusiness COVID-19 Relief Grant Program.

Authorize OC Community Resources Director or designee to execute all documents required to accept the funding for the California Microbusiness COVID-19 Relief Grant.

**Department Contact:**

List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.

Dylan Wright (714) 480-2788, dylan.wright@occr.ocgov.com

Renee Ramirez (714) 480-6483, renee.ramirez@occr.ocgov.com

**Name of the individual attending the Board Meeting:**

List the name of the individual who will be attending the Board Meeting for this Grant Item:

Dylan Wright, Director, OC Community Resources



# Continuation or Deletion Request

RECEIVED  
2022 JAN 10 PM 12:23  
CLERK OF THE BOARD  
ORANGE COUNTY  
BOARD OF SUPERVISORS

**Date:** 01/10/22  
**To:** Clerk of the Board of Supervisors  
**From:** Chairman Andrew Do  
**Re:** ASR Control #: -, Meeting Date 1/11/2022 Agenda Item No. # S33A  
**Subject:** Reappoint Maribel Marroquin Waldram, Santa Ana, OC Cemetery  
District

---

Request to continue Agenda Item No. # S33A to the 01/25/22 Board Meeting.

Comments:

Request deletion of Agenda Item No. # \_\_\_\_\_

Comments:



S33A  
**MEMORANDUM**

To: Robin Stieler, Clerk of the Board  
From: Chairman Andrew Do, Supervisor, 1<sup>st</sup> District  
Date: 01/04/2022

**RE: Supplemental Item for January 11, 2022 Agenda, Re-Appoint Maribel Marroquin Waldram to the OC Cemetery District**

Please add this memo and attachment as a Supplemental Item to the January 11, 2022 Board of Supervisors agenda to re-appoint Maribel Marroquin Waldram to the District 1 regular member seat, for term 1/3/2022 – 1/5/26 for a four-year term.

cc: Chris Wangsaporn, Chief of Staff, BOS-1  
Valerie Sanchez, Chief Deputy Clerk, COB

RECEIVED  
2022 JAN -4 AM 10:35  
CLERK OF THE BOARD  
ORANGE COUNTY  
BOARD OF SUPERVISORS



APPLICATION FOR COUNTY OF ORANGE  
BOARD, COMMISSION OR COMMITTEE

(FOR COUNTY USE ONLY)

Return to:

Clerk of the Board of Supervisors  
333 West Santa Ana Blvd., Suite 465  
Santa Ana, California 92701  
Website: [www.ocgov.com/gov/cob/](http://www.ocgov.com/gov/cob/)

**Instructions:** Please complete each section below. Be sure to enter the title of the Board, Commission or Committee for which you desire consideration. For information or assistance, please contact the Clerk of the Board of Supervisor's Office at (714) 834-2206. Please print in ink or type.

**NAME OF BOARD, COMMISSION, OR COMMITTEE TO WHICH YOU ARE APPLYING FOR MEMBERSHIP (SEE LIST AT [HTTP://WWW.OCGOV.COM/GOV/COB/BCC/CONTACT](http://www.ocgov.com/gov/cob/bcc/contact)):**

Orange County Cemetery District

**SUPERVISORIAL DISTRICT IN WHICH YOU RESIDE:**  First  Second  Third  Fourth  Fifth

**APPLICANT NAME AND RESIDENCE ADDRESS:**

Maribel Frias Marroquin-Waldram  
First Name Middle Name Last Name

Santa Ana CA  
Street Address City State Zip Code

Home Phone Number Cell Phone Number

Email Address

**CURRENT EMPLOYER:** Orange County Sheriff's Advisory Council

**OCCUPATION/JOB TITLE:** Executive Director

**BUSINESS ADDRESS:**

**BUSINESS PHONE NUMBER:**

**EMPLOYMENT HISTORY:** Please attach a resume to this application and provide any information that would be helpful in evaluating your application.

**ARE YOU A CITIZEN OF THE UNITED STATES:**  YES  NO

**IF NO, NAME OF COUNTRY OF CITIZENSHIP:**

**ARE YOU A REGISTERED VOTER?**  YES  NO

**IF YES, NAME COUNTY YOU ARE REGISTERED IN:** Orange County

LIST ALL CURRENT PROFESSIONAL OR COMMUNITY ORGANIZATIONS AND SOCIETIES OF WHICH YOU ARE A MEMBER.

ORGANIZATION/SOCIETY	FROM (MO./YR.)	TO (MO./YR.)
Building Industry of Southern California	2020	Present
_____	_____	_____
_____	_____	_____

WITHIN THE LAST FIVE YEARS, HAVE YOU BEEN AFFILIATED WITH ANY BUSINESS OR NONPROFIT AGENCY(IES)?  YES  NO

DO YOU OWN REAL OR PERSONAL PROPERTY OR HAVE FINANCIAL HOLDING WHICH MIGHT PRESENT A POTENTIAL CONFLICT OF INTEREST?  YES  NO

HAVE YOU BEEN CONVICTED OF A FELONY OR MISDEMEANOR CRIME SINCE YOUR 18TH BIRTHDAY? YOU ARE NOT REQUIRED TO DISCLOSE ANY OF THE FOLLOWING: ARRESTS OR DETENTIONS THAT DID NOT RESULT IN A CONVICTION; CONVICTIONS THAT HAVE BEEN JUDICIALLY DISMISSED, EXPUNGED OR ORDERED SEALED; INFORMATION CONCERNING REFERRAL TO AND PARTICIPATION IN ANY PRETRIAL OR POSTTRIAL DIVERSION PROGRAM; AND CERTAIN DRUG RELATED CONVICTIONS THAT ARE OLDER THAN TWO YEARS, AS LISTED IN CALIFORNIA LABOR CODE § 432.8 (INCLUDING VIOLATIONS OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 11357(B) AND (C), 11360(C) 11364, 11365 AND 11550 – AS THEY RELATE TO MARIJUANA)?

YES  NO

IF YES, PLEASE EXPLAIN AND ATTACH ADDITIONAL SHEETS, IF NECESSARY.

PLEASE BRIEFLY EXPLAIN WHY YOU WISH TO SERVE ON THIS BOARD, COMMITTEE, OR COMMISSION. ATTACH ADDITIONAL SHEETS, IF NECESSARY.

I have served on this board for the past four years. It has been an honor to serve the people of the County of Orange.

DATE: 11-18-2021

APPLICANTS SIGNATURE: Maribel Marroquin-Waldram

**CLERK OF THE BOARD OF SUPERVISORS USE ONLY – DO NOT WRITE BELOW THIS LINE**

Date Received: \_\_\_\_\_ Received by: \_\_\_\_\_  
Deputy Clerk of the Board of Supervisors

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

To:  BOS District 1  BOS District 2  BOS District 3  BOS District 4  BOS District 5

All BOS  BCC Contact Person Name \_\_\_\_\_

# Maribel Marroquin

## Experience

### Orange County Sheriff's Advisory Council

*Executive Director February 2020 – Present*

- Collaborate with the board of Directors to identify, create and implement strategic planning.
- Responsible for implementing programs to carry out the mission of the nonprofit.
- Managing the general business for the non-profit organization.
- Responsible for fundraising and developing other resources necessary to support the nonprofit.  
Enhancing community relationships.

### Andrew Do 2020

*Campaign Manager September 2020- November 2020*

- Built political coalitions to enhance image and gain endorsements while creating grassroots campaign initiatives mobilizing support.
- Managed all aspects of campaign field operations and volunteer efforts.
- Collaborated with the candidate, staff, consultants and party officials.
- Provided public relations assistance by sending emails, press releases, and statements, and attending public meetings.
- Provided research responded to public records requests.
- Setting up the infrastructure for voter contact, staffing, managing, coalition building.
- Executed campaign effectively, on schedule and budget.

### Moorlach for Senate 2020

*Senior Strategist/Finance Director (2019 –November 2020)*

- Organized and coordinated all fundraising for the client through events and individual contacts.
- Planned all levels of fundraisers, from small meetings to large events in excess of 200 attendees.

- Raised over \$100,000 per quarter and worked with the finance chair and finance committee to target financial goals for each quarterly deadline.
- Secured donations and active participation from individuals, corporations, and associations.
- Monitored budgets, expense reports, and financial data and recorded all expenses and contributions per campaign regulations.
- Managed the infrastructure for voter contact, staffing, managing, and coalition building.
- Coordinated with overlapping campaigns to perform voter contact through phone banking and precinct walking.
- Implemented voter outreach program at churches.
- Created a tracking system to capture details on the opponent's campaign.
- Executed campaign effectively, on schedule and budget.

#### **Building Industry Association of Southern California**

*Executive Administrator (May 2019- May 2020 )*

- Performed clerical tasks, such as filing and producing routine correspondence.
- Scheduled appointments, conferences, and meetings within the association.
- Acted as a liaison between executives and internal/external members.
- Provided support and calendar management for the Chief Executive Officer and Executive Vice-President.
- Planned and coordinated all organization events, from executive meetings to trade shows.
- Managed and coordinated the Building Industry Show (Trade Show) for 1,500 attendees.
- Coordinated and managed staff meetings for the entire southern region.
- Created presentations for use by the boards of directors, committees, and executives.

#### **Orange County Cemetery District**

*Vice Chair, District 1 (2018-2022)*

- Set policy in collaboration with the goals of the applying County Supervisor.
- Defined goals and objectives for the Cemetery District.
- Acted as a legal guardian for the three cemeteries.
- Planned and Executed community events for the three cemeteries (Dia De Los Muertos, History Walks, Wreaths Across America).
- Recruited and coordinated volunteers for events.

### **Rob Poythress for Senate 2018**

#### *Finance Director (2018)*

- Organized and coordinated fundraising events for the client.
- Recruited and coordinated volunteers for each fundraiser.
- Maintained client records up to date.
- Recorded all expenses incurred and contributions received.
- Consistently maintained fundraising goals according to financial needs.
- Secured commitments of participation and donations from individuals and corporations.
- Identified and built relationships with new donors within the district.
- Monitored budgets, expenses reports, and financial data.
- Scheduled call time with the candidate and the host of the event.

### **Stacy Davis and Associates**

#### *Account Manager 2017-2018*

- Developed and coordinated activities to secure funds for clients.
- Consistently maintained fundraising goals according to the financial needs of multiple clients.
- Called prospective donors to motivate them to give charitably and politically.
- Recorded all expenses incurred and contributions received.
- Assisted clients in handling issues as they arose through a proactive and reactive work ethic.
- Coached, trained, and recruited new employees.
- Planned all levels of fundraisers for multiple clients.

### **GLF Consulting**

#### *Account Manager (2014-2017)*

- Met with new clients to identify and conceptualize campaign strategies.
- Executed campaigns effectively, on schedule, and within the budget.
- Built relationships with clients based on trust and respect.
- Undertook and developed data entry standard operating procedures to ease in data collection.
- Assisted each federal, state, and local clients to help meet their goals weekly.
- Planned and executed voter registration drives.
- Coached, trained, and recruited new employees.

- Worked as the Latina Outreach Director and engaged the Latino community on legislation.

#### Education

##### Public Administration

University of Phoenix (In Progress)

#### Skills

- Microsoft Office (Outlook, Word, Excel, PowerPoint, Acrobat PDF)
- Bilingual (English, Spanish)
- Political Data Inc., iDonate Pro, Silk Start, Constant Contact/Mailer Lite
- Excellent time management
- Strong communication and customer service skills
- Ability to make decisions, meet targets and work under pressure
- Problem-solving
- Team builder

### Professional References

#### Chuck Hahn

CEO of Southlake Public Affairs

#### Matthew Klemin

Former Political Director

#### Michael Capaldi

Chairman Emeritus of the Lincoln Club





**Trustee Maribel Marroquin-Waldram**



# County Executive Office

## Memorandum

January 5, 2022

**To:** Clerk of the Board of Supervisors  
**From:** Frank Kim, County Executive Officer  
**Subject:** Exception to Rule 21

Digitally signed by Frank Kim  
DN: cn=Frank Kim, o=County  
of Orange, ou=CEO,  
email=frank.kim@ocgov.com,  
c=US  
Date: 2022.01.05 10:18:53  
+0800

CLERK OF THE BOARD  
ORANGE COUNTY  
BOARD OF SUPERVISORS

2022 JAN -6 PM 1:53

RECEIVED

S33B

The County Executive Office is requesting a Supplemental Agenda Staff Report for the January 11, 2022, Board Hearing.

**Agency:** Health Care Agency  
**Subject:** Amendment to Contract for Temporary Isolation Shelter Services  
**Districts:** All Districts

**Reason for supplemental:** The Office of Care Coordination is requesting this Supplemental item be placed on the January 11, 2022, Board agenda to amend the contract previously approved on December 14, 2021. This amendment will modify the Scope of Work to allow for the urgent access to additional beds available retroactive to January 1, 2022, and support the Omicron COVID-19 surge affecting those persons experiencing homelessness. The Agenda Staff Report and attachments were finalized after the filing deadline to the Clerk of the Board.

Concur:

Andrew Do, Chairman of the Board of Supervisors

cc: Board of Supervisors  
County Executive Office  
County Counsel



**SUPPLEMENTAL AGENDA ITEM  
 AGENDA STAFF REPORT**

RECEIVED  
 2022 JAN -6 PM 2:12  
 CLERK OF THE BOARD  
 ORANGE COUNTY  
 BOARD OF SUPERVISORS

**MEETING DATE:** 1/11/22  
**LEGAL ENTITY TAKING ACTION:** Board of Supervisors  
**BOARD OF SUPERVISORS DISTRICT(S):** All Districts  
**SUBMITTING AGENCY/DEPARTMENT:** Health Care Agency  
**DEPARTMENT HEAD REVIEW:** *Clayton Chau MD, PhD*  
*Department Head Signature*  
**DEPARTMENT CONTACT PERSON(S):** Doug Becht (714) 834-5000  
 Clayton Chau (714) 834-2830

**SUBJECT:** Amendment to Contract for Temporary Isolation Shelter Services

**CEO CONCUR**

Digitally signed by Frank Kim  
 DN: cn=Frank Kim, o=County of  
 Orange, ou=CEO,  
 email=frank.kim@ocgov.com,  
 c=US  
 Date: 2022.01.06 10:36:16 -0800

*CEO Signature*

**COUNTY COUNSEL REVIEW**

Approved as to Form  
*Action*

*County Counsel Signature*

**CLERK OF THE BOARD**

Discussion

3 Votes Board Majority

**Budgeted:** Yes                      **Current Year Cost:** \$1,283,250                      **Annual Cost:** N/A  
**Staffing Impact:** No                      **# of Positions:**                      **Sole Source:** Yes  
**Current Fiscal Year Revenue:** N/A  
**Funding Source:** See Financial Impact Section                      **County Audit in last 3 years:** No

**Prior Board Action:** 12/14/2021#25

**RECOMMENDED ACTION(S)**

1. Retroactively approve Amendment No. 1 to the Contract with The Illumination Foundation for provision of Temporary Isolation Shelter Services, to increase the Contract's not to exceed amount by \$1,283,250 effective January 1, 2022, through March 31, 2022, for a revised cumulative contract total amount not to exceed \$3,759,054.
2. Authorize the County Procurement Officer or authorized Deputy to execute Amendment No. 1 to the Contract with The Illumination Foundation, as referenced in the Recommended Action above.

**SUMMARY:**

Approval of the Amendment to the Contract with The Illumination Foundation for Temporary Isolation Shelter Services will allow to immediately increase bed availability in response to the COVID-19 surge to be provided for isolation and/or quarantine of individuals and families that are COVID-19 positive, symptomatic or exposed and are experiencing homelessness in Orange County.

**BACKGROUND INFORMATION:**

Under the State of Emergency Order in response to the COVID-19 pandemic, the Health Care Agency’s (HCA) Office of Care Coordination has been primarily responsible for implementing the County of Orange’s (County) COVID-19 Homelessness Response System, which included implementation of the Project Roomkey Program (PRK) in March 2020. PRK is designed to prevent and mitigate the spread of COVID-19 by providing non-congregate shelter in hotels and motels for individuals experiencing homelessness. PRK was implemented with two primary components:

- Temporary Shelter for Vulnerable Populations (TSVP), for asymptomatic individuals who are at high-risk for severe COVID-19 illness due to underlying health conditions and /or 65 years and older.
- Temporary Isolation Shelter Services (TISS) for individuals who are sick or symptomatic for COVID-19.

HCA entered into an emergency contract with The Illumination Foundation in March 2020 to implement both components of PRK and provide the opportunity to access motel rooms contracted out by the County to isolate and shelter in place. The TSVP component operated from March 2020 to October 2020 providing on-site services to program participants including daily meals and snacks, case management services, daily medical oversight by trained staff, COVID-19 testing, on-site security and transportation to and from the sites.

In October 2020, the TSVP component of PRK ramped down in utilization and capacity and transitioned participants into Project Toolbelt, a housing-focused program that utilized every tool in the toolbelt to assist individuals experiencing homelessness transition to available temporary or long-term housing options.

Meanwhile, the TISS component of PRK continued operations in response to the ongoing COVID-19 pandemic by providing isolation and quarantine options for individuals that have tested positive or have been exposed to COVID-19. The services promote a curative environment in which people experiencing homelessness have access to rest, heal and work with staff on coordination with external community resources for mainstream benefits, as well as physical and behavioral health services.

As the COVID-19 pandemic continues to affect Orange County, HCA continues to assess the County’s COVID-19 Homelessness Response System for persons experiencing homelessness and recommends the ongoing provision of TISS. The Illumination Foundation, the TISS County contracted provider since March 2020, continues to provide TISS including day to day operations of up to 150 beds capacity for isolation without diminishing the scope of services identified above. Referrals to the program are made by Public Health Services staff, emergency shelters, street outreach providers, hospitals and law enforcement directly to The Illumination Foundation by calling the 24-hour COVID-19 hotline.

**Performance Outcomes**

From March 2020 through December 2021, a total of 3,396 persons experiencing homelessness in Orange County have been served by this program.

	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>FY 2021-22 (July- December)</b>	<b>Total Served</b>
Temporary Isolation Shelter Services	265	1,351	482	2,098
Temporary Shelter for Vulnerable Population	865	433	0*	1,298

\* TSVP portion of the program ended in October 2020.

The Office of Care Coordination continues to work with The Illumination Foundation and HCA Public Health Services to mitigate the spread of COVID-19 amongst persons experiencing homelessness within Orange County, by providing a rapid response to potential outbreaks within the emergency shelter system and unsheltered homeless population.

The proposed services are existing services provided under a contract entered into pursuant to Resolution of the Board of Supervisors (Board), California Authorizing Emergency Contracting Authority dated April 21, 2020. The Board Resolution, allowed the Board to direct the County Procurement Officer (CPO), or designee, to engage independent contractors to perform services related to the COVID-19 Emergency for the County or County officers, with or without the furnishing of material, to the extent that the CPO determined that an immediate, emergency need exists due to imminent threat to life, health, property or essential public service for a services contract due to the COVID-19 Emergency. No further sole source justification was required for a contract to be entered into pursuant to the Board Resolution.

The proposed Contract is being brought as a sole source contract. See Attachment C for Sole Source Justification Form. The Illumination Foundation is the recommended sole source vendor due to the unique and complex requirements for the operations of this program requiring medical staff to monitor COVID-19 illness symptoms and possible complications. The Illumination Foundation has demonstrated ability and flexibility to adapt to the on-going changes and guidelines recommended by the Centers for Disease Control and Prevention and local Public Health Officials, to provide essential services during the COVID-19 pandemic. The Illumination Foundation brings extensive experience providing a wide range of services in Orange County including: experience in operating recuperative care programs, permanent supportive housing, emergency shelter and street outreach. The Orange County Preference Policy is not applicable to this contract award.

The Contract was initially submitted for the Board's approval on December 14, 2021, with a contract start date of January 1, 2022, as HCA was carefully observing COVID-19 trends and speaking to State and Federal representatives about the ongoing COVID-19 pandemic impacts on homelessness and available resources. The existing contract includes use of 100 TISS beds.

Due to the most recent increase in cases and surge from the Omicron variant and the urgency related to increasing bed capacity, HCA determined the need to collaborate with the Illumination Foundation to amend the contract to ensure the program was capable of supporting the surge without disruption. This amendment is being submitted as a supplemental for the Board's retroactive approval to amend the contract to immediately increase isolation shelter bed availability from 100 TISS beds to 150 effective January 1, 2022, for isolation and/or quarantine of individuals and families that are COVID-19 positive, symptomatic or exposed and are experiencing homelessness in Orange County.

This Contract does not currently include subcontractors or pass through to other providers. See Attachment B for Contract Summary Form.

HCA requests the Board approve the Amendment to the Contract with The Illumination Foundation for provision of Temporary Isolation Shelter Services, as referenced in the Recommended Actions. The Orange County Preference Policy is not applicable to this contract award.

**FINANCIAL IMPACT:**

This Contract is anticipated to be 100 percent funded through the Federal Emergency Management Agency with any unreimbursed costs covered by American Rescue Plan Act funds. HCA will

collaborate with the CEO Budget Office through the January Budget Report process to ensure that appropriations for this Contract can be absorbed in the Budget Control 042 FY 2021-22 Budget.

Should services need to be reduced or terminated due to lack of funding, the Contract contains language that allows HCA to give a 30-day notice to either terminate or renegotiate the level of services to be provided. The notice will allow HCA adequate time to transition or terminate services to clients, if necessary.

**STAFFING IMPACT:**

N/A

**ATTACHMENT(S):**

Attachment A – Amendment No. 1 to Contract MA-042-22010739 for Temporary Isolation Services with The Illumination Foundation

Attachment B – Contract Summary Form

Attachment C – Sole Source Justification Form

Attachment D – Redline Version to Attachment A



**AMENDMENT NO. 1  
TO  
CONTRACT NO. MA-042-22010739  
FOR  
Temporary Isolation Shelter Services**

This Amendment ("Amendment No. 1") to Contract No. MA-042-22010739 for Temporary Isolation Shelter Services is made and entered into on January 1, 2022 ("Effective Date") between The Illumination Foundation ("Contractor"), with a place of business at 1091 N. Batavia St., Orange, CA 92867, and the County of Orange, a political subdivision of the State of California ("County"), through its Health Care Agency, with a place of business at 405 W. 5th St., Ste. 600, Santa Ana, CA 92701. Contractor and County may sometimes be referred to individually as "Party" or collectively as "Parties".

**RECITALS**

WHEREAS, the Parties executed Contract No. MA-042-22010739 for Temporary Isolation Shelter Services, effective January 1, 2022 through March 31, 2022, in an amount not to exceed \$2,475,804 ("Contract"); and

WHEREAS, the Parties now desire to enter into this Amendment No. 1 to amend Exhibit A of the Contract and to increase the Contract's amount not to exceed; and

NOW THEREFORE, Contractor and County agree to amend the Contract as follows:

1. The Contract's amount not to exceed is increased by \$1,283,250, for a new total amount not to exceed \$3,759,054.
2. Referenced Contract Provisions, Basis for Reimbursement term, is deleted in its entirety and replaced with "Basis for Reimbursement: Fee for Service".
3. Exhibit A, Paragraph II. Budget, Subparagraph A is deleted in its entirety and replaced with the following:

"A. COUNTY shall pay CONTRACTOR in accordance with the Payments Paragraph of this Exhibit A to the Contract and the following budget, which is set forth for information purposes only and may be adjusted by mutual agreement, in writing, by ADMINISTRATOR and CONTRACTOR.

1. Operating Cost for 50 isolation beds (Broadway Site) - fixed fee of \$368,018/month for the 50 isolation beds.

2. Operating Cost for up to 100 overflow beds (Overflow site) - \$295 per diem rate per each occupied bed. In order to maintain access to overflow beds and rooms throughout the term of the Contract:

a. COUNTY will pay for a minimum of 30 overflow beds each night at the per diem rate. Payment is for occupied overflow beds; provided, however, if there are fewer than 30 occupied overflow beds, payment will cover all occupied overflow beds plus unoccupied overflow beds up to the total of 30 overflow beds.

b. COUNTY will pay \$65 per room for a minimum of 35 rooms each night. Payment is for unoccupied rooms; provided, however, if there are fewer than 35 occupied rooms, payment will cover all occupied rooms plus unoccupied rooms up to the total of 35 rooms.”

3. Exhibit A, Paragraph II. Budget, Subparagraph C is deleted in its entirety.
4. Exhibit A, Paragraph IV. Reports, Subparagraph B is deleted in its entirety.
5. Exhibit A, Paragraph V. Services, Subparagraph A is deleted in its entirety and replaced with the following:

“A. FACILITIES

1. CONTRACTOR shall maintain two facility(ies) for the provision of Temporary Isolation Shelter Services for persons experiencing homelessness. The provision of room and board along with health care services in-house at the identified facilities will support COUNTY’s COVID-19 response by mitigating exposure to COVID-19 for the vulnerable population who is at the highest risk of acquiring COVID-19. The sites are as follows:

a. Broadway Site located at 9942 W. Broadway, Anaheim, CA 92804: 50 beds with individual rooms for individuals presumed COVID-19 positive participants.

b. Overflow site located at 7555 Beach Blvd., Buena Park, CA 90620: Up to 100 overflow beds for presumed COVID-19 positive participants. Overflow beds are only to be used after Broadway site has reached max capacity.”

6. Exhibit A, Paragraph V. Services, Subparagraph C.3. is deleted in its entirety and replaced with the following:

“3. CONTRACTOR must operate and maintain two (2) facilities for the provision of Temporary Isolation Shelter Services. The capacity of each site may vary but the minimum capacity at each facility under this Contract is the number of beds and rooms set forth in Paragraph V., Subparagraph A of this Exhibit A. CONTRACTOR must maintain the contractually required capacity at all times during this Contract.”

This Amendment No. 1 modifies the Contract only as expressly set forth herein. Wherever there is a conflict in the terms or conditions between this Amendment No. 1 and the Contract, the terms and conditions of this Amendment No. 1 prevail. In all other respects, the terms and conditions of the Contract, not specifically changed by this Amendment No. 1 remain in full force and effect.

**SIGNATURE PAGE FOLLOWS**

**SIGNATURE PAGE**

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1. If Contractor is a corporation, Contractor shall provide two signatures as follows: 1) the first signature must be either the Chairman of the Board, the President, or any Vice President; 2) the second signature must be that of the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution or by-laws demonstrating the legal authority of the signature to bind the company.

**Contractor: The Illumination Foundation**

Paul Leon

President & CEO

Print Name  
DocuSigned by:  
  
CBF6B67E3BA84FE...  
Signature

Title

1/4/2022

Date

Print Name

Title

Signature

Date

---

**County of Orange**, a political subdivision of the State of California

Purchasing Agent/Designee Authorized Signature:

Print Name

Title

Signature

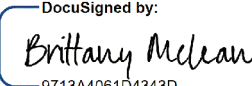
Date

**APPROVED AS TO FORM**

Office of the County Counsel  
Orange County, California

Brittany McLean

Deputy County Counsel

Print Name  
DocuSigned by:  
  
9713A4061D4343D...  
Signature

Title

1/4/2022

Date

## Contract Summary Form

The Illumination Foundation

### SUMMARY OF SIGNIFICANT CHANGES

Amendment for Temporary Shelter Isolation Services for FY 2021-22

### SUBCONTRACTORS

**This contract does not subcontractors or pass through to other providers.**

### CONTRACT OPERATING EXPENSES

1. Operating Cost for 50 isolation beds (Broadway site) - \$368,018/month
2. Operating Cost for up to 100 overflow beds (Overflow site) - \$295 per diem rate per each occupied bed.
  - a. COUNTY will pay for a minimum of 30 overflow beds each night at the per diem rate. Payment is for occupied overflow beds; provided, however, if there are fewer than 30 occupied overflow beds, payment will cover all occupied overflow beds plus unoccupied overflow beds up to the total of 30 overflow beds.
  - b. COUNTY will pay \$65 per room for a minimum of 35 rooms each night. Payment is for unoccupied rooms; provided, however, if there are fewer than 35 occupied rooms, payment will cover all occupied rooms plus unoccupied rooms up to the total of 35 rooms.”



## Sole Source Request Form Instruction Sheet

### COUNTY POLICY ON SOLE SOURCE CONTRACTS:

*It is the policy of the County of Orange to solicit competitive bids and proposals for its procurement requirements. Per the Contract Policy Manual, a sole source procurement shall not be used unless there is clear and convincing evidence that only one source exists to fulfill the County's requirements, CPM section 4.5. All sole source purchases requiring Board of Supervisors approval shall be justified as meeting the sole source standard in the Agenda Staff Report. The Agenda Staff Report shall clearly state that it is a sole source procurement. The Sole Source Justification, as described below, shall be attached within the Agenda Staff Report (CPM, Section 4.5)*

### SECTION I – INSTRUCTIONS FOR COMPLETING THE ATTACHED FORM

**(To be completed by the department's end-user, Program Manager, or Subject Matter Expert)**

1. Formal justification is required for sole source procurements when competitive bid guidelines require pricing from competing firms.
2. A written justification will be prepared by the department and approved by the department head or designee.
3. Prior to execution of a contract, the County Procurement Officer or designee shall approve ALL sole source requests for commodities that exceed \$250,000 annually, services exceeding \$75,000 annually and all Board contracts despite the amount. Board approval is required for all sole source contracts for commodities that exceed \$250,000 annually and services exceeding \$75,000 annually or a two (2) year consecutive term, regardless of the contract amount. Any amendments to Board approved sole source contracts require a new sole source form.
4. If vendor is a retired, former Orange County employee, CEO Human Resource Services shall approve the sole source request, regardless of the sole source amount.
5. Valid sole source requests will contain strong technological and/or programmatic justifications. Requests will explain how it is a sole source purchase, provide a clear and convincing justification and detail the purchasing history (who, what, when, how and where).
6. Sole source procurements may be approved based upon emergency situations in which there is not adequate time for competitive bidding.
7. Sole source requests for Human Service contracts will be guided by the regulations of the funding source.
8. Each question in Section II of this form must be answered in detail and the form signed by the department head with concurrence of the Deputy Purchasing Agent.
9. All sole source request forms must be entered into the County's online bidding system along with its supporting documentation.
10. The Deputy Purchasing Agent (DPA) shall retain a copy of the justification/approval as part of the contract file.
11. Request for Solicitation Exemption (*For purchases with special circumstances, and/or when it is determined to be in the best interest of the County*) – check the Solicitation Exemption box and complete additional question no 8.



## Sole Source Request Form

Sole Source Bidsync # 042- 2154802-JB-SS

### SECTION II – DEPARTMENT INFORMATION (Complete in its entirety)

Department: Health Care Agency/Office of Care Coordination		Date: 1/3/2022	
Vendor Name: The Illumination Foundation		Sole Source BidSync Number: 042- 2154802-JB-SS	
<p><b>Is the above named vendor a retired employee of the County of Orange?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  <b>If "Yes", review and Approval is required from CEO Human Resource Services prior to contract execution.</b></p>			
Contract Term (Dates) January 1, 2022 – March 31, 2022:		Is Agreement Grant Funded? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Percent Funded: 100% Funding Source: FEMA	
Contract Amount? \$3,759,054		Proprietary? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Contract Amount? \$3,759,054		Is this renewable? If yes, how many years?	
Type of Request: <input type="checkbox"/> New <input type="checkbox"/> Multi-Year <input type="checkbox"/> Renewal <input checked="" type="checkbox"/> Amendment <input checked="" type="checkbox"/> Increase			
Renewal Year: N/A		Did vendor provide a sole source affidavit? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, please attach	
Board Date: 1/11/2022	ASR Number: Supplemental ASR	If not scheduled to go to the Board explain why? N/A	
Does Contract include Non-Standard Language? If yes, explain in detail. No, contract does not include non-standard language			
Was Contract Approved by Risk Mgmt.? Not applicable		Was Contract Approved by County Counsel? County Counsel review is pending	
Were any exceptions taken? If yes, explain in detail. No exceptions were taken			
<input checked="" type="checkbox"/> DPA certifies that they have read and verified that the information is true and satisfies the sole source requirements listed in the County Contract Policy Manual.			
<input type="checkbox"/> Solicitation Exemption <i>(For purchases with special circumstances, and/or when it is determined to be in the best interest of the County.)</i>			



**Sole Source Request Form**

Sole Source Bidsync # 042- 2154802-JB-SS

**SECTION III – SOLE SOURCE JUSTIFICATION**

- 1. Provide a description of the type of contract to be established.** *(For example: is the contract a commodity, service, human service, public works, or other – please explain.) Attach additional sheet if necessary.*

This is a human services contract to continue providing Temporary Isolation Shelter Services for individuals who are sick or symptomatic with the COVID-19 virus. The identified contract is part of the County's COVID-19 Homelessness Response System. The scope of services for the program supports the efforts to operate a low-barrier non-congregate isolation program for persons experiencing homelessness in Orange County. This amendment is to increase the contract and modify the Scope of Work to allow for additional beds to be available to support the COVID-19 surge among those experiencing homelessness.

- 2. Provide a detailed description of services/commodities and how they will be used within the department. If this is an existing sole source, please provide some history of its origination, Board approvals, etc.** *(This information may be obtained from the scope of work prepared by the County and the vendor's proposal that provides a detailed description of the services/supplies.) Attach additional sheet if necessary.*

The Temporary Isolation Shelter Services Program was implemented in March 2020 as an emergency response to the COVID-19 pandemic in order to provide isolation for persons experiencing homelessness in Orange County. The program is operated by Illumination Foundation and it provides isolation and quarantine for individuals that have tested positive or have been exposed to COVID-19. An individual room is provided to program participants as well as daily meals and snacks. Additionally, the services available through the program encompass daily medical oversight by trained staff, on-site security, and transportation in and out of isolation sites. The services available through the program will promote a curative environment in which people experiencing homelessness have access to rest, heal, and work with staff on coordination with external community resources for physical and behavioral health.

- 3. Explain why the recommended vendor is the only one capable of providing the required services and/or commodities.** **How did you determine this to be a sole source and what specific steps did you take? Please list all sources that have been contacted and explain in detail why they cannot fulfill the County's requirements. Include vendor affidavit and/or other documentation which supports your sole source.** *(Responses will include strong programmatic and technological information that supports the claim that there is only one vendor that can provide the services and/or commodities. Your response will include information pertaining to any research that was conducted to establish that the vendor is a sole source, include information pertaining to discussions with other potential suppliers and why they were no longer being considered by the County.) Attach additional sheet if necessary.*

Illumination Foundation (IF) has been providing the services for the County's Homeless System of Care response to the COVID-19 pandemic through the Temporary Isolation Shelter Services since March 2020. As the COVID-19 pandemic continues to affect Orange County and the target population, the vendor continues to be unique in their expertise and ability to meet the inventory required to carry out the operations of this program.

The operations for Temporary Isolation Shelter Services require a unique program model and experience. Given that this program serves individuals who are sick and symptomatic for COVID-19, there is a need for the vendor to have medical staff onsite to monitor and provide medical oversight of those individuals in isolation or quarantine. Illumination Foundation (IF) is unique in their ability to provide such ambulatory services and adapt to the on-going local and federal guidelines and recommendations outlined throughout the COVID-19 pandemic. The identified vendor also brings extensive experience servicing person experiencing homelessness in Orange County by providing services such as case management, emergency shelter, recuperative care, and permanent supportive housing.



## Sole Source Request Form

Sole Source Bidsync # 042- 2154802-JB-SS

**4. How does recommended vendor's prices or fees compare to the general market?****Attach quotes for comparable services or supplies. Attach additional sheet if necessary.**

The proposed budget/fees from the recommended vendor is aligned with the prices that have been contracted for the program throughout the COVID-19 pandemic. In addition, the proposed budget adequately covers the costs needed to fund medical staffing, individual rooms for participants, food, PPE, services, and supplies required for the operations of the Temporary Isolation Shelter Services Program. Within the past 20 months, the cost of the program has decreased as it continues to scale down and reduce the number of beds based on need assessments. The costs for the operations at the beginning of the pandemic were significantly higher in costs such as food, security, and transportation services as more individuals were being isolated.

**5. If the recommended vendor was not available, how would the County accomplish this particular task?****Attach additional sheet if necessary.**

If the recommended vendor was not available, the County would not be able to continue this particular task of providing isolation and quarantine to persons experiencing homelessness in Orange County. There are no other vendors able to operate the unique requirements of this program, especially having a medical component to the day-to-day operational services. It is in the County's best interest and welfare of the residents of the County of Orange to continue providing services for individuals experiencing unsheltered homelessness during the COVID-19 pandemic. The recommended vendor is able to continue providing a unique expertise in operating isolation and quarantine services that require medical attention and understanding of the target population, as they have been since the beginning of the COVID-19 pandemic. In the immediate, the County would not be able to replicate this service and respond in a timely manner to the Board's directive.

**6. Please provide vendor history – name change, litigation, judgments, aka, etc. for the last 7 years.**

Through the normal County of Orange vetting process, The Illumination Foundation has had no name changes within the last seven (7) years. They have no judgements and litigations which are no significance to the County, and immaterial to their delivery of services to be provided.

**7. If vendor is a retired, former employee, has the vendor previously been rehired as a contractor within the last three years?       Yes       No**

**If yes, provide explanation/support for hiring the retired, former employee as a vendor and provide contract dates, scope of work, and total amounts paid under each contract.**

Not applicable

**8. Explain (in detail) why a request for Solicitation Exemption is needed. (Only applicable for Solicitation Exemption)****Attach additional sheet if necessary.**

Not applicable



**Sole Source Request Form**

Sole Source Bidsync # 042- 2154802-JB-SS

**SECTION IV – AUTHOR/REQUESTOR**

Signature: DocuSigned by: <i>Karen Betances</i> A793CE27153E4B7...	Print Name:  Karen Betances	Date:  1/4/2022
---	-----------------------------------	-----------------------

**SECTION V – CEO Human Resource Services APPROVAL** (Review and approval is required when vendor is a Retired, Former Employee.)

Signature:	Print Name:	Date:
------------	-------------	-------

**SECTION VI – DEPUTY PURCHASING AGENT CONCURRENCE**

Signature: DocuSigned by: <i>Brittany Davis</i> CBA8D85B77D2461...	Print Name:  Brittany Davis	Date:  1/4/2022
---	-----------------------------------	-----------------------

**SECTION VII – DEPARTMENT HEAD APPROVAL**

Signature: DocuSigned by: <i>Doug Becht</i> C3F502060A0B46A...	Print Name:  Doug Becht	Date:  1/4/2022
---	-------------------------------	-----------------------

**SECTION VIII – COUNTY PROCUREMENT OFFICE**

Prior to execution of a contract, the County Procurement Officer or designee shall approve All Sole Source requests for Commodities that exceed \$250,000, Capitol Assets and services exceeding \$75,000, and All other Sole Source requests that require Board approval despite the amount. Approvals are obtained electronically through the County’s online bidding system.

**SOLICITATION EXEMPTION – CEO USE ONLY:**

Board of Supervisor Notification Date:			
Comments:			
CPO: <input type="checkbox"/> Approved <input type="checkbox"/> Denied		CFO: <input type="checkbox"/> Approved <input type="checkbox"/> Denied	
<b>CPO Authorized Signature:</b>	<b>Date:</b>	<b>CFO Authorized Signature:</b>	<b>Date:</b>

## Question and Answers for Bid #042-2154802-JB-SS-2 - Sole Source for Temporary Isolation Shelter Services Amendment

### Overall Bid Questions

There are no questions associated with this bid.



Welcome BDavis2 | [Logout](#)

**Need assistance?**  
**Contact us**  
or call 800-990-9339

- [Home](#)
- [Search](#)
- [Source](#)
- [Contracts](#)
- [Purchasing](#)
- [Tools](#)

Release Bid Workflow

Name: Brittany M Davis  
 Phone: 714-834-5326  
 Email: bdavis@ochca.com  
 Status: Submitter Jan 4, 2022 9:29:27 AM PST



**Bid Information**

**Bid Number:**  
[042-2154802-JB-SS-2](#)

**Bid Title:**  
Sole Source For Temporary Isolation Shelter  
Services Amendment

**Status**

**Status:**  
Approved

**Comments:**  
Expertise

[View Workflow History](#)

Close

Questions? Contact a Periscope Source representative: 800-990-9339 or email: [source-support@periscopeholdings.com](mailto:source-support@periscopeholdings.com)

- [Home](#)
- [Bid Search](#)
- [Bids](#)
- [Orders](#)
- [Tools](#)
- [Support](#)
- [Privacy](#)
- [Logout](#)



Copyright © 2020 - Periscope Holdings, Inc. - All rights reserved.

~~CONTRACT~~ AMENDMENT NO. 1 FOR PROVISION OF  
 TEMPORARY ISOLATION SHELTER SERVICES  
 BETWEEN  
 COUNTY OF ORANGE  
 AND  
 THE ILLUMINATION FOUNDATION  
 JANUARY 1, 2022 THROUGH MARCH 31, 2022

THIS ~~CONTRACT~~ Amendment No. 1 entered into this 1<sup>st</sup> day of January, 2022 (“Effective Date”), is by and between the COUNTY OF ORANGE, a political subdivision of State of California (COUNTY), and The Illumination Foundation, a California nonprofit corporation (CONTRACTOR). COUNTY and CONTRACTOR may sometimes be referred to herein individually as “Party” or collectively as “Parties.” This Contract shall be administered by the Director of the COUNTY’s Health Care Agency or an authorized designee (“ADMINISTRATOR”).

**W I T N E S S E T H:**

WHEREAS, COUNTY wishes to contract with CONTRACTOR for the provision of Temporary Isolation Shelter Services described herein to individuals experiencing homelessness in Orange County; and

WHEREAS, CONTRACTOR is agreeable to the rendering of such services on the terms and conditions hereinafter set forth:

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein, COUNTY and CONTRACTOR do hereby agree as follows:

//  
 //  
 //  
 //  
 //  
 //  
 //  
 //  
 //  
 //  
 //  
 //  
 //  
 //  
 //  
 //  
 //

**TABLE OF CONTENTS**

<b><u>PARAGRAPH</u></b>	<b><u>PAGE</u></b>
Title Page.....	1
Table of Contents .....	3
Referenced Contract Provisions .....	4
I. Acronyms .....	5
II. Alteration of Terms .....	6
III. Assignment of Debts.....	6
IV. Compliance .....	6
V. Confidentiality.....	9
VI. Conflict of Interest .....	9
VII. Corrective Action Plan.....	9
VIII. Cost Report.....	10
IX. Debarment and Suspension Certification .....	12
X. Delegation, Assignment and Subcontracts.....	12
XI. Dispute Resolution.....	14
XII. Employee Eligibility Verification .....	15
XIII. Equipment .....	15
XIV. Facilities, Payments and Services.....	16
XV. Indemnification and Insurance .....	17
XVI. Inspections and Audits.....	21
XVII. Licenses and Laws .....	22
XVIII. Literature, Advertisements and Social Media.....	23
XIX. Maximum Obligation.....	23
XX. Minimum Wage Laws .....	23
XXI. Nondiscrimination.....	24
XXII. Notices.....	26
XXIII. Notification of Death .....	27
XXIV. Notification of Public Events and Meetings .....	28
XXV. Participant’s Rights .....	28
XXVI. Payment Card Compliance .....	28
XXVII. Records Management and Maintenance .....	29
XXVIII. Research and Publication.....	30
XXIX. Revenue .....	30
XXX. Severability.....	30
XXXI. Special Provisions .....	30
XXXII. Status of Contractor .....	32

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37

<b><u>PARAGRAPH</u></b>	<b><u>PAGE</u></b>
XXXIII. Term .....	32
XXXIV. Termination .....	32
XXXV. Third Party Beneficiary .....	34
XXXVI. Waiver of Default or Breach.....	34
Signature Page.....	35
 <b><u>EXHIBIT A</u></b>	
I. Common Terms and Definitions .....	1
II. Budget .....	7
III. Payments .....	8
IV. Reports.....	9
V. Services .....	11
VI. Staffing .....	14
 <b><u>EXHIBIT B</u></b>	
I. Business Associate Contract.....	1
 <b><u>EXHIBIT C</u></b>	
I. Personal Information Privacy and Security.....	1
 <b><u>EXHIBIT D</u></b>	
I. Additional Terms and Conditions .....	1
 <b><u>EXHIBIT E</u></b>	
I. Certification Regarding Anti-Lobbying .....	1

**REFERENCED CONTRACT PROVISIONS**

**Term:** January 1, 2022 through March 31, 2022

**Maximum Obligation:** ~~\$2,475,804~~ \$3,759,054

**Basis for Reimbursement:** ~~Actual Cost~~ Fee for Service

**Payment Method:** Monthly in Advance

**CONTRACTOR DUNS Number:** 829919047

**CONTRACTOR TAX ID Number:** 71-1047686

**Notices to COUNTY and CONTRACTOR:**

<p>COUNTY:</p> <p>County of Orange Health Care Agency Contract Services 405 West 5th Street, Suite 600 Santa Ana, CA 92701-4637</p>	<p>CONTRACTOR:</p> <p>The Illumination Foundation 1091 N Batavia St. Orange, CA 92867 John Ing Chief Financial Officer <a href="mailto:jing@ifhomeless.org">jing@ifhomeless.org</a></p>
---	---

## I. ACRONYMS

The following standard definitions are for reference purposes only and may or may not apply in their entirety throughout this Contract:

1		
2		
3		
4	A. ARRA	American Recovery and Reinvestment Act of 2009
5	B. CalWORKs	California Work Opportunity and Responsibility for Kids
6	C. CAP	Corrective Action Plan
7	D. CCC	California Civil Code
8	E. CCR	California Code of Regulations
9	F. CES	Coordinated Entry System
10	G. CFR	Code of Federal Regulations
11	H. CHPP	COUNTY HIPAA Policies and Procedures
12	I. COC	Continuum of Care
13	J. COI	Certificate of Insurance
14	K. CPA	Certified Public Accountant
15	L. DRS	Designated Record Set
16	M. EEOC	Equal Employment Opportunity Commission
17	N. EOC	Equal Opportunity Clause
18	O. FFS	Fee For Service
19	P. FSC	Family Solutions Collaborative
20	Q. FTE	Full Time Equivalent
21	R. GAAP	Generally Accepted Accounting Principles
22	S. HCA	County of Orange Health Care Agency
23	T. HIPAA	Health Insurance Portability and Accountability Act of 1996, Public
24		Law 104-191
25	U. HMIS	Homeless Management Information System
26	V. HSC	California Health and Safety Code
27	W. HUD	U.S. Department of Housing and Urban Development
28	X. MH	Mental Health
29	Y. MHSA	Mental Health Services Act
30	Z. OCR	Federal Office for Civil Rights
31	AA. OIG	Federal Office of Inspector General
32	AB. OMB	Federal Office of Management and Budget
33	AC. OPM	Federal Office of Personnel Management
34	AD. P&P	Policy and Procedure
35	AE. PA DSS	Payment Application Data Security Standard
36	AF. PATH	Projects for Assistance in Transition from Homelessness
37	AG. PC	California Penal Code

1	AH. PCI DSS	Payment Card Industry Data Security Standards
2	AI. PHI	Protected Health Information
3	AJ. PII	Personally Identifiable Information
4	AK. PRA	California Public Records Act
5	AL. PSC	Professional Services Contract System
6	AM. SIR	Self-Insured Retention
7	AN. SMA	Statewide Maximum Allowable (rate)
8	AO. SOW	Scope of Work
9	AP. UOS	Units of Service
10	AQ. USC	United States Code
11	AR. WIC	Women, Infants and Children

## **II. ALTERATION OF TERMS**

14 A. This Contract, together with Exhibits A, B, C and D attached hereto and incorporated herein by  
15 this reference, fully expresses the complete understanding of COUNTY and CONTRACTOR with  
16 respect to the services and obligations under this Contract.

17 B. Unless otherwise expressly stated in this Contract, no addition to, or alteration of the terms of  
18 this Contract or any Exhibits thereof, whether written or verbal, made by the Parties, their officers,  
19 employees or agents shall be valid unless made in the form of a written amendment to this Contract,  
20 which has been formally approved and executed by both Parties.

## **III. ASSIGNMENT OF DEBTS**

23 Unless this Contract is followed without interruption by another contract between the Parties hereto  
24 for the same services and substantially the same scope, at the termination of this Contract,  
25 CONTRACTOR shall assign to COUNTY any debts owed to CONTRACTOR by or on behalf of  
26 persons receiving services pursuant to this Contract. CONTRACTOR shall immediately notify by mail  
27 each of the relevant Parties, specifying the date of assignment, the County of Orange as assignee, and  
28 the address to which payments are to be sent. Payments received by CONTRACTOR from or on behalf  
29 of said persons, shall be immediately given to COUNTY.

## **IV. COMPLIANCE**

32 A. COMPLIANCE PROGRAM - ADMINISTRATOR has established certain policies and  
33 procedures regarding a Compliance Program and Code of Conduct, and offers Annual Provider  
34 Trainings (together, "Compliance Program") for the purpose of ensuring adherence to all rules and  
35 regulations related to federal and state homeless service and employment programs.

1           1. ADMINISTRATOR shall provide CONTRACTOR a copy of the policies and procedures  
2 relating to ADMINISTRATOR's Compliance Program for CONTRACTOR to implement and comply  
3 with in relation to Covered Individuals performing services under this Contract.

4           2. CONTRACTOR has the option to develop and provide, or make available to,  
5 ADMINISTRATOR copies of its own Compliance Program policies and procedures.  
6 CONTRACTOR's Compliance Program policies and procedures shall be verified by  
7 ADMINISTRATOR's Compliance Department to ensure they include all required elements of the  
8 ADMINISTRATOR's Compliance Program as described in this Compliance Paragraph to this Contract  
9 prior to implementation. These elements include:

- 10           a. Designation of a Compliance Officer and/or compliance staff.  
11           b. Written standards, policies and/or procedures.  
12           c. Compliance related training and/or education program and proof of completion.  
13           d. Communication methods for reporting concerns to the Compliance Officer.  
14           e. Methodology for conducting internal monitoring and auditing.  
15           f. Methodology for detecting and correcting offenses.  
16           g. Methodology/Procedure for enforcing disciplinary standards.

17           3. If CONTRACTOR does not provide, or make available to ADMINISTRATOR, copies of  
18 its own Compliance Program policies and procedures, CONTRACTOR shall comply with  
19 ADMINISTRATOR's Compliance Program in performing the services hereunder, and shall submit to  
20 the ADMINISTRATOR within thirty (30) calendar days of execution of this Contract a signed  
21 acknowledgement that CONTRACTOR will internally comply with ADMINISTRATOR's Compliance  
22 Program. CONTRACTOR shall have as many Covered Individuals as it determines necessary,  
23 complete ADMINISTRATOR's annual compliance training to ensure proper compliance.

24           4. If CONTRACTOR elects to have its own Compliance Program, then CONTRACTOR shall  
25 submit, or make available to ADMINISTRATOR copies of that Compliance Program policies and  
26 procedures within thirty (30) calendar days of execution of this Contract. ADMINISTRATOR's  
27 Compliance Officer, or designee, shall review said documents within a reasonable time, which shall not  
28 exceed forty-five (45) calendar days, and determine if CONTRACTOR's proposed Compliance  
29 Program contains all required elements to the ADMINISTRATOR's satisfaction as consistent with the  
30 HCA's Compliance Program. ADMINISTRATOR shall inform CONTRACTOR of any missing  
31 required elements and CONTRACTOR shall revise its Compliance Program to meet  
32 ADMINISTRATOR's required elements within thirty (30) calendar days after ADMINISTRATOR's  
33 Compliance Officer's determination and resubmit the same to ADMINISTRATOR for review.

34           5. Upon written confirmation from ADMINISTRATOR's Compliance Officer that  
35 CONTRACTOR's Compliance Program contains all required elements, CONTRACTOR shall ensure  
36 that all Covered Individuals relative to this Contract are made aware of CONTRACTOR's Compliance  
37 Program and contact information for the ADMINISTRATOR's Compliance Program.

1 B. GENERAL COMPLIANCE TRAINING - ADMINISTRATOR shall make General  
2 Compliance Training available to Covered Individuals.

3 1. CONTRACTORS that have acknowledged that they will comply with  
4 ADMINISTRATOR's Compliance Program shall use their best efforts to encourage completion by all  
5 Covered Individuals; provided, however, that at a minimum CONTRACTOR shall assign at least one  
6 (1) designated representative to complete ADMINISTRATOR's General Compliance Training when  
7 offered.

8 2. Such training will be made available to Covered Individuals within thirty (30) calendar  
9 days of employment or engagement.

10 3. Such training will be made available to each Covered Individual annually.

11 4. ADMINISTRATOR will track training completion while CONTRACTOR shall provide  
12 copies of training certification upon request.

13 5. Each Covered Individual attending a group training shall certify, in writing, attendance at  
14 compliance training. ADMINISTRATOR shall provide instruction on group training completion while  
15 CONTRACTOR shall retain the training certifications. Upon written request by ADMINISTRATOR,  
16 CONTRACTOR shall provide copies of the certifications.

17 C. SPECIALIZED PROVIDER TRAINING – ADMINISTRATOR shall make Specialized  
18 Provider Training, where appropriate, available to Covered Individuals.

19 1. CONTRACTOR shall ensure completion of Specialized Provider Training by all Covered  
20 Individuals relative to this Contract. This includes compliance with federal and state HOMELESS  
21 SERVICES program regulations and procedures or instructions otherwise communicated by regulatory  
22 agencies.

23 2. Such training will be made available to Covered Individuals within thirty (30) calendar  
24 days of employment or engagement.

25 3. Such training will be made available to each Covered Individual annually.

26 4. ADMINISTRATOR will track online completion of training while CONTRACTOR shall  
27 provide copies of the certifications upon request.

28 5. Each Covered Individual attending a group training shall certify, in writing, attendance at  
29 compliance training. ADMINISTRATOR shall provide instructions on completing the training in a  
30 group setting while CONTRACTOR shall retain the certifications. Upon written request by  
31 ADMINISTRATOR, CONTRACTOR shall provide copies of the certifications.

32 D. Failure to comply with the obligations stated in this Compliance Paragraph shall constitute a  
33 breach of the Contract on the part of CONTRACTOR and be grounds for COUNTY to terminate the  
34 Contract.

## **V. CONFIDENTIALITY**

A. CONTRACTOR shall maintain the confidentiality of all records, including billings and any audio and/or video recordings, in accordance with all applicable federal, state and county codes and regulations, as they now exist or may hereafter be amended or changed.

1. CONTRACTOR acknowledges and agrees that all persons served pursuant to this Contract are Participants of the Cold Weather Emergency Shelter program, and therefore it may be necessary for authorized staff of ADMINISTRATOR to audit Participants files, or to exchange information regarding specific Participants with COUNTY or other providers of related services contracting with COUNTY.

2. CONTRACTOR acknowledges and agrees that it shall be responsible for obtaining written consents for the release of information from all persons served by CONTRACTOR pursuant to this Contract.

3. In the event of a collaborative service agreement between Homeless Services providers, CONTRACTOR acknowledges and agrees that it is responsible for obtaining releases of information, from the collaborative agency, for Participants receiving services through the collaborative agreement.

B. Prior to providing any services pursuant to this Contract, all members of the Board of Directors or its designee or authorized agent, employees, consultants, subcontractors, volunteers and interns of CONTRACTOR shall agree, in writing, with CONTRACTOR to maintain the confidentiality of any and all information and records which may be obtained in the course of providing such services. This Contract shall specify that it is effective irrespective of all subsequent resignations or terminations of CONTRACTOR members of the Board of Directors or its designee or authorized agent, employees, consultants, subcontractors, volunteers and interns.

## **VI. CONFLICT OF INTEREST**

CONTRACTOR shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with COUNTY interests. This obligation shall also apply to CONTRACTOR's employees, agents, subcontractors, consultants, volunteers and interns associated with the provision of services provided under this Contract. CONTRACTOR's efforts shall include, but not be limited to, establishing rules and procedures preventing its employees, agents, subcontractors, consultants, volunteers and interns from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence COUNTY staff or elected officers in the performance of their duties.

## **VII. CORRECTIVE ACTION PLAN**

A. CONTRACTOR shall be responsible for meeting all programmatic and administrative contracted objectives and requirements as indicated in this Contract. CONTRACTOR shall be subject to the issuance of a CAP for the failure to perform to the level of contracted objectives, continuing to not meet goals and expectations, and/or for non-compliance. If CAPs are not completed within an

1 acceptable timeframe as determined by ADMINISTRATOR, ADMINISTRATOR reserves the right to  
 2 reduce and/or withhold payments until such time as the CAP is resolved to the satisfaction of the  
 3 ADMINISTRATOR. Failure to resolve the CAP to ADMINISTRATOR's satisfaction will constitute a  
 4 material breach and be grounds for termination of this Contract.

### 6 **VIII. COST REPORT**

7 A. CONTRACTOR shall submit a Cost Report to County no later than sixty (60) calendar days  
 8 following termination of this Contract. CONTRACTOR shall prepare the Cost Report in accordance  
 9 with all applicable federal, state and COUNTY requirements, GAAP and the Special Provisions  
 10 Paragraph of this Contract. CONTRACTOR shall allocate direct and indirect costs to and between  
 11 programs, cost centers, services, and funding sources in accordance with such requirements and  
 12 consistent with prudent business practice, which costs and allocations shall be supported by source  
 13 documentation maintained by CONTRACTOR, and available at any time to ADMINISTRATOR upon  
 14 reasonable notice.

15 1. If CONTRACTOR fails to submit an accurate and complete Cost Report within the time  
 16 period specified above, ADMINISTRATOR shall have sole discretion to impose one or both of the  
 17 following:

18 a. CONTRACTOR may be assessed a late penalty of five-hundred dollars (\$500) for each  
 19 business day after the above specified due date that the accurate and complete Cost Report is not  
 20 submitted. Imposition of the late penalty shall be at the sole discretion of the ADMINISTRATOR. The  
 21 late penalty shall be assessed separately on each outstanding Cost Report due COUNTY by  
 22 CONTRACTOR.

23 b. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR  
 24 pursuant to any or all agreements between COUNTY and CONTRACTOR until such time that the  
 25 accurate and complete Cost Report is delivered to ADMINISTRATOR.

26 2. CONTRACTOR may request, in advance and in writing, an extension of the due date of the  
 27 Cost Report setting forth good cause for justification of the request. Approval of such requests shall be  
 28 at the sole discretion of ADMINISTRATOR and shall not be unreasonably denied.

29 3. In the event that CONTRACTOR does not submit an accurate and complete Cost Report  
 30 within one hundred and eighty (180) calendar days following the termination of this Contract, and  
 31 CONTRACTOR has not entered into a subsequent or new Contract for any other services with  
 32 COUNTY, then all amounts paid to CONTRACTOR by COUNTY during the term of the Contract shall  
 33 be immediately reimbursed to COUNTY.

34 B. The Cost Report shall be the final financial and statistical report submitted by CONTRACTOR  
 35 to COUNTY, and shall serve as the basis for final settlement to CONTRACTOR. CONTRACTOR  
 36 shall document that costs are reasonable and allowable and directly or indirectly related to the services  
 37

1 to be provided hereunder. The Cost Report shall be the final financial record for subsequent audits, if  
2 any.

3 C. Final settlement shall be based upon the actual and reimbursable costs for services hereunder,  
4 less applicable revenues and any late penalty, not to exceed COUNTY's Maximum Obligation as set  
5 forth in the Referenced Contract Provisions of this Contract. CONTRACTOR shall not claim  
6 expenditures to COUNTY which are not reimbursable pursuant to applicable federal, state and  
7 COUNTY laws, regulations and requirements. Any payment made by COUNTY to CONTRACTOR,  
8 which is subsequently determined to have been for an unreimbursable expenditure or service, shall be  
9 repaid by CONTRACTOR to COUNTY in cash, or other authorized form of payment, within thirty (30)  
10 calendar days of submission of the Cost Report or COUNTY may elect to reduce any amount owed  
11 CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

12 D. If the Cost Report indicates the actual and reimbursable costs of services provided pursuant to  
13 this Contract, less applicable revenues and late penalty, are lower than the aggregate of interim monthly  
14 payments to CONTRACTOR, CONTRACTOR shall remit the difference to COUNTY. Such  
15 reimbursement shall be made, in cash, or other authorized form of payment, with the submission of the  
16 Cost Report. If such reimbursement is not made by CONTRACTOR within thirty (30) calendar days  
17 after submission of the Cost Report, COUNTY may, in addition to any other remedies, reduce any  
18 amount owed CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

19 E. If the Cost Report indicates the actual and reimbursable costs of services provided pursuant to  
20 this Contract, less applicable revenues and late penalty, are higher than the aggregate of interim monthly  
21 payments to CONTRACTOR, COUNTY shall pay CONTRACTOR the difference, provided such  
22 payment does not exceed the Maximum Obligation of COUNTY.

23 F. All Cost Reports shall contain the following attestation, which may be typed directly on or  
24 attached to the Cost Report:

25  
26 "I HEREBY CERTIFY that I have executed the accompanying Cost Report and  
27 supporting documentation prepared by \_\_\_\_\_ for the cost report period  
28 beginning \_\_\_\_\_ and ending \_\_\_\_\_ and that, to the best of my  
29 knowledge and belief, costs reimbursed through this Contract are reasonable and  
30 allowable and directly or indirectly related to the services provided and that this Cost  
31 Report is a true, correct, and complete statement from the books and records of  
32 (provider name) in accordance with applicable instructions, except as noted. I also  
33 hereby certify that I have the authority to execute the accompanying Cost Report.

34  
35 Signed \_\_\_\_\_  
36 Name \_\_\_\_\_  
37 Title \_\_\_\_\_

Date \_\_\_\_\_"

**IX. DEBARMENT AND SUSPENSION CERTIFICATION**

A. CONTRACTOR certifies that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded, or placed on any such lists, by any federal department or agency.

2. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

3. Are not presently indicted for or otherwise criminally or civilly charged by a federal, state, or local governmental entity with commission of any of the offenses enumerated in Subparagraph A.2. above.

4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

5. Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR Part 9, Subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction unless authorized by the State of California.

6. Shall include without modification, the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transaction," (i.e., transactions with sub-grantees and/or contractors) and in all solicitations for lower tier covered transactions in accordance with 2 CFR Part 376.

B. The terms and definitions of this paragraph have the meanings set out in the Definitions and Coverage sections of the rules implementing 51 F.R. 6370.

**X. DELEGATION, ASSIGNMENT AND SUBCONTRACTS**

A. CONTRACTOR may not delegate the obligations hereunder, either in whole or in part, without prior written consent of COUNTY. CONTRACTOR shall provide written notification of CONTRACTOR's intent to delegate the obligations hereunder, either in whole or part, to ADMINISTRATOR not less than sixty (60) calendar days prior to the effective date of the delegation. Any attempted delegation in derogation of this paragraph shall be void.

B. CONTRACTOR agrees that if there is an assignment of this Contract by CONTRACTOR, as defined below, prior to completion of this Contract, and COUNTY agrees to such assignment, the new owners shall be required under the terms of sale or such other instruments of transfer for the assignment

1 to assume CONTRACTOR's duties and obligations contained in this Contract and complete them to the  
2 satisfaction of COUNTY. CONTRACTOR may not assign the rights hereunder, either in whole or in  
3 part, without the prior written consent of COUNTY. CONTRACTOR shall provide written notification  
4 of CONTRACTOR's intent to assign the obligations hereunder, either in whole or part, to  
5 ADMINISTRATOR not less than sixty (60) calendar days prior to the effective date of the assignment.  
6 COUNTY reserves the right to immediately terminate the Contract in the event COUNTY determines,  
7 in its sole discretion that, the assignee is not qualified or is otherwise unacceptable to COUNTY for the  
8 provision of services under the Contract. Any attempted assignment in derogation of this subparagraph  
9 shall be void.

10 1. Nonprofit Entity Assignment. If CONTRACTOR is a nonprofit organization, any change  
11 from a nonprofit corporation to any other corporate structure of CONTRACTOR, including a change in  
12 more than fifty percent (50%) of the composition of the Board of Directors within a two (2) month  
13 period of time, shall be deemed an assignment for purposes of this paragraph, unless CONTRACTOR is  
14 transitioning from a community clinic/health center to a Federally Qualified Health Center and has been  
15 so designated by the Federal Government.

16 2. For-Profit Entity Assignment. If CONTRACTOR is a for-profit organization, any change in  
17 the business structure, including but not limited to, the sale or transfer of more than ten percent (10%) of  
18 the assets or stocks of CONTRACTOR, change to another corporate structure, including a change to a  
19 sole proprietorship, or a change in fifty percent (50%) or more of Board of Directors or any governing  
20 body of CONTRACTOR at one time shall be deemed an assignment pursuant to this paragraph.

21 3. Governmental Entity Assignment. If CONTRACTOR is a governmental organization, any  
22 change to another structure, including a change in more than fifty percent (50%) of the composition of  
23 its governing body (i.e. Board of Supervisors, City Council, School Board) within a two (2) month  
24 period of time, shall be deemed an assignment for purposes of this paragraph.

25 4. Whether CONTRACTOR is a nonprofit, for-profit, or a governmental organization,  
26 CONTRACTOR shall provide written notification within thirty (30) calendar days to  
27 ADMINISTRATOR when there is change of less than fifty percent (50%) of Board of Directors or any  
28 governing body of CONTRACTOR at one time.

29 C. CONTRACTOR's obligations undertaken pursuant to this Contract may be carried out  
30 by means of subcontracts, provided such subcontractors are approved in advance by  
31 ADMINISTRATOR, meet the requirements of this Contract as they relate to the service or activity  
32 under subcontract, include any provisions that ADMINISTRATOR may require, and are authorized in  
33 writing by ADMINISTRATOR prior to the beginning of service delivery.

34 1. After approval of the subcontractor, ADMINISTRATOR may revoke the approval of the  
35 subcontractor upon five (5) calendar days' written notice to CONTRACTOR if the subcontractor  
36 subsequently fails to meet the requirements of this Contract or any provisions that ADMINISTRATOR  
37 has required. ADMINISTRATOR may disallow subcontractor expenses reported by CONTRACTOR.

1 2. No subcontract shall terminate or alter the responsibilities of CONTRACTOR to COUNTY  
2 pursuant to this Contract.

3 3. ADMINISTRATOR may disallow, from payments otherwise due CONTRACTOR,  
4 amounts claimed for subcontracts not approved in accordance with this paragraph.

5 4. This provision shall not be applicable to service agreements usually and customarily  
6 entered into by CONTRACTOR to obtain or arrange for supplies, technical support, and professional  
7 services provided by consultants.

8 D. CONTRACTOR shall notify COUNTY in writing of any change in CONTRACTOR's status  
9 with respect to a name change. CONTRACTOR is also obligated to notify COUNTY in writing if  
10 CONTRACTOR becomes a party to any litigation against COUNTY, or a party to litigation that may  
11 reasonably affect CONTRACTOR's performance under the Contract, as well as any potential conflicts  
12 of interest between CONTRACTOR and COUNTY that may arise prior to or during the period of  
13 Contract performance.

#### 14 **XI. DISPUTE RESOLUTION**

15  
16 A. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the  
17 dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a  
18 reasonable period of time by CONTRACTOR and the ADMINISTRATOR, such matter shall be  
19 brought to the attention of the County Purchasing Agent by way of the following process:

20 1. CONTRACTOR shall submit to the County Purchasing Agent a written demand for a final  
21 decision regarding the disposition of any dispute between the Parties arising under, related to, or  
22 involving this Contract.

23 2. CONTRACTOR's written demand shall be fully supported by factual information, and  
24 shall include with the demand a written statement signed by an authorized representative indicating that  
25 the demand is made in good faith, that the supporting data are accurate and complete. If such demand  
26 involves a cost adjustment to the Contract, CONTRACTOR's written statement shall state that the  
27 amount requested accurately reflects the Contract adjustment for which CONTRACTOR believes  
28 COUNTY is liable.

29 B. Pending the final resolution of any dispute arising under, related to, or involving this Contract,  
30 CONTRACTOR agrees to proceed diligently with the performance of services secured via this Contract,  
31 including the provision of services. CONTRACTOR's failure to proceed diligently shall constitute a  
32 material breach and be grounds for termination of this Contract.

33 C. Any final decision of COUNTY shall be expressly identified as such, shall be in writing, and  
34 shall be signed by the County Purchasing Agent or deputy. If COUNTY fails to render a decision  
35 within ninety (90) calendar days after receipt of CONTRACTOR's demand, it shall be deemed a final  
36 decision adverse to CONTRACTOR's contentions.

1 D. This Contract has been negotiated and executed in the State of California and shall be governed  
 2 by and construed under the laws of the State of California. In the event of any legal action to enforce or  
 3 interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in  
 4 Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of  
 5 such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically  
 6 agree to waive any and all rights to request that an action be transferred for adjudication to another  
 7 county.

## 8 9 **XII. EMPLOYEE ELIGIBILITY VERIFICATION**

10 CONTRACTOR attests that it shall fully comply with all federal and state statutes and regulations  
 11 regarding the employment of aliens and others and to ensure that employees, subcontractors, and  
 12 consultants performing work under this Contract meet the citizenship or alien status requirements set  
 13 forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees,  
 14 subcontractors, and consultants performing work hereunder, all verification and other documentation of  
 15 employment eligibility status required by federal or state statutes and regulations including, but not  
 16 limited to, the Immigration Reform and Control Act of 1986, 8 USC §1324 et seq., as they currently  
 17 exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all  
 18 covered employees, subcontractors, and consultants for the period prescribed by the law.

## 19 20 **XIII. EQUIPMENT**

21 A. Unless otherwise specified in writing by ADMINISTRATOR, Equipment is defined as all  
 22 property of a Relatively Permanent nature with significant value, purchased in whole or in part by  
 23 ADMINISTRATOR to assist in performing the services described in this Contract. "Relatively  
 24 Permanent" is defined as having a useful life of one (1) year or longer. Equipment which costs \$5,000  
 25 or over, including freight charges, sales taxes, and other taxes, and installation costs are defined as  
 26 Capital Assets. Equipment which costs between \$600 and \$5,000, including freight charges, sales taxes  
 27 and other taxes, and installation costs, or electronic equipment that costs less than \$600 but may contain  
 28 PHI or PII, are defined as Controlled Equipment. Controlled Equipment includes, but is not limited to  
 29 phones, tablets, audio/visual equipment, computer equipment, and lab equipment. The cost of  
 30 Equipment purchased, in whole or in part, with funds paid pursuant to this Contract shall be depreciated  
 31 according to GAAP.

32 B. CONTRACTOR shall obtain ADMINISTRATOR's written approval prior to purchase of any  
 33 Equipment with funds paid pursuant to this Contract. Upon delivery of Equipment, CONTRACTOR  
 34 shall forward to ADMINISTRATOR, copies of the purchase order, receipt, and other supporting  
 35 documentation, which includes delivery date, unit price, tax, shipping and serial numbers.  
 36 CONTRACTOR shall request an applicable asset tag for said Equipment and shall include each  
 37 purchased asset in an Equipment inventory.

1 C. Upon ADMINISTRATOR's prior written approval, CONTRACTOR may expense to  
 2 COUNTY the cost of the approved Equipment purchased by CONTRACTOR. To "expense," in  
 3 relation to Equipment, means to charge the proportionate cost of Equipment in the fiscal year in which it  
 4 is purchased. Title of expensed Equipment shall be vested with COUNTY.

5 D. CONTRACTOR shall maintain an inventory of all Equipment purchased in whole or in part  
 6 with funds paid through this Contract, including date of purchase, purchase price, serial number, model  
 7 and type of Equipment. Such inventory shall be available for review by ADMINISTRATOR, and shall  
 8 include the original purchase date and price, useful life, and balance of depreciated Equipment cost, if  
 9 any.

10 E. CONTRACTOR shall cooperate with ADMINISTRATOR in conducting periodic physical  
 11 inventories of all Equipment. Upon demand by ADMINISTRATOR, CONTRACTOR shall return any  
 12 or all Equipment to COUNTY.

13 F. CONTRACTOR must report any loss or theft of Equipment in accordance with the procedure  
 14 approved by ADMINISTRATOR and the Notices Paragraph of this Contract. In addition,  
 15 CONTRACTOR must complete and submit to ADMINISTRATOR a notification form when items of  
 16 Equipment are moved from one location to another or returned to COUNTY as surplus.

17 G. Unless this Contract is followed without interruption by another contract between the Parties for  
 18 substantially the same type and scope of services, at the termination of this Contract for any cause,  
 19 CONTRACTOR shall return to COUNTY all Equipment purchased with funds paid through this  
 20 Contract.

21 H. CONTRACTOR shall maintain and administer a sound business program for ensuring the  
 22 proper use, maintenance, repair, protection, insurance, and preservation of COUNTY Equipment.

#### 23 24 **XIV. FACILITIES, PAYMENTS AND SERVICES**

25 A. CONTRACTOR agrees to provide the services, staffing, facilities, and supplies in accordance  
 26 with this Contract. COUNTY shall compensate, and authorize, when applicable, said services.  
 27 CONTRACTOR shall operate continuously throughout the term of this Contract with at least the  
 28 minimum number and type of staff which meet applicable federal and state requirements, and which are  
 29 necessary for the provision of the services hereunder. Service disruptions must be reported to COUNTY  
 30 immediately and be approved in writing by the ADMINISTRATOR

31 B. In the event that CONTRACTOR is unable to provide the services, staffing, facilities, or  
 32 supplies as required, ADMINISTRATOR may, at its sole discretion, reduce the Maximum Obligation.  
 33 The reduction to the Maximum Obligation shall be in an amount proportionate to the number of days in  
 34 which CONTRACTOR was determined to be unable to provide services, staffing, facilities or supplies.  
 35  
 36  
 37

**XV. INDEMNIFICATION AND INSURANCE**

1  
2 A. CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY,  
3 and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special  
4 districts and agencies for which COUNTY's Board of Supervisors acts as the governing Board  
5 ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature,  
6 including but not limited to personal injury or property damage, arising from or related to the services,  
7 products or other performance provided by CONTRACTOR pursuant to this Contract. If judgment is  
8 entered against CONTRACTOR and COUNTY by a court of competent jurisdiction because of the  
9 concurrent active negligence of COUNTY or COUNTY INDEMNITEES, CONTRACTOR and  
10 COUNTY agree that liability will be apportioned as determined by the court. Neither Party shall  
11 request a jury apportionment.

12 B. Prior to the provision of services under this Contract, CONTRACTOR agrees to purchase all  
13 required insurance at CONTRACTOR's expense, including all endorsements required herein, necessary  
14 to satisfy COUNTY that the insurance provisions of this Contract have been complied with.  
15 CONTRACTOR agrees to keep such insurance coverage, Certificates of Insurance, and endorsements  
16 on deposit with COUNTY during the entire term of this Contract. In addition, all subcontractors  
17 performing work on behalf of CONTRACTOR pursuant to this Contract shall obtain insurance subject  
18 to the same terms and conditions as set forth herein for CONTRACTOR.

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

28 D. All SIRs shall be clearly stated on the COI. Any SIR in an amount in excess of fifty thousand  
29 dollars (\$50,000) shall specifically be approved by the CEO/Office of Risk Management upon review of  
30 CONTRACTOR's current audited financial report. If CONTRACTOR's SIR is approved,  
31 CONTRACTOR, in addition to, and without limitation of, any other indemnity provision(s) in this  
32 Contract, agrees to all of the following:

33 1. In addition to the duty to indemnify and hold COUNTY harmless against any and all  
34 liability, claim, demand or suit resulting from CONTRACTOR's, its agents, employee's or  
35 subcontractor's performance of this Contract, CONTRACTOR shall defend COUNTY at its sole cost  
36 and expense with counsel approved by Board of Supervisors against same; and  
37

1           2. CONTRACTOR's duty to defend, as stated above, shall be absolute and irrespective of any  
2 duty to indemnify or hold harmless; and

3           3. The provisions of California Civil Code Section 2860 shall apply to any and all actions to  
4 which the duty to defend stated above applies, and CONTRACTOR's SIR provision shall be interpreted  
5 as though CONTRACTOR was an insurer and COUNTY was the insured.

6           E. If CONTRACTOR fails to maintain insurance acceptable to COUNTY for the full term of this  
7 Contract, COUNTY may terminate this Contract.

8           F. QUALIFIED INSURER

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

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

17           G. The policy or policies of insurance maintained by CONTRACTOR shall provide the minimum  
18 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 (4 passengers or less)	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Network Security & Privacy Liability	\$1,000,000 per claims made
Professional Liability Insurance	\$1,000,000 per claims-made \$1,000,000 aggregate
Sexual Misconduct Liability	\$1,000,000 per occurrence

1	Employee Dishonesty	\$1,000,000 per occurrence
2	(Client Coverage)	(Limit commensurate with exposure)

3

4 H. REQUIRED COVERAGE FORMS

5 1. The Commercial General Liability coverage shall be written on ISO form CG 00 01, or a  
6 substitute form providing liability coverage at least as broad.

7 2. The Business Automobile Liability coverage shall be written on ISO form CA 00 01,  
8 CA 00 05, CA 00 12, CA 00 20, or a substitute form providing coverage at least as broad.

9 I. REQUIRED ENDORSEMENTS

10 1. The Commercial General Liability policy shall contain the following endorsements, which  
11 shall accompany the COI:

12 a. An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least  
13 as broad naming the County of Orange, its elected and appointed officials, officers, agents and  
14 **employees** as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY**  
15 **WRITTEN CONTRACT.**

16 b. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at  
17 least as broad evidencing that CONTRACTOR's insurance is primary and any insurance or self-  
18 insurance maintained by the County of Orange shall be excess and non-contributing.

19 2. The Network Security and Privacy Liability policy shall contain the following  
20 endorsements which shall accompany the Certificate of Insurance:

21 a. An Additional Insured endorsement naming the County of Orange, its elected and  
22 appointed officials, officers, agents and employees as Additional Insureds for its vicarious liability.

23 b. A primary and non-contributing endorsement evidencing that CONTRACTOR's  
24 insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be  
25 excess and non-contributing.

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

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

33 L. The County of Orange shall be the loss payee on the Employee Dishonesty coverage. A Loss  
34 Payee endorsement evidencing that the County of Orange is a Loss Payee shall accompany the  
35 Certificate of Insurance.

36 M. CONTRACTOR shall notify COUNTY in writing within thirty (30) business days of any policy  
37 cancellation and within ten (10) business days for non-payment of premium and provide a copy of the

1 cancellation notice to COUNTY. Failure to provide written notice of cancellation shall constitute a  
2 breach of CONTRACTOR's obligation hereunder and ground for COUNTY to suspend or terminate  
3 this Contract.

4 N. If CONTRACTOR's Network Security & Privacy Liability is a "Claims Made" policy,  
5 CONTRACTOR shall agree to maintain coverage for two (2) years following the completion of the  
6 Contract.

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

9 P. Insurance certificates should be forwarded to COUNTY at the address specified in the  
10 Referenced Contract Provisions of this Contract.

11 Q. If CONTRACTOR fails to provide the insurance certificates and endorsements within seven (7)  
12 calendar days of notification by CEO/Purchasing or the agency/department purchasing division, the  
13 Contract may be terminated by COUNTY without penalty.

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

18 S. COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If  
19 CONTRACTOR does not deposit copies of acceptable Certificate of Insurance and endorsements with  
20 COUNTY incorporating such changes within thirty (30) calendar days of receipt of such notice, this  
21 Contract may be in breach without further notice to CONTRACTOR, and COUNTY shall be entitled to  
22 all legal remedies.

23 T. The procuring of such required policy or policies of insurance shall not be construed to limit  
24 CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of  
25 this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

#### 26 U. SUBMISSION OF INSURANCE DOCUMENTS

27 1. The COI and endorsements shall be provided to COUNTY as follows:  
28 a. Prior to the start date of this Contract.  
29 b. No later than the expiration date for each policy.  
30 c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding  
31 changes to any of the insurance requirements as set forth in the Coverage Subparagraph above.

32 2. The COI and endorsements shall be provided to COUNTY at the address as specified in the  
33 Referenced Contract Provisions of this Contract.

34 3. If CONTRACTOR fails to submit the COI and endorsements that meet the insurance  
35 provisions stipulated in this Contract by the above specified due dates, ADMINISTRATOR shall have  
36 sole discretion to impose one or both of the following:  
37

1 a. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR  
 2 pursuant to any and all contracts between COUNTY and CONTRACTOR until such time that the  
 3 required COI and endorsements that meet the insurance provisions stipulated in this Contract are  
 4 submitted to ADMINISTRATOR.

5 b. CONTRACTOR may be assessed a penalty of one hundred dollars (\$100) for each late  
 6 COI or endorsement for each business day, pursuant to any and all contracts between COUNTY and  
 7 CONTRACTOR, until such time that the required COI and endorsements that meet the insurance  
 8 provisions stipulated in this Contract are submitted to ADMINISTRATOR.

9 c. If CONTRACTOR is assessed a late penalty, the amount shall be deducted from  
 10 CONTRACTOR's monthly invoice.

11 4. In no cases shall assurances by CONTRACTOR, its employees, agents, including any  
 12 insurance agent, be construed as adequate evidence of insurance. COUNTY will only accept valid COIs  
 13 and endorsements, or in the interim, an insurance binder as adequate evidence of insurance coverage.  
 14

#### 15 **XVI. INSPECTIONS AND AUDITS**

16 A. ADMINISTRATOR, any authorized representative of COUNTY, any authorized representative  
 17 of the State of California, the Comptroller General of the United States, or any other of their authorized  
 18 representatives, shall to the extent permissible under applicable law have access to any books,  
 19 documents, and records, including but not limited to, financial statements, general ledgers, relevant  
 20 accounting systems, and Participant records, of CONTRACTOR that are directly pertinent to this  
 21 Contract, for the purpose of responding to a beneficiary complaint or conducting an audit, review,  
 22 evaluation, or examination, or making transcripts during the periods of retention set forth in the Records  
 23 Management and Maintenance Paragraph of this Contract. Such persons may at all reasonable times  
 24 inspect or otherwise evaluate the services provided pursuant to this Contract, and the premises in which  
 25 they are provided.

26 B. CONTRACTOR shall actively participate and cooperate with any person specified in  
 27 Subparagraph A. above in any evaluation or monitoring of the services provided pursuant to this  
 28 Contract, and shall provide the above-mentioned persons adequate office space to conduct such  
 29 evaluation or monitoring.

#### 30 **C. AUDIT RESPONSE**

31 1. Following an audit report, in the event of non-compliance with applicable laws and  
 32 regulations governing funds provided through this Contract, COUNTY may terminate this Contract as  
 33 provided for in the Termination Paragraph or direct CONTRACTOR to immediately implement  
 34 appropriate corrective action. A CAP shall be submitted to ADMINISTRATOR in writing within thirty  
 35 (30) calendar days after receiving notice from ADMINISTRATOR.

36 2. If the audit reveals that money is payable from one Party to the other, that is,  
 37 reimbursement by CONTRACTOR to COUNTY, or payment of sums due from COUNTY to

1 CONTRACTOR, said funds shall be due and payable from one Party to the other within sixty (60)  
 2 calendar days of receipt of the audit results. If reimbursement is due from CONTRACTOR to  
 3 COUNTY, and such reimbursement is not received within said sixty (60) calendar days, COUNTY may,  
 4 in addition to any other remedies provided by law, reduce any amount owed CONTRACTOR by an  
 5 amount not to exceed the reimbursement due COUNTY.

6 D. CONTRACTOR shall retain a licensed certified public accountant, who will prepare and file  
 7 with ADMINISTRATOR, an annual, independent, organization-wide audit of related expenditures as  
 8 may be required during the term of this Contract.

9 E. CONTRACTOR shall forward to ADMINISTRATOR a copy of any audit report within  
 10 fourteen (14) calendar days of receipt. Such audit shall include, but not be limited to, management,  
 11 financial, programmatic or any other type of audit of CONTRACTOR's operations, whether or not the  
 12 cost of such operation or audit is reimbursed in whole or in part through this Contract.

### 13 14 **XVII. LICENSES AND LAWS**

15 A. CONTRACTOR, its officers, agents, employees, affiliates, and subcontractors shall, throughout  
 16 the term of this Contract, maintain all necessary licenses, permits, approvals, certificates, accreditations,  
 17 waivers, and exemptions necessary for the provision of the services hereunder and required by the laws,  
 18 regulations and requirements of the United States, the State of California, COUNTY, and all other  
 19 applicable governmental agencies. CONTRACTOR shall notify ADMINISTRATOR immediately and  
 20 in writing of its inability to obtain or maintain, irrespective of the pendency of any hearings or appeals,  
 21 permits, licenses, approvals, certificates, accreditations, waivers and exemptions. Said inability shall be  
 22 cause for termination of this Contract.

23 B. CONTRACTOR shall comply with all applicable governmental laws, regulations, and  
 24 requirements as they exist now or may be hereafter amended or changed. The applicable provisions of  
 25 laws, regulations, and requirements for the provision of services under this Contract shall include, but  
 26 not be limited to, the following:

- 27 1. ARRA of 2009.
- 28 2. Trafficking Victims Protection Act of 2000.
- 29 3. PC, §§11164-11174.3, Child Abuse and Neglect Reporting Act.
- 30 4. CCR, Title 9, Rehabilitative and Developmental Services.
- 31 5. CCR, Title 17, Public Health.
- 32 6. CCR, Title 22, Social Security.
- 33 7. CFR, Title 42, Public Health.
- 34 8. CFR, Title 45, Public Welfare.
- 35 9. USC Title 42. Public Health and Welfare.
- 36 10. 42 USC §12101 et seq., Americans with Disabilities Act of 1990.
- 37 11. 42 USC §1857, et seq., Clean Air Act.

1 12. 33 USC 84, §308 and §§1251 et seq., the Federal Water Pollution Control Act.

2 13. 31 USC 7501.70, Federal Single Audit Act of 1984.

3 14. McKinney-Vento Homeless Assistance Act

4 15. 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200,  
5 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal  
6 Awards.

7  
8 **XVIII. LITERATURE, ADVERTISEMENTS AND SOCIAL MEDIA**

9 A. Any written information or literature, including educational or promotional materials,  
10 distributed by CONTRACTOR to any person or organization for purposes directly or indirectly related  
11 to this Contract must be approved at least thirty (30) business days in advance and in writing by  
12 ADMINISTRATOR before distribution. For the purposes of this Contract, distribution of written  
13 materials shall include, but not be limited to, pamphlets, brochures, flyers, newspaper or magazine ads,  
14 and electronic media such as the Internet.

15 B. Any advertisement through radio, television broadcast, or the Internet, for educational or  
16 promotional purposes, made by CONTRACTOR for purposes directly or indirectly related to this  
17 Contract must be approved in advance at least thirty (30) business days and in writing by  
18 ADMINISTRATOR.

19 C. If CONTRACTOR uses social media (such as Facebook, Twitter, YouTube or other publicly  
20 available social media sites) in support of the services described within this Contract, CONTRACTOR  
21 shall develop social media policies and procedures and have them available to ADMINISTRATOR  
22 upon reasonable notice. CONTRACTOR shall inform ADMINISTRATOR of all forms of social media  
23 used to either directly or indirectly support the services described within this Contract. CONTRACTOR  
24 shall comply with COUNTY Social Media Use Policy and Procedures as they pertain to any social  
25 media developed in support of the services described within this Contract. CONTRACTOR shall also  
26 include any required funding statement information on social media when required by  
27 ADMINISTRATOR.

28 D. Any information as described in Subparagraphs A. and B. above shall not imply endorsement  
29 by COUNTY, unless ADMINISTRATOR consents thereto in writing.

30  
31 **XIX. MAXIMUM OBLIGATION**

32 A. The Maximum Obligation of COUNTY for services provided in accordance with this Contract  
33 is as specified in the Referenced Contract Provisions of this Contract.

34 B. ADMINISTRATOR may amend the Maximum Obligation by an amount not to exceed ten  
35 percent (10%) of funding for this Contract.

36  
37 **XX. MINIMUM WAGE LAWS**

1 A. Pursuant to the United States of America Fair Labor Standards Act of 1938, as amended, and  
 2 State of California Labor Code, §1178.5, CONTRACTOR shall pay no less than the greater of the  
 3 federal or California Minimum Wage to all its Covered Individuals (as defined herein) that directly or  
 4 indirectly provide services pursuant to this Contract, in any manner whatsoever. CONTRACTOR shall  
 5 require and verify that all of its Covered Individuals providing services pursuant to this Contract be paid  
 6 no less than the greater of the federal or California Minimum Wage.

7 B. CONTRACTOR shall comply and verify that its Covered Individuals comply with all other  
 8 federal and State of California laws for minimum wage, overtime pay, record keeping, and child labor  
 9 standards pursuant to providing services pursuant to this Contract.

10 C. Notwithstanding the minimum wage requirements provided for in this clause, CONTRACTOR,  
 11 where applicable, shall comply with the prevailing wage and related requirements, as provided for in  
 12 accordance with the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the  
 13 State of California (§§1770, et seq.), as it now exists or may hereafter be amended.

## 14 **XXI. NONDISCRIMINATION**

### 15 **A. EMPLOYMENT**

16 1. During the term of this Contract, CONTRACTOR and its Covered Individuals (as defined  
 17 in the "Compliance" paragraph of this Contract) shall not unlawfully discriminate against any employee  
 18 or applicant for employment because of his/her race, religious creed, color, national origin, ancestry,  
 19 physical disability, mental disability, medical condition, genetic information, marital status, sex, gender,  
 20 gender identity, gender expression, age, sexual orientation, or military and veteran status. Additionally,  
 21 during the term of this Contract, CONTRACTOR and its Covered Individuals shall require in its  
 22 subcontracts that subcontractors shall not unlawfully discriminate against any employee or applicant for  
 23 employment because of his/her race, religious creed, color, national origin, ancestry, physical disability,  
 24 mental disability, medical condition, genetic information, marital status, sex, gender, gender identity,  
 25 gender expression, age, sexual orientation, or military and veteran status.

26 2. CONTRACTOR and its Covered Individuals shall not discriminate against employees or  
 27 applicants for employment in the areas of employment, promotion, demotion or transfer; recruitment or  
 28 recruitment advertising, layoff or termination; rate of pay or other forms of compensation; and selection  
 29 for training, including apprenticeship.

30 3. CONTRACTOR shall not discriminate between employees with spouses and employees  
 31 with domestic partners, or discriminate between domestic partners and spouses of those employees, in  
 32 the provision of benefits.

33 4. CONTRACTOR shall post in conspicuous places, available to employees and applicants for  
 34 employment, notices from ADMINISTRATOR and/or the United States Equal Employment  
 35 Opportunity Commission setting forth the provisions of the EOC.  
 36  
 37

1           5. All solicitations or advertisements for employees placed by or on behalf of  
2 CONTRACTOR and/or subcontractor shall state that all qualified applicants will receive consideration  
3 for employment without regard to race, religious creed, color, national origin, ancestry, physical  
4 disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender  
5 identity, gender expression, age, sexual orientation, or military and veteran status. Such requirements  
6 shall be deemed fulfilled by use of the term EOE.

7           6. Each labor union or representative of workers with which CONTRACTOR and/or  
8 subcontractor has a collective bargaining agreement or other contract or understanding must post a  
9 notice advising the labor union or workers' representative of the commitments under this  
10 Nondiscrimination Paragraph and shall post copies of the notice in conspicuous places, available to  
11 employees and applicants for employment.

12           B. SERVICES, BENEFITS AND FACILITIES – CONTRACTOR and/or subcontractor shall not  
13 discriminate in the provision of services, the allocation of benefits, or in the accommodation in facilities  
14 on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental  
15 disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender  
16 expression, age, sexual orientation, or military and veteran status in accordance with Title IX of the  
17 Education Amendments of 1972 as they relate to 20 USC §1681 - §1688; Title VI of the Civil Rights  
18 Act of 1964 (42 USC §2000d); the Age Discrimination Act of 1975 (42 USC §6101); Title 9, Division  
19 4, Chapter 6, Article 1 (§10800, et seq.) of the CCR; and Title II of the Genetic Information  
20 Nondiscrimination Act of 2008, 42 USC 2000ff, et seq. as applicable, and all other pertinent rules and  
21 regulations promulgated pursuant thereto, and as otherwise provided by state law and regulations, as all  
22 may now exist or be hereafter amended or changed. For the purpose of this Nondiscrimination  
23 paragraph, discrimination includes, but is not limited to the following based on one or more of the  
24 factors identified above:

- 25           1. Denying a Participant or potential Participant any service, benefit, or accommodation.
- 26           2. Providing any service or benefit to a Participant which is different or is provided in a  
27 different manner or at a different time from that provided to other Participants.
- 28           3. Restricting a Participant in any way in the enjoyment of any advantage or privilege enjoyed  
29 by others receiving any service and/or benefit.
- 30           4. Treating a Participant differently from others in satisfying any admission requirement or  
31 condition, or eligibility requirement or condition, which individuals must meet in order to be provided  
32 any service and/or benefit.
- 33           5. Assignment of times or places for the provision of services.

34           C. COMPLAINT PROCESS – CONTRACTOR shall establish procedures for advising all  
35 Participants through a written statement that CONTRACTOR's and/or subcontractor's Participants may  
36 file all complaints alleging discrimination in the delivery of services with CONTRACTOR,  
37 subcontractor, and ADMINISTRATOR.





1                                    **XXIV. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS**

2            A. CONTRACTOR shall notify ADMINISTRATOR of any public event or meeting funded in  
3 whole or in part by COUNTY, except for those events or meetings that are intended solely to serve  
4 Clients or occur in the normal course of business.

5  
6            B. CONTRACTOR shall notify ADMINISTRATOR at least thirty (30) business days in advance  
7 of any applicable public event or meeting. The notification must include the date, time, duration,  
8 location and purpose of the public event or meeting. Any promotional materials or event related flyers  
9 must be approved by ADMINISTRATOR prior to distribution.

10  
11                                    **XXV. PARTICIPANT'S RIGHTS**

12            A. CONTRACTOR shall post the current HMIS privacy notice as well as the Orange County  
13 Continuum of Care Grievance and Appeals poster in locations readily available to Participants and staff.  
14 Grievance and Appeal forms must be available in the threshold languages and envelopes must be readily  
15 accessible to Participants to take without having to request the form or envelope.

16            B. In addition to those processes provided by ADMINISTRATOR, CONTRACTOR shall have an  
17 internal grievance and appeals process approved by ADMINISTRATOR, to which the Participant shall  
18 have access.

19            1. CONTRACTOR's grievance and appeals processes shall incorporate COUNTY's  
20 grievance, appeals, participants' rights, and/or utilization management guidelines and procedures. The  
21 Participant has the right to utilize either or both grievance and appeals process(es) simultaneously in  
22 order to resolve their dissatisfaction.

23            C. The Parties agree that Participants have recourse to initiate an expression of dissatisfaction to  
24 CONTRACTOR, file a grievance, file an appeal, and file a complaint.

25  
26                                    **XXVI. PAYMENT CARD COMPLIANCE**

27            Should CONTRACTOR conduct credit/debit card transactions in conjunction with their business  
28 with COUNTY, on behalf of COUNTY, or as part of the business that they conduct, CONTRACTOR  
29 covenants and warrants that it is currently PA DSS and PCI DSS compliant and will remain compliant  
30 during the entire duration of this Contract. CONTRACTOR agrees to immediately notify COUNTY in  
31 the event CONTRACTOR should ever become non-compliant, and will take all necessary steps to  
32 return to compliance and shall be compliant within ten (10) business days of the commencement of any  
33 such interruption. Upon demand by COUNTY, CONTRACTOR shall provide to COUNTY written  
34 certification of CONTRACTOR's PA DSS and/or PCI DSS compliance.

**XXVII. RECORDS MANAGEMENT AND MAINTENANCE**

1  
2 A. CONTRACTOR, its officers, agents, employees and subcontractors shall, throughout the term  
3 of this Contract, prepare, maintain and manage records, primarily in HMIS, appropriate to the services  
4 provided and in accordance with this Contract and all applicable requirements.

5 1. CONTRACTOR shall maintain records that are adequate to substantiate the services for  
6 which claims are submitted for reimbursement under this Contract and the charges thereto. Such  
7 records shall include, but not be limited to, individual housing plans, case management plans and  
8 utilization review records.

9 2. CONTRACTOR shall keep and maintain records of each service rendered to each  
10 Participant, the identity of the Participant to whom the service was rendered, the date the service was  
11 rendered, and such additional information as ADMINISTRATOR may require.

12 3. CONTRACTOR shall maintain books, records, documents, accounting procedures and  
13 practices, and other evidence sufficient to reflect properly all direct and indirect cost of whatever nature  
14 claimed to have been incurred in the performance of this Contract and in accordance with County  
15 policies of reimbursement and GAAP.

16 B. CONTRACTOR shall implement and maintain acceptable administrative, technical and  
17 physical safeguards to ensure the privacy and security of health related and/or personally identifying  
18 information CONTRACTOR collects from participants. If there is an unauthorized use or disclosure of  
19 participant's health related and/or personally identifying information in possession of CONTRACTOR,  
20 CONTRACTOR shall (i) immediately notify ADMINISTRATOR of such unauthorized use of  
21 disclosure and (ii) mitigate, to the extent practicable, the known harmful effect of any such unauthorized  
22 use or disclosure.

23 C. CONTRACTOR's participant records shall be maintained in a secure manner. CONTRACTOR  
24 shall maintain participant records and must establish and implement written record management  
25 procedures.

26 D. CONTRACTOR shall retain all financial records for a minimum of ten (10) years from the  
27 termination of the Contract, unless a longer period is required due to legal proceedings such as  
28 litigations and/or settlement of claims.

29 E. CONTRACTOR shall make records pertaining to the costs of services, participant fees, charges,  
30 billings, and revenues available at one (1) location within the limits of the County of Orange. If  
31 CONTRACTOR is unable to meet the record location criteria above, ADMINISTRATOR may provide  
32 written approval to CONTRACTOR to maintain records in a single location, identified by  
33 CONTRACTOR.

34 F. To the extent CONTRACTOR is subject to PRA, CONTRACTOR shall notify  
35 ADMINISTRATOR of any PRA requests related to, or arising out of, this Contract, within forty-eight  
36 (48) hours. CONTRACTOR shall provide ADMINISTRATOR all information that is requested by the  
37 PRA request.

1 G. CONTRACTOR may retain participant documentation electronically in accordance with the  
 2 terms of this Contract and common business practices. If documentation is retained electronically,  
 3 CONTRACTOR shall, in the event of an audit or site visit:

4 1. Have documents readily available within twenty-four (24) hour notice of a scheduled audit  
 5 or site visit.

6  
 7 2. Provide auditor or other authorized individuals access to documents via a computer  
 8 terminal.

9 3. Provide auditor or other authorized individuals a hardcopy printout of documents, if  
 10 requested.

### 11 **XXVIII. RESEARCH AND PUBLICATION**

12 CONTRACTOR shall not utilize information and/or data received from COUNTY, or arising out  
 13 of, or developed, as a result of this Contract for the purpose of personal or professional research, or for  
 14 publication.  
 15

### 16 **XXIX. REVENUE**

17  
 18 A. THIRD-PARTY REVENUE – CONTRACTOR shall make every reasonable effort to obtain all  
 19 available third-party reimbursement for which persons served pursuant to this Contract may be eligible.  
 20 Charges to insurance carriers shall be on the basis of CONTRACTOR’s usual and customary charges.

21 B. PROCEDURES – CONTRACTOR shall maintain internal financial controls which adequately  
 22 ensure proper billing and collection procedures. CONTRACTOR’s procedures shall specifically  
 23 provide for the identification of delinquent accounts and methods for pursuing such accounts.  
 24 CONTRACTOR shall provide ADMINISTRATOR, monthly, a written report specifying the current  
 25 status of fees which are billed, collected, transferred to a collection agency, or deemed by  
 26 CONTRACTOR to be uncollectible.

27 C. OTHER REVENUES – CONTRACTOR shall charge for services, supplies, or facility use by  
 28 persons other than individuals or groups eligible for services pursuant to this Contract.  
 29

### 30 **XXX. SEVERABILITY**

31 If a court of competent jurisdiction declares any provision of this Contract or application thereof to  
 32 any person or circumstances to be invalid or if any provision of this Contract contravenes any federal,  
 33 state or county statute, ordinance, or regulation, the remaining provisions of this Contract or the  
 34 application thereof shall remain valid, and the remaining provisions of this Contract shall remain in full  
 35 force and effect, and to that extent the provisions of this Contract are severable.  
 36

### 37 **XXXI. SPECIAL PROVISIONS**

1 A. CONTRACTOR shall not use the funds provided by means of this Contract for the following  
2 purposes:

- 3 1. Making cash payments to intended recipients of services through this Contract.
- 4 2. Lobbying any governmental agency or official. CONTRACTOR shall file all certifications  
5 and reports in compliance with this requirement pursuant to Title 31, USC, §1352 (e.g., limitation on  
6 use of appropriated funds to influence certain federal contracting and financial transactions).
- 7 3. Fundraising.
- 8 4. Purchasing gifts, meals, entertainment, awards, or other personal expenses for  
9 CONTRACTOR's staff, volunteers, interns, consultants, subcontractors, and members of the Board of  
10 Directors or governing body.
- 11 5. Reimbursing CONTRACTOR's members of the Board of Directors or governing body for  
12 expenses or services.
- 13 6. Making personal loans to CONTRACTOR's staff, volunteers, interns, consultants,  
14 subcontractors, and members of the Board of Directors or governing body, or its designee or authorized  
15 agent, or making salary advances or giving bonuses to CONTRACTOR's staff.
- 16 7. Paying an individual salary or compensation for services at a rate in excess of the current  
17 Level I of the Executive Salary Schedule as published by the OPM. The OPM Executive Salary  
18 Schedule may be found at [www.opm.gov](http://www.opm.gov).
- 19 8. Paying severance pay for separating employees.
- 20 9. Paying rent and/or lease costs for a facility prior to the facility meeting all required building  
21 codes and obtaining all necessary building permits for any associated construction.
- 22 10. Supplanting current funding for existing services.

23 B. Unless otherwise specified in advance and in writing by ADMINISTRATOR, CONTRACTOR  
24 shall not use the funds provided by means of this Contract for the following purposes:

- 25 1. Funding travel or training (excluding program-related mileage or parking).
- 26 2. Making phone calls outside of the local area unless documented to be directly for the  
27 purpose of Participant care.
- 28 3. Paying for grant writing, consultants, certified public accounting, or legal services.
- 29 4. Purchasing artwork or other items that are for decorative purposes and do not directly  
30 contribute to the quality of services to be provided pursuant to this Contract.
- 31 5. Purchasing or improving land, including constructing or permanently improving any  
32 building or facility, except for tenant improvements.
- 33 6. Providing inpatient hospital services or purchasing major medical equipment.
- 34 7. Satisfying any expenditure of non-federal funds as a condition for the receipt of federal  
35 funds (matching).
- 36 8. Purchasing gifts, meals, entertainment, awards, or other personal expenses for  
37 CONTRACTOR's Participants outside of program Scope of Services.

1  
2  
3 **XXXII. STATUS OF CONTRACTOR**

4 CONTRACTOR is, and shall at all times be deemed to be, an independent contractor and shall be  
5 wholly responsible for the manner in which it performs the services required of it by the terms of this  
6 Contract. CONTRACTOR is entirely responsible for compensating staff, subcontractors, and  
7 consultants employed by CONTRACTOR. This Contract shall not be construed as creating the  
8 relationship of employer and employee, or principal and agent, between COUNTY and CONTRACTOR  
9 or any of CONTRACTOR's employees, agents, consultants, volunteers, interns, or subcontractors.  
10 CONTRACTOR assumes exclusively the responsibility for the acts of its employees, agents,  
11 consultants, volunteers, interns, or subcontractors as they relate to the services to be provided during the  
12 course and scope of their employment. CONTRACTOR, its agents, employees, consultants, volunteers,  
13 interns, or subcontractors, shall not be entitled to any rights or privileges of COUNTY's employees and  
14 shall not be considered in any manner to be COUNTY's employees.

15 **XXXIII. TERM**

16 A. The term of this Contract shall commence as specified in the Referenced Contract Provisions of  
17 this Contract or the execution date, whichever is later. This Contract shall terminate as specified in the  
18 Referenced Contract Provisions of this Contract unless otherwise sooner terminated as provided in this  
19 Contract. CONTRACTOR shall be obligated to perform such duties as would normally extend beyond  
20 this term, including but not limited to, obligations with respect to confidentiality, indemnification,  
21 audits, reporting, and accounting.

22 B. Any administrative duty or obligation to be performed pursuant to this Contract on a weekend  
23 or holiday may be performed on the next regular business day.

24  
25 **XXXIV. TERMINATION**

26 A. COUNTY may terminate this Contract, without cause, upon thirty (30) calendar days' written  
27 notice. The rights and remedies of COUNTY provided in this Termination Paragraph shall not be  
28 exclusive, and are in addition to any other rights and remedies provided by law or under this Contract.

29 B. COUNTY may terminate this Contract immediately, upon prior written notice, on the occurrence  
30 of any of the following events:

- 31 1. The loss by CONTRACTOR of legal capacity.
- 32 2. Cessation of services without cause.
- 33 3. The delegation or assignment of CONTRACTOR's services, operation or administration  
34 without the prior written consent of COUNTY.
- 35 4. The neglect by any licensed person employed by CONTRACTOR of any duty required  
36 pursuant to this Contract.

1           5. The loss of accreditation or any license required by the Licenses and Laws Paragraph of  
2 this Contract.

3           6. The continued incapacity of any licensed person to perform duties required pursuant to this  
4 Contract.

5           7. Unethical conduct or malpractice by any physician or licensed person providing services  
6 pursuant to this Contract; provided, however, COUNTY may waive this option if CONTRACTOR  
7 removes such licensed person from serving persons assisted pursuant to this Contract.

8           C. CONTINGENT FUNDING

9           1. Any obligation of COUNTY under this Contract is contingent upon the following:

10           a. The continued availability of federal, state and County funds for reimbursement of  
11 COUNTY's expenditures, and

12           b. Inclusion of sufficient funding for the services hereunder in the applicable budget(s)  
13 approved by the Orange County Board of Supervisors.

14           2. In the event such funding is subsequently reduced or terminated, COUNTY may suspend,  
15 terminate or renegotiate this Contract upon thirty (30) calendar days' written notice provided to  
16 CONTRACTOR. If COUNTY elects to renegotiate this Contract due to reduced or terminated funding,  
17 CONTRACTOR shall not be obligated to accept the renegotiated terms.

18           D. In the event this Contract is suspended or terminated prior to the completion of the term as  
19 specified in the Referenced Contract Provisions of this Contract, ADMINISTRATOR may, at its  
20 sole discretion, reduce the Maximum Obligation of this Contract to be consistent with the reduced term  
21 of the Contract.

22           E. In the event this Contract is terminated CONTRACTOR shall do the following:

23           1. Comply with termination instructions provided by ADMINISTRATOR in a manner which  
24 is consistent with recognized standards of quality care and prudent business practice.

25           2. Obtain immediate clarification from ADMINISTRATOR of any unsettled issues of  
26 Contract performance during the remaining Contract term.

27           3. Until the date of termination, continue to provide the same level of service required by this  
28 Contract.

29           4. If Participant's records are to be transferred to another facility for services, furnish  
30 ADMINISTRATOR, upon request, all Participant's information and records deemed necessary by  
31 ADMINISTRATOR to effect an orderly transfer.

32           5. Assist ADMINISTRATOR in effecting the transfer of Participants in a manner consistent  
33 with Participant's best interests.

34           6. If records are to be transferred to COUNTY, pack and label such records in accordance  
35 with directions provided by ADMINISTRATOR.

36           7. Return to COUNTY, in the manner indicated by ADMINISTRATOR, any equipment and  
37 supplies purchased with funds provided by COUNTY.

1 8. To the extent services are terminated, cancel outstanding commitments covering the  
2 procurement of materials, supplies, equipment, and miscellaneous items, as well as outstanding  
3 commitments which relate to personal services. With respect to these canceled commitments,  
4 CONTRACTOR shall submit a written plan for settlement of all outstanding liabilities and all claims  
5 arising out of such cancellation of commitment which shall be subject to written approval of  
6 ADMINISTRATOR.

7  
8 9. Provide written notice of termination of services to each Participant being served under this  
9 Contract, within fifteen (15) calendar days of receipt of termination notice. A copy of the notice of  
10 termination of services must also be provided to ADMINISTRATOR within the fifteen (15) calendar  
11 day period.

12  
13 **XXXV. THIRD PARTY BENEFICIARY**

14 Neither Party hereto intends that this Contract shall create rights hereunder in third parties  
15 including, but not limited to, any subcontractors or any Participants provided services pursuant to this  
16 Contract.

17  
18 **XXXVI. WAIVER OF DEFAULT OR BREACH**

19 Waiver by COUNTY of any default by CONTRACTOR shall not be considered a waiver of any  
20 subsequent default. Waiver by COUNTY of any breach by CONTRACTOR of any provision of this  
21 Contract shall not be considered a waiver of any subsequent breach. Waiver by COUNTY of any  
22 default or any breach by CONTRACTOR shall not be considered a modification of the terms of this  
23 Contract.

1 IN WITNESS WHEREOF, the Parties have executed this Contract, in the County of Orange, State  
2 of California.

3  
4  
5 THE ILLUMINATION FOUNDATION

6  
7  
8 BY: \_\_\_\_\_ DATED: \_\_\_\_\_

9  
10 TITLE: \_\_\_\_\_

11  
12 BY: \_\_\_\_\_ DATED: \_\_\_\_\_

13  
14 TITLE: \_\_\_\_\_

15  
16  
17  
18 COUNTY OF ORANGE

19  
20  
21 BY: \_\_\_\_\_ DATED: \_\_\_\_\_

22 HEALTH CARE AGENCY

23  
24  
25  
26  
27 APPROVED AS TO FORM  
28 OFFICE OF THE COUNTY COUNSEL  
29 ORANGE COUNTY, CALIFORNIA

30  
31  
32 BY: \_\_\_\_\_ DATED: \_\_\_\_\_

33 DEPUTY

34  
35 If the contracting party is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the  
36 President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer  
37 or any Assistant Treasurer. If the contract is signed by one (1) authorized individual only, a copy of the corporate resolution  
or by-laws whereby the board of directors has empowered said authorized individual to act on its behalf by his or her  
signature alone is required by ADMINISTRATOR.

1 EXHIBIT A  
2 TO THE CONTRACT FOR PROVISION OF  
3 TEMPORARY ISOLATION SHELTER SERVICES  
4 BETWEEN  
5 COUNTY OF ORANGE  
6 AND  
7 THE ILLUMINATION FOUNDATION  
8 JANUARY 1, 2022 THROUGH MARCH 31, 2022

9  
10 **I. COMMON TERMS AND DEFINITIONS**

11  
12 A. The parties agree to the following terms and definitions, and to those terms and definitions  
13 which for convenience, are set forth elsewhere in the Agreement.

14 1. Activities of Daily Living (ADL) means diet, personal hygiene, clothing care, grooming,  
15 money and household management, personal safety, symptom monitoring, etc.

16 2. Admission means documentation, by CONTRACTOR, for completion of entry and  
17 evaluation services provided to Clients into IRIS.

18 3. Client means any individual, referred or enrolled, for services under the Agreement who is  
19 living with mental, emotional, or behavioral disorders.

20 4. Crisis Intervention means a service, lasting less than twenty-four (24) hours that is provided  
21 to or on the behalf of a Client for a condition that requires more timely response than a regularly  
22 scheduled visit. Service activities may include, but are not limited to: assessment, individual therapy,  
23 collateral therapy, family therapy, case management, and psychiatric evaluation.

24 5. Data Collection System means software designed for collection, tracking and reporting  
25 outcomes data for Resident enrolled in the FSP Programs.

26 a. 3 M's means the Quarterly Assessment Form that is completed for each Resident every  
27 three months in the approved data collection system.

28 b. Data Mining and Analysis Specialist means a person who is responsible for ensuring  
29 the program maintains a focus on outcomes, by reviewing outcomes, and analyzing data as well as  
30 working on strategies for gathering new data from the Resident' perspective which will improve  
31 understanding of Resident' needs and desires towards furthering their recovery. This individual will  
32 provide feedback to the program and work collaboratively with the employment specialist, education  
33 specialist, benefits specialist, and other staff in the program in strategizing improved outcomes in these  
34 areas. This position will be responsible for attending all data and outcome related meetings and ensuring  
35 that program is being proactive in all data collection requirements and changes at the local and state  
36 level.

1 c. Data Certification means the process of reviewing State and COUNTY mandated  
2 outcome data for accuracy and signing the Certification of Accuracy of Data form indicating that the  
3 data is accurate.

4 6. Care Coordinator is a MHS, CSW, or MFT that provides mental health, crisis intervention  
5 and case management services to those Residents who seek services in the COUNTY operated  
6 outpatient programs.

7 7. Case Management Linkage Brokerage means a process of identification, assessment of  
8 need, planning, coordination and linking, monitoring and continuous evaluation of Residents and of  
9 available resources and advocacy through a process of casework activities in order to achieve the best  
10 possible resolution to individual needs in the most effective way possible. This includes supportive  
11 assistance to the Resident in the assessment, determination of need and securing of adequate and  
12 appropriate living arrangements.

13 8. Client/Participant or Resident means an individual, referred by COUNTY or enrolled in  
14 CONTRACTOR's program for services under the Agreement, who experiences chronic mental illness.

15 9. CSW means an individual who meets the minimum professional and licensure requirements  
16 set forth in CCR, Title 9, Section 625, and has two (2) years of post-master's clinical experience in a  
17 mental health setting.

18 10. Bed Day means one (1) calendar day which CONTRACTOR provides residential treatment  
19 services as described in Exhibit A of the Agreement. A Bed Day will include the day of admission; but  
20 not the day of discharge. If admission and discharge occur on the same day, one (1) Bed Day will be  
21 charged.

22 11. Diagnosis means the definition of the nature of the Resident's disorder. When formulating  
23 the diagnosis of Resident, CONTRACTOR shall use the diagnostic codes and axes as specified in the  
24 most current edition of the DSM published by the American Psychiatric Association (APA). DSM  
25 diagnoses will be recorded on all IRIS documents, as appropriate.

26 12. Engagement means the process by which a trusting relationship between worker and  
27 Client(s) is established with the goal to link the individual(s) to the appropriate services. Engagement of  
28 Client(s) is the objective of a successful Outreach.

29 13. Face-to-Face means an encounter between Client and provider where they are both  
30 physically present.

31 14. Full Service Partnership (FSP): a. A FSP means a type of program described by the State in  
32 the requirements for the COUNTY plan for use of MHSA funds and which includes Residents being a  
33 full partner in the development and implementation of their treatment plan. A FSP is an evidence-based  
34 and strength-based model, with the focus on the individual rather than the disease. Multi-disciplinary  
35 teams will be established including the Resident, Psychiatrist, and PSC. Whenever possible, these multi-  
36 disciplinary teams will include a mental health nurse, marriage and family therapist, clinical social  
37 worker, peer specialist, and family members. The ideal Resident to staff ratio will be in the range of

1 fifteen to twenty (15-20) to one (1), ensuring relationship building and intense service delivery. Services  
2 will include, but not be limited to, the following:

- 3 1) Crisis management;
- 4 2) Housing Services;
- 5 3) Twenty-four (24)-hours per day, seven (7) days per week intensive case  
6 management;
- 7 4) Community-based Wraparound Recovery Services;
- 8 5) Vocational and Educational services;
- 9 6) Job Coaching/Developing;
- 10 7) Resident employment;
- 11 8) Money management/Representative Payee support;
- 12 9) Flexible Fund account for immediate needs;
- 13 10) Transportation;
- 14 11) Illness education and self-management;
- 15 12) Medication Support;
- 16 13) Co-occurring Services;
- 17 14) Linkage to financial benefits/entitlements;
- 18 15) Family and Peer Support; and
- 19 16) Supportive socialization and meaningful community roles.

20 b. Client services are focused on recovery and harm reduction to encourage the highest  
21 level of Resident empowerment and independence achievable. PSC's will meet with the Resident in  
22 their current community setting and will develop a supportive relationship with the individual served.  
23 Substance abuse treatment will be integrated into services and provided by the Resident's team to  
24 individuals with a co-occurring disorder.

25 c. The FSP shall offer "whatever it takes" to engage seriously mentally ill adults,  
26 including those who are dually diagnosed, in a partnership to achieve the individual's wellness and  
27 recovery goals. Services shall be non-coercive and focused on engaging people in the field. The goal of  
28 FSP Programs is to assist the Resident's progress through pre-determined quality of life outcome  
29 domains (housing, decreased jail, decreased hospitalization, increased education involvement, increased  
30 employment opportunities and retention, linkage to medical providers, etc.) and become more  
31 independent and self-sufficient as Residents move through the continuum of recovery and evidence by  
32 progressing to lower level of care or out of the "intensive case management need" category.

33 15. Housing Specialist means a specialized position dedicated to developing the full array of  
34 housing options for their program and monitoring their suitability for the population served in  
35 accordance with the minimal housing standards policy set by the COUNTY for their program. This  
36 individual is also responsible for assisting Clients with applications to low income housing, housing  
37 subsidies, senior housing, etc.

1 16. Intern means an individual enrolled in an accredited graduate program accumulating  
 2 clinically supervised work experience hours as part of field work, internship, or practicum requirements.  
 3 Acceptable graduate programs include all programs that assist the student in meeting the educational  
 4 requirements in becoming a MFT, a Licensed CSW, or a licensed Clinical Psychologist.

5 17. Intake means the initial meeting between a Client and CONTRACTOR's staff and  
 6 includes an evaluation to determine if the Client meets program criteria and is willing to seek services.

7 18. MFT means an individual who meets the minimum professional and licensure requirements  
 8 set forth in CCR, Title 9, Section 625.

9 19. Mental Health Services means interventions designed to provide the maximum reduction of  
 10 mental disability and restoration or maintenance of functioning consistent with the requirements for  
 11 learning, development and enhanced self-sufficiency. Services shall include:

12 a. Assessment means a service activity, which may include a clinical analysis of the  
 13 history and current status of a beneficiary's mental, emotional, or behavioral disorder, relevant cultural  
 14 issues and history, Diagnosis and the use of testing procedures.

15 b. Collateral means a significant support person in a beneficiary's life and is used to  
 16 define services provided to them with the intent of improving or maintaining the mental health status of  
 17 the Resident. The beneficiary may or may not be present for this service activity.

18 c. Co-Occurring Integrated Treatment Model. In evidence-based Integrated Treatment  
 19 programs, Residents receive combined treatment for mental illnesses and substance use disorders from  
 20 the same practitioner or treatment team.

21 d. Crisis Intervention means a service, lasting less than twenty-four (24) hours, to or on  
 22 behalf of a Resident for a condition which requires more timely response than a regularly scheduled  
 23 visit. Service activities may include, but are not limited to, assessment, collateral and therapy.

24 e. Medication Support Services means those services provided by a licensed physician,  
 25 registered nurse, or other qualified medical staff, which includes prescribing, administering, dispensing  
 26 and monitoring of psychiatric medications or biologicals and which are necessary to alleviate the  
 27 symptoms of mental illness. These services also include evaluation and documentation of the clinical  
 28 justification and effectiveness for use of the medication, dosage, side effects, compliance and response  
 29 to medication, as well as obtaining informed consent, providing medication education and plan  
 30 development related to the delivery of the service and/or assessment of the beneficiary.

31 f. Rehabilitation Service means an activity which includes assistance in improving,  
 32 maintaining, or restoring a Resident's or group of Residents' functional skills, daily living skills, social  
 33 and leisure skill, grooming and personal hygiene skills, meal preparation skills, support resources and/or  
 34 medication education.

35 g. Targeted Case Management means services that assist a beneficiary to access needed  
 36 medical, educational, social, prevocational, vocational, rehabilitative, or other community services. The  
 37 service activities may include, but are not limited to, communication, coordination and referral;

1 monitoring service delivery to ensure beneficiary access to service and the service delivery system;  
 2 monitoring of the beneficiary's progress; and plan development.

3 h. Therapy means a service activity which is a therapeutic intervention that focuses  
 4 primarily on symptom reduction as a means to improve functional impairments. Therapy may be  
 5 delivered to an individual or group of beneficiaries which may include family therapy in which the  
 6 beneficiary is present.

7 20. MHSA means the law that provides funding for expanded community Mental Health  
 8 Services. It is also known as "Proposition 63."

9 21. Mental Health Worker (MHW) means an individual that assists in planning, developing and  
 10 evaluating mental health services for Clients; provides liaison between Clients and service providers;  
 11 and has obtained a Bachelor's degree in a behavioral science field such as psychology, counseling, or  
 12 social work, or has two years of experience providing Client related services to Clients experiencing  
 13 mental health, drug abuse or alcohol disorders. Education in a behavioral science field such as  
 14 psychology, counseling, or social work may be substituted for up to one year of the experience  
 15 requirement.

16 22. MORS is a Recovery scale that ADMINISTRATOR will be using for the adult mental  
 17 health programs in COUNTY. The scale will provide the means of assigning Clients to their appropriate  
 18 level of care and replace the diagnostic and acuity of illness-based tools being used today. MORS is  
 19 ideally suited to serve as a Recovery-based tool for identifying the level of service needed by  
 20 participating members. The scale will be used to create a map of the system by determining which  
 21 milestone(s) or level of Recovery (based on the MORS) are the target groups for different programs  
 22 across the continuum of programs and services offered by ADMINISTRATOR.

23 23. Outreach means the Outreach to potential Clients to link them to appropriate Mental Health  
 24 Services and may include activities that involve educating the community about the services offered and  
 25 requirements for participation in the programs. Such activities should result in the CONTRACTOR  
 26 developing their own Client referral sources for the programs they offer.

27 24. Peer Recovery Specialist/Counselor means an individual who has been through the same or  
 28 similar Recovery process as those he/she is now assisting to attain their Recovery goals while getting  
 29 paid for this function by the program. A Peer Recovery Specialist practice is informed by his/her own  
 30 experience.

31 25. Personal Services Coordinator (PSC) means an individual who will be part of a  
 32 multidisciplinary team that will provide community based Mental Health Services to adults that are  
 33 struggling with persistent and severe mental illness as well as homelessness, rehabilitation and recovery  
 34 principles. The PSC is responsible for clinical care and case management of assigned Client and families  
 35 in a community, home, or program setting. This includes assisting Clients with mental health, housing,  
 36 vocational and educational needs. The position is also responsible for administrative and clinical  
 37 documentation as well as participating in trainings and team meetings. The PSC shall be active in

1 supporting and implementing the program's philosophy and its individualized, strength-based,  
2 culturally/linguistically competent and Client-centered approach.

3 26. Personal Health Information (PHI) means individually identifiable health information  
4 usually transmitted by electronic media, maintained in any medium as defined in the regulations, or for  
5 an entity such as a health plan, transmitted or maintained in any other medium. It is created or received  
6 by a covered entity and relates to the past, present, or future physical or mental health or condition of an  
7 individual, provision of health care to an individual, or the past, present, or future payment for health  
8 care provided to an individual.

9 27. Pre-Licensed Psychologist means an individual who has obtained a Ph.D. or Psy.D. in  
10 Clinical Psychology and is registered with the Board of Psychology as a registered Psychology Intern or  
11 Psychological Assistant, acquiring hours for licensing and waived in accordance with WIC Section  
12 575.2. The waiver may not exceed five (5) years.

13 28. Pre-Licensed Therapist means an individual who has obtained a Master's Degree in Social  
14 Work or Marriage and Family Therapy and is registered with the BBS as an Associate CSW or MFT  
15 Intern acquiring hours for licensing. An individual's registration is subject to regulations adopted by the  
16 BBS.

17 29. Program Director means an individual who has complete responsibility for the day to day  
18 function of the program. The Program Director is the highest level of decision making at a local,  
19 program level.

20 30. Psychiatrist means an individual who meets the minimum professional and licensure  
21 requirements set forth in CCR, Title 9, Section 623.

22 31. Psychologist means an individual who meets the minimum professional and licensure  
23 requirements set forth in CCR, Title 9, Section 624.

24 32. Recovery is a process of change through which individuals improve their health and  
25 wellness, live a self-directed life, and strive to reach their full potential, and identifies four major  
26 dimensions to support recovery in live:

27 a. Health: Overcoming or managing one's disease(s) as well as living in a physically and  
28 emotionally healthy way;

29 b. Home: A stable and safe place to live;

30 c. Purpose: Meaningful daily activities, such as a job, school, volunteerism, family  
31 caretaking, or creative endeavors, and the independence, income, and resources to participate in society;  
32 and

33 d. Community: Relationships and social networks that provide support, friendship, love,  
34 and hope.

35 33. Referral means providing the effective linkage of a Resident to another service, when  
36 indicated; with follow-up to be provided within five (5) working days to assure that the Resident has  
37 made contact with the referred service.

1 34. Supportive Housing PSC means a Personal Services Coordinator who provides services in a  
 2 supportive housing structure. This person will coordinate activities which will include, but not be  
 3 limited to: Independent living skills, social activities, supporting communal living, assisting residents  
 4 with conflict resolution, advocacy, and linking Clients with the assigned PSC for clinical issues.  
 5 Supportive Housing PSC will consult with the multidisciplinary team of Clients assigned by the  
 6 program. The PSCs will be active in supporting and implementing a full service partnership philosophy  
 7 and its individualized, strengths-based, culturally appropriate, and Client-centered approach.

8 35. Vocational/Educational Specialist means a person who provides services that range from  
 9 prevocational groups, trainings and supports to obtain employment out in the community based on the  
 10 Clients' level of need and desired support. The Vocational/Educational Specialist will provide "one-on-  
 11 one" vocational counseling and support to Clients to ensure that their needs and goals are being met.  
 12 The overall focus of Vocational/Educational Specialist is to empower Clients and provide them with the  
 13 knowledge and resources to achieve the highest level of vocational functioning possible.

14 36. Wellness Recovery Action Plan (WRAP) as developed by Mary Ellen Copeland and refers  
 15 to a Client self-help technique for monitoring and responding to symptoms to achieve the highest  
 16 possible levels of wellness, stability, and quality of life.

17 B. CONTRACTOR AND ADMINISTRATOR may mutually agree, in writing, to modify the  
 18 Common Terms and Condition Paragraph of this Exhibit A to the Agreement.

## 19 **II. BUDGET**

20  
 21 ~~A. COUNTY shall pay CONTRACTOR in accordance with the Payments Paragraph of this~~  
 22 ~~Exhibit A to the Agreement and the following budget, which is set forth for information purposes only~~  
 23 ~~and may be adjusted by mutual agreement, in writing, by ADMINISTRATOR and CONTRACTORS.~~

24 ~~1. Operating Cost for up to 50 isolation beds (Broadway) - \$368,018/month~~

25 ~~2. Operating Costs for 50 overflow beds - \$295 per diem rate per each occupied bed.~~

26 A. COUNTY shall pay CONTRACTOR in accordance with the Payments Paragraph of this  
 27 Exhibit A to the Contract and the following budget, which is set forth for information purposes only and  
 28 may be adjusted by mutual agreement, in writing, by ADMINISTRATOR and CONTRACTOR.

29 1. Operating Cost for 50 isolation beds (Broadway Site) - fixed fee of \$368,018/month for the  
 30 50 isolation beds.

31 2. Operating Cost for up to 100 overflow beds (Overflow site) - \$295 per diem rate per each  
 32 occupied bed. In order to maintain access to overflow beds and rooms throughout the term of the  
 33 Contract:

34 a. COUNTY will pay for a minimum of 30 overflow beds each night at the per diem rate.  
 35 Payment is for occupied overflow beds; provided, however, if there are fewer than 30 occupied  
 36 overflow beds, payment will cover all occupied overflow beds plus unoccupied overflow beds up to the  
 37 total of 30 overflow beds.

1 b. COUNTY will pay \$65 per room for a minimum of 35 rooms each night. Payment is  
 2 for unoccupied rooms; provided, however, if there are fewer than 35 occupied rooms, payment will  
 3 cover all occupied rooms plus unoccupied rooms up to the total of 35 rooms.

4 B. BUDGET/STAFFING MODIFICATIONS – CONTRACTOR may request to shift funds  
 5 between budgeted line items within a program for the purpose of meeting specific program needs or for  
 6 providing continuity of care to its Participants, by utilizing a Budget/Staffing Modification Request form  
 7 provided by ADMINISTRATOR. CONTRACTOR shall submit a properly completed Budget/Staffing  
 8 Modification Request to ADMINISTRATOR for consideration, in advance, which must include a  
 9 justification narrative specifying the purpose of the request, the amount of said funds to be shifted, and  
 10 the sustaining annual impact of the shift as may be applicable to the current contract period and/or future  
 11 contract periods. CONTRACTOR shall obtain written approval of any Budget/Staffing Modification  
 12 Request(s) from ADMINISTRATOR prior to implementation by CONTRACTOR. Failure of  
 13 CONTRACTOR to obtain written approval from ADMINISTRATOR for any proposed Budget/Staffing  
 14 Modification Request(s) may result in disallowance of those costs.

15 ~~C. FINANCIAL RECORDS – CONTRACTOR shall prepare and maintain accurate and complete~~  
 16 ~~financial records of its cost and operating expenses. Such records will reflect the actual cost of the type~~  
 17 ~~of service for which payment is claimed.~~

18 D. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the  
 19 Budget Paragraph of this Exhibit A to the Contract.

### 21 **III. PAYMENTS**

22 A. COUNTY shall pay CONTRACTOR monthly in advance to secure recuperative care beds for  
 23 the fees outlined in Paragraph II. Budget. All payments are interim payments only, and subject to final  
 24 settlement in accordance with the Cost Report Paragraph of the Agreement for which CONTRACTOR  
 25 shall be reimbursed for the actual cost of providing the services, which may include Indirect  
 26 Administrative Costs, as identified in Subparagraph II.A. of this Exhibit A to the Agreement; provided,  
 27 however, the total of such payments does not exceed the Maximum Obligation for each period as stated  
 28 in the Referenced Contract Provisions of the Agreement and, provided further, CONTRACTOR's costs  
 29 are reimbursable pursuant to COUNTY, state, and/or federal regulations. ADMINISTRATOR may, at  
 30 its discretion, pay supplemental invoices for any month for which the provisional amount specified  
 31 above has not been fully paid.

32 1. In support of the monthly invoices, CONTRACTOR shall submit an Expenditure and  
 33 Revenue Report as specified in the Reports Paragraph of this Exhibit A to the Contract.  
 34 ADMINISTRATOR shall use the Expenditure and Revenue Report to determine payment to  
 35 CONTRACTOR as specified in Subparagraphs A.2. and A.3., below.

36 2. If, at any time, CONTRACTOR's Expenditure and Revenue Reports indicate that the  
 37 provisional amount payments exceed the actual cost of providing services, ADMINISTRATOR may

1 reduce COUNTY payments to CONTRACTOR by an amount not to exceed the difference between the  
 2 year-to-date provisional amount payments to CONTRACTOR's and the year-to-date actual cost  
 3 incurred by CONTRACTOR.

4 3. If, at any time, CONTRACTOR's Expenditure and Revenue Reports indicate that the  
 5 provisional amount payments are less than the actual cost of providing services, ADMINISTRATOR  
 6 may authorize an increase in the provisional amount payment to CONTRACTOR by an amount not to  
 7 exceed the difference between the year-to-date provisional amount payments to CONTRACTOR and  
 8 the year-to-date actual cost incurred by CONTRACTOR.

9 B. CONTRACTOR's invoices shall be on a form approved or supplied by COUNTY and provide  
 10 such information as is required by ADMINISTRATOR. Invoices are due the fifteenth (15th) and  
 11 thirtieth (30th) calendar day of the month. Invoices received after the due date may not be paid within  
 12 the same month. Payments to CONTRACTOR should be released by COUNTY no later than thirty  
 13 (30) calendar days after receipt of the correctly completed invoice form.

14 C. All invoices to COUNTY shall be supported, at CONTRACTOR's facility, by source  
 15 documentation including, but not limited to, ledgers, journals, time sheets, invoices, bank statements,  
 16 canceled checks, receipts, receiving records and records of services provided.

17 D. ADMINISTRATOR may withhold or delay any payment if CONTRACTOR fails to comply  
 18 with any provision of the Contract.

19 E. COUNTY shall not reimburse CONTRACTOR for services provided beyond the expiration  
 20 and/or termination of the Contract, except as may otherwise be provided under the Contract, or  
 21 specifically agreed upon in a subsequent contract.

22 F. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the  
 23 Payments Paragraph of this Exhibit A to the Contract.

#### 24 **IV. REPORTS**

25 A. CONTRACTOR shall maintain records and make statistical reports as required by  
 26 ADMINISTRATOR on forms provided by either agency.

#### 27 ~~B. FISCAL~~

28 ~~1. Expenditure and Revenue Report. CONTRACTOR shall submit monthly Expenditure and~~  
 29 ~~Revenue Reports to ADMINISTRATOR. These reports will be on a form provided by~~  
 30 ~~ADMINISTRATOR and will report year-to-date actual costs and revenues for CONTRACTOR's~~  
 31 ~~program described in the Services Paragraph of this Exhibit A to the Agreement. Such reports will also~~  
 32 ~~include actual productivity as defined by ADMINISTRATOR.~~

33 ~~2. Year-End Projections. In conjunction with the Expenditure and Revenue Report,~~  
 34 ~~CONTRACTOR shall provide monthly year-end projections that shall include year-to-date actual costs~~  
 35 ~~and revenues and anticipated year-end actual costs and revenues for CONTRACTOR's program~~  
 36 ~~described in the Services Paragraph of this Exhibit A to the Agreement.~~  
 37

~~3. The Expenditure and Revenue and Year-End Projection report shall be received by ADMINISTRATOR no later than the twentieth (20th) day following the end of the month being reported.~~

C. STAFFING – CONTRACTOR shall submit monthly Staffing Reports to ADMINISTRATOR. These reports shall be on a form provided by ADMINISTRATOR and shall, at a minimum, report overall FTEs of the positions stipulated in the Staffing Paragraph of this Exhibit A to the Agreement, and staff hours worked by position. The reports will be received by ADMINISTRATOR no later than twenty (20) calendar days following the end of the month being reported.

D. PROGRAMMATIC – CONTRACTOR shall submit monthly programmatic reports to ADMINISTRATOR, including a program narrative and Performance Outcome report, on a form acceptable to or provided by ADMINISTRATOR, which will be submitted to ADMINISTRATOR no later than fifteen (15) calendar days following the end of the month being reported, unless otherwise specified. Programmatic reports will include, but not be limited to, the following:

1. Training provided to staff; and

2. A description of CONTRACTOR’s progress in implementing the provisions of the Agreement, any pertinent facts or interim findings, staff changes, status of licenses and/or certifications, changes in population served and reasons for any such changes. CONTRACTOR shall state whether it is or is not progressing satisfactorily in achieving all the terms of the Agreement, and if not, shall specify what steps will be taken to achieve satisfactory progress.

3. CONTRACTOR shall be prepared to present and discuss their programmatic reports at their monthly scheduled meetings with ADMINISTRATOR and shall state whether it is or is not progressing satisfactorily in achieving all the terms of this Agreement, and if not, shall specify what steps will be taken to achieve satisfactory progress.

E. CONTRACTOR shall advise ADMINISTRATOR of any special incidents, conditions, or issues that adversely affect the quality or accessibility of Client-related services provided by, or under contract with, the COUNTY as identified in the HCA P&Ps.

F. CONTRACTOR shall document all adverse incidents affecting the physical and/or emotional welfare of Clients including, but not limited to, serious physical harm to self or others, serious destruction of property, developments, etc., and which may raise liability issues with COUNTY. CONTRACTOR shall notify COUNTY within twenty-four (24) hours of becoming aware of any such serious adverse incident, and complete a Special Incident Report in accordance with established P&Ps.

G. ADDITIONAL REPORTS – Upon ADMINISTRATOR’s request, CONTRACTOR shall make such additional reports as required by ADMINISTRATOR concerning CONTRACTOR’s activities as they affect the services hereunder. ADMINISTRATOR shall be specific as to the nature of information requested and allow up to thirty (30) calendar days for CONTRACTOR to respond.

1 H. CONTRACTOR must request in writing any extensions to the due date of the monthly required  
 2 report. If an extension is approved by ADMINISTRATOR, the total extension will not exceed more  
 3 than five (5) calendar days.

4 I. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the  
 5 Reports Paragraph of this Exhibit A to the Agreement.

## 6 V. SERVICES

### 7 A. FACILITIES

8 ~~1. CONTRACTOR shall maintain two facility(ies) for the provision of Temporary Isolation  
 9 Shelter Services for persons experiencing homelessness. The provision of room and board along with  
 10 health care services in-house at the identified facilities will support the COUNTY's COVID-19 response  
 11 by mitigating exposure to COVID-19 for the vulnerable population who is at the highest risk of  
 12 acquiring COVID-19. The sites are as follows:~~

13 ~~a. Broadway Site located at 9942 W. Broadway, Anaheim, CA 92804: 50 beds with  
 14 individual rooms for individuals presumed COVID-19 positive participants.~~

15 ~~c. Overflow site located at 7555 Beach Blvd., Buena Park, CA 90620: Up to 50 overflow  
 16 beds for presumed COVID-19 positive participants. Overflow beds are only to be used after other site  
 17 has reached max capacity.~~

### 18 A. FACILITIES

19 1. CONTRACTOR shall maintain two facility(ies) for the provision of Temporary Isolation  
 20 Shelter Services for persons experiencing homelessness. The provision of room and board along with  
 21 health care services in-house at the identified facilities will support COUNTY's COVID-19 response by  
 22 mitigating exposure to COVID-19 for the vulnerable population who is at the highest risk of acquiring  
 23 COVID-19. The sites are as follows:

24 a. Broadway Site located at 9942 W. Broadway, Anaheim, CA 92804: 50 beds with  
 25 individual rooms for individuals presumed COVID-19 positive participants.

26 b. Overflow site located at 7555 Beach Blvd., Buena Park, CA 90620: Up to 100 overflow  
 27 beds for presumed COVID-19 positive participants. Overflow beds are only to be used after Broadway  
 28 site has reached max capacity.

### 29 B. CONTRACT TIMELINE

30 1. This program will be established for through and including March 31, 2022.

### 31 C. ISOLATION SHELTER LOCATION SERVICES

32 1. CONFIDENTIALITY REQUIREMENTS – CONTRACTOR agrees to maintain the  
 33 confidentiality of all County and County-related records and information pursuant to all statutory laws  
 34 relating to privacy and confidentiality that currently exist or exist at any time during the term of this  
 35 contract. All such records and information shall be considered confidential and kept confidential by the  
 36 contractor and the contractor's staff, agents and employees.  
 37

1           2. SERVICES: The goal of the Temporary Isolation Shelter Services is to provide short-term  
 2 shelter and comprehensive care delivered by a team of providers that include a physician, psychiatrist,  
 3 physician assistant, nurse practitioner, counselors, behavioral health therapists, social workers, and case  
 4 managers. The sites shall be staffed 24/7 with medical staff on-site including evenings and weekends.  
 5 Contract shall provide a telehealth program, which provides on demand health care services and avoid  
 6 unnecessary utilization of the health care system. This includes but is not limited to homeless  
 7 individuals exhibiting signs of illness who need isolation and quarantine. Services shall include:

- 8           a. Medical oversight;
- 9           b. Treatment and management of acute and chronic health needs;
- 10          c. Mental health services, treatment and counseling by onsite psychiatrist, licensed  
 11 therapists, and social workers;
- 12          d. Post-hospital care and follow-up;
- 13          e. Dispensing prescriptions;
- 14          f. Medication management;
- 15          g. Telehealth; and
- 16          h. Referrals to specialist when necessary

17           ~~3. CONTRACTOR must operate and maintain up to two (2) temporary Isolation  
 18 Shelter Locations. The capacity of each site will vary but the maximum program capacity will remain at  
 19 original contracted amount of 100 beds.~~

20           3. CONTRACTOR must operate and maintain two (2) facilities for the provision of  
 21 Temporary Isolation Shelter Services. The capacity of each site may vary but the minimum capacity at  
 22 each facility under this Contract is the number of beds and rooms set forth in Paragraph V.,  
 23 Subparagraph A of this Exhibit A. CONTRACTOR must maintain the contractually required capacity at  
 24 all times during this Contract.

25           4. CONTRACTOR must facilitate an access phone number to be used by shelter providers,  
 26 homeless outreach teams, law enforcement, hospitals, Public Health Services and other homeless  
 27 serving organizations to refer homeless participants into Temporary Isolation Shelter Locations.

28           a. CONTRACTOR must respond to all referral calls 24/7 with a live person to accept  
 29 requests for medical screening and linkage to one of the temporary Alternative Shelter  
 30 Locations.

31           5. The use for any of the Isolation Shelter Locations can be changed by COUNTY in  
 32 coordination with CONTRACTOR.

33           6. All financial responsibility for damages to the rooms will be assumed by the  
 34 CONTRACTOR.

35           D. CONTRACTOR must provide a space for homeless individuals to isolate, rest and recover  
 36 which is habitable, promotes physical functioning, adequate hygiene, and personal safety.

37           1. A bed available to each patient for 24 hours per day.

- 1 2. On-site showering facilities.
- 2 3. On-site or access to laundering facilities.
- 3 4. Access to secured storage for personal belongings.
- 4 5. Access to secured storage for medications if CONTRACTOR is not legally authorized to
- 5 store/dispense medication.
- 6 6. At least three (3) meals per day and snacks.
- 7 7. Security guards on all sites 24 hours, 7 days a week; 10 per shift
- 8 8. Support pet needs of Clients.
- 9 9. Written policies and procedures for responding to life-threatening emergencies.
- 10 10. Compliant with State and local fire safety standards.
- 11 11. Transportation services.
- 12 12. Written code of conduct for patient behavior
- 13 E. CONTRACTOR must provide Medical Care Plan Coordination:
- 14 1. Supporting Client in isolation and recovery
- 15 2. Assisting Clients in navigating their health network and other support systems, as needed.
- 16 F. CONTRACTOR must follow applicable State and local guidelines and regulations related to
- 17 hazardous waste handling and disposal, disease prevention, and safety. Written policies and procedures
- 18 should address the following:
- 19 1. Safe storage, disposal, and handling of biomedical and pharmaceutical waste, including
- 20 expired or unused medications and needles.
- 21 2. Managing exposure to bodily fluids and other biohazards.
- 22 3. Infection control and the management of communicable diseases, including following
- 23 applicable reporting requirements.
- 24 4. Storage, handling, security, and disposal of patient medications, if patient medications are
- 25 stored and/or handled by CONTRACTOR's staff.
- 26 G. CONTRACTOR must maintain clear policies and procedures for the screening and
- 27 management of referrals in coordination with COUNTY.
- 28 1. Admission criteria
- 29 2. Screening tool
- 30 3. Point of contact and phone number to receive referrals for additional providers
- 31 4. HIPAA compliant communication
- 32 5. User agreement upon intake
- 33 H. CONTRACTOR must make on-going reassessments to determine recovery of each homeless
- 34 individual within the program and make referrals to appropriate housing options.
- 35 I. CONTRACTOR must maintain clear policies and procedures for discharging Clients back to
- 36 the community.
- 37

1 J. CONTRACTOR must maintain a medical record for each Client in a manner consistent with  
2 federal and state laws and regulations, including privacy laws.

3 K. CONTRACTOR must maintain ongoing database in coordination with COUNTY of all patient  
4 services and transitions.

5 L. CONTRACTOR must facilitate safe and appropriate transitions out of temporary Alternative  
6 Shelter Locations as follows.

7 1. When a Client's stay in the Temporary Isolation Shelter Services is complete,  
8 CONTRACTOR or assigned case management provider, if identified by COUNTY, must provide client-  
9 centered discharge planning to Clients in order to facilitate a smooth transition out of identified Isolation  
10 sites and back to their community of origin. Efforts shall be made to avoid referring individuals back to  
11 an unsheltered living situation.

12 2. Clients must be given an exit date of at least three days (72 hours) prior to discharge in  
13 order to support discharge planning. The 3-day notice does not apply to Clients that either self-exit or  
14 are exited for cause. This notice must be provided to the Client in writing, and a copy must be kept in a  
15 master file. A second document with the discharge date and discharge transition location or site must be  
16 provided to the Client for them to sign at least forty-eight (48) hours prior to discharge. A master  
17 spreadsheet must be created to track discharge planning documents. CONTRACTOR must implement a  
18 calendaring system that will track each Client's appropriate date to provide a 3-day notice of transition  
19 for check out and to guide the checkout process. Communication must be provided to coordinating  
20 agencies. If a Client came from a shelter environment, the referring agency is expected to hold the bed  
21 so that the Client can return to the shelter.

22 3. Transportation back to the community must be provided at time of check out, by either  
23 CONTRACTOR or the assigned agency providing case management, their health network and other  
24 support systems, as needed.

25 M. CAPITAL IMPROVEMENTS: Contractor will complete critical TI upgrades to the Fullerton  
26 site and ancillary equipment, including HVAC retrofits, entry/exit and foot-traffic control measures,  
27 state-of-the-art screening tools and technology, sanitation equipment, and medical equipment. These  
28 proven measures will protect program participants, staff, and outside visitors by mitigating the spread of  
29 COVID-19 at the facility.

## 30 31 32 **VI. STAFFING**

33  
34 A. Contractors shall provide a minimum of the following staffing pattern expressed in FTEs  
35 continuously throughout the term of the Contract. One (1) FTE shall be equal to an average of forty (40)  
36 hours of work per week to provide supportive housing services for the homeless. The minimum staff for  
37 operation of the three recuperative care sites are as follows:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37

[INSERT STAFFING TABLE HERE]

B. Contractor shall provide security guards at all identified sites 24 hours, 7 days a week: Per shift there will be four (4) at overflow site, and two (2) at Broadway site.

C. Contractor shall have adequate and trained staff working with individuals struggling with homelessness and medical issues and are able to assess the baseline of homeless individuals, provide supportive and educational services onsite, and determine recovery.

D. Contractor and Administrator may mutually agree, in writing, to modify the Staffing Paragraph of this Exhibit A to the Contract.

1 EXHIBIT B  
2 TO THE CONTRACT FOR PROVISION OF  
3 TEMPORARY ISOLATION SHELTER SERVICES  
4 BETWEEN  
5 COUNTY OF ORANGE  
6 AND  
7 THE ILLUMINATION FOUNDATION  
8 JANUARY 1, 2022 THROUGH MARCH 31, 2022

9  
10 **I. BUSINESS ASSOCIATE CONTRACT**

11  
12 **A. GENERAL PROVISIONS AND RECITALS**

13 1. The parties agree that the terms used, but not otherwise defined in the Common Terms and  
14 Definitions Paragraph of Exhibit A to the Contract or in Subparagraph B below, shall have the same  
15 meaning given to such terms under HIPAA, the HITECH Act, and their implementing regulations at  
16 45 CFR Parts 160 and 164 (“the HIPAA regulations”) as they may exist now or be hereafter amended.

17 2. The parties agree that a business associate relationship under HIPAA, the HITECH Act,  
18 and the HIPAA regulations between the CONTRACTOR and COUNTY arises to the extent that  
19 CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of  
20 COUNTY pursuant to, and as set forth in, the Contract that are described in the definition of “Business  
21 Associate” in 45 CFR § 160.103.

22 3. The COUNTY wishes to disclose to CONTRACTOR certain information pursuant to the  
23 terms of the Contract, some of which may constitute PHI, as defined below in Subparagraph B.10, to be  
24 used or disclosed in the course of providing services and activities pursuant to, and as set forth, in the  
25 Contract.

26 4. The parties intend to protect the privacy and provide for the security of PHI that may be  
27 created, received, maintained, transmitted, used, or disclosed pursuant to the Contract in compliance  
28 with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH  
29 Act, and the HIPAA regulations as they may exist now or be hereafter amended.

30 5. The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA  
31 regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by  
32 other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.

33 6. The parties understand that the HIPAA Privacy and Security rules, as defined below in  
34 Subparagraphs B.9 and B.14, apply to the CONTRACTOR in the same manner as they apply to the  
35 covered entity (COUNTY). CONTRACTOR agrees therefore to be in compliance at all times with the  
36 terms of this Business Associate Contract, as it exists now or be hereafter updated with notice to  
37 CONTRACTOR, and the applicable standards, implementation specifications, and requirements of the

1 Privacy and the Security rules, as they may exist now or be hereafter amended, with respect to PHI and  
2 electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Contract.

3 B. DEFINITIONS

4 1. "Administrative Safeguards" are administrative actions, and P&Ps, to manage the selection,  
5 development, implementation, and maintenance of security measures to protect ePHI and to manage the  
6 conduct of CONTRACTOR's workforce in relation to the protection of that information.

7 2. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted  
8 under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

9 a. Breach excludes:

10 1) Any unintentional acquisition, access, or use of PHI by a workforce member or  
11 person acting under the authority of CONTRACTOR or COUNTY, if such acquisition, access, or use  
12 was made in good faith and within the scope of authority and does not result in further use or disclosure  
13 in a manner not permitted under the Privacy Rule.

14 2) Any inadvertent disclosure by a person who is authorized to access PHI at  
15 CONTRACTOR to another person authorized to access PHI at the CONTRACTOR, or organized health  
16 care arrangement in which COUNTY participates, and the information received as a result of such  
17 disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.

18 3) A disclosure of PHI where CONTRACTOR or COUNTY has a good faith belief  
19 that an unauthorized person to whom the disclosure was made would not reasonably have been able to  
20 retain such information.

21 b. Except as provided in Subparagraph a. of this definition, an acquisition, access, use, or  
22 disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach  
23 unless CONTRACTOR demonstrates that there is a low probability that the PHI has been compromised  
24 based on a risk assessment of at least the following factors:

25 1) The nature and extent of the PHI involved, including the types of identifiers and the  
26 likelihood of re-identification;

27 2) The unauthorized person who used the PHI or to whom the disclosure was made;

28 3) Whether the PHI was actually acquired or viewed; and

29 4) The extent to which the risk to the PHI has been mitigated.

30 3. "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy  
31 Rule in 45 CFR § 164.501.

32 4. "DRS" shall have the meaning given to such term under the HIPAA Privacy Rule in  
33 45 CFR § 164.501.

34 5. "Disclosure" shall have the meaning given to such term under the HIPAA regulations in  
35 45 CFR § 160.103.

36 6. "Health Care Operations" shall have the meaning given to such term under the HIPAA  
37 Privacy Rule in 45 CFR § 164.501.

1 7. "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in  
2 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance  
3 with 45 CFR § 164.502(g).

4 8. "Physical Safeguards" are physical measures, policies, and procedures to protect  
5 CONTRACTOR's electronic information systems and related buildings and equipment, from natural  
6 and environmental hazards, and unauthorized intrusion.

7 9. "The HIPAA Privacy Rule" shall mean the Standards for Privacy of Individually  
8 Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

9 10. "PHI" shall have the meaning given to such term under the HIPAA regulations in  
10 45 CFR § 160.103.

11 11. "Required by Law" shall have the meaning given to such term under the HIPAA Privacy  
12 Rule in 45 CFR § 164.103.

13 12. "Secretary" shall mean the Secretary of the Department of HHS or his or her designee.

14 13. "Security Incident" means attempted or successful unauthorized access, use, disclosure,  
15 modification, or destruction of information or interference with system operations in an information  
16 system. "Security incident" does not include trivial incidents that occur on a daily basis, such as scans,  
17 "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by  
18 CONTRACTOR.

19 14. "The HIPAA Security Rule" shall mean the Security Standards for the Protection of ePHI at  
20 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.

21 15. "Subcontractor" shall have the meaning given to such term under the HIPAA regulations in  
22 45 CFR § 160.103.

23 16. "Technical safeguards" means the technology and the P&Ps for its use that protect  
24 electronic PHI and control access to it.

25 17. "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable,  
26 unreadable, or indecipherable to unauthorized individuals through the use of a technology or  
27 methodology specified by the Secretary of HHS in the guidance issued on the HHS Web site.

28 18. "Use" shall have the meaning given to such term under the HIPAA regulations in  
29 45 CFR § 160.103.

### 30 C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE

31 1. CONTRACTOR agrees not to use or further disclose PHI COUNTY discloses to  
32 CONTRACTOR other than as permitted or required by this Business Associate Contract or as required  
33 by law.

34 2. CONTRACTOR agrees to use appropriate safeguards, as provided for in this Business  
35 Associate Contract and the Contract, to prevent use or disclosure of PHI COUNTY discloses to  
36 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY  
37 other than as provided for by this Business Associate Contract.

1           3. CONTRACTOR agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR  
2 Part 164 with respect to ePHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates,  
3 receives, maintains, or transmits on behalf of COUNTY.

4           4. CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is  
5 known to CONTRACTOR of a Use or Disclosure of PHI by CONTRACTOR in violation of the  
6 requirements of this Business Associate Contract.

7           5. CONTRACTOR agrees to report to COUNTY immediately any Use or Disclosure of PHI  
8 not provided for by this Business Associate Contract of which CONTRACTOR becomes aware.  
9 CONTRACTOR must report Breaches of Unsecured PHI in accordance with Subparagraph E below and  
10 as required by 45 CFR § 164.410.

11           6. CONTRACTOR agrees to ensure that any Subcontractors that create, receive, maintain, or  
12 transmit PHI on behalf of CONTRACTOR agree to the same restrictions and conditions that apply  
13 through this Business Associate Contract to CONTRACTOR with respect to such information.

14           7. CONTRACTOR agrees to provide access, within fifteen (15) calendar days of receipt of a  
15 written request by COUNTY, to PHI in a DRS, to COUNTY or, as directed by COUNTY, to an  
16 Individual in order to meet the requirements under 45 CFR § 164.524. If CONTRACTOR maintains an  
17 EHR with PHI, and an individual requests a copy of such information in an electronic format,  
18 CONTRACTOR shall provide such information in an electronic format.

19           8. CONTRACTOR agrees to make any amendment(s) to PHI in a DRS that COUNTY directs  
20 or agrees to pursuant to 45 CFR § 164.526 at the request of COUNTY or an Individual, within thirty  
21 (30) calendar days of receipt of said request by COUNTY. CONTRACTOR agrees to notify COUNTY  
22 in writing no later than ten (10) calendar days after said amendment is completed.

23           9. CONTRACTOR agrees to make internal practices, books, and records, including P&Ps,  
24 relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on  
25 behalf of, COUNTY available to COUNTY and the Secretary in a time and manner as determined by  
26 COUNTY or as designated by the Secretary for purposes of the Secretary determining COUNTY's  
27 compliance with the HIPAA Privacy Rule.

28           10. CONTRACTOR agrees to document any Disclosures of PHI COUNTY discloses to  
29 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY,  
30 and to make information related to such Disclosures available as would be required for COUNTY to  
31 respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with  
32 45 CFR § 164.528.

33           11. CONTRACTOR agrees to provide COUNTY or an Individual, as directed by COUNTY, in  
34 a time and manner to be determined by COUNTY, that information collected in accordance with the  
35 Contract, in order to permit COUNTY to respond to a request by an Individual for an accounting of  
36 Disclosures of PHI in accordance with 45 CFR § 164.528.

1 12. CONTRACTOR agrees that to the extent CONTRACTOR carries out COUNTY's  
2 obligation under the HIPAA Privacy and/or Security rules CONTRACTOR will comply with the  
3 requirements of 45 CFR Part 164 that apply to COUNTY in the performance of such obligation.

4 13. If CONTRACTOR receives Social Security data from COUNTY provided to COUNTY by  
5 a state agency, upon request by COUNTY, CONTRACTOR shall provide COUNTY with a list of all  
6 employees, subcontractors, and agents who have access to the Social Security data, including  
7 employees, agents, subcontractors, and agents of its subcontractors.

8 14. CONTRACTOR will notify COUNTY if CONTRACTOR is named as a defendant in a  
9 criminal proceeding for a violation of HIPAA. COUNTY may terminate the Contract, if  
10 CONTRACTOR is found guilty of a criminal violation in connection with HIPAA. COUNTY may  
11 terminate the Contract, if a finding or stipulation that CONTRACTOR has violated any standard or  
12 requirement of the privacy or security provisions of HIPAA, or other security or privacy laws are made  
13 in any administrative or civil proceeding in which CONTRACTOR is a party or has been joined.  
14 COUNTY will consider the nature and seriousness of the violation in deciding whether or not to  
15 terminate the Contract.

16 15. CONTRACTOR shall make itself and any subcontractors, employees or agents assisting  
17 CONTRACTOR in the performance of its obligations under the Contract, available to COUNTY at no  
18 cost to COUNTY to testify as witnesses, or otherwise, in the event of litigation or administrative  
19 proceedings being commenced against COUNTY, its directors, officers or employees based upon  
20 claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy,  
21 which involves inactions or actions by CONTRACTOR, except where CONTRACTOR or its  
22 subcontractor, employee, or agent is a named adverse party.

23 16. The Parties acknowledge that federal and state laws relating to electronic data security and  
24 privacy are rapidly evolving and that amendment of this Business Associate Contract may be required to  
25 provide for procedures to ensure compliance with such developments. The Parties specifically agree to  
26 take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH  
27 Act, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon  
28 COUNTY's request, CONTRACTOR agrees to promptly enter into negotiations with COUNTY  
29 concerning an amendment to this Business Associate Contract embodying written assurances consistent  
30 with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other  
31 applicable laws. COUNTY may terminate the Contract upon thirty (30) days written notice in the event:

32 a. CONTRACTOR does not promptly enter into negotiations to amend this Business  
33 Associate Contract when requested by COUNTY pursuant to this Subparagraph C; or

34 b. CONTRACTOR does not enter into an amendment providing assurances regarding the  
35 safeguarding of PHI that COUNTY deems are necessary to satisfy the standards and requirements of  
36 HIPAA, the HITECH Act, and the HIPAA regulations.

1 17. CONTRACTOR shall work with COUNTY upon notification by CONTRACTOR to  
2 COUNTY of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph  
3 B.2.a above.

4 D. SECURITY RULE

5 1. CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish  
6 and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with  
7 45 CFR § 164.308, § 164.310, and § 164.312, with respect to electronic PHI COUNTY discloses to  
8 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY.  
9 CONTRACTOR shall develop and maintain a written information privacy and security program that  
10 includes Administrative, Physical, and Technical Safeguards appropriate to the size and complexity of  
11 CONTRACTOR's operations and the nature and scope of its activities.

12 2. CONTRACTOR shall implement reasonable and appropriate P&Ps to comply with the  
13 standards, implementation specifications and other requirements of 45 CFR Part 164, Subpart C, in  
14 compliance with 45 CFR § 164.316. CONTRACTOR will provide COUNTY with its current and  
15 updated policies upon request.

16 3. CONTRACTOR shall ensure the continuous security of all computerized data systems  
17 containing ePHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives,  
18 maintains, or transmits on behalf of COUNTY. CONTRACTOR shall protect paper documents  
19 containing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives,  
20 maintains, or transmits on behalf of COUNTY. These steps shall include, at a minimum:

21 a. Complying with all of the data system security precautions listed under Subparagraph  
22 E., below;

23 b. Achieving and maintaining compliance with the HIPAA Security Rule, as necessary in  
24 conducting operations on behalf of COUNTY;

25 c. Providing a level and scope of security that is at least comparable to the level and scope  
26 of security established by the OMB in OMB Circular No. A-130, Appendix III - Security of Federal  
27 Automated Information Systems, which sets forth guidelines for automated information systems in  
28 Federal agencies;

29 4. CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or  
30 transmit ePHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same  
31 restrictions and requirements contained in this Subparagraph D of this Business Associate Contract.

32 5. CONTRACTOR shall report to COUNTY immediately any Security Incident of which it  
33 becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI in accordance with  
34 Subparagraph E below and as required by 45 CFR § 164.410.

35 6. CONTRACTOR shall designate a Security Officer to oversee its data security program who  
36 shall be responsible for carrying out the requirements of this paragraph and for communicating on  
37 security matters with COUNTY.

1 E. DATA SECURITY REQUIREMENTS

2 1. Personal Controls

3 a. Employee Training. All workforce members who assist in the performance of  
4 functions or activities on behalf of COUNTY in connection with Contract, or access or disclose PHI  
5 COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on  
6 behalf of COUNTY, must complete information privacy and security training, at least annually, at  
7 CONTRACTOR's expense. Each workforce member who receives information privacy and security  
8 training must sign a certification, indicating the member's name and the date on which the training was  
9 completed. These certifications must be retained for a period of six (6) years following the termination  
10 of Contract.

11 b. Employee Discipline. Appropriate sanctions must be applied against workforce  
12 members who fail to comply with any provisions of CONTRACTOR's privacy P&Ps, including  
13 termination of employment where appropriate.

14 c. Confidentiality Statement. All persons that will be working with PHI COUNTY  
15 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of  
16 COUNTY must sign a confidentiality statement that includes, at a minimum, General Use, Security and  
17 Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the  
18 workforce member prior to access to such PHI. The statement must be renewed annually. The  
19 CONTRACTOR shall retain each person's written confidentiality statement for COUNTY inspection  
20 for a period of six (6) years following the termination of the Contract.

21 d. Background Check. Before a member of the workforce may access PHI COUNTY  
22 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of  
23 COUNTY, a background screening of that worker must be conducted. The screening should be  
24 commensurate with the risk and magnitude of harm the employee could cause, with more thorough  
25 screening being done for those employees who are authorized to bypass significant technical and  
26 operational security controls. CONTRACTOR shall retain each workforce member's background check  
27 documentation for a period of three (3) years.

28 2. Technical Security Controls

29 a. Workstation/Laptop encryption. All workstations and laptops that store PHI COUNTY  
30 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of  
31 COUNTY either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which  
32 is 128bit or higher, such as AES. The encryption solution must be full disk unless approved by the  
33 COUNTY.

34 b. Server Security. Servers containing unencrypted PHI COUNTY discloses to  
35 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY  
36 must have sufficient administrative, physical, and technical controls in place to protect that data, based  
37 upon a risk assessment/system security review.

1 c. Minimum Necessary. Only the minimum necessary amount of PHI COUNTY discloses  
2 to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY  
3 required to perform necessary business functions may be copied, downloaded, or exported.

4 d. Removable media devices. All electronic files that contain PHI COUNTY discloses to  
5 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY  
6 must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives,  
7 floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified  
8 algorithm which is 128bit or higher, such as AES. Such PHI shall not be considered “removed from the  
9 premises” if it is only being transported from one of CONTRACTOR’s locations to another of  
10 CONTRACTOR’s locations.

11 e. Antivirus software. All workstations, laptops and other systems that process and/or  
12 store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or  
13 transmits on behalf of COUNTY must have installed and actively use comprehensive anti-virus software  
14 solution with automatic updates scheduled at least daily.

15 f. Patch Management. All workstations, laptops and other systems that process and/or  
16 store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or  
17 transmits on behalf of COUNTY must have critical security patches applied, with system reboot if  
18 necessary. There must be a documented patch management process which determines installation  
19 timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable  
20 patches must be installed within thirty (30) days of vendor release. Applications and systems that  
21 cannot be patched due to operational reasons must have compensatory controls implemented to  
22 minimize risk, where possible.

23 g. User IDs and Password Controls. All users must be issued a unique user name for  
24 accessing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,  
25 or transmits on behalf of COUNTY. Username must be promptly disabled, deleted, or the password  
26 changed upon the transfer or termination of an employee with knowledge of the password, at maximum  
27 within twenty-four (24) hours. Passwords are not to be shared. Passwords must be at least eight  
28 characters and must be a non-dictionary word. Passwords must not be stored in readable format on the  
29 computer. Passwords must be changed every ninety (90) days, preferably every sixty (60) days.  
30 Passwords must be changed if revealed or compromised. Passwords must be composed of characters  
31 from at least three (3) of the following four (4) groups from the standard keyboard:

- 32 1) Upper case letters (A-Z)
- 33 2) Lower case letters (a-z)
- 34 3) Arabic numerals (0-9)
- 35 4) Non-alphanumeric characters (punctuation symbols)

36 h. Data Destruction. When no longer needed, all PHI COUNTY discloses to  
37 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY

1 must be wiped using the Gutmann or US DoD 5220.22-M (7 Pass) standard, or by degaussing. Media  
2 may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods  
3 require prior written permission by COUNTY.

4 i. System Timeout. The system providing access to PHI COUNTY discloses to  
5 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY  
6 must provide an automatic timeout, requiring re-authentication of the user session after no more than  
7 twenty (20) minutes of inactivity.

8 j. Warning Banners. All systems providing access to PHI COUNTY discloses to  
9 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY  
10 must display a warning banner stating that data is confidential, systems are logged, and system use is for  
11 business purposes only by authorized users. User must be directed to log off the system if they do not  
12 agree with these requirements.

13 k. System Logging. The system must maintain an automated audit trail which can  
14 identify the user or system process which initiates a request for PHI COUNTY discloses to  
15 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY,  
16 or which alters such PHI. The audit trail must be date and time stamped, must log both successful and  
17 failed accesses, must be read only, and must be restricted to authorized users. If such PHI is stored in a  
18 database, database logging functionality must be enabled. Audit trail data must be archived for at least  
19 three (3) years after occurrence.

20 l. Access Controls. The system providing access to PHI COUNTY discloses to  
21 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY  
22 must use role based access controls for all user authentications, enforcing the principle of least privilege.

23 m. Transmission encryption. All data transmissions of PHI COUNTY discloses to  
24 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY  
25 outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is  
26 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files  
27 containing PHI can be encrypted. This requirement pertains to any type of PHI in motion such as  
28 website access, file transfer, and E-Mail.

29 n. Intrusion Detection. All systems involved in accessing, holding, transporting, and  
30 protecting PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,  
31 or transmits on behalf of COUNTY that are accessible via the Internet must be protected by a  
32 comprehensive intrusion detection and prevention solution.

### 33 3. Audit Controls

34 a. System Security Review. CONTRACTOR must ensure audit control mechanisms that  
35 record and examine system activity are in place. All systems processing and/or storing PHI COUNTY  
36 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of  
37 COUNTY must have at least an annual system risk assessment/security review which provides

1 assurance that administrative, physical, and technical controls are functioning effectively and providing  
2 adequate levels of protection. Reviews should include vulnerability scanning tools.

3           b. Log Reviews. All systems processing and/or storing PHI COUNTY discloses to  
4 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY  
5 must have a routine procedure in place to review system logs for unauthorized access.

6           c. Change Control. All systems processing and/or storing PHI COUNTY discloses to  
7 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY  
8 must have a documented change control procedure that ensures separation of duties and protects the  
9 confidentiality, integrity and availability of data.

#### 10           4. Business Continuity/Disaster Recovery Control

11           a. Emergency Mode Operation Plan. CONTRACTOR must establish a documented plan  
12 to enable continuation of critical business processes and protection of the security of PHI COUNTY  
13 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of  
14 COUNTY kept in an electronic format in the event of an emergency. Emergency means any  
15 circumstance or situation that causes normal computer operations to become unavailable for use in  
16 performing the work required under this Contract for more than twenty-four (24) hours.

17           b. Data Backup Plan. CONTRACTOR must have established documented procedures to  
18 backup such PHI to maintain retrievable exact copies of the PHI. The plan must include a regular  
19 schedule for making backups, storing backup offsite, an inventory of backup media, and an estimate of  
20 the amount of time needed to restore DHCS PHI or PI should it be lost. At a minimum, the schedule  
21 must be a weekly full backup and monthly offsite storage of DHCS data. BCP for CONTRACTOR and  
22 COUNTY (e.g. the application owner) must merge with the DRP.

#### 23           5. Paper Document Controls

24           a. Supervision of Data. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR  
25 creates, receives, maintains, or transmits on behalf of COUNTY in paper form shall not be left  
26 unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means  
27 that information is not being observed by an employee authorized to access the information. Such PHI  
28 in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in  
29 baggage on commercial airplanes.

30           b. Escorting Visitors. Visitors to areas where PHI COUNTY discloses to  
31 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY is  
32 contained shall be escorted and such PHI shall be kept out of sight while visitors are in the area.

33           c. Confidential Destruction. PHI COUNTY discloses to CONTRACTOR or  
34 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must be disposed of  
35 through confidential means, such as cross cut shredding and pulverizing.

1 d. Removal of Data. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR  
2 creates, receives, maintains, or transmits on behalf of COUNTY must not be removed from the premises  
3 of the CONTRACTOR except with express written permission of COUNTY.

4 e. Faxing. Faxes containing PHI COUNTY discloses to CONTRACTOR or  
5 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY shall not be left  
6 unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement  
7 notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the  
8 intended recipient before sending the fax.

9 f. Mailing. Mailings containing PHI COUNTY discloses to CONTRACTOR or  
10 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY shall be sealed and  
11 secured from damage or inappropriate viewing of PHI to the extent possible. Mailings which include  
12 five hundred (500) or more individually identifiable records containing PHI COUNTY discloses to  
13 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY in  
14 a single package shall be sent using a tracked mailing method which includes verification of delivery  
15 and receipt, unless the prior written permission of COUNTY to use another method is obtained.

#### 16 F. BREACH DISCOVERY AND NOTIFICATION

17 1. Following the discovery of a Breach of Unsecured PHI, CONTRACTOR shall notify  
18 COUNTY of such Breach, however both parties agree to a delay in the notification if so advised by a  
19 law enforcement official pursuant to 45 CFR § 164.412.

20 a. A Breach shall be treated as discovered by CONTRACTOR as of the first day on which  
21 such Breach is known to CONTRACTOR or, by exercising reasonable diligence, would have been  
22 known to CONTRACTOR.

23 b. CONTRACTOR shall be deemed to have knowledge of a Breach, if the Breach is  
24 known, or by exercising reasonable diligence would have known, to any person who is an employee,  
25 officer, or other agent of CONTRACTOR, as determined by federal common law of agency.

26 2. CONTRACTOR shall provide the notification of the Breach immediately to the COUNTY  
27 Privacy Officer. CONTRACTOR's notification may be oral, but shall be followed by written  
28 notification within twenty-four (24) hours of the oral notification.

29 3. CONTRACTOR's notification shall include, to the extent possible:

30 a. The identification of each Individual whose Unsecured PHI has been, or is reasonably  
31 believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;

32 b. Any other information that COUNTY is required to include in the notification to  
33 Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify COUNTY or  
34 promptly thereafter as this information becomes available, even after the regulatory sixty (60) day  
35 period set forth in 45 CFR § 164.410 (b) has elapsed, including:

36 1) A brief description of what happened, including the date of the Breach and the date  
37 of the discovery of the Breach, if known;

1                   2) A description of the types of Unsecured PHI that were involved in the Breach (such  
2 as whether full name, social security number, date of birth, home address, account number, diagnosis,  
3 disability code, or other types of information were involved);

4                   3) Any steps Individuals should take to protect themselves from potential harm  
5 resulting from the Breach;

6                   4) A brief description of what CONTRACTOR is doing to investigate the Breach, to  
7 mitigate harm to Individuals, and to protect against any future Breaches; and

8                   5) Contact procedures for Individuals to ask questions or learn additional information,  
9 which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

10                  4. COUNTY may require CONTRACTOR to provide notice to the Individual as required in  
11 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the  
12 COUNTY.

13                  5. In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation  
14 of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that  
15 CONTRACTOR made all notifications to COUNTY consistent with this Subparagraph F and as  
16 required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or  
17 disclosure of PHI did not constitute a Breach.

18                  6. CONTRACTOR shall maintain documentation of all required notifications of a Breach or  
19 its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.

20                  7. CONTRACTOR shall provide to COUNTY all specific and pertinent information about the  
21 Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit  
22 COUNTY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as  
23 practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR's initial report of  
24 the Breach to COUNTY pursuant to Subparagraph F.2. above.

25                  8. CONTRACTOR shall continue to provide all additional pertinent information about the  
26 Breach to COUNTY as it may become available, in reporting increments of five (5) business days after  
27 the last report to COUNTY. CONTRACTOR shall also respond in good faith to any reasonable  
28 requests for further information, or follow-up information after report to COUNTY, when such request  
29 is made by COUNTY.

30                  9. If the Breach is the fault of CONTRACTOR, CONTRACTOR shall bear all expense or  
31 other costs associated with the Breach and shall reimburse COUNTY for all expenses COUNTY incurs  
32 in addressing the Breach and consequences thereof, including costs of investigation, notification,  
33 remediation, documentation or other costs associated with addressing the Breach.

#### 34 G. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

35                  1. CONTRACTOR may use or further disclose PHI COUNTY discloses to CONTRACTOR  
36 as necessary to perform functions, activities, or services for, or on behalf of, COUNTY as specified in  
37

1 the Contract, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by  
2 COUNTY except for the specific Uses and Disclosures set forth below.

3 a. CONTRACTOR may use PHI COUNTY discloses to CONTRACTOR, if necessary,  
4 for the proper management and administration of CONTRACTOR.

5 b. CONTRACTOR may disclose PHI COUNTY discloses to CONTRACTOR for the  
6 proper management and administration of CONTRACTOR or to carry out the legal responsibilities of  
7 CONTRACTOR, if:

8 1) The Disclosure is required by law; or

9 2) CONTRACTOR obtains reasonable assurances from the person to whom the PHI  
10 is disclosed that it will be held confidentially and used or further disclosed only as required by law or for  
11 the purposes for which it was disclosed to the person and the person immediately notifies  
12 CONTRACTOR of any instance of which it is aware in which the confidentiality of the information has  
13 been breached.

14 c. CONTRACTOR may use or further disclose PHI COUNTY discloses to  
15 CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of  
16 CONTRACTOR.

17 2. CONTRACTOR may use PHI COUNTY discloses to CONTRACTOR, if necessary, to  
18 carry out legal responsibilities of CONTRACTOR.

19 3. CONTRACTOR may use and disclose PHI COUNTY discloses to CONTRACTOR  
20 consistent with the minimum necessary P&Ps of COUNTY.

21 4. CONTRACTOR may use or disclose PHI COUNTY discloses to CONTRACTOR as  
22 required by law.

#### 23 H. PROHIBITED USES AND DISCLOSURES

24 1. CONTRACTOR shall not disclose PHI COUNTY discloses to CONTRACTOR or  
25 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY about an individual to  
26 a health plan for payment or health care operations purposes if the PHI pertains solely to a health care  
27 item or service for which the health care provider involved has been paid out of pocket in full and the  
28 individual requests such restriction, in accordance with 42 USC § 17935(a) and 45 CFR § 164.522(a).

29 2. CONTRACTOR shall not directly or indirectly receive remuneration in exchange for PHI  
30 COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on  
31 behalf of COUNTY, except with the prior written consent of COUNTY and as permitted by  
32 42 USC § 17935(d)(2).

#### 33 I. OBLIGATIONS OF COUNTY

34 1. COUNTY shall notify CONTRACTOR of any limitation(s) in COUNTY's notice of  
35 privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect  
36 CONTRACTOR's Use or Disclosure of PHI.

1           2. COUNTY shall notify CONTRACTOR of any changes in, or revocation of, the permission  
2 by an Individual to use or disclose his or her PHI, to the extent that such changes may affect  
3 CONTRACTOR's Use or Disclosure of PHI.

4           3. COUNTY shall notify CONTRACTOR of any restriction to the Use or Disclosure of PHI  
5 that COUNTY has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction  
6 may affect CONTRACTOR's Use or Disclosure of PHI.

7           4. COUNTY shall not request CONTRACTOR to use or disclose PHI in any manner that  
8 would not be permissible under the HIPAA Privacy Rule if done by COUNTY.

9           J. BUSINESS ASSOCIATE TERMINATION

10           1. Upon COUNTY's knowledge of a material Breach or violation by CONTRACTOR of the  
11 requirements of this Business Associate Contract, COUNTY shall:

12           a. Provide an opportunity for CONTRACTOR to cure the material Breach or end the  
13 violation within thirty (30) business days; or

14           b. Immediately terminate the Contract, if CONTRACTOR is unwilling or unable to cure  
15 the material Breach or end the violation within thirty (30) days, provided termination of the Contract is  
16 feasible.

17           2. Upon termination of the Contract, CONTRACTOR shall either destroy or return to  
18 COUNTY all PHI CONTRACTOR received from COUNTY or CONTRACTOR created, maintained,  
19 or received on behalf of COUNTY in conformity with the HIPAA Privacy Rule.

20           a. This provision shall apply to all PHI that is in the possession of Subcontractors or  
21 agents of CONTRACTOR.

22           b. CONTRACTOR shall retain no copies of the PHI.

23           c. In the event that CONTRACTOR determines that returning or destroying the PHI is not  
24 feasible, CONTRACTOR shall provide to COUNTY notification of the conditions that make return or  
25 destruction infeasible. Upon determination by COUNTY that return or destruction of PHI is infeasible,  
26 CONTRACTOR shall extend the protections of this Business Associate Contract to such PHI and limit  
27 further Uses and Disclosures of such PHI to those purposes that make the return or destruction  
28 infeasible, for as long as CONTRACTOR maintains such PHI.

29           3. The obligations of this Business Associate Contract shall survive the termination of the  
30 Contract.

EXHIBIT C  
 TO THE CONTRACT FOR PROVISION OF  
 TEMPORARY ISOLATION SHELTER SERVICES  
 BETWEEN  
 COUNTY OF ORANGE  
 AND  
 THE ILLUMINATION FOUNDATION  
 JANUARY 1, 2022 THROUGH MARCH 31, 2022

**I. PERSONAL INFORMATION PRIVACY AND SECURITY CONTRACT**

Any reference to statutory, regulatory, or contractual language herein shall be to such language as in effect or as amended.

A. DEFINITIONS

1. "Breach" shall have the meaning given to such term under the IEA and CMPPA. It shall include a "PII loss" as that term is defined in the CMPPA.

2. "Breach of the security of the system" shall have the meaning given to such term under the CIPA, CCC § 1798.29(d).

3. "CMPPA Contract" means the CMPPA Contract between the SSA and CHHS.

4. "DHCS PI" shall mean PI, as defined below, accessed in a database maintained by the COUNTY or DHCS, received by CONTRACTOR from the COUNTY or DHCS or acquired or created by CONTRACTOR in connection with performing the functions, activities and services specified in the Contract on behalf of the COUNTY.

5. "IEA" shall mean the IEA currently in effect between the SSA and DHCS.

6. "Notice-triggering PI" shall mean the PI identified in CCC § 1798.29(e) whose unauthorized access may trigger notification requirements under CCC § 1709.29. For purposes of this provision, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, a photograph or a biometric identifier. Notice-triggering PI includes PI in electronic, paper or any other medium.

7. "PII" shall have the meaning given to such term in the IEA and CMPPA.

8. "PI" shall have the meaning given to such term in CCC § 1798.3(a).

9. "Required by law" means a mandate contained in law that compels an entity to make a use or disclosure of PI or PII that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or

1 regulations that require the production of information, including statutes or regulations that require such  
2 information if payment is sought under a government program providing public benefits.

3 10. "Security Incident" means the attempted or successful unauthorized access, use, disclosure,  
4 modification, or destruction of PI, or confidential data utilized in complying with this Contract; or  
5 interference with system operations in an information system that processes, maintains or stores PI.

## 6 B. TERMS OF CONTRACT

7 1. Permitted Uses and Disclosures of DHCS PI and PII by CONTRACTOR. Except as  
8 otherwise indicated in this Exhibit, CONTRACTOR may use or disclose DHCS PI only to perform  
9 functions, activities, or services for or on behalf of the COUNTY pursuant to the terms of the Contract  
10 provided that such use or disclosure would not violate the CIPA if done by the COUNTY.

### 11 2. Responsibilities of CONTRACTOR

12 CONTRACTOR agrees:

13 a. Nondisclosure. Not to use or disclose DHCS PI or PII other than as permitted or  
14 required by this Personal Information Privacy and Security Contract or as required by applicable state  
15 and federal law.

16 b. Safeguards. To implement appropriate and reasonable administrative, technical, and  
17 physical safeguards to protect the security, confidentiality and integrity of DHCS PI and PII, to protect  
18 against anticipated threats or hazards to the security or integrity of DHCS PI and PII, and to prevent use  
19 or disclosure of DHCS PI or PII other than as provided for by this Personal Information Privacy and  
20 Security Contract. CONTRACTOR shall develop and maintain a written information privacy and  
21 security program that include administrative, technical and physical safeguards appropriate to the size  
22 and complexity of CONTRACTOR's operations and the nature and scope of its activities, which  
23 incorporate the requirements of Subparagraph c. below. CONTRACTOR will provide COUNTY with  
24 its current policies upon request.

25 c. Security. CONTRACTOR shall ensure the continuous security of all computerized data  
26 systems containing DHCS PI and PII. CONTRACTOR shall protect paper documents containing  
27 DHCS PI and PII. These steps shall include, at a minimum:

28 1) Complying with all of the data system security precautions listed in Subparagraph  
29 E. of the Business Associate Contract, Exhibit B to the Contract; and

30 2) Providing a level and scope of security that is at least comparable to the level and  
31 scope of security established by the OMB in OMB Circular No. A-130, Appendix III-Security of  
32 Federal Automated Information Systems, which sets forth guidelines for automated information systems  
33 in Federal agencies.

34 3) If the data obtained by CONTRACTOR from COUNTY includes PII,  
35 CONTRACTOR shall also comply with the substantive privacy and security requirements in the  
36 CMPPA Contract between the SSA and the CHHS and in the Contract between the SSA and DHCS,  
37 known as the IEA. The specific sections of the IEA with substantive privacy and security requirements

1 to be complied with are sections E, F, and G, and in Attachment 4 to the IEA, Electronic Information  
2 Exchange Security Requirements, Guidelines and Procedures for Federal, State and Local Agencies  
3 Exchanging Electronic Information with the SSA. CONTRACTOR also agrees to ensure that any of  
4 CONTRACTOR's agents or subcontractors, to whom CONTRACTOR provides DHCS PII agree to the  
5 same requirements for privacy and security safeguards for confidential data that apply to  
6 CONTRACTOR with respect to such information.

7 d. Mitigation of Harmful Effects. To mitigate, to the extent practicable, any harmful effect  
8 that is known to CONTRACTOR of a use or disclosure of DHCS PI or PII by CONTRACTOR or its  
9 subcontractors in violation of this Personal Information Privacy and Security Contract.

10 e. CONTRACTOR's Agents and Subcontractors. To impose the same restrictions and  
11 conditions set forth in this Personal Information and Security Contract on any subcontractors or other  
12 agents with whom CONTRACTOR subcontracts any activities under the Contract that involve the  
13 disclosure of DHCS PI or PII to such subcontractors or other agents.

14 f. Availability of Information. To make DHCS PI and PII available to the DHCS and/or  
15 COUNTY for purposes of oversight, inspection, amendment, and response to requests for records,  
16 injunctions, judgments, and orders for production of DHCS PI and PII. If CONTRACTOR receives  
17 DHCS PII, upon request by COUNTY and/or DHCS, CONTRACTOR shall provide COUNTY and/or  
18 DHCS with a list of all employees, contractors and agents who have access to DHCS PII, including  
19 employees, contractors and agents of its subcontractors and agents.

20 g. Cooperation with COUNTY. With respect to DHCS PI, to cooperate with and assist the  
21 COUNTY to the extent necessary to ensure the DHCS's compliance with the applicable terms of the  
22 CIPA including, but not limited to, accounting of disclosures of DHCS PI, correction of errors in DHCS  
23 PI, production of DHCS PI, disclosure of a security Breach involving DHCS PI and notice of such  
24 Breach to the affected individual(s).

25 h. Breaches and Security Incidents. During the term of the Contract, CONTRACTOR  
26 agrees to implement reasonable systems for the discovery of any Breach of unsecured DHCS PI and PII  
27 or security incident. CONTRACTOR agrees to give notification of any Breach of unsecured DHCS PI  
28 and PII or security incident in accordance with Subparagraph F, of the Business Associate Contract,  
29 Exhibit B to the Contract.

30 i. Designation of Individual Responsible for Security. CONTRACTOR shall designate an  
31 individual, (e.g., Security Officer), to oversee its data security program who shall be responsible for  
32 carrying out the requirements of this Personal Information Privacy and Security Contract and for  
33 communicating on security matters with the COUNTY.

EXHIBIT D  
 TO THE CONTRACT FOR PROVISION OF  
 TEMPORARY ISOLATION SHELTER SERVICES  
 BETWEEN  
 COUNTY OF ORANGE  
 AND  
 THE ILLUMINATION FOUNDATION  
 JANUARY 1, 2022 THROUGH MARCH 31, 2022

**I. ADDITIONAL TERMS AND CONDITIONS**

A. Contract Work Hours And Safety Standards Act -

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. *Withholding for unpaid wages and liquidated damages.* The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

1           4. *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set  
 2 forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include  
 3 these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by  
 4 any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of  
 5 this section.

6           B. Clean Air Act And The Federal Water Pollution Control Act -

7           1. Clean Air Act

- 8                   a) The Contractor agrees to comply with all applicable standards, orders or regulations  
 9                   issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.  
 10                   b) The Contractor agrees to report each violation to the County and understands and  
 11                   agrees that the County will, in turn, report each violation as required to assure  
 12                   notification to the Federal Emergency Management Agency, and the appropriate  
 13                   Environmental Protection Agency Regional Office.  
 14                   c) The Contractor agrees to include these requirements in each subcontract exceeding  
 15                   \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

16           C. Federal Water Pollution Control Act

- 17           1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued  
 18 pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.  
 19           2. The Contractor agrees to report each violation to the County and understands and agrees that  
 20 the County will, in turn, report each violation as required to assure notification to the Federal Emergency  
 21 Management Agency, and the appropriate Environmental Protection Agency Regional Office.  
 22           3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000  
 23 financed in whole or in part with Federal assistance provided by FEMA.

24           D. Suspension and Debarment -

25           1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt.  
 26 3000. As such, the Contractor is required to verify that none of the contractor's principals (defined at 2  
 27 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. §  
 28 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

29           2. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart  
 30 C, and must include a requirement to comply with these regulations in any lower tier covered transaction  
 31 it enters into.

32           3. This certification is a material representation of fact relied upon by County. If it is later  
 33 determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000,  
 34 subpart C, in addition to remedies available to County, the Federal Government may pursue available  
 35 remedies, including but not limited to suspension and/or debarment.

36           4. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart  
 37 C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract

1 that may arise from this offer. The bidder or proposer further agrees to include a provision requiring  
2 such compliance in its lower tier covered transactions.

3 E. Byrd Anti-Lobbying Amendment - 31 U.S.C. § 1352 (as amended) Contractors who apply or  
4 bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier  
5 above that it will not and has not used Federal appropriated funds to pay any person or organization for  
6 influencing or attempting to influence an officer or employee of any agency, a Member of Congress,  
7 officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining  
8 any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also  
9 disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal  
10 award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the  
11 certification(s) to the awarding agency. Contractor must execute the certification, as provided in  
12 Attachment C.

13 F. Procurement of Recovered Materials -

14 In the performance of this contract, the Contractor shall make maximum use of products containing  
15 recovered materials that are EPA-designated items unless the product cannot be acquired

- 16 1. Competitively within a timeframe providing for compliance with the contract performance  
17 schedule;
- 18 2. Meeting contract performance requirements; or
- 19 3. At a reasonable price.

20 I. Information about this requirement, along with the list of EPA- designated items, is  
21 available at EPA's Comprehensive Procurement Guidelines web site,  
22 <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

23 II. The Contractor also agrees to comply with all other applicable requirements of Section  
24 6002 of the Solid Waste Disposal Act.

25 G. Access To Records -

26 1. The Contractor agrees to provide County, the FEMA Administrator, the Comptroller  
27 General of the United States, or any of their authorized representatives access to any books, documents,  
28 papers, and records of the Contractor which are directly pertinent to this contract for the purposes of  
29 making audits, examinations, excerpts, and transcriptions.

30 2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means  
31 whatsoever or to copy excerpts and transcriptions as reasonably needed.

32 3. The Contractor agrees to provide the FEMA Administrator or his authorized representatives  
33 access to construction or other work sites pertaining to the work being completed under the contract.

34 4. In compliance with the Disaster Recovery Act of 2018, the County and the Contractor  
35 acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews  
36 by the FEMA Administrator or the Comptroller General of the United States.

1 B. Department of Homeland Security (DHS) Seal, Logo, And Flags - The Contractor shall not use  
2 the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without  
3 specific FEMA pre-approval.

4 C. Compliance with Federal Law, Regulations, And Executive Orders - This is an  
5 acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract.  
6 The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA  
7 policies, procedures, and directives.

8 D. No Obligation by Federal Government - The Federal Government is not a party to this contract  
9 and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party  
10 pertaining to any matter resulting from the contract.

11 E. Program Fraud and False Or Fraudulent Statements Or Related Acts - The Contractor  
12 acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements)  
13 applies to the Contractor's actions pertaining to this contract.

14 F. Equal Employment Opportunity - The Contractor shall comply with U.S. Executive Order  
15 11246 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as  
16 supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable State of California  
17 regulations as may now exist or be amended in the future. The Contractor shall not discriminate against  
18 any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion,  
19 sex, marital status, political affiliation or physical or mental condition.

20 G. Regarding handicapped persons, the Contractor will not discriminate against any employee or  
21 applicant for employment because of physical or mental handicap in regard to any position for which the  
22 employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity  
23 to handicapped persons in employment or in advancement in employment or otherwise treat qualified  
24 handicapped individuals without discrimination based upon their physical or mental handicaps in all  
25 employment practices such as the following: employment, upgrading, promotions, transfers,  
26 recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and  
27 selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of  
28 Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of  
29 discrimination against qualified handicapped persons in all programs and/or activities as detailed in  
30 regulations signed by the Secretary of the Department of Health and Human Services effective June 3,  
31 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be  
32 amended in the future.

33 H. Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions  
34 of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the  
35 future.

1 EXHIBIT E  
 2 CERTIFICATION REGARDING ANTI-LOBBYING  
 3 CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE  
 4 AGREEMENTS  
 5

6 The undersigned certifies, to the best of his or her knowledge and belief, that:

7  
 8 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the  
 9 undersigned, to any person for influencing or attempting to influence an officer or employee of an  
 10 agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of  
 11 Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the  
 12 making of any Federal loan, the entering into of any cooperative agreement, and the extension,  
 13 continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative  
 14 agreement.

15 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person  
 16 for influencing or attempting to influence an officer or employee of any agency, a Member of Congress,  
 17 an officer or employee of Congress, or an employee of a Member of Congress in connection with this  
 18 Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit  
 19 Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

20 3. The undersigned shall require that the language of this certification be included in the award  
 21 documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants,  
 22 loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.  
 23

24 This certification is a material representation of fact upon which reliance was placed when this  
 25 transaction was made or entered into. Submission of this certification is a prerequisite for making or  
 26 entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file  
 27 the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than  
 28 \$100,000 for each such failure.

29 The Contractor, The Illumination Foundation, certifies or affirms the truthfulness and accuracy of each  
 30 statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees  
 31 that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements,  
 32 apply to this certification and disclosure, if any.  
 33

34 \_\_\_\_\_  
 35 Signature of Contractor's Authorized Official                      Date

36 \_\_\_\_\_  
 37 Name and Title of Contractor's Authorized Official



## County Executive Office

### Memorandum

January 5, 2022

**To:** Clerk of the Board of Supervisors  
**From:** Frank Kim, County Executive Officer  
**Subject:** Exception to Rule 21

Digitally signed by Frank Kim  
DN: cn=Frank Kim, o=County  
of Orange, ou=CEO,  
email=frank.kim@ocgov.com  
, c=US  
Date: 2022.01.06 12:53:27  
-08'00'

RECEIVED  
2022 JAN -6 PM 1:53  
CLERK OF THE BOARD  
ORANGE COUNTY  
BOARD OF SUPERVISOR

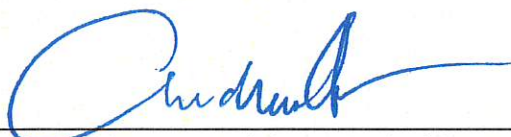
S33C

The County Executive Office is requesting a Supplemental Agenda Staff Report for the January 11, 2022, Board Hearing.

**Agency:** County Executive Office  
**Subject:** Approve Compensation Relief for COVID-19 Related Absences  
**Districts:** All Districts

**Reason for supplemental:** The County Executive Office is requesting this Supplemental item be placed on the January 11, 2022, Board agenda in order to avoid delayed compensation relief during COVID-19 related absences. The Agenda Staff Report and attachments were finalized after the filing deadline to the Clerk of the Board.

Concur:

  
\_\_\_\_\_  
Andrew Do, Chairman of the Board of Supervisors

cc: Board of Supervisors  
County Executive Office  
County Counsel



### AGENDA STAFF REPORT

**MEETING DATE:** 1/11/22

**LEGAL ENTITY TAKING ACTION:** Board of Supervisors

**BOARD OF SUPERVISORS DISTRICT(S):** All Districts


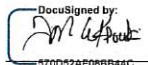
**SUBMITTING AGENCY/DEPARTMENT:** County Executive Office

**DEPARTMENT HEAD REVIEW:** DocuSigned by: Colette Farnes  
Department Head Signature

**DEPARTMENT CONTACT PERSON(S):** Colette Farnes (714) 834-2836  
Susan Rohde (714) 834-7330

RECEIVED  
 2022 JAN -6 PM 2:12  
 CLERK OF THE BOARD  
 ORANGE COUNTY  
 BOARD OF SUPERVISORS

**SUBJECT:** Approve Compensation Relief for COVID-19 Related Absences

<p><b>CEO CONCUR</b></p>  <p>Digitally signed by Frank Kim DN: cn=Frank Kim, o=County of Orange, ou=CEO, email=frank.kim@ocgov.com, c=US Date: 2022.01.06 12:53:45 -08'00'</p> <p>CEO Signature</p>	<p><b>COUNTY COUNSEL REVIEW</b></p> <p>Approved as to Form</p> <p>Action</p>  <p>DocuSigned by: [Signature] 570D52AF08B644C</p> <p>County Counsel Signature</p>	<p><b>CLERK OF THE BOARD</b></p> <p>Discussion</p> <p>3 Votes Board Majority</p>
--	--	--

**Budgeted:** Yes                      **Current Year Cost:** See Financial Impact Section                      **Annual Cost:** See Financial Impact Section

**Staffing Impact:** No                      **# of Positions:** N/A                      **Sole Source:** N/A

**Current Fiscal Year Revenue:** N/A

**Funding Source:** See Financial Impact Section                      **County Audit in last 3 years:** No

**Prior Board Action:** 12/15/2020 #S37N

**RECOMMENDED ACTION(S):**

1. Authorize the County Executive Officer, or Designee, to administer a 2022 Emergency Paid Sick Leave Program effective December 31, 2021 to April 7, 2022, that provides employees up to 40 hours of paid sick leave for qualifying COVID-related absences.
2. Authorize the County Executive Officer the discretion to provide up to 40 additional hours of paid sick leave for qualifying COVID-related absences and to extend the program to June 30, 2022, in a manner consistent with the Board of Supervisors-approved parameters.
3. Authorize the County Executive Officer, or Designee, after review by County Counsel and notification to the Board of Supervisors, to administer future state and/or federal statutorily required leave programs in a manner consistent with the parameters approved by the Board of Supervisors on March 31, 2020.

**SUMMARY:**

Approval and adoption of emergency leave practices will provide employees with compensation relief during COVID-19-related absences.

**BACKGROUND INFORMATION:**

The COVID-19 pandemic has continued to disrupt school, business and government operations. On March 13, 2020, the County Executive Office issued a notice that employees who have exhausted all leave balances would be advanced up to 80 hours of Advanced Sick Leave if they needed to stay home to care for a child whose school closed (and could not telework). The ability to utilize Advanced Sick Leave is ongoing.

On March 18, 2020, the President of the United States signed HR 6201 into law, otherwise known as the Families First Coronavirus Response Act (FFCRA), with an effective date of April 1, 2020 through December 31, 2020. This law provided emergency paid sick leave and expanded paid leave under the Family and Medical Leave Act (FMLA) for COVID-19-related absences.

To ensure that the County complied with FFCRA, on March 31, 2020, your Honorable Board of Supervisors (Board) approved the implementation of the statutorily required leaves. On December 15, 2020, the Board extended employees' ability to use Emergency Paid Sick Leave (EPSL) and Health Care Providers and Emergency Responders COVID-19 Leave. All statutorily required state and federal leave protections under the FFCRA and California Senate Bill 95 (SB 95) expired on December 31, 2020 and September 30, 2021, respectively.

To ensure that the County maximizes the health and safety of its employees and the public they serve, the following recommendations are before the Board for your consideration:

**Emergency Paid Sick Leave (EPSL)**

Eligible Full-Time Regular and Limited-Term employees shall be allowed to receive up to 40 hours of EPSL paid sick leave at their regular rate of pay for any qualifying leave. Administration of this EPSL shall be consistent with parameters established by SB 95.

Extra-Help, Part-Time and other employees as defined by law will receive an amount of EPSL hours tied to their regular work schedule, as previously administered by the County in 2020-2021. Such employees will also receive their regular rate of pay for any EPSL qualifying leave.

The Board approved the recommendation that the County would not apply the financial caps provided by the FFCRA for EPSL due to the complexity of administering the caps. Per statutory requirement, any EPSL granted to employees was in addition to any existing leave balances, including Advanced Sick Leave.

**Health Care Providers and Emergency Responders COVID-19 Leave**

County employees who are health care providers and emergency responders, as those terms are defined by the Department of Labor and any relevant regulations, may be allowed to use 40 hours of EPSL sick leave at their regular rate of pay, under the terms and conditions that other County employees receive EPSL, except that use of such leave is subject to Department Head approval to ensure that critical health and public safety needs are met.

### **Additional Emergency Leave Recommendations**

New employees shall be eligible to use EPSL leave and/or Advanced Sick Leave under the terms and conditions that other County employees receive EPSL and Advanced Sick Leave.

For all employees, the ability to use EPSL is in addition to any existing leave balances, including Advanced Sick Leave. These leave hours have no cash value and unused balances of these hours shall not be paid out upon separation.

Use of EPSL balances may be retroactively applied from December 31, 2021 through January 11, 2022.

Board approval is requested to allow the County Executive Officer to authorize 40 additional hours (to a maximum of 80 hours) and the authority to extend the administration of this program through June 30, 2022 in a manner consistent with the Board of Supervisors-approved parameters, if warranted by the continued impact of the COVID pandemic. Additionally, Board authority is requested to allow the County Executive Officer discretion to administer future state and/or federal statutorily required leave programs, if any, in a manner consistent with the parameters approved for the implementation of the FFCRA.

The County will continue to encourage telecommuting instead of the use of leave balances for employees with each department determining the feasibility of employee telecommuting while ensuring vital services continue to be provided.

### **FINANCIAL IMPACT:**

The financial impact is unknown at this time as Human Resources cannot forecast the number of employees who may utilize the benefit. The use of this Emergency Leave time will be paid by each department. Funding would be eligible from the Board approved allocation of American Rescue Plan Act funding for Employee Paid Sick Leave.

### **STAFFING IMPACT:**

N/A

### **ATTACHMENT(S):**

Attachment A – Response to COVID-19 Related School Closures dated March 13, 2020

Attachment B – H.R. 6201 (Families First Coronavirus Response Act)

Attachment C – Senate Bill 95 (COVID-19 Supplemental Paid Sick Leave)



## County Executive Office

### Memorandum

---

March 13, 2020

To: Orange County Employees

From: Frank Kim, County Executive Officer

A handwritten signature in blue ink, appearing to read "Frank Kim".

Subject: **Response to COVID-19 Related School Closures**

---

We understand this may be a difficult time, and in response we are implementing this emergency procedure to aid our County family in dealing with the ever-evolving COVID-19 pandemic.

Effective Monday, March 16, 2020 through March 31, 2020, the following procedure shall apply to employees with children that attend a school closed due to COVID-19, but may not apply to employees essential to public health and safety as determined by each department:

1. Impacted employees may telecommute if doing so is deemed feasible and approved by their supervisor or manager.
2. Impacted employees who are not able to telecommute may use sick leave or elect to use any other leave available to them (e.g., annual leave, comp time, etc.).
3. Impacted employees who have exhausted all leave balances shall be advanced up to 80 hours of sick leave/healthcare leave.
4. Impacted extra help employees may use any accrued sick leave hours and may also be advanced an additional 3 days of sick leave.
5. Impacted employees should follow their department's normal call-in guidelines.

These guidelines may be extended if necessary.

We are monitoring and evaluating the situation and will communicate additional information to employees as developments arise. The Board of Supervisors and the County Executive Office thank you for your continued service, dedication and patience.

H. R. 6201

One Hundred Sixteenth Congress  
of the  
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Friday,  
the third day of January, two thousand and twenty*

An Act

Making emergency supplemental appropriations for the fiscal year ending September 30, 2020, and for other purposes.

*Be it enacted by the Senate and House of Representatives of  
the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Families First Coronavirus Response Act”.

**SEC. 2. TABLE OF CONTENTS.**

The table of contents is as follows:

DIVISION A—SECOND CORONAVIRUS PREPAREDNESS AND RESPONSE  
SUPPLEMENTAL APPROPRIATIONS ACT, 2020

DIVISION B—NUTRITION WAIVERS

DIVISION C—EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

DIVISION D—EMERGENCY UNEMPLOYMENT INSURANCE STABILIZATION  
AND ACCESS ACT OF 2020

DIVISION E—EMERGENCY PAID SICK LEAVE ACT

DIVISION F—HEALTH PROVISIONS

DIVISION G—TAX CREDITS FOR PAID SICK AND PAID FAMILY AND  
MEDICAL LEAVE

DIVISION H—BUDGETARY EFFECTS

**SEC. 3. REFERENCES.**

Except as expressly provided otherwise, any reference to “this Act” contained in any division of this Act shall be treated as referring only to the provisions of that division.

**DIVISION A—SECOND CORONAVIRUS PREPAREDNESS  
AND RESPONSE SUPPLEMENTAL APPROPRIATIONS  
ACT, 2020**

The following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2020, and for other purposes, namely:

## H. R. 6201—2

## TITLE I

## DEPARTMENT OF AGRICULTURE

## FOOD AND NUTRITION SERVICE

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS,  
AND CHILDREN (WIC)

For an additional amount for the “Special Supplemental Nutrition Program for Women, Infants, and Children”, \$500,000,000, to remain available through September 30, 2021: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

## COMMODITY ASSISTANCE PROGRAM

For an additional amount for the “Commodity Assistance Program” for the emergency food assistance program as authorized by section 27(a) of the Food and Nutrition Act of 2008 (7 U.S.C. 2036(a)) and section 204(a)(1) of the Emergency Food Assistance Act of 1983 (7 U.S.C. 7508(a)(1)), \$400,000,000, to remain available through September 30, 2021: *Provided*, That of the funds made available, the Secretary may use up to \$100,000,000 for costs associated with the distribution of commodities: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

## GENERAL PROVISIONS—THIS TITLE

SEC. 1101. (a) PUBLIC HEALTH EMERGENCY.—During fiscal year 2020, in any case in which a school is closed for at least 5 consecutive days during a public health emergency designation during which the school would otherwise be in session, each household containing at least 1 member who is an eligible child attending the school shall be eligible to receive assistance pursuant to a state agency plan approved under subsection (b).

(b) ASSISTANCE.—To carry out this section, the Secretary of Agriculture may approve State agency plans for temporary emergency standards of eligibility and levels of benefits under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.) for households with eligible children. Plans approved by the Secretary shall provide for supplemental allotments to households receiving benefits under such Act, and issuances to households not already receiving benefits. Such level of benefits shall be determined by the Secretary in an amount not less than the value of meals at the free rate over the course of 5 school days for each eligible child in the household.

(c) MINIMUM CLOSURE REQUIREMENT.—The Secretary of Agriculture shall not provide assistance under this section in the case of a school that is closed for less than 5 consecutive days.

(d) USE OF EBT SYSTEM.—A State agency may provide assistance under this section through the EBT card system established under section 7 of the Food and Nutrition Act of 2008 (7 U.S.C. 2016).

(e) RELEASE OF INFORMATION.—Notwithstanding any other provision of law, the Secretary of Agriculture may authorize State

## H. R. 6201—3

educational agencies and school food authorities administering a school lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) to release to appropriate officials administering the supplemental nutrition assistance program such information as may be necessary to carry out this section.

(f) **WAIVERS.**—To facilitate implementation of this section, the Secretary of Agriculture may approve waivers of the limits on certification periods otherwise applicable under section 3(f) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(f)), reporting requirements otherwise applicable under section 6(c) of such Act (7 U.S.C. 2015(c)), and other administrative requirements otherwise applicable to State agencies under such Act.

(g) **AVAILABILITY OF COMMODITIES.**—During fiscal year 2020, the Secretary of Agriculture may purchase commodities for emergency distribution in any area of the United States during a public health emergency designation.

(h) **DEFINITIONS.**—In this section:

(1) The term “eligible child” means a child (as defined in section 12(d) or served under section 11(a)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(d), 1759(a)(1)) who, if not for the closure of the school attended by the child during a public health emergency designation and due to concerns about a COVID–19 outbreak, would receive free or reduced price school meals under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) at the school.

(2) The term “public health emergency designation” means the declaration of a public health emergency, based on an outbreak of SARS–CoV–2 or another coronavirus with pandemic potential, by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247d).

(3) The term “school” has the meaning given the term in section 12(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(d)).

(i) **FUNDING.**—There are hereby appropriated to the Secretary of Agriculture such amounts as are necessary to carry out this section: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

**SEC. 1102.** In addition to amounts otherwise made available, \$100,000,000, to remain available through September 30, 2021, shall be available for the Secretary of Agriculture to provide grants to the Commonwealth of the Northern Mariana Islands, Puerto Rico, and American Samoa for nutrition assistance in response to a COVID–19 public health emergency: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

## H. R. 6201—4

## TITLE II

## DEPARTMENT OF DEFENSE

## DEFENSE HEALTH PROGRAM

For an additional amount for “Defense Health Program”, \$82,000,000, to remain available until September 30, 2022, for health services consisting of SARS-CoV-2 or COVID-19 related items and services as described in section 6006(a) of division F of the Families First Coronavirus Response Act (or the administration of such products): *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

## TITLE III

## DEPARTMENT OF THE TREASURY

## INTERNAL REVENUE SERVICE

## TAXPAYER SERVICES

For an additional amount for “Taxpayer Services”, \$15,000,000, to remain available until September 30, 2022, for the purposes of carrying out the Families First Coronavirus Response Act: *Provided*, That amounts provided under this heading in this Act may be transferred to and merged with “Operations Support”: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

## TITLE IV

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## INDIAN HEALTH SERVICE

## INDIAN HEALTH SERVICES

For an additional amount for “Indian Health Services”, \$64,000,000, to remain available until September 30, 2022, for health services consisting of SARS-CoV-2 or COVID-19 related items and services as described in section 6007 of division F of the Families First Coronavirus Response Act (or the administration of such products): *Provided*, That such amounts shall be allocated at the discretion of the Director of the Indian Health Service: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

## H. R. 6201—5

## TITLE V

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## ADMINISTRATION FOR COMMUNITY LIVING

## AGING AND DISABILITY SERVICES PROGRAMS

For an additional amount for “Aging and Disability Services Programs”, \$250,000,000, to remain available until September 30, 2021, for activities authorized under subparts 1 and 2 of part C, of title III, and under title VI, of the Older Americans Act of 1965 (“OAA”), of which \$160,000,000 shall be for Home-Delivered Nutrition Services, \$80,000,000 shall be for Congregate Nutrition Services, and \$10,000,000 shall be for Nutrition Services for Native Americans: *Provided*, That State matching requirements under sections 304(d)(1)(D) and 309(b)(2) of the OAA shall not apply to funds made available under this heading in this Act: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

## OFFICE OF THE SECRETARY

## PUBLIC HEALTH AND SOCIAL SERVICES EMERGENCY FUND

For an additional amount for “Public Health and Social Services Emergency Fund”, \$1,000,000,000, to remain available until expended, for activities authorized under section 2812 of the Public Health Service Act (42 U.S.C. 300hh–11), in coordination with the Assistant Secretary for Preparedness and Response and the Administrator of the Centers for Medicare & Medicaid Services, to pay the claims of providers for reimbursement, as described in subsection (a)(3)(D) of such section 2812, for health services consisting of SARS–CoV–2 or COVID–19 related items and services as described in paragraph (1) of section 6001(a) of division F of the Families First Coronavirus Response Act (or the administration of such products) or visits described in paragraph (2) of such section for uninsured individuals: *Provided*, That the term “uninsured individual” in this paragraph means an individual who is not enrolled in—

(1) a Federal health care program (as defined under section 1128B(f) of the Social Security Act (42 U.S.C. 1320a–7b(f)), including an individual who is eligible for medical assistance only because of subsection (a)(10)(A)(ii)(XXIII) of Section 1902 of the Social Security Act; or

(2) a group health plan or health insurance coverage offered by a health insurance issuer in the group or individual market (as such terms are defined in section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91)), or a health plan offered under chapter 89 of title 5, United States Code:

*Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

H. R. 6201—6

## TITLE VI

## DEPARTMENT OF VETERANS AFFAIRS

## VETERANS HEALTH ADMINISTRATION

## MEDICAL SERVICES

For an additional amount for “Medical Services”, \$30,000,000, to remain available until September 30, 2022, for health services consisting of SARS-CoV-2 or COVID-19 related items and services as described in section 6006(b) of division F of the Families First Coronavirus Response Act (or the administration of such products): *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

## MEDICAL COMMUNITY CARE

For an additional amount for “Medical Community Care”, \$30,000,000, to remain available until September 30, 2022, for health services consisting of SARS-CoV-2 or COVID-19 related items and services as described in section 6006(b) of division F of the Families First Coronavirus Response Act (or the administration of such products): *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

## TITLE VII

## GENERAL PROVISIONS—THIS ACT

SEC. 1701. Not later than 30 days after the date of enactment of this Act, the head of each executive agency that receives funding in this Act shall provide a report detailing the anticipated uses of all such funding to the Committees on Appropriations of the House of Representatives and the Senate: *Provided*, That each report shall include estimated personnel and administrative costs, as well as the total amount of funding apportioned, allotted, obligated, and expended, to date: *Provided further*, That each such plan shall be updated and submitted to such Committees every 60 days until all funds are expended or expire.

SEC. 1702. States and local governments receiving funds or assistance pursuant to this division shall ensure the respective State Emergency Operations Center receives regular and real-time reporting on aggregated data on testing and results from State and local public health departments, as determined by the Director of the Centers for Disease Control and Prevention, and that such data is transmitted to the Centers for Disease Control and Prevention.

SEC. 1703. Each amount appropriated or made available by this Act is in addition to amounts otherwise appropriated for the fiscal year involved.

SEC. 1704. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

## H. R. 6201—7

SEC. 1705. Unless otherwise provided for by this Act, the additional amounts appropriated by this Act to appropriations accounts shall be available under the authorities and conditions applicable to such appropriations accounts for fiscal year 2020.

SEC. 1706. Each amount designated in this Act by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be available (or rescinded or transferred, if applicable) only if the President subsequently so designates all such amounts and transmits such designations to the Congress.

SEC. 1707. Any amount appropriated by this Act, designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 and subsequently so designated by the President, and transferred pursuant to transfer authorities provided by this Act shall retain such designation.

This division may be cited as the “Second Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020”.

## DIVISION B—NUTRITION WAIVERS

### TITLE I—MAINTAINING ESSENTIAL ACCESS TO LUNCH FOR STUDENTS ACT

#### SEC. 2101. SHORT TITLE.

This title may be cited as the “Maintaining Essential Access to Lunch for Students Act” or the “MEALS Act”.

#### SEC. 2102. WAIVER EXCEPTION FOR SCHOOL CLOSURES DUE TO COVID-19.

(a) **IN GENERAL.**—The requirements under section 12(l)(1)(A)(iii) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)(1)(A)(iii)) shall not apply to a qualified COVID-19 waiver.

(b) **ALLOWABLE INCREASE IN FEDERAL COSTS.**—Notwithstanding paragraph (4) of section 12(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)), the Secretary of Agriculture may grant a qualified COVID-19 waiver that increases Federal costs.

(c) **TERMINATION AFTER PERIODIC REVIEW.**—The requirements under section 12(l)(5) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)(5)) shall not apply to a qualified COVID-19 waiver.

(d) **QUALIFIED COVID-19 WAIVER.**—In this section, the term “qualified COVID-19 waiver” means a waiver—

(1) requested by a State (as defined in section 12(d)(8) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(d)(8))) or eligible service provider under section 12(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)); and

(2) to waive any requirement under such Act (42 U.S.C. 1751 et seq.) or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), or any regulation issued under either such Act, for purposes of providing meals and meal supplements under such Acts during a school closure due to COVID-19.

H. R. 6201—8

## TITLE II—COVID—19 CHILD NUTRITION RESPONSE ACT

### SEC. 2201. SHORT TITLE.

This title may be cited as the “COVID–19 Child Nutrition Response Act”.

### SEC. 2202. NATIONAL SCHOOL LUNCH PROGRAM REQUIREMENT WAIVERS ADDRESSING COVID–19.

#### (a) NATIONWIDE WAIVER.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may establish a waiver for all States under section 12(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)), for purposes of—

(A) providing meals and meal supplements under a qualified program; and

(B) carrying out subparagraph (A) with appropriate safety measures with respect to COVID–19, as determined by the Secretary.

(2) STATE ELECTION.—A waiver established under paragraph (1) shall—

(A) notwithstanding paragraph (2) of section 12(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)), apply automatically to any State that elects to be subject to the waiver without further application; and

(B) not be subject to the requirements under paragraph (3) of such section.

(b) CHILD AND ADULT CARE FOOD PROGRAM WAIVER.—Notwithstanding any other provision of law, the Secretary may grant a waiver under section 12(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)) to allow non-congregate feeding under a child and adult care food program under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) if such waiver is for the purposes of—

(1) providing meals and meal supplements under such child and adult care food program; and

(2) carrying out paragraph (1) with appropriate safety measures with respect to COVID–19, as determined by the Secretary.

(c) MEAL PATTERN WAIVER.—Notwithstanding paragraph (4)(A) of section 12(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)) the Secretary may grant a waiver under such section that relates to the nutritional content of meals served if the Secretary determines that—

(1) such waiver is necessary to provide meals and meal supplements under a qualified program; and

(2) there is a supply chain disruption with respect to foods served under such a qualified program and such disruption is due to COVID–19.

(d) REPORTS.—Each State that receives a waiver under subsection (a), (b), or (c), shall, not later than 1 year after the date such State received such waiver, submit a report to the Secretary that includes the following:

(1) A summary of the use of such waiver by the State and eligible service providers.

## H. R. 6201—9

(2) A description of whether such waiver resulted in improved services to children.

(e) SUNSET.—The authority of the Secretary to establish or grant a waiver under this section shall expire on September 30, 2020.

(f) DEFINITIONS.—In this section:

(1) QUALIFIED PROGRAM.—The term “qualified program” means the following:

(A) The school lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

(B) The school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(C) The child and adult care food program under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766).

(D) The summer food service program for children under section 13 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761).

(2) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.

(3) STATE.—The term “State” has the meaning given such term in section 12(d)(8) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(d)(8)).

**SEC. 2203. PHYSICAL PRESENCE WAIVER UNDER WIC DURING CERTAIN PUBLIC HEALTH EMERGENCIES.**

(a) WAIVER AUTHORITY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may grant a request described in paragraph (2) to—

(A) waive the requirement under section 17(d)(3)(C)(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(3)(C)(i)); and

(B) defer anthropometric and bloodwork requirements necessary to determine nutritional risk.

(2) REQUEST.—A request described in this paragraph is a request made to the Secretary by a State agency to waive, on behalf of the local agencies served by such State agency, the requirements described in paragraph (1) during any portion of the emergency period (as defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b-5(g)) (beginning on or after the date of the enactment of this section).

(b) REPORTS.—

(1) LOCAL AGENCY REPORTS.—Each local agency that uses a waiver pursuant to subsection (a) shall, not later than 1 year after the date such local agency uses such waiver, submit a report to the State agency serving such local agency that includes the following:

(A) A summary of the use of such waiver by the local agency.

(B) A description of whether such waiver resulted in improved services to women, infants, and children.

(2) STATE AGENCY REPORTS.—Each State agency that receives a waiver under subsection (a) shall, not later than 18 months after the date such State agency received such

## H. R. 6201—10

waiver, submit a report to the Secretary that includes the following:

(A) A summary of the reports received by the State agency under paragraph (1).

(B) A description of whether such waiver resulted in improved services to women, infants, and children.

(c) SUNSET.—The authority under this section shall expire on September 30, 2020.

(d) DEFINITIONS.—In this section:

(1) LOCAL AGENCY.—The term “local agency” has the meaning given the term in section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)).

(2) NUTRITIONAL RISK.—The term “nutritional risk” has the meaning given the term in section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)).

(3) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.

(4) STATE AGENCY.—The term “State agency” has the meaning given the term in section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)).

**SEC. 2204. ADMINISTRATIVE REQUIREMENTS WAIVER UNDER WIC.**

(a) WAIVER AUTHORITY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Agriculture may, if requested by a State agency (as defined in section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), modify or waive any qualified administrative requirement with respect to such State agency.

(2) QUALIFIED ADMINISTRATIVE REQUIREMENT.—In this section, the term “qualified administrative requirement” means a regulatory requirement issued under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) that the Secretary of Agriculture determines—

(A) cannot be met by a State agency due to COVID-19; and

(B) the modification or waiver of which is necessary to provide assistance under such section.

(b) STATE AGENCY REPORTS.—Each State agency that receives a waiver under subsection (a)(1) shall, not later than 1 year after the date such State agency received such waiver, submit a report to the Secretary of Agriculture that includes the following:

(1) A summary of the use of such waiver by the State agency.

(2) A description of whether such waiver resulted in improved services to women, infants, and children.

(c) SUNSET.—The authority under this section shall expire on September 30, 2020.

**TITLE III—SNAP WAIVERS**

**SEC. 2301. SNAP FLEXIBILITY FOR LOW-INCOME JOBLESS WORKERS.**

(a) Beginning with the first month that begins after the enactment of this Act and for each subsequent month through the end of the month subsequent to the month a public health emergency declaration by the Secretary of Health and Human Services under section 319 of the Public Health Service Act based on an outbreak

## H. R. 6201—11

of coronavirus disease 2019 (COVID-19) is lifted, eligibility for supplemental nutrition assistance program benefits shall not be limited under section 6(o)(2) of the Food and Nutrition Act of 2008 unless an individual does not comply with the requirements of a program offered by the State agency (as defined in section 3 of the Food and Nutrition Act of 2008) that meets the standards of subparagraphs (B) or (C) of such section 6(o)(2).

(b) Beginning on the month subsequent to the month the public health emergency declaration by the Secretary of Health and Human Services under section 319 of the Public Health Service Act based on an outbreak of COVID-19 is lifted for purposes of section 6(o) of the Food and Nutrition Act of 2008, such State agency shall disregard any period during which an individual received benefits under the supplemental nutrition assistance program prior to such month.

**SEC. 2302. ADDITIONAL SNAP FLEXIBILITIES IN A PUBLIC HEALTH EMERGENCY.**

(a) In the event of a public health emergency declaration by the Secretary of Health and Human Services under section 319 of the Public Health Service Act based on an outbreak of coronavirus disease 2019 (COVID-19) and the issuance of an emergency or disaster declaration by a State based on an outbreak of COVID-19, the Secretary of Agriculture—

(1) shall provide, at the request of a State agency (as defined in section 3 of the Food and Nutrition Act of 2008) that provides sufficient data (as determined by the Secretary through guidance) supporting such request, for emergency allotments to households participating in the supplemental nutrition assistance program under the Food and Nutrition Act of 2008 to address temporary food needs not greater than the applicable maximum monthly allotment for the household size; and

(2) may adjust, at the request of State agencies or by guidance in consultation with one or more State agencies, issuance methods and application and reporting requirements under the Food and Nutrition Act of 2008 to be consistent with what is practicable under actual conditions in affected areas. (In making this adjustment, the Secretary shall consider the availability of offices and personnel in State agencies, any conditions that make reliance on electronic benefit transfer systems described in section 7(h) of the Food and Nutrition Act of 2008 impracticable, any disruptions of transportation and communication facilities, and any health considerations that warrant alternative approaches.)

(b) Not later than 10 days after the date of the receipt or issuance of each document listed in paragraphs (1), (2), or (3) of this subsection, the Secretary of Agriculture shall make publicly available on the website of the Department the following documents:

(1) Any request submitted by State agencies under subsection (a).

(2) The Secretary's approval or denial of each such request.

(3) Any guidance issued under subsection (a)(2).

(c) The Secretary of Agriculture shall, within 18 months after the public health emergency declaration described in subsection (a) is lifted, submit a report to the House and Senate Agriculture Committees with a description of the measures taken to address

H. R. 6201—12

the food security needs of affected populations during the emergency, any information or data supporting State agency requests, any additional measures that States requested that were not approved, and recommendations for changes to the Secretary's authority under the Food and Nutrition Act of 2008 to assist the Secretary and States and localities in preparations for any future health emergencies.

## **DIVISION C—EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT**

### **SEC. 3101. SHORT TITLE.**

This Act may be cited as “Emergency Family and Medical Leave Expansion Act”.

### **SEC. 3102. AMENDMENTS TO THE FAMILY AND MEDICAL LEAVE ACT OF 1993.**

#### **(a) PUBLIC HEALTH EMERGENCY LEAVE.—**

(1) **IN GENERAL.**—Section 102(a)(1) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(a)(1)) is amended by adding at the end the following:

“(F) During the period beginning on the date the Emergency Family and Medical Leave Expansion Act takes effect, and ending on December 31, 2020, because of a qualifying need related to a public health emergency in accordance with section 110.”.

(2) **PAID LEAVE REQUIREMENT.**—Section 102(c) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(c)) is amended by striking “under subsection (a)” and inserting “under subsection (a) (other than certain periods of leave under subsection (a)(1)(F))”.

(b) **REQUIREMENTS.**—Title I of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611 et seq.) is amended by adding at the end the following:

#### **“SEC. 110. PUBLIC HEALTH EMERGENCY LEAVE.**

“(a) **DEFINITIONS.**—The following shall apply with respect to leave under section 102(a)(1)(F):

“(1) **APPLICATION OF CERTAIN TERMS.**—The definitions in section 101 shall apply, except as follows:

“(A) **ELIGIBLE EMPLOYEE.**—In lieu of the definition in sections 101(2)(A) and 101(2)(B)(ii), the term ‘eligible employee’ means an employee who has been employed for at least 30 calendar days by the employer with respect to whom leave is requested under section 102(a)(1)(F).

“(B) **EMPLOYER THRESHOLD.**—Section 101(4)(A)(i) shall be applied by substituting ‘fewer than 500 employees’ for ‘50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year’.

“(2) **ADDITIONAL DEFINITIONS.**—In addition to the definitions described in paragraph (1), the following definitions shall apply with respect to leave under section 102(a)(1)(F):

“(A) **QUALIFYING NEED RELATED TO A PUBLIC HEALTH EMERGENCY.**—The term ‘qualifying need related to a public health emergency’, with respect to leave, means the

## H. R. 6201—13

employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.

“(B) PUBLIC HEALTH EMERGENCY.—The term ‘public health emergency’ means an emergency with respect to COVID–19 declared by a Federal, State, or local authority.

“(C) CHILD CARE PROVIDER.—The term ‘child care provider’ means a provider who receives compensation for providing child care services on a regular basis, including an ‘eligible child care provider’ (as defined in section 658P of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n)).

“(D) SCHOOL.—The term ‘school’ means an ‘elementary school’ or ‘secondary school’ as such terms are defined in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

“(3) REGULATORY AUTHORITIES.—The Secretary of Labor shall have the authority to issue regulations for good cause under sections 553(b)(B) and 553(d)(A) of title 5, United States Code—

“(A) to exclude certain health care providers and emergency responders from the definition of eligible employee under section 110(a)(1)(A); and

“(B) to exempt small businesses with fewer than 50 employees from the requirements of section 102(a)(1)(F) when the imposition of such requirements would jeopardize the viability of the business as a going concern.

“(b) RELATIONSHIP TO PAID LEAVE.—

“(1) UNPAID LEAVE FOR INITIAL 10 DAYS.—

“(A) IN GENERAL.—The first 10 days for which an employee takes leave under section 102(a)(1)(F) may consist of unpaid leave.

“(B) EMPLOYEE ELECTION.—An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave under section 102(a)(1)(F) in accordance with section 102(d)(2)(B).

“(2) PAID LEAVE FOR SUBSEQUENT DAYS.—

“(A) IN GENERAL.—An employer shall provide paid leave for each day of leave under section 102(a)(1)(F) that an employee takes after taking leave under such section for 10 days.

“(B) CALCULATION.—

“(i) IN GENERAL.—Subject to clause (ii), paid leave under subparagraph (A) for an employee shall be calculated based on—

“(I) an amount that is not less than two-thirds of an employee’s regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e)); and

“(II) the number of hours the employee would otherwise be normally scheduled to work (or the number of hours calculated under subparagraph (C)).

## H. R. 6201—14

“(ii) CLARIFICATION.—In no event shall such paid leave exceed \$200 per day and \$10,000 in the aggregate.

“(C) VARYING SCHEDULE HOURS CALCULATION.—In the case of an employee whose schedule varies from week to week to such an extent that an employer is unable to determine with certainty the number of hours the employee would have worked if such employee had not taken leave under section 102(a)(1)(F), the employer shall use the following in place of such number:

“(i) Subject to clause (ii), a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes such leave, including hours for which the employee took leave of any type.

“(ii) If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

“(c) NOTICE.—In any case where the necessity for leave under section 102(a)(1)(F) for the purpose described in subsection (a)(2)(A)(iii) is foreseeable, an employee shall provide the employer with such notice of leave as is practicable.

“(d) RESTORATION TO POSITION.—

“(1) IN GENERAL.—Section 104(a)(1) shall not apply with respect to an employee of an employer who employs fewer than 25 employees if the conditions described in paragraph (2) are met.

“(2) CONDITIONS.—The conditions described in this paragraph are the following:

“(A) The employee takes leave under section 102(a)(1)(F).

“(B) The position held by the employee when the leave commenced does not exist due to economic conditions or other changes in operating conditions of the employer—

“(i) that affect employment; and

“(ii) are caused by a public health emergency during the period of leave.

“(C) The employer makes reasonable efforts to restore the employee to a position equivalent to the position the employee held when the leave commenced, with equivalent employment benefits, pay, and other terms and conditions of employment.

“(D) If the reasonable efforts of the employer under subparagraph (C) fail, the employer makes reasonable efforts during the period described in paragraph (3) to contact the employee if an equivalent position described in subparagraph (C) becomes available.

“(3) CONTACT PERIOD.—The period described under this paragraph is the 1-year period beginning on the earlier of—

“(A) the date on which the qualifying need related to a public health emergency concludes; or

“(B) the date that is 12 weeks after the date on which the employee’s leave under section 102(a)(1)(F) commences.”

H. R. 6201—15

**SEC. 3103. EMPLOYMENT UNDER MULTI-EMPLOYER BARGAINING AGREEMENTS.**

(a) **EMPLOYERS.**—An employer signatory to a multiemployer collective bargaining agreement may, consistent with its bargaining obligations and its collective bargaining agreement, fulfill its obligations under section 110(b)(2) of title I of the Family and Medical Leave Act of 1993, as added by the Families First Coronavirus Response Act, by making contributions to a multiemployer fund, plan, or program based on the paid leave each of its employees is entitled to under such section while working under the multiemployer collective bargaining agreement, provided that the fund, plan, or program enables employees to secure pay from such fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement for paid leave taken under section 102(a)(1)(F) of title I of the Family and Medical Leave Act of 1993, as added by the Families First Coronavirus Response Act.

(b) **EMPLOYEES.**—Employees who work under a multiemployer collective bargaining agreement into which their employers make contributions as provided in subsection (a) may secure pay from such fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement for paid leave taken under section 102(a)(1)(F) of title I of the Family and Medical Leave Act of 1993, as added by the Families First Coronavirus Response Act.

**SEC. 3104. SPECIAL RULE FOR CERTAIN EMPLOYERS.**

An employer under 110(a)(B) shall not be subject to section 107(a) for a violation of section 102(a)(1)(F) if the employer does not meet the definition of employer set forth in Section 101(4)(A)(i).

**SEC. 3105. SPECIAL RULE FOR HEALTH CARE PROVIDERS AND EMERGENCY RESPONDERS.**

An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of the provisions in the amendments made under of section 3102 of this Act.

**SEC. 3106. EFFECTIVE DATE.**

This Act shall take effect not later than 15 days after the date of enactment of this Act.

## **DIVISION D—EMERGENCY UNEMPLOYMENT INSURANCE STABILIZATION AND ACCESS ACT OF 2020**

**SEC. 4101. SHORT TITLE.**

This division may be cited as the “Emergency Unemployment Insurance Stabilization and Access Act of 2020”.

**SEC. 4102. EMERGENCY TRANSFERS FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION.**

(a) **IN GENERAL.**—Section 903 of the Social Security Act (42 U.S.C. 1103) is amended by adding at the end the following:

## H. R. 6201—16

## “Emergency Transfers in Fiscal Year 2020 for Administration

“(h)(1)(A) In addition to any other amounts, the Secretary of Labor shall provide for the making of emergency administration grants in fiscal year 2020 to the accounts of the States in the Unemployment Trust Fund, in accordance with succeeding provisions of this subsection.

“(B) The amount of an emergency administration grant with respect to a State shall, as determined by the Secretary of Labor, be equal to the amount obtained by multiplying \$1,000,000,000 by the same ratio as would apply under subsection (a)(2)(B) for purposes of determining such State’s share of any excess amount (as described in subsection (a)(1)) that would have been subject to transfer to State accounts, as of October 1, 2019, under the provisions of subsection (a).

“(C) Of the emergency administration grant determined under subparagraph (B) with respect to a State—

“(i) not later than 60 days after the date of enactment of this subsection, 50 percent shall be transferred to the account of such State upon a certification by the Secretary of Labor to the Secretary of the Treasury that the State meets the requirements of paragraph (2); and

“(ii) only with respect to a State in which the number of unemployment compensation claims has increased by at least 10 percent over the same quarter in the previous calendar year, the remainder shall be transferred to the account of such State upon a certification by the Secretary of Labor to the Secretary of the Treasury that the State meets the requirements of paragraph (3).

“(2) The requirements of this paragraph with respect to a State are the following:

“(A) The State requires employers to provide notification of the availability of unemployment compensation to employees at the time of separation from employment. Such notification may be based on model notification language issued by the Secretary of Labor.

“(B) The State ensures that applications for unemployment compensation, and assistance with the application process, are accessible in at least two of the following: in-person, by phone, or online.

“(C) The State notifies applicants when an application is received and is being processed, and in any case in which an application is unable to be processed, provides information about steps the applicant can take to ensure the successful processing of the application.

“(3) The requirements of this paragraph with respect to a State are the following:

“(A) The State has expressed its commitment to maintain and strengthen access to the unemployment compensation system, including through initial and continued claims.

“(B) The State has demonstrated steps it has taken or will take to ease eligibility requirements and access to unemployment compensation for claimants, including waiving work search requirements and the waiting week, and non-charging employers directly impacted by COVID-19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers.

## H. R. 6201—17

“(4) Any amount transferred to the account of a State under this subsection may be used by such State only for the administration of its unemployment compensation law, including by taking such steps as may be necessary to ensure adequate resources in periods of high demand.

“(5) Not later than 1 year after the date of enactment of the Emergency Unemployment Insurance Stabilization and Access Act of 2020, each State receiving emergency administration grant funding under paragraph (1)(C)(i) shall submit to the Secretary of Labor, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, a report that includes—

“(A) an analysis of the reciprocity rate for unemployment compensation in the State as such rate has changed over time;

“(B) a description of steps the State intends to take to increase such reciprocity rate.

“(6)(A) Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated) to the employment security administration account (as established by section 901 of the Social Security Act) such sums as the Secretary of Labor estimates to be necessary for purposes of making the transfers described in paragraph (1)(C).

“(B) There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.”

(b) EMERGENCY FLEXIBILITY.—Notwithstanding any other law, if a State modifies its unemployment compensation law and policies with respect to work search, waiting week, good cause, or employer experience rating on an emergency temporary basis as needed to respond to the spread of COVID–19, such modifications shall be disregarded for the purposes of applying section 303 of the Social Security Act and section 3304 of the Internal Revenue Code of 1986 to such State law.

(c) REGULATIONS.—The Secretary of Labor may prescribe any regulations, operating instructions, or other guidance necessary to carry out the amendment made by subsection (a).

**SEC. 4103. TEMPORARY ASSISTANCE FOR STATES WITH ADVANCES.**

Section 1202(b)(10)(A) of the Social Security Act (42 U.S.C. 1322(b)(10)(A)) is amended by striking “beginning on the date of enactment of this paragraph and ending on December 31, 2010” and inserting “beginning on the date of enactment of the Emergency Unemployment Insurance Stabilization and Access Act of 2020 and ending on December 31, 2020”.

**SEC. 4104. TECHNICAL ASSISTANCE AND GUIDANCE FOR SHORT-TIME COMPENSATION PROGRAMS.**

The Secretary of Labor shall assist States in establishing, implementing, and improving the employer awareness of short-time compensation programs (as defined in section 3306(v) of the Internal Revenue Code of 1986) to help avert layoffs, including by providing technical assistance and guidance.

## H. R. 6201—18

**SEC. 4105. FULL FEDERAL FUNDING OF EXTENDED UNEMPLOYMENT COMPENSATION FOR A LIMITED PERIOD.**

(a) **IN GENERAL.**—In the case of sharable extended compensation and sharable regular compensation paid for weeks of unemployment beginning after the date of the enactment of this section and before December 31, 2020 (and only with respect to States that receive emergency administration grant funding under clauses (i) and (ii) of section 903(h)(1)(C) of the Social Security Act (42 U.S.C. 1102(h)(1)(C))), section 204(a)(1) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) shall be applied by substituting “100 percent of” for “one-half of”.

(b) **TEMPORARY FEDERAL MATCHING FOR THE FIRST WEEK OF EXTENDED BENEFITS FOR STATES WITH NO WAITING WEEK.**—With respect to weeks of unemployment beginning after the date of the enactment of this Act and ending on or before December 31, 2020, subparagraph (B) of section 204(a)(2) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) shall not apply.

(c) **DEFINITIONS.**—For purposes of this section—

(1) the terms “sharable extended compensation” and “sharable regular compensation” have the respective meanings given such terms under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970; and

(2) the term “week” has the meaning given such term under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970.

(d) **REGULATIONS.**—The Secretary of Labor may prescribe any operating instructions or regulations necessary to carry out this section.

## **DIVISION E—EMERGENCY PAID SICK LEAVE ACT**

**SEC. 5101. SHORT TITLE.**

This Act may be cited as the “Emergency Paid Sick Leave Act”.

**SEC. 5102. PAID SICK TIME REQUIREMENT.**

(a) **IN GENERAL.**—An employer shall provide to each employee employed by the employer paid sick time to the extent that the employee is unable to work (or telework) due to a need for leave because:

(1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19.

(2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID–19.

(3) The employee is experiencing symptoms of COVID–19 and seeking a medical diagnosis.

(4) The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).

(5) The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter

## H. R. 6201—19

has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.

(6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Except that an employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of this subsection.

(b) DURATION OF PAID SICK TIME.—

(1) IN GENERAL.—An employee shall be entitled to paid sick time for an amount of hours determined under paragraph (2).

(2) AMOUNT OF HOURS.—The amount of hours of paid sick time to which an employee is entitled shall be as follows:

(A) For full-time employees, 80 hours.

(B) For part-time employees, a number of hours equal to the number of hours that such employee works, on average, over a 2-week period.

(3) CARRYOVER.—Paid sick time under this section shall not carry over from 1 year to the next.

(c) EMPLOYER'S TERMINATION OF PAID SICK TIME.—Paid sick time provided to an employee under this Act shall cease beginning with the employee's next scheduled workshift immediately following the termination of the need for paid sick time under subsection (a).

(d) PROHIBITION.—An employer may not require, as a condition of providing paid sick time under this Act, that the employee involved search for or find a replacement employee to cover the hours during which the employee is using paid sick time.

(e) USE OF PAID SICK TIME.—

(1) IN GENERAL.—The paid sick time under subsection (a) shall be available for immediate use by the employee for the purposes described in such subsection, regardless of how long the employee has been employed by an employer.

(2) SEQUENCING.—

(A) IN GENERAL.—An employee may first use the paid sick time under subsection (a) for the purposes described in such subsection.

(B) PROHIBITION.—An employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the paid sick time under subsection (a).

**SEC. 5103. NOTICE.**

(a) IN GENERAL.—Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees are customarily posted, a notice, to be prepared or approved by the Secretary of Labor, of the requirements described in this Act.

(b) MODEL NOTICE.—Not later than 7 days after the date of enactment of this Act, the Secretary of Labor shall make publicly available a model of a notice that meets the requirements of subsection (a).

**SEC. 5104. PROHIBITED ACTS.**

It shall be unlawful for any employer to discharge, discipline, or in any other manner discriminate against any employee who—

## H. R. 6201—20

- (1) takes leave in accordance with this Act; and
- (2) has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act (including a proceeding that seeks enforcement of this Act), or has testified or is about to testify in any such proceeding.

**SEC. 5105. ENFORCEMENT.**

(a) **UNPAID SICK LEAVE.**—An employer who violates section 5102 shall—

(1) be considered to have failed to pay minimum wages in violation of section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206); and

(2) be subject to the penalties described in sections 16 and 17 of such Act (29 U.S.C. 216; 217) with respect to such violation.

(b) **UNLAWFUL TERMINATION.**—An employer who willfully violates section 5104 shall—

(1) be considered to be in violation of section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)); and

(2) be subject to the penalties described in sections 16 and 17 of such Act (29 U.S.C. 216; 217) with respect to such violation.

**SEC. 5106. EMPLOYMENT UNDER MULTI-EMPLOYER BARGAINING AGREEMENTS.**

(a) **EMPLOYERS.**—An employer signatory to a multiemployer collective bargaining agreement may, consistent with its bargaining obligations and its collective bargaining agreement, fulfill its obligations under this Act by making contributions to a multiemployer fund, plan, or program based on the hours of paid sick time each of its employees is entitled to under this Act while working under the multiemployer collective bargaining agreement, provided that the fund, plan, or program enables employees to secure pay from such fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement and for the uses specified under section 5102(a).

(b) **EMPLOYEES.**—Employees who work under a multiemployer collective bargaining agreement into which their employers make contributions as provided in subsection (a) may secure pay from such fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement for the uses specified in section 5102(a).

**SEC. 5107. RULES OF CONSTRUCTION.**

Nothing in this Act shall be construed—

(1) to in any way diminish the rights or benefits that an employee is entitled to under any—

- (A) other Federal, State, or local law;
- (B) collective bargaining agreement; or
- (C) existing employer policy; or

(2) to require financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment for paid sick time under this Act that has not been used by such employee.

## H. R. 6201—21

**SEC. 5108. EFFECTIVE DATE.**

This Act, and the requirements under this Act, shall take effect not later than 15 days after the date of enactment of this Act.

**SEC. 5109. SUNSET.**

This Act, and the requirements under this Act, shall expire on December 31, 2020.

**SEC. 5110. DEFINITIONS.**

For purposes of the Act:

(1) **EMPLOYEE.**—The terms “employee” means an individual who is—

(A)(i) an employee, as defined in section 3(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(e)), who is not covered under subparagraph (E) or (F), including such an employee of the Library of Congress, except that a reference in such section to an employer shall be considered to be a reference to an employer described in clauses (i)(I) and (ii) of paragraph (5)(A); or

(ii) an employee of the Government Accountability Office;

(B) a State employee described in section 304(a) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16c(a));

(C) a covered employee, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301), other than an applicant for employment;

(D) a covered employee, as defined in section 411(c) of title 3, United States Code;

(E) a Federal officer or employee covered under subchapter V of chapter 63 of title 5, United States Code; or

(F) any other individual occupying a position in the civil service (as that term is defined in section 2101(1) of title 5, United States Code).

(2) **EMPLOYER.**—

(A) **IN GENERAL.**—The term “employer” means a person who is—

(i)(I) a covered employer, as defined in subparagraph (B), who is not covered under subclause (V);

(II) an entity employing a State employee described in section 304(a) of the Government Employee Rights Act of 1991;

(III) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995;

(IV) an employing office, as defined in section 411(c) of title 3, United States Code; or

(V) an Executive Agency as defined in section 105 of title 5, United States Code, and including the U.S. Postal Service and the Postal Regulatory Commission; and

(ii) engaged in commerce (including government), or an industry or activity affecting commerce (including government), as defined in subparagraph (B)(iii).

(B) **COVERED EMPLOYER.**—

## H. R. 6201—22

(i) IN GENERAL.—In subparagraph (A)(i)(I), the term “covered employer”—

(I) means any person engaged in commerce or in any industry or activity affecting commerce that—

(aa) in the case of a private entity or individual, employs fewer than 500 employees; and

(bb) in the case of a public agency or any other entity that is not a private entity or individual, employs 1 or more employees;

(II) includes—

(aa) includes any person acting directly or indirectly in the interest of an employer in relation to an employee (within the meaning of such phrase in section 3(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(d)); and

(bb) any successor in interest of an employer;

(III) includes any “public agency”, as defined in section 3(x) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(x)); and

(IV) includes the Government Accountability Office and the Library of Congress.

(ii) PUBLIC AGENCY.—For purposes of clause (i)(IV), a public agency shall be considered to be a person engaged in commerce or in an industry or activity affecting commerce.

(iii) DEFINITIONS.—For purposes of this subparagraph:

(I) COMMERCE.—The terms “commerce” and “industry or activity affecting commerce” means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include “commerce” and any “industry affecting commerce”, as defined in paragraphs (1) and (3) of section 501 of the Labor Management Relations Act of 1947 (29 U.S.C. 142 (1) and (3)).

(II) EMPLOYEE.—The term “employee” has the same meaning given such term in section 3(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(e)).

(III) PERSON.—The term “person” has the same meaning given such term in section 3(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(a)).

(3) FLSA TERMS.—The terms “employ” and “State” have the meanings given such terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

(4) FMLA TERMS.—The terms “health care provider” and “son or daughter” have the meanings given such terms in section 101 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611).

(5) PAID SICK TIME.—

(A) IN GENERAL.—The term “paid sick time” means an increment of compensated leave that—

## H. R. 6201—23

(i) is provided by an employer for use during an absence from employment for a reason described in any paragraph of section 2(a); and

(ii) is calculated based on the employee's required compensation under subparagraph (B) and the number of hours the employee would otherwise be normally scheduled to work (or the number of hours calculated under subparagraph (C)), except that in no event shall such paid sick time exceed—

(I) \$511 per day and \$5,110 in the aggregate for a use described in paragraph (1), (2), or (3) of section 5102(a); and

(II) \$200 per day and \$2,000 in the aggregate for a use described in paragraph (4), (5), or (6) of section 5102(a).

**(B) REQUIRED COMPENSATION.—**

(i) **IN GENERAL.**—Subject to subparagraph (A)(ii), the employee's required compensation under this subparagraph shall be not less than the greater of the following:

(I) The employee's regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e)).

(II) The minimum wage rate in effect under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).

(III) The minimum wage rate in effect for such employee in the applicable State or locality, whichever is greater, in which the employee is employed.

**(ii) SPECIAL RULE FOR CARE OF FAMILY MEMBERS.—**

Subject to subparagraph (A)(ii), with respect to any paid sick time provided for any use described in paragraph (4), (5), or (6) of section 5102(a), the employee's required compensation under this subparagraph shall be two-thirds of the amount described in clause (B)(i).

**(C) VARYING SCHEDULE HOURS CALCULATION.**—In the case of a part-time employee described in section 5102(b)(2)(B) whose schedule varies from week to week to such an extent that an employer is unable to determine with certainty the number of hours the employee would have worked if such employee had not taken paid sick time under section 2(a), the employer shall use the following in place of such number:

(i) Subject to clause (ii), a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes the paid sick time, including hours for which the employee took leave of any type.

(ii) If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

**(D) GUIDELINES.**—Not later than 15 days after the date of the enactment of this Act, the Secretary of Labor

## H. R. 6201—24

shall issue guidelines to assist employers in calculating the amount of paid sick time under subparagraph (A).

(E) REASONABLE NOTICE.—After the first workday (or portion thereof) an employee receives paid sick time under this Act, an employer may require the employee to follow reasonable notice procedures in order to continue receiving such paid sick time.

**SEC. 5111. REGULATORY AUTHORITIES.**

The Secretary of Labor shall have the authority to issue regulations for good cause under sections 553(b)(B) and 553(d)(A) of title 5, United States Code—

(1) to exclude certain health care providers and emergency responders from the definition of employee under section 5110(1) including by allowing the employer of such health care providers and emergency responders to opt out;

(2) to exempt small businesses with fewer than 50 employees from the requirements of section 5102(a)(5) when the imposition of such requirements would jeopardize the viability of the business as a going concern; and

(3) as necessary, to carry out the purposes of this Act, including to ensure consistency between this Act and Division C and Division G of the Families First Coronavirus Response Act.

**DIVISION F—HEALTH PROVISIONS****SEC. 6001. COVERAGE OF TESTING FOR COVID-19.**

(a) IN GENERAL.—A group health plan and a health insurance issuer offering group or individual health insurance coverage (including a grandfathered health plan (as defined in section 1251(e) of the Patient Protection and Affordable Care Act)) shall provide coverage, and shall not impose any cost sharing (including deductibles, copayments, and coinsurance) requirements or prior authorization or other medical management requirements, for the following items and services furnished during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b-5(g)) beginning on or after the date of the enactment of this Act:

(1) In vitro diagnostic products (as defined in section 809.3(a) of title 21, Code of Federal Regulations) for the detection of SARS-CoV-2 or the diagnosis of the virus that causes COVID-19 that are approved, cleared, or authorized under section 510(k), 513, 515 or 564 of the Federal Food, Drug, and Cosmetic Act, and the administration of such in vitro diagnostic products.

(2) Items and services furnished to an individual during health care provider office visits (which term in this paragraph includes in-person visits and telehealth visits), urgent care center visits, and emergency room visits that result in an order for or administration of an in vitro diagnostic product described in paragraph (1), but only to the extent such items and services relate to the furnishing or administration of such product or to the evaluation of such individual for purposes of determining the need of such individual for such product.

## H. R. 6201—25

(b) ENFORCEMENT.—The provisions of subsection (a) shall be applied by the Secretary of Health and Human Services, Secretary of Labor, and Secretary of the Treasury to group health plans and health insurance issuers offering group or individual health insurance coverage as if included in the provisions of part A of title XXVII of the Public Health Service Act, part 7 of the Employee Retirement Income Security Act of 1974, and subchapter B of chapter 100 of the Internal Revenue Code of 1986, as applicable.

(c) IMPLEMENTATION.—The Secretary of Health and Human Services, Secretary of Labor, and Secretary of the Treasury may implement the provisions of this section through sub-regulatory guidance, program instruction or otherwise.

(d) TERMS.—The terms “group health plan”; “health insurance issuer”; “group health insurance coverage”, and “individual health insurance coverage” have the meanings given such terms in section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91), section 733 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b), and section 9832 of the Internal Revenue Code of 1986, as applicable.

**SEC. 6002. WAIVING COST SHARING UNDER THE MEDICARE PROGRAM FOR CERTAIN VISITS RELATING TO TESTING FOR COVID-19.**

(a) IN GENERAL.—Section 1833 of the Social Security Act (42 U.S.C. 1395l) is amended—

(1) in subsection (a)(1)—

(A) by striking “and” before “(CC)”; and

(B) by inserting before the period at the end the following: “, and (DD) with respect to a specified COVID-19 testing-related service described in paragraph (1) of subsection (cc) for which payment may be made under a specified outpatient payment provision described in paragraph (2) of such subsection, the amounts paid shall be 100 percent of the payment amount otherwise recognized under such respective specified outpatient payment provision for such service,”;

(2) in subsection (b), in the first sentence—

(A) by striking “and” before “(10)”; and

(B) by inserting before the period at the end the following: “, and (11) such deductible shall not apply with respect to any specified COVID-19 testing-related service described in paragraph (1) of subsection (cc) for which payment may be made under a specified outpatient payment provision described in paragraph (2) of such subsection”; and

(3) by adding at the end the following new subsection:

“(cc) SPECIFIED COVID-19 TESTING-RELATED SERVICES.—For purposes of subsection (a)(1)(DD):

“(1) DESCRIPTION.—

“(A) IN GENERAL.—A specified COVID-19 testing-related service described in this paragraph is a medical visit that—

“(i) is in any of the categories of HCPCS evaluation and management service codes described in subparagraph (B);

“(ii) is furnished during any portion of the emergency period (as defined in section 1135(g)(1)(B))

## H. R. 6201—26

(beginning on or after the date of enactment of this subsection);

“(iii) results in an order for or administration of a clinical diagnostic laboratory test described in section 1852(a)(1)(B)(iv)(IV); and

“(iv) relates to the furnishing or administration of such test or to the evaluation of such individual for purposes of determining the need of such individual for such test.

“(B) CATEGORIES OF HCPCS CODES.—For purposes of subparagraph (A), the categories of HCPCS evaluation and management services codes are the following:

“(i) Office and other outpatient services.

“(ii) Hospital observation services.

“(iii) Emergency department services.

“(iv) Nursing facility services.

“(v) Domiciliary, rest home, or custodial care services.

“(vi) Home services.

“(vii) Online digital evaluation and management services.

“(2) SPECIFIED OUTPATIENT PAYMENT PROVISION.—A specified outpatient payment provision described in this paragraph is any of the following:

“(A) The hospital outpatient prospective payment system under subsection (t).

“(B) The physician fee schedule under section 1848.

“(C) The prospective payment system developed under section 1834(o).

“(D) Section 1834(g), with respect to an outpatient critical access hospital service.

“(E) The payment basis determined in regulations pursuant to section 1833(a)(3) for rural health clinic services.”

(b) CLAIMS MODIFIER.—The Secretary of Health and Human Services shall provide for an appropriate modifier (or other identifier) to include on claims to identify, for purposes of subparagraph (DD) of section 1833(a)(1), as added by subsection (a), specified COVID-19 testing-related services described in paragraph (1) of section 1833(cc) of the Social Security Act, as added by subsection (a), for which payment may be made under a specified outpatient payment provision described in paragraph (2) of such subsection.

(c) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may implement the provisions of, including amendments made by, this section through program instruction or otherwise.

**SEC. 6003. COVERAGE OF TESTING FOR COVID-19 AT NO COST SHARING UNDER THE MEDICARE ADVANTAGE PROGRAM.**

(a) IN GENERAL.—Section 1852(a)(1)(B) of the Social Security Act (42 U.S.C. 1395w-22(a)(1)(B)) is amended—

(1) in clause (iv)—

(A) by redesignating subclause (IV) as subclause (VI); and

(B) by inserting after subclause (III) the following new subclauses:

## H. R. 6201—27

“(IV) Clinical diagnostic laboratory test administered during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) beginning on or after the date of the enactment of the Families First Coronavirus Response Act for the detection of SARS-CoV-2 or the diagnosis of the virus that causes COVID-19 and the administration of such test.

“(V) Specified COVID-19 testing-related services (as described in section 1833(cc)(1)) for which payment would be payable under a specified outpatient payment provision described in section 1833(cc)(2).”;

(2) in clause (v), by inserting “, other than subclauses (IV) and (V) of such clause,” after “clause (iv)”; and

(3) by adding at the end the following new clause:

“(vi) PROHIBITION OF APPLICATION OF CERTAIN REQUIREMENTS FOR COVID-19 TESTING.—In the case of a product or service described in subclause (IV) or (V), respectively, of clause (iv) that is administered or furnished during any portion of the emergency period described in such subclause beginning on or after the date of the enactment of this clause, an MA plan may not impose any prior authorization or other utilization management requirements with respect to the coverage of such a product or service under such plan.”.

(b) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may implement the amendments made by this section by program instruction or otherwise.

**SEC. 6004. COVERAGE AT NO COST SHARING OF COVID-19 TESTING UNDER MEDICAID AND CHIP.**

(a) MEDICAID.—

(1) IN GENERAL.—Section 1905(a)(3) of the Social Security Act (42 U.S.C. 1396d(a)(3)) is amended—

(A) by striking “other laboratory” and inserting “(A) other laboratory”;

(B) by inserting “and” after the semicolon; and

(C) by adding at the end the following new subparagraph:

“(B) in vitro diagnostic products (as defined in section 809.3(a) of title 21, Code of Federal Regulations) administered during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) beginning on or after the date of the enactment of this subparagraph for the detection of SARS-CoV-2 or the diagnosis of the virus that causes COVID-19 that are approved, cleared, or authorized under section 510(k), 513, 515 or 564 of the Federal Food, Drug, and Cosmetic Act, and the administration of such in vitro diagnostic products;”.

(2) NO COST SHARING.—

(A) IN GENERAL.—Subsections (a)(2) and (b)(2) of section 1916 of the Social Security Act (42 U.S.C. 1396o) are each amended—

## H. R. 6201—28

- (i) in subparagraph (D), by striking “or” at the end;
- (ii) in subparagraph (E), by striking “; and” and inserting a comma; and
- (iii) by adding at the end the following new subparagraphs:

“(F) any in vitro diagnostic product described in section 1905(a)(3)(B) that is administered during any portion of the emergency period described in such section beginning on or after the date of the enactment of this subparagraph (and the administration of such product), or

“(G) COVID-19 testing-related services for which payment may be made under the State plan; and”.

(B) APPLICATION TO ALTERNATIVE COST SHARING.—Section 1916A(b)(3)(B) of the Social Security Act (42 U.S.C. 1396o-1(b)(3)(B)) is amended by adding at the end the following new clause:

“(xi) Any in vitro diagnostic product described in section 1905(a)(3)(B) that is administered during any portion of the emergency period described in such section beginning on or after the date of the enactment of this clause (and the administration of such product) and any visit described in section 1916(a)(2)(G) that is furnished during any such portion.”.

(C) CLARIFICATION.—The amendments made this paragraph shall apply with respect to a State plan of a territory in the same manner as a State plan of one of the 50 States.

(3) STATE OPTION TO PROVIDE COVERAGE FOR UNINSURED INDIVIDUALS.—

(A) IN GENERAL.—Section 1902(a)(10) of the Social Security Act (42 U.S.C. 1396a(a)(10)) is amended—

(i) in subparagraph (A)(ii)—

(I) in subclause (XXI), by striking “or” at the end;

(II) in subclause (XXII), by adding “or” at the end; and

(III) by adding at the end the following new subclause:

“(XXIII) during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) beginning on or after the date of the enactment of this subclause, who are uninsured individuals (as defined in subsection (ss));”;

(ii) in the matter following subparagraph (G)—

(I) by striking “and (XVII)” and inserting “, (XVII)”; and

(II) by inserting after “instead of through subclause (VIII)” the following: “, and (XVIII) the medical assistance made available to an uninsured individual (as defined in subsection (ss)) who is eligible for medical assistance only because of subparagraph (A)(ii)(XXIII) shall be limited to medical assistance for any in vitro diagnostic product described in section 1905(a)(3)(B) that is administered during any portion of the emergency period described in such section beginning on or

## H. R. 6201—29

after the date of the enactment of this subclause (and the administration of such product) and any visit described in section 1916(a)(2)(G) that is furnished during any such portion”.

(B) RECEIPT AND INITIAL PROCESSING OF APPLICATIONS AT CERTAIN LOCATIONS.—Section 1902(a)(55) of the Social Security Act (42 U.S.C. 1396a(a)(55)) is amended, in the matter preceding subparagraph (A), by striking “or (a)(10)(A)(ii)(IX)” and inserting “(a)(10)(A)(ii)(IX), or (a)(10)(A)(ii)(XXIII)”.

(C) UNINSURED INDIVIDUAL DEFINED.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended by adding at the end the following new subsection:

“(ss) UNINSURED INDIVIDUAL DEFINED.—For purposes of this section, the term ‘uninsured individual’ means, notwithstanding any other provision of this title, any individual who is—

“(1) not described in subsection (a)(10)(A)(i); and

“(2) not enrolled in a Federal health care program (as defined in section 1128B(f)), a group health plan, group or individual health insurance coverage offered by a health insurance issuer (as such terms are defined in section 2791 of the Public Health Service Act), or a health plan offered under chapter 89 of title 5, United States Code.”.

(D) FEDERAL MEDICAL ASSISTANCE PERCENTAGE.—Section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) is amended by adding at the end the following new sentence: “Notwithstanding the first sentence of this subsection, the Federal medical assistance percentage shall be 100 per centum with respect to (and, notwithstanding any other provision of this title, available for) medical assistance provided to uninsured individuals (as defined in section 1902(ss)) who are eligible for such assistance only on the basis of section 1902(a)(10)(A)(ii)(XXIII) and with respect to expenditures described in section 1903(a)(7) that a State demonstrates to the satisfaction of the Secretary are attributable to administrative costs related to providing for such medical assistance to such individuals under the State plan.”.

(b) CHIP.—

(1) IN GENERAL.—Section 2103(c) of the Social Security Act (42 U.S.C. 1397cc(c)) is amended by adding at the end the following paragraph:

“(10) CERTAIN IN VITRO DIAGNOSTIC PRODUCTS FOR COVID-19 TESTING.—The child health assistance provided to a targeted low-income child shall include coverage of any in vitro diagnostic product described in section 1905(a)(3)(B) that is administered during any portion of the emergency period described in such section beginning on or after the date of the enactment of this subparagraph (and the administration of such product).”.

(2) COVERAGE FOR TARGETED LOW-INCOME PREGNANT WOMEN.—Section 2112(b)(4) of the Social Security Act (42 U.S.C. 1397ll(b)(4)) is amended by inserting “under section 2103(c)” after “same requirements”.

(3) PROHIBITION OF COST SHARING.—Section 2103(e)(2) of the Social Security Act (42 U.S.C. 1397cc(e)(2)) is amended—

## H. R. 6201—30

(A) in the paragraph header, by inserting “, COVID-19 TESTING,” before “OR PREGNANCY-RELATED ASSISTANCE”; and

(B) by striking “category of services described in subsection (c)(1)(D) or” and inserting “categories of services described in subsection (c)(1)(D), in vitro diagnostic products described in subsection (c)(10) (and administration of such products), visits described in section 1916(a)(2)(G), or”.

**SEC. 6005. TREATMENT OF PERSONAL RESPIRATORY PROTECTIVE DEVICES AS COVERED COUNTERMEASURES.**

Section 319F-3(i)(1) of the Public Health Service Act (42 U.S.C. 247d-6d(i)(1)) is amended—

(1) in subparagraph (B), by striking “or” at the end;

(2) in subparagraph (C), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following new subparagraph:

“(D) a personal respiratory protective device that is—

“(i) approved by the National Institute for Occupational Safety and Health under part 84 of title 42, Code of Federal Regulations (or successor regulations);

“(ii) subject to the emergency use authorization issued by the Secretary on March 2, 2020, or subsequent emergency use authorizations, pursuant to section 564 of the Federal Food, Drug, and Cosmetic Act (authorizing emergency use of personal respiratory protective devices during the COVID-19 outbreak); and

“(iii) used during the period beginning on January 27, 2020, and ending on October 1, 2024, in response to the public health emergency declared on January 31, 2020, pursuant to section 319 as a result of confirmed cases of 2019 Novel Coronavirus (2019-nCoV).”.

**SEC. 6006. APPLICATION WITH RESPECT TO TRICARE, COVERAGE FOR VETERANS, AND COVERAGE FOR FEDERAL CIVILIANS.**

(a) **TRICARE.**—The Secretary of Defense may not require any copayment or other cost sharing under chapter 55 of title 10, United States Code, for in vitro diagnostic products described in paragraph (1) of section 6001(a) (or the administration of such products) or visits described in paragraph (2) of such section furnished during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b-5(g)) beginning on or after the date of the enactment of this Act.

(b) **VETERANS.**—The Secretary of Veterans Affairs may not require any copayment or other cost sharing under chapter 17 of title 38, United States Code, for in vitro diagnostic products described in paragraph (1) of section 6001(a) (or the administration of such products) or visits described in paragraph (2) of such section furnished during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b-5(g)) beginning on or after the date of the enactment of this Act.

(c) **FEDERAL CIVILIANS.**—No copayment or other cost sharing may be required for any individual occupying a position in the civil service (as that term is defined in section 2101(1) of title 5, United States Code) enrolled in a health benefits plan, including

## H. R. 6201—31

any plan under chapter 89 of title 5, United States Code, or for any other individual currently enrolled in any plan under chapter 89 of title 5 for in vitro diagnostic products described in paragraph (1) of section 6001(a) (or the administration of such products) or visits described in paragraph (2) of such section furnished during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b-5(g)) beginning on or after the date of the enactment of this Act.

**SEC. 6007. COVERAGE OF TESTING FOR COVID-19 AT NO COST SHARING FOR INDIANS RECEIVING PURCHASED/REFERRED CARE.**

The Secretary of Health and Human Services shall cover, without the imposition of any cost sharing requirements, the cost of providing any COVID-19 related items and services as described in paragraph (1) of section 6001(a) (or the administration of such products) or visits described in paragraph (2) of such section furnished during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 320b-5(g)) beginning on or after the date of the enactment of this Act to Indians (as defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603)) receiving health services through the Indian Health Service, including through an Urban Indian Organization, regardless of whether such items or services have been authorized under the purchased/referred care system funded by the Indian Health Service or is covered as a health service of the Indian Health Service.

**SEC. 6008. TEMPORARY INCREASE OF MEDICAID FMAP.**

(a) **IN GENERAL.**—Subject to subsection (b), for each calendar quarter occurring during the period beginning on the first day of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b-5(g)) and ending on the last day of the calendar quarter in which the last day of such emergency period occurs, the Federal medical assistance percentage determined for each State, including the District of Columbia, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the United States Virgin Islands, under section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) shall be increased by 6.2 percentage points.

(b) **REQUIREMENT FOR ALL STATES.**—A State described in subsection (a) may not receive the increase described in such subsection in the Federal medical assistance percentage for such State, with respect to a quarter, if—

(1) eligibility standards, methodologies, or procedures under the State plan of such State under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (including any waiver under such title or section 1115 of such Act (42 U.S.C. 1315)) are more restrictive during such quarter than the eligibility standards, methodologies, or procedures, respectively, under such plan (or waiver) as in effect on January 1, 2020;

(2) the amount of any premium imposed by the State pursuant to section 1916 or 1916A of such Act (42 U.S.C. 1396o, 1396o-1) during such quarter, with respect to an individual enrolled under such plan (or waiver), exceeds the amount of such premium as of January 1, 2020;

(3) the State fails to provide that an individual who is enrolled for benefits under such plan (or waiver) as of the date of enactment of this section or enrolls for benefits under

## H. R. 6201—32

such plan (or waiver) during the period beginning on such date of enactment and ending the last day of the month in which the emergency period described in subsection (a) ends shall be treated as eligible for such benefits through the end of the month in which such emergency period ends unless the individual requests a voluntary termination of eligibility or the individual ceases to be a resident of the State; or

(4) the State does not provide coverage under such plan (or waiver), without the imposition of cost sharing, during such quarter for any testing services and treatments for COVID-19, including vaccines, specialized equipment, and therapies.

(c) REQUIREMENT FOR CERTAIN STATES.—Section 1905(cc) of the Social Security Act (42 U.S.C. 1396d(cc)) is amended by striking the period at the end of the subsection and inserting “and section 6008 of the Families First Coronavirus Response Act, except that in applying such treatments to the increases in the Federal medical assistance percentage under section 6008 of the Families First Coronavirus Response Act, the reference to ‘December 31, 2009’ shall be deemed to be a reference to ‘March 11, 2020’.”.

**SEC. 6009. INCREASE IN MEDICAID ALLOTMENTS FOR TERRITORIES.**

Section 1108(g) of the Social Security Act (42 U.S.C. 1308(g)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (B)—

(i) in clause (i), by striking “and” at the end;

(ii) in clause (ii), by striking “for each of fiscal years 2020 through 2021, \$126,000,000;” and inserting “for fiscal year 2020, \$128,712,500; and”; and

(iii) by adding at the end the following new clause: “(iii) for fiscal year 2021, \$127,937,500;”;

(B) in subparagraph (C)—

(i) in clause (i), by striking “and” at the end;

(ii) in clause (ii), by striking “for each of fiscal years 2020 through 2021, \$127,000,000;” and inserting “for fiscal year 2020, \$130,875,000; and”; and

(iii) by adding at the end the following new clause: “(iii) for fiscal year 2021, \$129,712,500;”;

(C) in subparagraph (D)—

(i) in clause (i), by striking “and” at the end;

(ii) in clause (ii), by striking “for each of fiscal years 2020 through 2021, \$60,000,000; and” and inserting “for fiscal year 2020, \$63,100,000; and”; and

(iii) by adding at the end the following new clause: “(iii) for fiscal year 2021, \$62,325,000; and”; and

(D) in subparagraph (E)—

(i) in clause (i), by striking “and” at the end;

(ii) in clause (ii), by striking “for each of fiscal years 2020 through 2021, \$84,000,000.” and inserting “for fiscal year 2020, \$86,325,000; and”; and

(iii) by adding at the end the following new clause: “(iii) for fiscal year 2021, \$85,550,000.”; and

(2) in paragraph (6)(A)—

(A) in clause (i), by striking “\$2,623,188,000” and inserting “\$2,716,188,000”; and

(B) in clause (ii), by striking “\$2,719,072,000” and inserting “\$2,809,063,000”.

H. R. 6201—33

**SEC. 6010. CLARIFICATION RELATING TO SECRETARIAL AUTHORITY REGARDING MEDICARE TELEHEALTH SERVICES FURNISHED DURING COVID-19 EMERGENCY PERIOD.**

Paragraph (3)(A) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b-5(g)) is amended to read as follows:

“(A) furnished to such individual, during the 3-year period ending on the date such telehealth service was furnished, an item or service that would be considered covered under title XVIII if furnished to an individual entitled to benefits or enrolled under such title; or”.

**DIVISION G—TAX CREDITS FOR PAID SICK AND PAID FAMILY AND MEDICAL LEAVE****SEC. 7001. PAYROLL CREDIT FOR REQUIRED PAID SICK LEAVE.**

(a) **IN GENERAL.**—In the case of an employer, there shall be allowed as a credit against the tax imposed by section 3111(a) or 3221(a) of the Internal Revenue Code of 1986 for each calendar quarter an amount equal to 100 percent of the qualified sick leave wages paid by such employer with respect to such calendar quarter.

(b) **LIMITATIONS AND REFUNDABILITY.**—

(1) **WAGES TAKEN INTO ACCOUNT.**—The amount of qualified sick leave wages taken into account under subsection (a) with respect to any individual shall not exceed \$200 (\$511 in the case of any day any portion of which is paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act) for any day (or portion thereof) for which the individual is paid qualified sick leave wages.

(2) **OVERALL LIMITATION ON NUMBER OF DAYS TAKEN INTO ACCOUNT.**—The aggregate number of days taken into account under paragraph (1) for any calendar quarter shall not exceed the excess (if any) of—

(A) 10, over

(B) the aggregate number of days so taken into account for all preceding calendar quarters.

(3) **CREDIT LIMITED TO CERTAIN EMPLOYMENT TAXES.**—The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the tax imposed by section 3111(a) or 3221(a) of such Code for such calendar quarter (reduced by any credits allowed under subsections (e) and (f) of section 3111 of such Code for such quarter) on the wages paid with respect to the employment of all employees of the employer.

(4) **REFUNDABILITY OF EXCESS CREDIT.**—

(A) **IN GENERAL.**—If the amount of the credit under subsection (a) exceeds the limitation of paragraph (3) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b) of such Code.

(B) **TREATMENT OF PAYMENTS.**—For purposes of section 1324 of title 31, United States Code, any amounts due to an employer under this paragraph shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

## H. R. 6201—34

(c) **QUALIFIED SICK LEAVE WAGES.**—For purposes of this section, the term “qualified sick leave wages” means wages (as defined in section 3121(a) of the Internal Revenue Code of 1986) and compensation (as defined in section 3231(e) of the Internal Revenue Code) paid by an employer which are required to be paid by reason of the Emergency Paid Sick Leave Act.

(d) **ALLOWANCE OF CREDIT FOR CERTAIN HEALTH PLAN EXPENSES.**—

(1) **IN GENERAL.**—The amount of the credit allowed under subsection (a) shall be increased by so much of the employer’s qualified health plan expenses as are properly allocable to the qualified sick leave wages for which such credit is so allowed.

(2) **QUALIFIED HEALTH PLAN EXPENSES.**—For purposes of this subsection, the term “qualified health plan expenses” means amounts paid or incurred by the employer to provide and maintain a group health plan (as defined in section 5000(b)(1) of the Internal Revenue Code of 1986), but only to the extent that such amounts are excluded from the gross income of employees by reason of section 106(a) of such Code.

(3) **ALLOCATION RULES.**—For purposes of this section, qualified health plan expenses shall be allocated to qualified sick leave wages in such manner as the Secretary of the Treasury (or the Secretary’s delegate) may prescribe. Except as otherwise provided by the Secretary, such allocation shall be treated as properly made if made on the basis of being pro rata among covered employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).

(e) **SPECIAL RULES.**—

(1) **DENIAL OF DOUBLE BENEFIT.**—For purposes of chapter 1 of such Code, the gross income of the employer, for the taxable year which includes the last day of any calendar quarter with respect to which a credit is allowed under this section, shall be increased by the amount of such credit. Any wages taken into account in determining the credit allowed under this section shall not be taken into account for purposes of determining the credit allowed under section 45S of such Code.

(2) **ELECTION NOT TO HAVE SECTION APPLY.**—This section shall not apply with respect to any employer for any calendar quarter if such employer elects (at such time and in such manner as the Secretary of the Treasury (or the Secretary’s delegate) may prescribe) not to have this section apply.

(3) **CERTAIN TERMS.**—Any term used in this section which is also used in chapter 21 of such Code shall have the same meaning as when used in such chapter.

(4) **CERTAIN GOVERNMENTAL EMPLOYERS.**—This credit shall not apply to the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing.

(f) **REGULATIONS.**—The Secretary of the Treasury (or the Secretary’s delegate) shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

(1) regulations or other guidance to prevent the avoidance of the purposes of the limitations under this section,

## H. R. 6201—35

(2) regulations or other guidance to minimize compliance and record-keeping burdens under this section,

(3) regulations or other guidance providing for waiver of penalties for failure to deposit amounts in anticipation of the allowance of the credit allowed under this section,

(4) regulations or other guidance for recapturing the benefit of credits determined under this section in cases where there is a subsequent adjustment to the credit determined under subsection (a), and

(5) regulations or other guidance to ensure that the wages taken into account under this section conform with the paid sick time required to be provided under the Emergency Paid Sick Leave Act.

(g) APPLICATION OF SECTION.—This section shall apply only to wages paid with respect to the period beginning on a date selected by the Secretary of the Treasury (or the Secretary's delegate) which is during the 15-day period beginning on the date of the enactment of this Act, and ending on December 31, 2020.

(h) TRANSFERS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND.—There are hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401) and the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n-1(a)) amounts equal to the reduction in revenues to the Treasury by reason of this section (without regard to this subsection). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund or Account had this section not been enacted.

**SEC. 7002. CREDIT FOR SICK LEAVE FOR CERTAIN SELF-EMPLOYED INDIVIDUALS.**

(a) CREDIT AGAINST SELF-EMPLOYMENT TAX.—In the case of an eligible self-employed individual, there shall be allowed as a credit against the tax imposed by subtitle A of the Internal Revenue Code of 1986 for any taxable year an amount equal to the qualified sick leave equivalent amount with respect to the individual.

(b) ELIGIBLE SELF-EMPLOYED INDIVIDUAL.—For purposes of this section, the term “eligible self-employed individual” means an individual who—

(1) regularly carries on any trade or business within the meaning of section 1402 of such Code, and

(2) would be entitled to receive paid leave during the taxable year pursuant to the Emergency Paid Sick Leave Act if the individual were an employee of an employer (other than himself or herself).

(c) QUALIFIED SICK LEAVE EQUIVALENT AMOUNT.—For purposes of this section—

(1) IN GENERAL.—The term “qualified sick leave equivalent amount” means, with respect to any eligible self-employed individual, an amount equal to—

(A) the number of days during the taxable year (but not more than the applicable number of days) that the individual is unable to perform services in any trade or business referred to in section 1402 of such Code for a

## H. R. 6201—36

reason with respect to which such individual would be entitled to receive sick leave as described in subsection (b), multiplied by

(B) the lesser of—

(i) \$200 (\$511 in the case of any day of paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act), or

(ii) 67 percent (100 percent in the case of any day of paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act) of the average daily self-employment income of the individual for the taxable year.

(2) AVERAGE DAILY SELF-EMPLOYMENT INCOME.—For purposes of this subsection, the term “average daily self-employment income” means an amount equal to—

(A) the net earnings from self-employment of the individual for the taxable year, divided by

(B) 260.

(3) APPLICABLE NUMBER OF DAYS.—For purposes of this subsection, the term “applicable number of days” means, with respect to any taxable year, the excess (if any) of 10 days over the number of days taken into account under paragraph (1)(A) in all preceding taxable years.

(d) SPECIAL RULES.—

(1) CREDIT REFUNDABLE.—

(A) IN GENERAL.—The credit determined under this section shall be treated as a credit allowed to the taxpayer under subpart C of part IV of subchapter A of chapter 1 of such Code.

(B) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, any refund due from the credit determined under this section shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(2) DOCUMENTATION.—No credit shall be allowed under this section unless the individual maintains such documentation as the Secretary of the Treasury (or the Secretary’s delegate) may prescribe to establish such individual as an eligible self-employed individual.

(3) DENIAL OF DOUBLE BENEFIT.—In the case of an individual who receives wages (as defined in section 3121(a) of the Internal Revenue Code of 1986) or compensation (as defined in section 3231(e) of the Internal Revenue Code) paid by an employer which are required to be paid by reason of the Emergency Paid Sick Leave Act, the qualified sick leave equivalent amount otherwise determined under subsection (c) shall be reduced (but not below zero) to the extent that the sum of the amount described in such subsection and in section 7001(b)(1) exceeds \$2,000 (\$5,110 in the case of any day any portion of which is paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act).

(4) CERTAIN TERMS.—Any term used in this section which is also used in chapter 2 of the Internal Revenue Code of 1986 shall have the same meaning as when used in such chapter.

## H. R. 6201—37

(e) APPLICATION OF SECTION.—Only days occurring during the period beginning on a date selected by the Secretary of the Treasury (or the Secretary's delegate) which is during the 15-day period beginning on the date of the enactment of this Act, and ending on December 31, 2020, may be taken into account under subsection (c)(1)(A).

(f) APPLICATION OF CREDIT IN CERTAIN POSSESSIONS.—

(1) PAYMENTS TO POSSESSIONS WITH MIRROR CODE TAX SYSTEMS.—The Secretary of the Treasury (or the Secretary's delegate) shall pay to each possession of the United States which has a mirror code tax system amounts equal to the loss (if any) to that possession by reason of the application of the provisions of this section. Such amounts shall be determined by the Secretary of the Treasury (or the Secretary's delegate) based on information provided by the government of the respective possession.

(2) PAYMENTS TO OTHER POSSESSIONS.—The Secretary of the Treasury (or the Secretary's delegate) shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury (or the Secretary's delegate) as being equal to the aggregate benefits (if any) that would have been provided to residents of such possession by reason of the provisions of this section if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply unless the respective possession has a plan, which has been approved by the Secretary of the Treasury (or the Secretary's delegate), under which such possession will promptly distribute such payments to its residents.

(3) MIRROR CODE TAX SYSTEM.—For purposes of this section, the term “mirror code tax system” means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

(4) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, the payments under this section shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(g) REGULATIONS.—The Secretary of the Treasury (or the Secretary's delegate) shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

(1) regulations or other guidance to effectuate the purposes of this Act, and

(2) regulations or other guidance to minimize compliance and record-keeping burdens under this section.

**SEC. 7003. PAYROLL CREDIT FOR REQUIRED PAID FAMILY LEAVE.**

(a) IN GENERAL.—In the case of an employer, there shall be allowed as a credit against the tax imposed by section 3111(a) or 3221(a) of the Internal Revenue Code of 1986 for each calendar quarter an amount equal to 100 percent of the qualified family leave wages paid by such employer with respect to such calendar quarter.

(b) LIMITATIONS AND REFUNDABILITY.—

## H. R. 6201—38

(1) **WAGES TAKEN INTO ACCOUNT.**—The amount of qualified family leave wages taken into account under subsection (a) with respect to any individual shall not exceed—

(A) for any day (or portion thereof) for which the individual is paid qualified family leave wages, \$200, and

(B) in the aggregate with respect to all calendar quarters, \$10,000.

(2) **CREDIT LIMITED TO CERTAIN EMPLOYMENT TAXES.**—The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the tax imposed by section 3111(a) or 3221(a) of such Code for such calendar quarter (reduced by any credits allowed under subsections (e) and (f) of section 3111 of such Code, and section 7001 of this Act, for such quarter) on the wages paid with respect to the employment of all employees of the employer.

(3) **REFUNDABILITY OF EXCESS CREDIT.**—If the amount of the credit under subsection (a) exceeds the limitation of paragraph (2) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b) of such Code.

(c) **QUALIFIED FAMILY LEAVE WAGES.**—For purposes of this section, the term “qualified family leave wages” means wages (as defined in section 3121(a) of such Code) and compensation (as defined in section 3231(e) of the Internal Revenue Code) paid by an employer which are required to be paid by reason of the Emergency Family and Medical Leave Expansion Act (including the amendments made by such Act).

(d) **ALLOWANCE OF CREDIT FOR CERTAIN HEALTH PLAN EXPENSES.**—

(1) **IN GENERAL.**—The amount of the credit allowed under subsection (a) shall be increased by so much of the employer’s qualified health plan expenses as are properly allocable to the qualified family leave wages for which such credit is so allowed.

(2) **QUALIFIED HEALTH PLAN EXPENSES.**—For purposes of this subsection, the term “qualified health plan expenses” means amounts paid or incurred by the employer to provide and maintain a group health plan (as defined in section 5000(b)(1) of the Internal Revenue Code of 1986), but only to the extent that such amounts are excluded from the gross income of employees by reason of section 106(a) of such Code.

(3) **ALLOCATION RULES.**—For purposes of this section, qualified health plan expenses shall be allocated to qualified family leave wages in such manner as the Secretary of the Treasury (or the Secretary’s delegate) may prescribe. Except as otherwise provided by the Secretary, such allocation shall be treated as properly made if made on the basis of being pro rata among covered employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).

(e) **SPECIAL RULES.**—

(1) **DENIAL OF DOUBLE BENEFIT.**—For purposes of chapter 1 of such Code, the gross income of the employer, for the taxable year which includes the last day of any calendar quarter with respect to which a credit is allowed under this section, shall be increased by the amount of such credit. Any wages taken into account in determining the credit allowed under

## H. R. 6201—39

this section shall not be taken into account for purposes of determining the credit allowed under section 45S of such Code.

(2) ELECTION NOT TO HAVE SECTION APPLY.—This section shall not apply with respect to any employer for any calendar quarter if such employer elects (at such time and in such manner as the Secretary of the Treasury (or the Secretary's delegate) may prescribe) not to have this section apply.

(3) CERTAIN TERMS.—Any term used in this section which is also used in chapter 21 of such Code shall have the same meaning as when used in such chapter.

(4) CERTAIN GOVERNMENTAL EMPLOYERS.—This credit shall not apply to the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing.

(f) REGULATIONS.—The Secretary of the Treasury (or the Secretary's delegate) shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

(1) regulations or other guidance to prevent the avoidance of the purposes of the limitations under this section,

(2) regulations or other guidance to minimize compliance and record-keeping burdens under this section,

(3) regulations or other guidance providing for waiver of penalties for failure to deposit amounts in anticipation of the allowance of the credit allowed under this section,

(4) regulations or other guidance for recapturing the benefit of credits determined under this section in cases where there is a subsequent adjustment to the credit determined under subsection (a), and

(5) regulations or other guidance to ensure that the wages taken into account under this section conform with the paid leave required to be provided under the Emergency Family and Medical Leave Expansion Act (including the amendments made by such Act).

(g) APPLICATION OF SECTION.—This section shall apply only to wages paid with respect to the period beginning on a date selected by the Secretary of the Treasury (or the Secretary's delegate) which is during the 15-day period beginning on the date of the enactment of this Act, and ending on December 31, 2020.

(h) TRANSFERS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND.—There are hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401) and the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n-1(a)) amounts equal to the reduction in revenues to the Treasury by reason of this section (without regard to this subsection). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund or Account had this section not been enacted.

## H. R. 6201—40

**SEC. 7004. CREDIT FOR FAMILY LEAVE FOR CERTAIN SELF-EMPLOYED INDIVIDUALS.**

(a) **CREDIT AGAINST SELF-EMPLOYMENT TAX.**—In the case of an eligible self-employed individual, there shall be allowed as a credit against the tax imposed by subtitle A of the Internal Revenue Code of 1986 for any taxable year an amount equal to 100 percent of the qualified family leave equivalent amount with respect to the individual.

(b) **ELIGIBLE SELF-EMPLOYED INDIVIDUAL.**—For purposes of this section, the term “eligible self-employed individual” means an individual who—

(1) regularly carries on any trade or business within the meaning of section 1402 of such Code, and

(2) would be entitled to receive paid leave during the taxable year pursuant to the Emergency Family and Medical Leave Expansion Act if the individual were an employee of an employer (other than himself or herself).

(c) **QUALIFIED FAMILY LEAVE EQUIVALENT AMOUNT.**—For purposes of this section—

(1) **IN GENERAL.**—The term “qualified family leave equivalent amount” means, with respect to any eligible self-employed individual, an amount equal to the product of—

(A) the number of days (not to exceed 50) during the taxable year that the individual is unable to perform services in any trade or business referred to in section 1402 of such Code for a reason with respect to which such individual would be entitled to receive paid leave as described in subsection (b), multiplied by

(B) the lesser of—

(i) 67 percent of the average daily self-employment income of the individual for the taxable year, or

(ii) \$200.

(2) **AVERAGE DAILY SELF-EMPLOYMENT INCOME.**—For purposes of this subsection, the term “average daily self-employment income” means an amount equal to—

(A) the net earnings from self-employment income of the individual for the taxable year, divided by

(B) 260.

(d) **SPECIAL RULES.**—

(1) **CREDIT REFUNDABLE.**—

(A) **IN GENERAL.**—The credit determined under this section shall be treated as a credit allowed to the taxpayer under subpart C of part IV of subchapter A of chapter 1 of such Code.

(B) **TREATMENT OF PAYMENTS.**—For purposes of section 1324 of title 31, United States Code, any refund due from the credit determined under this section shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(2) **DOCUMENTATION.**—No credit shall be allowed under this section unless the individual maintains such documentation as the Secretary of the Treasury (or the Secretary’s delegate) may prescribe to establish such individual as an eligible self-employed individual.

(3) **DENIAL OF DOUBLE BENEFIT.**—In the case of an individual who receives wages (as defined in section 3121(a) of the Internal Revenue Code of 1986) or compensation (as defined

## H. R. 6201—41

in section 3231(e) of the Internal Revenue Code) paid by an employer which are required to be paid by reason of the Emergency Family and Medical Leave Expansion Act, the qualified family leave equivalent amount otherwise described in subsection (c) shall be reduced (but not below zero) to the extent that the sum of the amount described in such subsection and in section 7003(b)(1) exceeds \$10,000.

(4) CERTAIN TERMS.—Any term used in this section which is also used in chapter 2 of the Internal Revenue Code of 1986 shall have the same meaning as when used in such chapter.

(5) REFERENCES TO EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT.—Any reference in this section to the Emergency Family and Medical Leave Expansion Act shall be treated as including a reference to the amendments made by such Act.

(e) APPLICATION OF SECTION.—Only days occurring during the period beginning on a date selected by the Secretary of the Treasury (or the Secretary's delegate) which is during the 15-day period beginning on the date of the enactment of this Act, and ending on December 31, 2020, may be taken into account under subsection (c)(1)(A).

(f) APPLICATION OF CREDIT IN CERTAIN POSSESSIONS.—

(1) PAYMENTS TO POSSESSIONS WITH MIRROR CODE TAX SYSTEMS.—The Secretary of the Treasury (or the Secretary's delegate) shall pay to each possession of the United States which has a mirror code tax system amounts equal to the loss (if any) to that possession by reason of the application of the provisions of this section. Such amounts shall be determined by the Secretary of the Treasury (or the Secretary's delegate) based on information provided by the government of the respective possession.

(2) PAYMENTS TO OTHER POSSESSIONS.—The Secretary of the Treasury (or the Secretary's delegate) shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury (or the Secretary's delegate) as being equal to the aggregate benefits (if any) that would have been provided to residents of such possession by reason of the provisions of this section if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply unless the respective possession has a plan, which has been approved by the Secretary of the Treasury (or the Secretary's delegate), under which such possession will promptly distribute such payments to its residents.

(3) MIRROR CODE TAX SYSTEM.—For purposes of this section, the term “mirror code tax system” means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

(4) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, the payments under this section shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

## H. R. 6201—42

(e) REGULATIONS.—The Secretary of the Treasury (or the Secretary's delegate) shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

- (1) regulations or other guidance to prevent the avoidance of the purposes of this Act, and
- (2) regulations or other guidance to minimize compliance and record-keeping burdens under this section.

**SEC. 7005. SPECIAL RULE RELATED TO TAX ON EMPLOYERS.**

(a) IN GENERAL.—Any wages required to be paid by reason of the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act shall not be considered wages for purposes of section 3111(a) of the Internal Revenue Code of 1986 or compensation for purposes of section 3221(a) of such Code.

(b) ALLOWANCE OF CREDIT FOR HOSPITAL INSURANCE TAXES.—

(1) IN GENERAL.—The credit allowed by section 7001 and the credit allowed by section 7003 shall each be increased by the amount of the tax imposed by section 3111(b) of the Internal Revenue Code of 1986 on qualified sick leave wages, or qualified family leave wages, for which credit is allowed under such section 7001 or 7003 (respectively).

(2) DENIAL OF DOUBLE BENEFIT.—For denial of double benefit with respect to the credit increase under paragraph (1), see sections 7001(e)(1) and 7003(e)(1).

(c) TRANSFERS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND.—There are hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401) and the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n-1(a)) amounts equal to the reduction in revenues to the Treasury by reason of this section (without regard to this subsection). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund or Account had this section not been enacted.

**DIVISION H—BUDGETARY EFFECTS****SEC. 8001. BUDGETARY EFFECTS.**

(a) STATUTORY PAYGO SCORECARDS.—The budgetary effects of division B and each succeeding division shall not be entered on either PAYGO scorecard maintained pursuant to section 4(d) of the Statutory Pay-As-You-Go Act of 2010.

(b) SENATE PAYGO SCORECARDS.—The budgetary effects of division B and each succeeding division shall not be entered on any PAYGO scorecard maintained for purposes of section 4106 of H. Con. Res. 71 (115th Congress).

(c) CLASSIFICATION OF BUDGETARY EFFECTS.—Notwithstanding Rule 3 of the Budget Scorekeeping Guidelines set forth in the joint explanatory statement of the committee of conference accompanying Conference Report 105-217 and section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985, the

H. R. 6201—43

budgetary effects of division B and each succeeding division shall not be estimated—

(1) for purposes of section 251 of such Act; and

(2) for purposes of paragraph (4)(C) of section 3 of the Statutory Pay-As-You-Go Act of 2010 as being included in an appropriation Act.

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*

## Senate Bill No. 95

### CHAPTER 13

An act to add Sections 248.2 and 248.3 to the Labor Code, relating to employment, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor March 19, 2021. Filed with Secretary  
of State March 19, 2021.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 95, Skinner. Employment: COVID-19: supplemental paid sick leave.

Existing law, the Healthy Workplaces, Healthy Families Act of 2014, entitles an employee who works in California for the same employer for 30 or more days within a year from the commencement of employment to paid sick days. Under existing law, an employee accrues paid sick days at a rate of not less than one hour per every 30 hours worked, subject to certain use, accrual, and yearly carryover limitations. Existing law requires the Labor Commissioner to enforce the act and provides for procedures, including investigation and hearing, and for remedies and penalties.

Existing law, until December 31, 2020, provided for COVID-19 food sector supplemental paid sick leave for food sector workers and required a hiring entity to provide COVID-19 food sector supplemental paid sick leave, as described, to each food sector worker unable to work due to specified reasons relating to COVID-19. Existing law also established, until December 31, 2020, COVID-19 supplemental paid sick leave for covered workers, including certain persons employed by private businesses of 500 or more employees or persons employed as certain types of health care providers or emergency responders by public or private entities.

This bill would provide for COVID-19 supplemental paid sick leave for covered employees, as defined, who are unable to work or telework due to certain reasons related to COVID-19, including that the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. The bill would entitle a covered employee to 80 hours of COVID-19 supplemental paid sick leave if that employee either works full time or was scheduled to work, on average, at least 40 hours per week for the employer in the 2 weeks preceding the date the covered employee took COVID-19 supplemental paid sick leave. The bill would provide a different calculation for supplemental paid sick leave for a covered employee who is a firefighter subject to certain work schedule requirements and for a covered employee working fewer or variable hours, as specified. The bill would provide that the total number of hours of COVID-19 supplemental paid sick leave to which a covered employee is entitled to under these

provisions is in addition to any paid sick leave available under the act, as specified.

This bill would set the compensation rate for a nonexempt covered employee at the highest of the covered employee's regular rate of pay for the pay period in which the supplemental paid sick leave is taken, the state minimum wage, or the local minimum wage to which the covered employee is entitled, up to certain daily and aggregate total maximum payment limits and subject to specified federal law increases. The bill would prohibit an employer from requiring a covered employee to use other paid or unpaid leave, paid time off, or vacation time provided by the employer to the covered employee before that employee uses COVID-19 supplemental paid leave or in lieu thereof, except in certain circumstances in which the employer provides another supplemental benefit for leave for COVID-19, as prescribed. The bill would require the Labor Commissioner to enforce these COVID-19 supplemental paid sick leave provisions, as provided. The bill would also require the Labor Commissioner to make publicly available a model notice relating to COVID-19 supplemental paid sick leave.

This bill would also provide for COVID-19 supplemental paid sick leave for specified in-home supportive service providers and personal waiver care service providers, as defined, who are unable to work or telework due to certain reasons related to COVID-19. Under the bill, a provider would be entitled to COVID-19 supplemental paid leave if, among other reasons, the provider is subject to a quarantine or isolation period related to COVID-19 pursuant to an order or guidelines of the State Department of Public Health, the federal Centers for Disease Control and Prevention, or a local health officer, or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. The bill would entitle a provider to up to 80 hours of COVID-19 supplemental paid leave, if the provider worked or was scheduled to work, on average, at least 40 hours per week, as specified, or met certain other work conditions. The bill would set the compensation rate for this supplemental paid sick leave, as specified. The bill would authorize the State Department of Social Services and the State Department of Health Care Services to implement, interpret, or make these provisions specific by means of all-county letters or similar instructions, without taking any regulatory action.

The bill would make these requirements, with respect to covered employees, in-home supportive service providers, and personal waiver care service providers, to provide COVID-19 supplemental paid sick leave take effect 10 days after the date of enactment of the bill and would apply these provisions retroactively to January 1, 2021, as specified. The bill would provide that the requirement to provide COVID-19 supplemental paid sick leave would apply until September 30, 2021, as specified.

This bill would appropriate \$100,000 from the General Fund to the Labor Commissioner for staffing resources to implement and enforce these provisions.

This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 248.2 is added to the Labor Code, to read:

248.2. (a) As used in this section:

(1) "COVID-19 supplemental paid sick leave" means supplemental paid sick leave provided pursuant to this section.

(2) "Employer" means an employer, as defined in subdivision (b) of Section 245.5, that employs more than 25 employees.

(3) "Covered employee" means an employee who is unable to work or telework for an employer because of a reason listed under paragraph (1) of subdivision (b).

(4) "Firefighter" means an active firefighting member of any of the following:

(A) A fire department of a city, county, city and county, district, or other public or municipal corporation or political subdivision.

(B) A fire department of the University of California and the California State University.

(C) The Department of Forestry and Fire Protection.

(D) A county forestry or firefighting department or unit.

(E) A fire department that serves a United States Department of Defense installation and whose firefighters are certified by the United States Department of Defense as meeting its standards for firefighters.

(F) A fire department that serves a National Aeronautics and Space Administration installation and that adheres to training standards established in accordance with Article 4 (commencing with Section 13155) of Chapter 1 of Part 2 of Division 12 of the Health and Safety Code.

(G) A fire department that provides fire protection to a commercial airport regulated by the Federal Aviation Administration (FAA) under Part 139 (commencing with Section 139.1) of Subchapter G of Chapter 1 of Title 14 of the Federal Code of Regulations whose firefighters are trained and certified by the State Fire Marshal as meeting the standards of Fire Control 5 and Section 139.319 of Title 14 of the Federal Code of Regulations.

(H) Fire and rescue services coordinators who work for the Office of Emergency Services. For purposes of this clause, "fire and rescue services coordinators" means coordinators with any of the following job classifications: coordinator, senior coordinator, or chief coordinator.

(b) A covered employee shall be entitled to COVID-19 supplemental paid sick leave as follows:

(1) An employer shall provide COVID-19 supplemental paid sick leave to each covered employee if that covered employee is unable to work or telework due to any of the following reasons:

(A) The covered employee is subject to a quarantine or isolation period related to COVID-19 as defined by an order or guidelines of the State Department of Public Health, the federal Centers for Disease Control and

Prevention, or a local health officer who has jurisdiction over the workplace. If the covered employee is subject to more than one of the foregoing, the covered employee shall be permitted to use COVID-19 supplemental paid sick leave for the minimum quarantine or isolation period under the order or guidelines that provides for the longest such minimum period.

(B) The covered employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

(C) The covered employee is attending an appointment to receive a vaccine for protection against contracting COVID-19.

(D) The covered employee is experiencing symptoms related to a COVID-19 vaccine that prevent the employee from being able to work or telework.

(E) The covered employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

(F) The covered employee is caring for a family member, as defined in subdivision (c) of Section 245.5, who is subject to an order or guidelines described in subparagraph (A) or who has been advised to self-quarantine, as described in subparagraph (B).

(G) The covered employee is caring for a child, as defined in subdivision (c) of Section 245.5, whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

(2) A covered employee shall be entitled to the following number of hours of COVID-19 supplemental paid sick leave:

(A) A covered employee is entitled to 80 hours of COVID-19 supplemental paid sick leave, if the covered employee satisfies either of the following criteria:

(i) The employer considers the covered employee to work full time.

(ii) The covered employee worked or was scheduled to work, on average, at least 40 hours per week for the employer in the two weeks preceding the date the covered employee took COVID-19 supplemental paid sick leave.

(B) Notwithstanding subparagraph (A), a covered employee who is a firefighter who was scheduled to work more than 80 hours for the employer in the two weeks preceding the date the covered employee took COVID-19 supplemental paid sick leave is entitled to an amount of COVID-19 supplemental paid sick leave equal to the total number of hours that the covered employee was scheduled to work for the employer in those two preceding weeks.

(C) A covered employee who does not satisfy the criteria in subparagraph (A) or subparagraph (B) is entitled to an amount of COVID-19 supplemental paid sick leave as follows:

(i) If the covered employee has a normal weekly schedule, the total number of hours the covered employee is normally scheduled to work for the employer over two weeks.

(ii) If the covered employee works a variable number of hours, 14 times the average number of hours the covered employee worked each day for the employer in the six months preceding the date the covered employee took COVID-19 supplemental paid sick leave. If the covered employee has

worked for the employer over a period of fewer than six months but more than 14 days, this calculation shall instead be made over the entire period the covered employee has worked for the employer.

(iii) If the covered employee works a variable number of hours and has worked for the employer over a period of 14 days or fewer, the total number of hours the covered employee has worked for that employer.

(D) The total number of hours of COVID-19 supplemental paid sick leave to which a covered employee is entitled pursuant to subparagraph (A), (B), or (C) shall be in addition to any paid sick leave that may be available to the covered employee under Section 246.

(E) A covered employee may determine how many hours of COVID-19 supplemental paid sick leave to use, up to the total number of hours to which the covered employee is entitled pursuant to subparagraph (A), (B), or (C) of this paragraph. The employer shall make COVID-19 supplemental paid sick leave available for immediate use by the covered employee, upon the oral or written request of the covered employee to the employer.

(F) An employer is not required to provide a covered employee more than the total number of hours of COVID-19 supplemental paid sick leave to which the covered employee is entitled pursuant to subparagraph (A), (B), or (C) of this paragraph.

(3) (A) Each hour of COVID-19 supplemental paid sick leave shall be compensated at a rate equal to the following:

(i) For nonexempt covered employees, by the highest of the following:

(I) Calculated in the same manner as the regular rate of pay for the workweek in which the covered employee uses COVID-19 supplemental paid sick leave, whether or not the employee actually works overtime in that workweek.

(II) Calculated by dividing the covered employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

(III) The state minimum wage.

(IV) The local minimum wage to which the covered employee is entitled.

(ii) COVID-19 supplemental paid sick leave for exempt covered employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

(B) Notwithstanding subparagraph (A), a covered employee who is entitled to an amount of COVID-19 supplemental paid sick leave under subparagraph (B) of paragraph (2), shall be compensated for each hour of COVID-19 supplemental paid sick leave at the regular rate of pay to which the covered employee would be entitled as if the covered employee had been scheduled to work those hours, pursuant to existing law or an applicable collective bargaining agreement.

(C) Notwithstanding subparagraph (A) or (B), an employer shall not be required to pay more than five hundred eleven dollars (\$511) per day and five thousand one hundred ten dollars (\$5,110) in the aggregate to a covered employee for COVID-19 supplemental paid sick leave taken by the covered employee unless federal legislation is enacted that increases these amounts

beyond the amounts that were included in the Emergency Paid Sick Leave Act established by the federal Families First Coronavirus Response Act (Public Law 116-127), in which case the new federal dollar amounts shall apply to this section as of the date the new amounts are applicable under the federal law. Nothing in this subparagraph shall prevent a covered employee who has reached the maximum amounts, as set forth herein, from choosing to utilize other paid leave that is available to the covered employee in order to fully compensate the covered employee for leave taken.

(4) An employer shall not require a covered employee to use any other paid or unpaid leave, paid time off, or vacation time provided by the employer to the covered employee before the covered employee uses COVID-19 supplemental paid sick leave or in lieu of COVID-19 supplemental paid sick leave.

(5) Notwithstanding any other provision in this section, in order to satisfy the requirement to maintain an employee's earnings when an employee is excluded from the workplace due to COVID-19 exposure under the Cal-OSHA COVID-19 Emergency Temporary Standards at Sections 3205 through 3205.4, inclusive, of Title 8 of the California Code of Regulations or the Cal-OSHA Aerosol Transmissible Diseases Standard at Section 5199 of Title 8 of the California Code of Regulations, an employer may require a covered employee to first exhaust their COVID-19 supplemental paid sick leave under this section.

(c) Notwithstanding subdivision (b), if an employer pays a covered employee another supplemental benefit for leave taken on or after January 1, 2021, that is payable for the reasons listed in paragraph (1) of subdivision (b) and that compensates the covered employee in an amount equal to or greater than the amount of compensation for COVID-19 supplemental paid sick leave to which the covered employee is entitled as set forth under paragraph (3) of subdivision (b), then the employer may count the hours of the other paid benefit or leave towards the total number of hours of COVID-19 supplemental paid sick leave that the employer is required to provide to the covered employee under paragraph (2) of subdivision (b). For purposes of the foregoing, the other supplemental benefit for leave taken that may be counted does not include paid sick leave to which the covered employee is entitled under Section 246, subdivision (e) of Section 248, or subdivision (f) of Section 248.1 but may include paid leave provided by the employer pursuant to any federal or local law in effect or that became effective on or after January 1, 2021, if the paid leave is provided to the covered employee under that law for any of the same reasons set forth in paragraph (1) of subdivision (b).

(d) In addition to other remedies as may be provided by the laws of this state or its subdivisions, including, but not limited to, the remedies available to redress any unlawful business practice under Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, the Labor Commissioner shall enforce this section. For purposes of enforcement and to implement COVID-19 supplemental paid sick leave, this section shall apply as follows:

(1) The Labor Commissioner shall enforce this section as if COVID-19 supplemental paid sick leave constitutes “paid sick days,” “paid sick leave,” or “sick leave” under subdivisions (i) and (n) of Section 246, subdivisions (b) and (c) of Section 246.5, Section 247, Section 247.5, and Section 248.5.

(2) For purposes of the enforcement of subdivision (i) of Section 246 as it relates to this section:

(A) COVID-19 supplemental paid sick leave shall be set forth separately from paid sick days.

(B) The requirement in subdivision (i) of Section 246 is not enforceable until the next full pay period following the date that this section takes effect.

(C) When covered employees have schedules described in clauses (ii) and (iii) of subparagraph (C) of paragraph (2) of subdivision (b), an employer may meet the requirement of subdivision (i) of Section 246 for such covered employees by doing an initial calculation of COVID-19 supplemental paid sick leave available and indicating “(variable)” next to that calculation. This, however, does not exempt an employer from providing a covered employee an updated calculation when such a covered employee requests to use COVID-19 supplemental paid sick leave or requests relevant records under Section 247.5.

(3) Section 249 applies to COVID-19 supplemental paid sick leave.

(4) By seven days after the date of enactment of this section, the Labor Commissioner shall make publicly available a model notice for purposes of Section 247. Only for purposes of COVID-19 supplemental paid sick leave, if an employer’s covered employees do not frequent a workplace, the employer may satisfy the notice requirement of subdivision (a) of Section 247 by disseminating notice through electronic means, such as by electronic mail.

(e) (1) The requirement to provide COVID-19 supplemental paid sick leave as set forth in this section shall take effect 10 days after the date of enactment of this section, at which time the requirements shall apply retroactively to January 1, 2021.

(2) The requirement to provide COVID-19 supplemental paid sick leave as set forth in this section applies retroactively to January 1, 2021, in order to protect the economic well-being of covered employees who took leave for the reasons listed in paragraph (1) of subdivision (b) beginning on or after January 1, 2021, when the requirements in Sections 248, 248.1, and the Emergency Paid Sick Leave Act established by the federal Families First Coronavirus Response Act (Public Law 116-127) expired, and before the effective date of this section.

(A) For any such leave taken, if the employer did not compensate the covered employee in an amount equal to or greater than the amount of compensation for COVID-19 supplemental paid sick leave to which the covered employee is entitled as set forth under paragraph (3) of subdivision (b), then upon the oral or written request of the employee, the employer shall provide the covered employee with a retroactive payment that provides for such compensation.

(B) For any such retroactive payment, the number of hours of leave corresponding to the amount of the retroactive payment shall count towards the total number of hours of COVID-19 supplemental paid sick leave that the employer is required to provide to the covered employee under paragraph (2) of subdivision (b).

(C) This retroactive payment shall be paid on or before the payday for the next full pay period after the oral or written request of the covered employee. The retroactive payment shall be reflected on the written notice required by subparagraph (B) of paragraph (2) of subdivision (d) for the corresponding pay period.

(D) The requirement to provide a retroactive payment under this subdivision is in addition to the requirements in subdivision (e) of Section 248 and subdivision (f) of Section 248.1 that a covered employee taking COVID-19 food sector supplemental paid sick leave or COVID-19 supplemental paid sick leave at the time of the expiration of those sections shall be permitted to take the full amount of such supplemental paid sick leave to which that covered employee otherwise would have been entitled under those sections.

(f) The requirement to provide COVID-19 supplemental paid sick leave as set forth in this section shall remain in effect through September 30, 2021, except that a covered employee taking COVID-19 supplemental paid sick leave at the time of the expiration of this section shall be permitted to take the full amount of COVID-19 supplemental paid sick leave to which the covered employee otherwise would have been entitled under this section.

(g) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(h) The provisions of this section shall not apply to providers of in-home supportive services under Section 14132.95, 14132.952, or 14132.956 of, or Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of, the Welfare and Institutions Code, or waiver personal care services pursuant to Section 14132.97 of the Welfare and Institutions Code.

SEC. 2. Section 248.3 is added to the Labor Code, to read:

248.3. (a) As used in this section:

(1) “COVID-19 supplemental paid sick leave” means supplemental paid sick leave provided pursuant to this section.

(2) “Provider” or “providers” means a provider of in-home supportive services under Section 14132.95, 14132.952, or 14132.956 of, or Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of, the Welfare and Institutions Code, or waiver personal care services pursuant to Section 14132.97 of the Welfare and Institutions Code.

(3) “Work” or “worked” means providing authorized in-home supportive services under Section 14132.95, 14132.952, or 14132.956 of, or Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of, the Welfare and Institutions Code, or waiver personal care services pursuant

to Section 14132.97 of the Welfare and Institutions Code, to an eligible recipient.

(b) A provider shall be entitled to COVID-19 supplemental paid sick leave as follows:

(1) COVID-19 supplemental paid sick leave shall be available to a provider if that provider is unable to work due to any of the following reasons:

(A) The provider is subject to a quarantine or isolation period related to COVID-19 as defined by an order or guidelines of the State Department of Public Health, the federal Centers for Disease Control and Prevention, or a local health officer who has jurisdiction over the workplace. If the provider is subject to more than one of the foregoing, the provider shall be permitted to use COVID-19 supplemental paid sick leave for the minimum quarantine or isolation period under the order or guidelines that provides for the longest minimum period.

(B) The provider has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

(C) The provider is attending an appointment to receive a vaccine for protection against contracting COVID-19.

(D) The provider is experiencing symptoms related to a COVID-19 vaccine that prevents the provider from being able to work.

(E) The provider is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

(F) The provider is caring for a family member, as defined in subdivision (c) of Section 245.5, who is subject to an order or guidelines described in subparagraph (A) or who has been advised to self-quarantine, as described in subparagraph (B).

(G) The provider is caring for a child, as defined in subdivision (c) of Section 245.5, whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

(2) A provider shall be entitled to the following number of hours of COVID-19 supplemental paid sick leave:

(A) A provider is entitled to 80 hours of COVID-19 supplemental paid sick leave if the provider worked or was scheduled to work, on average, at least 40 hours per week in the two weeks preceding the date the provider took COVID-19 supplemental paid sick leave.

(B) A provider who does not satisfy the criteria in subparagraph (A) is entitled to an amount of COVID-19 supplemental paid sick leave as follows, up to a maximum of 80 hours of COVID-19 supplemental paid sick leave:

(i) If the provider has a regular weekly schedule, the total number of hours the provider is normally scheduled to work over two weeks.

(ii) If the provider works a variable number of hours, 14 times the average number of hours the provider worked each day for the employer in the six months preceding the date the provider took COVID-19 supplemental paid sick leave. If the provider has worked over a period of fewer than six months but more than 14 days, this calculation shall instead be made over the entire period the provider has worked.

(iii) If the provider works a variable number of hours and has worked over a period of 14 days or fewer, the total number of hours the provider has worked.

(C) The total number of hours of COVID-19 supplemental paid sick leave to which a provider is entitled pursuant to subparagraph (A) or (B) shall be determined on the first day that the provider uses COVID-19 supplemental paid sick leave under this section and shall be in addition to any paid sick leave that may be available to the provider under Section 246.

(D) A provider may determine how many hours of COVID-19 supplemental paid sick leave to use, up to the total number of hours to which the provider is entitled pursuant to subparagraph (A) or (B). The COVID-19 supplemental paid sick leave is available for immediate use by the provider, and the provider shall inform the recipient of the need to take sick leave and submit a sick leave claim to the county consistent with established procedures in that county.

(E) A provider is not entitled to more than the total number of hours of COVID-19 supplemental paid sick leave to which the provider is entitled pursuant to subparagraph (A) or (B).

(3) Each hour of COVID-19 supplemental paid sick leave shall be compensated at the regular rate of pay to which the provider would be entitled if the provider had been scheduled to work those hours pursuant to existing law or an applicable collective bargaining agreement.

(4) A provider shall not be required to use any other paid or unpaid leave before the provider uses COVID-19 supplemental paid sick leave or in lieu of COVID-19 supplemental paid sick leave.

(c) Notwithstanding subdivision (b), if a provider takes paid leave on or after April 1, 2021, that is payable for the reasons listed in paragraph (1) of subdivision (b) that compensates the provider in an amount equal to or greater than the amount of compensation for COVID-19 supplemental paid sick leave to which the provider is entitled as set forth under paragraph (3) of subdivision (b), the hours of the other paid benefit or leave may be counted towards the total number of hours of COVID-19 supplemental paid sick leave to which the provider is entitled under paragraph (2) of subdivision (b). For purposes of the foregoing, the other supplemental benefit for leave taken that may be counted does not include paid sick leave to which the provider may be entitled to under Section 246, but may include paid leave provided by any federal or local law that becomes effective on or after April 1, 2021, if the paid leave is provided to the provider under that law for any of the same reasons set forth in paragraph (1) of subdivision (b).

(d) (1) The entitlement to COVID-19 supplemental paid sick leave as set forth in this section shall take effect 10 days after the date of enactment of this section, at which time the entitlements shall apply retroactively to January 1, 2021.

(2) The entitlement to COVID-19 supplemental paid sick leave as set forth in this section applies retroactively to January 1, 2021.

(A) For any such leave taken, if the provider was not compensated in an amount equal to or greater than the amount of compensation for COVID-19

supplemental paid sick leave to which the provider is entitled as set forth under paragraph (3) of subdivision (b), then the provider shall be entitled to a retroactive payment that provides for such compensation.

(B) For any such retroactive payment, the number of hours of leave corresponding to the amount of the retroactive payment shall count towards the total number of hours of COVID-19 supplemental paid sick leave that the provider is entitled to under paragraph (2) of subdivision (b).

(C) The COVID-19 supplemental paid sick leave provided under this section is in addition to any unused sick leave benefits put in place by the federal Family First Coronavirus Response Act (Public Law 116-127), which a provider may still use until March 31, 2021.

(e) The entitlement to COVID-19 supplemental paid sick leave as set forth in this section shall remain in effect through September 30, 2021, except that a provider taking COVID-19 supplemental paid sick leave at the time of the expiration of this section shall be permitted to take the full amount of COVID-19 supplemental paid sick leave to which the provider otherwise would have been entitled under this section.

(f) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(g) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the State Department of Social Services and the State Department of Health Care Services may implement, interpret, or make specific this section by means of all-county letters or similar instructions, without taking any regulatory action.

SEC. 3. The sum of \$100,000 is hereby appropriated from the General Fund to the Labor Commissioner for staffing resources to implement and enforce the provisions related to the COVID-19 supplemental paid sick leave in this act.

SEC. 4. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

O



---

## Memorandum

**Date:** January 7, 2022  
**To:** Robin Stieler, Clerk of the Board  
**From:** Supervisor Donald Wagner  
**Subject:** Supplemental Item for Tuesday, January 11

*[Handwritten signature of Donald Wagner]*  
*[Handwritten signature of Robin Stieler]*  
*[Handwritten number 533D]*

---

Please add the following supplemental item to the 1/11/2022 Board Meeting Agenda:

For the Board of Supervisors to authorize OC Public Works to act as local sponsor for federal funding for debris removal and rainstorm recovery projects.

Thank you.

Attachments: Agenda Staff Report and Attachments

cc: Members of the Board of Supervisors  
Frank Kim, CEO  
Leon J. Page, County Counsel  
James Treadaway, Director, OC Public Works

2022 JAN -7 AM 11:02  
CLERK OF THE BOARD  
ORANGE COUNTY  
BOARD OF SUPERVISORS

RECEIVED

**SUPPLEMENTAL AGENDA ITEM  
AGENDA STAFF REPORT**

**MEETING DATE:** 1/11/22  
**LEGAL ENTITY TAKING ACTION:** Board of Supervisors  
**BOARD OF SUPERVISORS DISTRICT(S):** District 3  
**SUBMITTING AGENCY/DEPARTMENT:** Supervisor Donald P. Wagner - District 3  
**DEPARTMENT HEAD REVIEW:** \_\_\_\_\_  
*Department Head Signature*  
**DEPARTMENT CONTACT PERSON(S):** Tara Campbell 714-834-3330

2022 JAN -7 AM 11:02  
RECEIVED  
CLERK OF THE BOARD  
ORANGE COUNTY  
BOARD OF SUPERVISORS

**SUBJECT:** AUTHORIZE OC PUBLIC WORKS TO ACT AS THE LOCAL SPONSOR FOR FEDERAL FUNDING FOR DEBRIS REMOVAL AND RAINSTORM RECOVERY PROJECTS IN THE CANYONS

CEO CONCUR	COUNTY COUNSEL REVIEW	CLERK OF THE BOARD
_____	_____	Discussion
_____	<i>Action</i>	3 Votes Board Majority
<i>CEO Signature</i>	<i>County Counsel Signature</i>	

**Budgeted:** N/A      **Current Year Cost:** N/A      **Annual Cost:** N/A

**Staffing Impact:** N/A      **# of Positions:**      **Sole Source:** N/A

**Funding Source:** N/A      **County Audit in last 3 years** N/A

**Prior Board Action:** 11/8/2011 #11

## **RECOMMENDED ACTION(S):**

1. Authorize OC Public Works to submit a request to the United States Department of Agriculture's Natural Resources Conservation Service Emergency Watershed Protection Program as the Local Sponsor for projects to: (1) remove debris and obstructions in Silverado Creek and Anderson Creek upstream of Kitterman Bridge; and (2) remove debris and other material in Silverado Creek and Wildcat Creek upstream of the Silverado Canyon Road culvert.
2. Authorize OC Public Works Director, or his designee, to apply for federal funding through the Emergency Watershed Protection Program for Projects (1) through (2), above, and negotiate agreement with the Natural Resources Conservation Service for federal funding.

## **SUMMARY:**

Authorization for Orange County Public Works to act as the local sponsor for the federal funding program for debris clearing projects in the Bond Fire burn scar area allows the County to help affected residents receive the federal assistance that may be available.

## **BACKGROUND INFORMATION:**

During the significant rainstorms that occurred in December 2021, the areas affected by the 2020 Bond Fire (called the "Bond Fire scar area") experienced significant mud and debris flows in certain locations. The most severe impacts were in Wildcat Canyon, where two homes were red-tagged due to severe damage rendering the homes too dangerous to inhabit because of the rain-induced mud and debris flows. In other locations, significant mud and debris deposits remain on various parcels of private property and in privately owned culverts and creeks even after the homeowners' cleanup efforts.

In mid-December, the United States Department of Agriculture's National Resource Conservation Service (NRCS) performed a field visit and assessed several locations to determine if there was a recommended recovery or watershed protection project that may qualify for federal funding as part of the Emergency Watershed Protection (EWP) program. The areas assessed at that time were privately owned properties within the unincorporated area of the County and only two of the assessed areas are adjacent to County owned or maintained facilities.

On December 21, 2021, NRCS staff provided their initial assessment (Attachment A), which identified five recommended projects, two of which involve clearing of debris in areas that will protect County facilities from future flooding and/or debris flow:

- Silverado Creek and Anderson Creek – Debris and obstruction removal of deposited material only (no widening of channel) upstream of the County owned Kitterman Bridge
- Silverado Creek and Wildcat Canyon Creek – Channel clearing/debris removal upstream of the County owned culvert under Silverado Canyon Road

On December 30, 2021, the Governor declared a state of emergency for several counties, including Orange County, as the result of the series of winter storms. This emergency proclamation makes state aid for recovery projects available and underscores the severity of the storms.

On January 3, 2022, and January 4, 2022, NRCS visited the Bond Fire scar area again to assess their prior recommendations, and whether there might be additional or different projects that may qualify for federal funding as part of the EWP program. A report from NRCS from these visits was received late on January

6 but has not been fully reviewed by OC Public Works staff, thus, OC Public Works may return to the Board to seek authorization to act as the local sponsor for additional projects once the new report is fully analyzed.

The NRCS EWP program provides federal funding, anywhere from 75% to 90% of the project, for projects designed to either recover from a natural disaster or to help prepare a watershed to withstand natural disaster weather events. To receive funding, projects are required to have a qualified local sponsor. Only a local governmental entity can serve as a qualified local sponsor for EWP program funding.

Authorizing OC Public Works to act as the local sponsor for a project application to NRCS for federal funding assistance will allow OC Public Works to formally request assistance as required to initiate the application process. If approved, OC Public Works proposes to send a formal request for NRCS assistance in substantially the same form as the letter attached hereto as Attachment B. An overview of the timing and milestones in the NRCS EWP funding process is attached hereto as Attachment C.

As local sponsor, the County must provide up to 25% of the costs of the project through a local cost match, obtaining rights-of-entry, securing regulatory permits, as well as awarding and administering the construction contract. The County as local sponsor would bid out the work, contract to perform the actual project activities, and oversee and manage the projects approved for federal funding, which will serve as the County's in-kind contribution, in addition to any actual costs incurred.

Pursuant to the Board Policy regarding Emergency Work on Private Property, adopted on November 8, 2011, OC Public Works is authorized to act as the local sponsor for purposes of assisting private property owners in qualifying for federal or state assistance after a proclaimed local emergency event. While the December 2021 rainstorms were not a proclaimed local emergency, a state emergency has been proclaimed by the Governor, and the proposed actions follow what the Board Policy authorizes for local emergencies, including the future entry into reimbursement agreements with the private residents unless waived by the Board of Supervisors.

If left unaddressed, the debris in culverts and creeks in the aforementioned two project areas could contribute to further flooding, debris, and mud flows in rainstorm events in 2022. Without debris clearing, the debris and mud obstructing the culvert and creek will prevent rain and water from flowing naturally and may create localized flooding or contribute to debris flows to downstream areas, including creating potential impacts to a County-owned bridge structure in the vicinity of Anderson Creek, over Silverado Creek, and impacts to Silverado Canyon Road. The County has an interest in debris removal projects that protect County facilities by restoring natural drainage patterns to ensure that storm flows and debris flows are directed through creeks and culverts to avoid debris flows onto and/or flooding of County roadways in future rain events in these unincorporated County areas.

If NRCS grants funding for the two projects proposed, OC Public Works will return to the Board to approve an agreement with NRCS to facilitate that funding.

**CEQA COMPLIANCE:**

The proposed actions are exempt from CEQA compliance pursuant to CEQA Guidelines Section 15629, subdivisions (a) through (d), because they actions constitute emergency actions to remediate and mitigate damage caused by a natural disaster event, and to restore the normal function of existing waterways.

**FINANCIAL IMPACT:**

N/A

**STAFFING IMPACT:**

N/A

**ATTACHMENT(S):**

Attachment A – NRCS December 21, 2021 Field Visit/Assessment

Attachment B – OCPW Local Sponsor EWP Assistance Request Letter

Attachment C – NRCS EWP Funding Process Overview



Natural Resources Conservation Service

---

## Helping People Help the Land

**SUBJECT:** ENG – Trip Report  
Emergency Watershed Protection Program  
Silverado Canyon and Surrounding Area  
Flooding/Debris flow Investigation for rain event occurring on 12/14/21,

**DATE:** Dec 21, 2021

**TO:** Bob Hewitt, District Conservationist, USDA-NRCS,  
San Jacinto Field Office

---

### **Participants:**

Juan Segoviano, Area Engineer, USDA-NRCS, San Bernardino, CA  
Daniel Holtz, Team Engineer, USDA-NRCS, Escondido Field Office, Escondido, CA  
Isabel Garcia, Field Office Engineer, USDA-NRCS, Escondido Field Office, Escondido, CA  
Joanne Hubble, Emergency Planning, Coordination & Communication East OC Canyon Communities  
Edward and Corinne, Orange County Public Works  
Al, Orange County Supervisor's office

**Date of Site Visit:** December 20, 2021

### **Origin of Request:**

Joanne Hubble requested assistance from the NRCS San Jacinto Field Office regarding issues pertaining to flooding and debris flow after a recent rain event. The San Jacinto Field Office requested further assistance from the Area Engineer and EWP coordinator.

### **Background:**

Joanne has previously worked with NRCS and EWP roughly 10 years ago after the Santiago Fire and a 20 inch rain event that also caused flooding and debris flows in the same area. A rain event on December 14, 2021 was between 4-6 inches in less than 24 hours. The Bond fire occurred in December of 2020 in the Santiago Canyon and surrounding area. A WERT (Watershed Emergency Response Team) report was completed for this fire and can be found online.

<https://landslides.usgs.gov/storymap/bond/>

<https://www.fire.ca.gov/incidents/2020/12/2/bond-fire/>

<https://www.conservation.ca.gov/cgs/landslides/wert#bondfire>

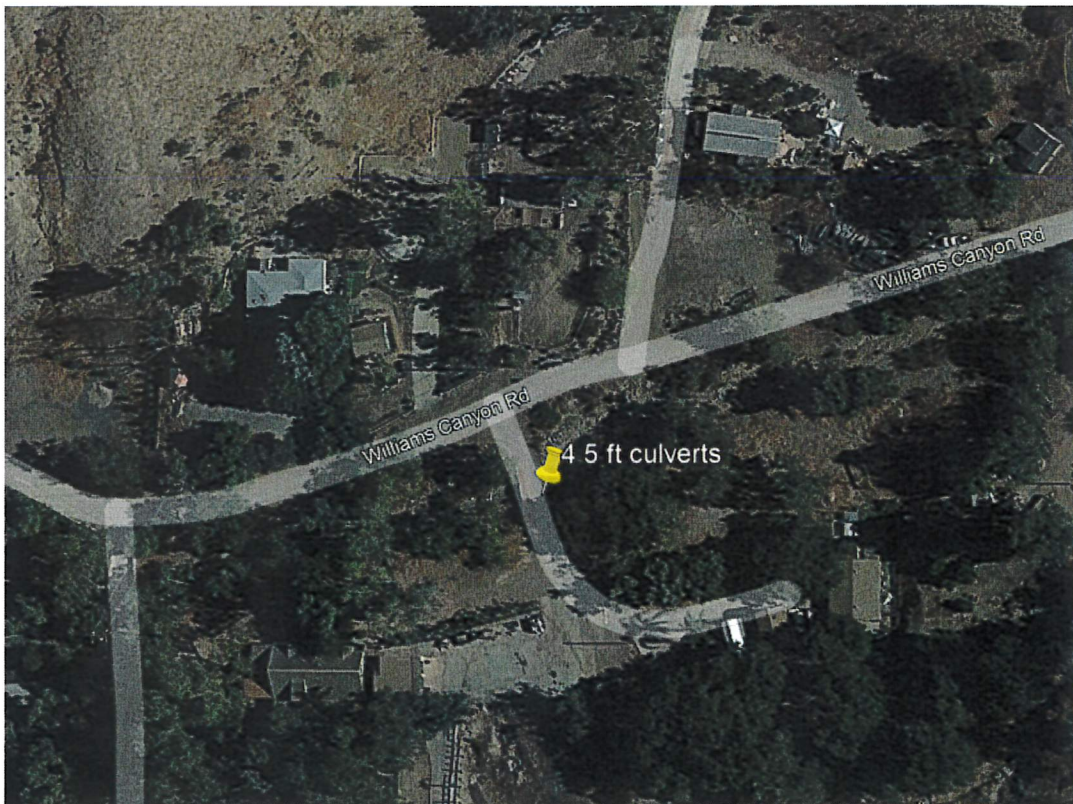
**Observations:**

Five sites were identified for potential EWP assistance. There may be additional sites not identified from this field visit and additional visits may be required.

1. Williams Canyon Culvert Crossing Repair and Debris Removal (33.72942,-117.63288)

The 4 barrel, 5 feet in diameter culvert crossing is plugged with sediment/debris and is failing. 3 homes use this as primary access. There is a threat to life and safety. The crossing could be brought back to existing conditions including excavation of sediment and repair of concrete

headwalls as needed for culverts to function properly.



2. Giracci

Vineyards-

K-rail and waterfilled barriers to be placed to divert water/mud flows away from 2 barns. Total of 380 feet required. Preliminary estimate of 220 concrete k-rail and 160 ft water filled. Water filled to be placed in back of lower barn as access is limited.

3. Grundy Way- k rail is not feasible with narrow road. Removal of existing sediment is required.

Deflection boards:

- a. 80-100 ft – oak tree across brown house across from hodge podge lodge.
- b. 80-100 ft – ending at 28280.

The Natural Resources Conservation Service provides leadership in a partnership effort to help people conserve, maintain, and improve our natural resources and environment.

An Equal Opportunity Provider and Employer

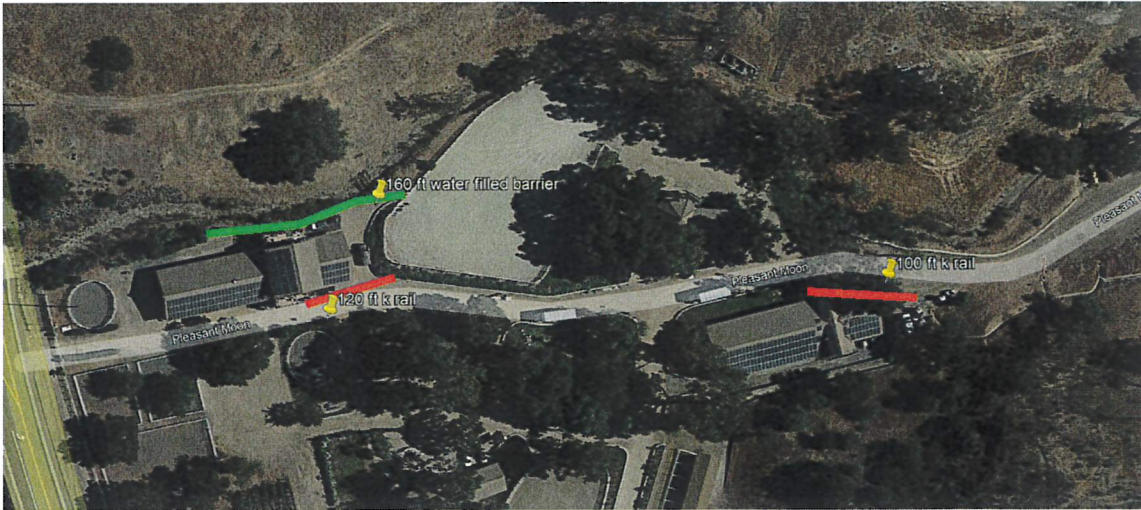


Photo below, #4.

4. Anderson Creek-

Debris and obstruction removal of deposited material only. (no widening or improvement of channel) 200-250 ft of channel starting near Grundy Rd to 14189 Anderson Way.



5. Wildcat Canyon-

Channel clearing/debris removal downstream of Hazel Bell Dr.

The Natural Resources Conservation Service provides leadership in a partnership effort to help people conserve, maintain, and improve our natural resources and environment.

An Equal Opportunity Provider and Employer



**Recommendations:**

1. A sponsor is required for EWP to proceed. Further analysis, quotes for work and additional site visits will be required.
2. NRCS is available for additional technical assistance as needed. Good resources are available online such as:
  - a. California EWP Program information  
<https://www.nrcs.usda.gov/wps/portal/nrcs/main/ca/programs/financial/ewp/>
  - b. San Bernardino Flood and Erosion Control Guide:  
<https://cms.sbcounty.gov/Portals/50/Homeowners%20Guide-Revised-20190513.pdf?ver=2020-09-28-161057-887>
  - c. San Diego Homeowner Guide:  
<https://www.sandiegocounty.gov/content/sdc/dpw/flood/erosion-control-homeowners-assistance-center-.html>

Sincerely,

Juan Segoviano  
Area Engineer  
USDA-NRCS  
San Bernardino, CA

Mr. Carlos Suarez, State Conservationist  
USDA – Natural Resources Conservation Service  
430 G Street  
Davis, CA 95616

Dear Mr. Suarez:

The County of Orange (County) requests Federal assistance under the provisions of Section 216 of the Flood Control Act of 1950, Public Law 81-516 or Section 403 of the Agricultural Credit Act of 1978, Public Law 95-334, to restore damages sustained in the Wildcat Canyon area of unincorporated Orange County, California by the rainstorm events that occurred on December 14, 2021, December 24, 2021, December 25, 2021, December 27, 2021, December 28, 2021, and December 29, 2021 in the Wildcat Canyon portion of the Bond Fire Burn scar area, which resulted in significant debris flows. Specifically, the County requests Federal assistance with debris and sediment removal projects in Anderson Creek near its intersection with Silverado Creek, near Grundy Road and Anderson Way; and Wildcat Creek near its intersection with Silverado Creek, in the vicinity of Hazel Bell Drive. This work is needed to safeguard lives and property from in imminent hazard posed by future debris flows that may result from further storm events that may occur in early 2022.

We understand, as sponsors of an Emergency Watershed protection project that the County's responsibilities will include acquiring land rights (if necessary) and any permits needed to construct, and if required, to operate and maintain the proposed measures. We are prepared to provide 25% of the cost of construction work in dollars or in-kind services.

The names, addresses, and telephone numbers of the administrative and technical contact persons within the County are as follows:

[Insert contact persons]

Please contact [NAME] for any additional information you might need in assessing the County's request.

Sincerely,

[NAME]

### **Overview of NRCS Funding Process for Emergency Watershed Protection projects**

- 1.** Within 60 days of a non-exigency (those that do not require immediate action within 10 days) event, the local sponsor must submit a request for assistance to NRCS
- 2.** Once a request is received, NRCS determines whether the EWP is applicable and provides an initial cost estimate and damage survey report. This is done within 60 days of the date NRCS receives the assistance request from the local sponsor.
- 3.** Funding (if available) is then allocated for implementation of the emergency measures identified in an approved damage survey report. If funding is not available, the damage survey report will be put on a waitlist for funding.
- 4.** Negotiate and enter into an agreement with the local sponsor in order to facilitate federal funding and define the responsibilities of the local sponsor and the NRCS
- 5.** Local sponsor designs and constructs the projects pursuant to the process identified in the Project Agreement. This must be done within 220 days of when federal funds are allocated to the projects identified in the damage survey report.
- 6.** Local sponsor requests any final reimbursement of costs from NRCS within 90 calendar days of when the EWP agreement ends.



OFFICE OF THE COUNTY COUNSEL  
COUNTY OF ORANGE

333 West Santa Ana Boulevard, Suite 407  
Santa Ana, California 92701  
Direct No.: (714) 834-3303  
E-Mail: leon.page@coco.ocgov.com

LEON J. PAGE  
COUNTY COUNSEL

Agenda Item No. SCS- 2  
January 11, 2022

MEMORANDUM

TO: Robin Stieler, Clerk of the Board of Supervisors  
FROM: Leon J. Page, County Counsel  
SUBJECT: Request for Supplemental Closed Session

RECEIVED  
2022 JAN -5 PM 3:06  
CLERK OF THE BOARD  
ORANGE COUNTY  
BOARD OF SUPERVISORS

I am requesting a supplemental closed session on Tuesday, January 11, 2022, to discuss with the Board the status of existing litigation, pursuant to Government Code section 54956.9(d)(1).

Accordingly, please prepare the Agenda Item to read:

“CONFERENCE WITH LEGAL COUNSEL --  
EXISTING LITIGATION Pursuant to Government Code Section  
54956.9(d)(1).  
Name of Case: *Maxwell v. County of Orange*  
Case Number: ADJ2575493

RECOMMENDED ACTION: Conduct Closed Session.”

Thank you.

Digitally signed by James C. Herman, Chief Assistant  
County Counsel  
DN: cn=James C. Herman, Chief Assistant County  
Counsel, o=Office of County Counsel, ou=  
amajones@ocgov.com, email=amajones@ocgov.com, c=US  
Date: 2022.01.05 14:08:00 -0800

for LJP

LJP:jb

cc: Members of the Board of Supervisors  
Frank Kim, CEO