SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

STATE OF BALL

1800

FROM: TLMA-TRANSPORTATION::

SUBMITTAL DATE: August 23, 2016

SUBJECT: Approva

Approval of the Reimbursement, Indemnity and Defense Agreement for the Cajalco Road Widening Project By and Between the Metropolitan Water District

of Southern California and the County of Riverside. 1st District; [\$70,000 - Total

Cost]; Local Funds 100%

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Reimbursement, Indemnity and Defense Agreement for the Cajalco Road Widening Project between the Metropolitan Water District of Southern California (MWD) and the County of Riverside (County); and

2. Authorize the Chairman of the Board to execute the same.

Policy

FINANCIAL DATA	Current Fiscal Year:		Next Fiscal Year:	Total Cost:	Ongoing Cost	
COST	\$	\$70,000	\$0	\$ 70,000	\$0	
NET COUNTY COST		\$0	\$0	\$0	\$0	
SOURCE OF FUNDS:	Developm	Budget Adjustm	Budget Adjustment: No			
Reginal Transportation Match funds (100%). There are no General Funds used for this agreement.				16/17		

C.E.O. RECOMMENDATION: Approve

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Tavaglione and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes:

Jeffries, Tavaglione, Washington and Ashley

Nays:

None

Absent:

Benoit

Date:

November 1, 2016

XC:

Transp.

Kecia Harper-Ihem

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Page 2 BACKGROUND:

Summary

Cajalco Road (Expressway) is one of the primary transportation corridors in Western Riverside County. It links the Interstate 15 (I-15) to the Interstate 215 (I-215), and connects to the Ramona Expressway easterly from that point to State Route 79 (SR-79) and the San Jacinto Valley.

Improvements to Cajalco Road are essential to reduce congestion and maintain and enhance the quality of life in Western Riverside County. The Riverside County Transportation Commission (RCTC) reaffirmed its commitment to a future east-west arterial corridor between I-15 and I-215 by supporting the County's planned improvements to Cajalco Road and prioritizing funding for the preparation of environmental documents by the County.

On December 14, 2010 (Agenda Item 3-59), the Board of Supervisors approved the Environmental and Engineering Services Agreement No. 10-11-014. On March 29, 2016 (Agenda Item 3-31), the Board of Supervisors approved Amendment No. 1 to the Environmental and Engineering Services Agreement No. 10-11-014 to modify the scope due to additional environmental and design requirements.

The County of Riverside Transportation Department (Transportation Department) is proceeding with the planned improvements to widen Cajalco Road between I-15 and I-215. Certain portions of the proposed Cajalco Project are located on real property owned by Metropolitan ("Metropolitan Land") lying both within the boundaries of Metropolitan's Multiple Species Habitat Conservation Plan/Natural Communities Conservation Plan (MSHCP/NCCP) ("Conservation Plans") and outside of the Conservation Plans boundaries.

The Conservation Plans as developed and implemented by Metropolitan provide incidental take authorizations pursuant to the federal and state Endangered Species Acts for optimal operation and expansion of Lake Mathews and its facilities, which are an integral part of Metropolitan's public water supply system. Metropolitan may expand its current operations at Lake Mathews, which requires that Metropolitan's incidental take authorizations remain at or exceed current levels.

County's efforts to evaluate and maintain consistency with the Conservation Plans. The Cajalco Project's consistency with Metropolitan's Conservation Plans will be evaluated by County in an environmental impact report or other environmental document that is prepared by the County for the Cajalco Road Widening Project. As a condition for participation in this effort, Metropolitan requires reimbursement for the expenses it incurs and indemnification against any potential claims arising out of Metropolitan's assistance to the County for the Cajalco Road Widening Project.

The terms of this agreement limit the reimbursement of Metropolitan expenses to \$70,000 unless approved by an amendment.

Project Number: C0-0551

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Impact on Residents and Businesses

Regional transportation facilities are essential to public health, safety, and welfare. Cajalco Road is a significant east-west regional arterial in the County. Extensive public outreach has taken place for the widening project via scoping meetings, Municipal Advisory Council briefings, community group meetings, and town hall meetings.

Input received has been incorporated into the Alternatives to be evaluated in the Environmental Impact Report (EIR)/Environmental Impact Statement (EIS). The purpose of this agreement is in part to facilitate coordination with Metropolitan in order to minimize project impacts on Metropolitan Land and facilities, the Plan Agreements and Conservation Plans.

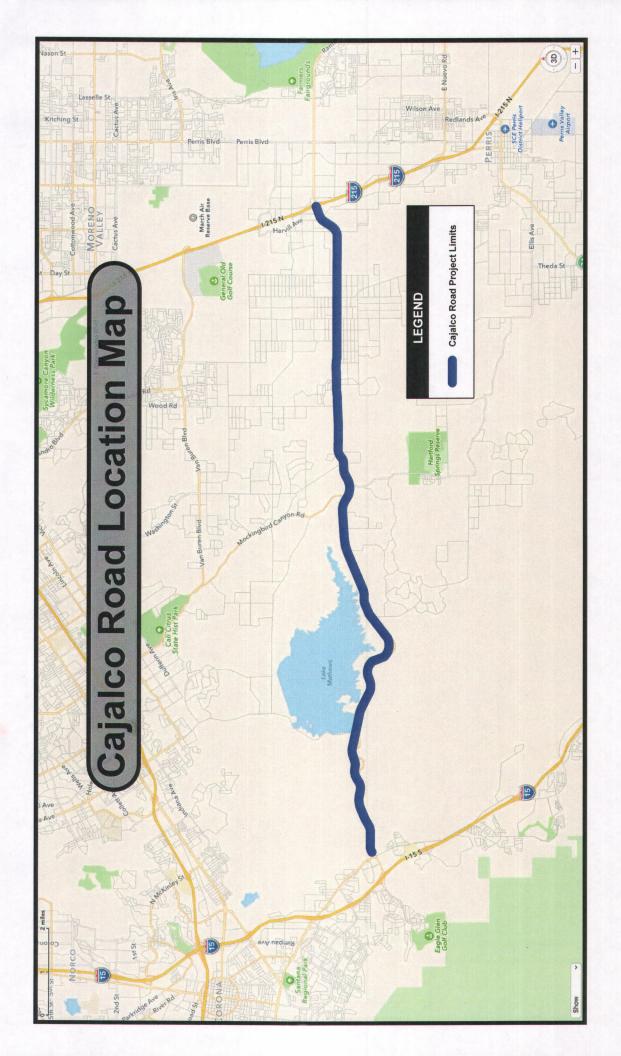
SUPPLEMENTAL:

Additional Fiscal Information

All costs associated with Metropolitan's coordination are fully funded by the Development Impact (DIF) Area Plan 7 (AP7) Regional Transportation Match funds authorized by the Board of Supervisors on July 12, 2011, by Minute Order 3-5. No net County costs will be incurred as a result of this transaction.

ATTACHMENTS:

Vicinity Map Agreement



Contract No. 16-08-007
Riverside Co. Transportation

REIMBURSEMENT, INDEMNITY AND DEFENSE AGREEMENT FOR THE CAJALCO ROAD WIDENING PROJECT BY AND BETWEEN THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA AND THE COUNTY OF RIVERSIDE

THIS REIMBURSEMENT, INDEMNITY AND DEFENSE AGREEMENT

("Reimbursement Agreement") is made and entered into on Wolf Professional (Effective Date")

by and between THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,

a public corporation incorporated under the Metropolitan Water District Act of the State of

California (Stats. 1969, Ch. 209 as amended), hereinafter referred to as "Metropolitan," and THE

COUNTY OF RIVERSIDE, a political subdivision of the State of California, by and through the

RIVERSIDE COUNTY TRANSPORTATION DEPARTMENT, hereinafter referred to as

"County". Metropolitan and County may be referred to as "Parties" in this Reimbursement

Agreement.

1. Recitals

- 1.1. In 2011, County proposed the Cajalco Road improvement project ("Cajalco Project") to (i) address anticipated growth and mobility needs, as identified in the County of Riverside General Plan Circulation Element Policy 1.5; (ii) provide improved interregional travel by improving east-west mobility in Riverside County; and (iii) improve roadway alignment and intersection design to enhance safety along Cajalco Road. The Cajalco Project is a County of Riverside Project.
- 1.2. County is continuing its study of alignments for the widening of Cajalco Road from two to four lanes between Harvill Avenue and Temescal Canyon Road, and from four to six lanes between the I-215 southbound ramps and Harvill Avenue. Two alignments previously were identified for study and presented to the public during scoping meetings held pursuant to the California Environmental Quality Act ("CEQA") in September 2011 and October

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- 2012. Based upon the feedback received from residents and public agencies, two additional alignments are identified for study.
- 1.3. Certain portions of the proposed Cajalco Project are located on real property owned by Metropolitan ("Metropolitan Land") lying both within the boundaries of Metropolitan's Multiple Species Habitat Conservation Plan/Natural Communities Conservation Plan (MSHCP/NCCP) ("Conservation Plans") and outside of the Conservation Plans boundaries as identified in the map attached as Exhibit "A" and incorporated herein by reference. The Conservation Plans as developed and implemented by Metropolitan provide incidental take authorizations pursuant to the federal and state Endangered Species Acts for optimal operation and expansion of Lake Mathews and its facilities, which are an integral part of Metropolitan's public water supply system. Metropolitan may expand its current operations at Lake Mathews, which requires that Metropolitan's incidental take authorizations remain at or exceed current levels. The Cajalco Project's consistency with Conservation Plans will be evaluated by County in an environmental impact report or other environmental document that is prepared by the County for the Cajalco Project, including without limitation, an Environmental Impact Report/Environmental Impact Statement ("EIR/EIS") prepared for the Cajalco Project pursuant to the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA") ("Environmental Document").
- Lake Mathews and is encumbered with conservation easements for the protection of native habitat and species. The Conservation Plans were developed pursuant to the Mitigation Banking Agreement, the Cooperative Management Agreement, the California Fish and Game Code Sections 2081 and 2835 Memorandum of Understanding, and the federal Memorandum of Understanding and Implementation Agreement ("Plan Agreements") and a settlement agreement in *San Bernardino Audubon Society v. Metropolitan Water District, et al.*, Riverside County Superior Court Case No. RIC 274844 ("Settlement Agreement"). The Settlement and Plan Agreements are deemed to have a binding legal effect on Metropolitan.

- 1.5. Each of the currently proposed Cajalco Project alignments (hereinafter referred to as "Alignments") will likely require acquisition of some Metropolitan Land and may result in direct or reasonably foreseeable indirect effects on protected species and may increase the potential for unauthorized access. These direct or reasonably foreseeable indirect effects may degrade the current condition of the Reserve unless the Cajalco Project includes adequate mitigation. In addition, each of the currently proposed Cajalco Project alignments may affect facilities constructed by Metropolitan in the vicinity of Lake Matthews.
- 1.6. County requires the cooperation and participation of Metropolitan in analyzing the Alignments and their respective impacts on the Metropolitan Land, facilities, water quality and operations, the Plan Agreements, Conservation Plans, Settlement Agreement, incidental take authorizations granted to Metropolitan by the United States Fish and Wildlife Service and the California Department of Fish and Wildlife ("Wildlife Agencies"), impacts on Metropolitan's existing and planned improvements, and impacts on water quality. County desires Metropolitan's technical assistance, analysis and expertise for the Cajalco Project, which may include plan review and comments, consultation on design, engineering, environmental and legal analysis ("Metropolitan's Assistance").
- 1.7. County acknowledges that Metropolitan's Assistance will require Metropolitan's expenditure of resources for the benefit of the County and Metropolitan will require reimbursement from the County for all actual costs and expenses incurred by Metropolitan in providing Metropolitan Assistance. Metropolitan agrees to cooperate with County as it studies and works toward identifying a preferred alignment for the Cajalco Project subject to the terms and conditions of this Reimbursement Agreement. Metropolitan's cooperation with County under the terms and conditions of this Reimbursement Agreement shall not be construed as an expression of support, acquiescence, consent or ratification of either the Cajalco Project or any of the Alignments considered by County. Metropolitan reserves its rights of objection and opposition to the Cajalco Project and to any part of the project.

NOW, THEREFORE, BE IT RESOLVED found and determined that for the mutual promises and consideration of the provisions herein contained, the Parties hereto do hereby agree as follows:

- Environmental Matters. The Cajalco Project may require preparation of an Environmental Impact Report or an Environmental Impact Statement ("Environmental Documents"). The Environmental Documents will fully analyze project impacts on Metropolitan Land, facilities, water quality and operations the Plan Agreements, Conservation Plans, Settlement Agreement, incidental take authorizations granted to Metropolitan by the Wildlife Agencies, impacts on Metropolitan's existing and planned improvements, and impacts on water quality. Metropolitan may be a "responsible agency" for the Cajalco Project under CEQA and a "participating agency" under NEPA. Metropolitan's designation as either a responsible agency or participating agency shall not be construed as an expression of support, acquiescence, consent or ratification of either the Cajalco Project or any of the Alignments considered by County. Metropolitan reserves its rights of objection and opposition to the Cajalco Project and to any part of the project.
- **2.1.** County shall preserve, maintain and make whole Metropolitan with respect to direct or reasonably foreseeable indirect impacts on Metropolitan Land, facilities, water quality and operations, rights under Plan Agreements and Conservation Plans, including the incidental take authorizations granted to Metropolitan by the Wildlife Agencies that are identified in the Environmental Documents prepared for the Cajalco Project.
- 2.2. County will undertake all feasible mitigation measures required to minimize project impacts on Metropolitan Land and facilities, water quality and operations, the Plan Agreements and Conservation Plans, including but not limited to, acquiring and conveying substitute conservation easements as mitigation for such impacts. County shall further maintain the incidental take authorizations granted to Metropolitan by the Wildlife Agencies at their existing or greater levels.

- 2.3. The Environmental Documents shall, amongst other actions: (1) calculate the direct or reasonably foreseeable indirect impacts of the Cajalco Project to the Metropolitan Lands for direct and indirect temporary and permanent impacts and effects on biological resources and habitat values of the Metropolitan Lands for the species covered by the Plan Agreements and Conservation Plans; (2) assess impacts of the Cajalco Project on facilities, operations and water quality; (3) and evaluate potential impacts to Metropolitan Lands covered by a conservation easement.
- 3. Reimbursement and Deposits. County will reimburse Metropolitan's actual costs incurred in providing Metropolitan Assistance to the County for the Cajalco Project. County will make payment to Metropolitan for all of Metropolitan's costs for Metropolitan Assistance, including labor, labor additives, materials, equipment use, transportation, and the cost of consumables, plus overhead, based on Metropolitan's direct costs for providing Metropolitan Assistance. The maximum reimbursable amount for work by Metropolitan shall not exceed \$70,000 unless approved by an amendment to this agreement.
- 3.1 Within 30 days from the Effective Date, County shall issue a task order to Metropolitan for Metropolitan Assistance, the specific details of which shall be described in the task order, and will make an initial deposit with Metropolitan in the sum of \$25,000. The initial deposit of \$25,000 will be applied to actual costs, as described in Section 3 above, incurred by Metropolitan in providing Metropolitan Assistance for the Cajalco Project. Thereafter, County will make periodic deposits (a "Task Order Deposit") to cover actual costs of performing the Task Orders, which costs may exceed estimates made in the Task Order. All Task Order Deposits shall be made by County within 30 days of written notice given by Metropolitan.
- 3.2 In addition to Metropolitan Assistance, Task Orders may include Metropolitan's retention of consultants to study the after condition configuration and functionality of the Metropolitan Lands, including effects on species covered under the Plan Agreements and Conservation Plans for each of the Alignments and such other studies as may be deemed necessary by Metropolitan and County for the Cajalco Project. Metropolitan has no

obligation to commence work or perform services described in a Task Order, until (i) County has first deposited with Metropolitan the estimated reimbursable amount of payment associated with that Task Order or (ii) County has made a subsequent deposit of costs which exceed the Task Order estimate. Reimbursement for any work done by consultants retained by Metropolitan for the Cajalco Project shall be included in the total maximum reimbursable amount set forth in Section 3 above and shall not increase that maximum reimbursable amount unless approved by an amendment to this agreement.

- 4. <u>Task Orders.</u> Metropolitan will provide services to County pursuant to a written Task Order in the form of Exhibit 1, hereto. However, Metropolitan shall have no obligation to provide services under a Task Order until such time as the Parties have agreed to the scope of services and special terms and conditions, if any. Metropolitan's time spent reviewing and negotiating Task Orders shall be a reimbursable item, whether or not listed in a Task Order.
- 4.1. The Parties shall meet and confer prior to issuing a Task Order or an amended Task Order for the purpose of discussing the scope of Metropolitan's Assistance, estimating time and costs for Task Order Deposits and discussing other issues that may relate to Task Orders. The Task Order may be issued by County only after the Parties have agreed to the scope of services and special terms and conditions contained, if any, in a Task Order for the performance of Metropolitan Assistance.
- **4.2.** Any requested changes or modifications to the tasks documented in a Task Order, either prior to or after authorization, will not be effective unless accepted by the other Party and documented in an amended Task Order. County will increase its Task Order Deposit should the amended Task Order so require.
- **5.** <u>Coordination and Schedule.</u> Metropolitan and County agree to pursue their respective work efforts with reasonable diligence based on an estimated project schedule. Nonetheless, the time scheduled for completion of any task undertaken pursuant to this Reimbursement Agreement may be delayed by either party to this Reimbursement Agreement

without penalty. In case of a delay, the Parties will strive to complete the work in an expeditious manner.

- **5.1.** Metropolitan and County may hold periodic meetings to review the Cajalco Project schedule and coordinate work efforts, coordination issues, and changes in scope or project organization, and to agree to revise and update the project schedule if necessary. The foregoing, notwithstanding, the Parties may coordinate via email, electronic conferencing or any other mutually agreed method.
- 6. <u>Billings and Payments.</u> Metropolitan shall have the right, but not the obligation, to draw monthly against Task Order Deposits in proportion to the amount Metropolitan Assistance provided during that month. County shall have the right to request an accounting, with description of tasks completed and time incurred by Metropolitan for Metropolitan Assistance. If requested by County, Metropolitan shall provide the accounting within thirty (30) days of the request.

7. <u>Indemnification and Defense</u>

- 7.1. County, at its own expense, shall indemnify, defend and hold harmless Metropolitan, its agents, officers, and employees from and against any claim, demand, cause of action or proceedings (of any kind whatsoever) (collectively a "Dispute") brought against Metropolitan, its agents, officers, and employees, arising out of Metropolitan's Assistance to the County for the Cajalco Project, including the Plan Agreements, Conservation Plans, Settlement Agreement or any combination thereof as such agreements and plans relate to the Cajalco Project, including actual direct and indirect costs, damages, expenses attorney fees and awards of attorneys' fees against Metropolitan.
- 7.2. Upon written notice from Metropolitan of a Dispute, County shall resist, or defend such pre- and post-trial Disputes through counsel that is satisfactory to Metropolitan. Metropolitan has the absolute right to approve any and all counsel retained by County to defend Metropolitan in any Dispute, approval by Metropolitan of counsel selected by County shall not

be unreasonably withheld. Metropolitan has the right to demand that County appoint outside counsel to defend Metropolitan at the County's sole cost and expense.

- 7.3. In the event County fails to promptly and diligently defend Metropolitan in any Dispute, after notice from Metropolitan of any alleged failure to defend, Metropolitan shall have the right but not the obligation to assume its own defense at the sole cost and expense of County. In such circumstances, County shall pay the attorneys' fees and costs of the legal firm retained by Metropolitan to represent Metropolitan in the Dispute within 30 days from receipt of an invoice delivered to County by Metropolitan or its appointed counsel.
- 7.4 Nothing contained in this Reimbursement Agreement, shall be construed to limit the Metropolitan's discretion to defend, settle or appeal or to decline to settle or to terminate or forego defense or appeal of a Dispute as it relates to Metropolitan only. It is also understood and agreed that all written work product prepared by County or its counsel for a Dispute is subject to reasonable review, revision and approval by Metropolitan's counsel. County shall be responsible for all economic costs, losses and damages incurred by Metropolitan in any final disposition of a Dispute, including without limitation, settlement by Metropolitan in consultation with County.
- 7.5 The County's obligation to defend and indemnify Metropolitan shall survive termination of this Reimbursement Agreement.
- 8. <u>Term.</u> This Reimbursement Agreement shall remain in effect for 24 months from the Effective Date, unless earlier terminated as set forth in paragraph 11. No later than 30 days after termination, all funds deposited with Metropolitan that have not been appropriated to a Task Order, shall be returned to County.
- 9. Agreement Administrators. In performing tasks for this Reimbursement Agreement, Metropolitan designates Shohreh Zareh and County designates Scott Staley as their respective Agreement Administrators. The Parties may change this designation upon written notice to the other Party.

10. Notices. Any notice or communication given under this Reimbursement

Agreement shall be effective upon receipt when deposited as registered or certified mail, postage prepaid, with the United States Postal Service and addressed to the contracting Parties as follows:

Metropolitan Water District of Southern California Post Office Box 54153 Los Angeles, California 90054-0153 Attention: Shohreh Zareh

The County of Riverside, by and through the Riverside County Transportation Department 3525 14th Street Riverside CA 92501 Attention: Khalid Nasim

Either party may change the address to which notice or communication is to be sent by providing advance written notice to the other party.

- 11. <u>Termination</u>. Either Party may terminate this Reimbursement Agreement with or without cause by providing 30-day written notice of termination to the other party.

 Metropolitan shall have 30-days following termination, to release the uncommitted portion of any Task Order Deposits to County.
- 12. <u>Assignment</u>. Neither Metropolitan nor County may assign, transfer, convey, sublet or otherwise dispose of this Reimbursement Agreement, or its rights, obligations, title, and interest in all or any part of this Reimbursement Agreement, without the prior written consent of the other party.
- 13. <u>Severability</u>. If any provision of this Reimbursement Agreement shall be held illegal, invalid, or unenforceable, in whole or in part, such provision shall be modified to the

minimum extent necessary to make it legal, valid, and enforceable, and the legality, validity, and enforceability of the remaining provisions shall not be affected thereby.

- 14. Jurisdiction and Venue. This Reimbursement Agreement shall be deemed a contract under the laws of the State of California and for all purposes shall be interpreted in accordance with such laws. Both Parties hereby agree and consent to the exclusive jurisdiction of the Courts of Riverside County, State of California and the parties hereto expressly waive all provisions of law providing for the filing, removal or change of venue to any other court or jurisdiction.
- 15. <u>Waiver</u>. No delay or failure by either party to exercise or enforce at any time any right or provision of this Reimbursement Agreement shall be considered a waiver thereof or of such party's right thereafter to exercise or enforce each and every right and provision of this Reimbursement Agreement. To be valid, a waiver shall be in writing but need not be supported by consideration. No single waiver shall constitute a continuing or subsequent waiver.
- 16. Entire Agreement. This writing contains the entire agreement of the Parties relating to the subject matter hereof; and the Parties have made no agreements, representations, or warranties relating to the subject matter hereof which are not set forth herein. Except as provided herein, this Reimbursement Agreement may not be modified or altered without formal amendment thereto.
- 17. Joint Drafting and Counterparts. Both Parties have participated in the drafting of this Reimbursement Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

IN WITNESS THEREOF, Metropolitan and County have executed this Agreement as of the date hereinabove set forth.

Approved as to form:	THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALLED ON IA
By: Marcia L. Scully	By: Gordon Johnson
General Counsel Date:	Chief Engineer Date: 6/8/16

Approved as to form:	COUNTY OF RIVERSIDE, by and through the RIVERSIDE COUNTY TRANSPORTATION DEPARTMENT
By: Place Departy County Course	By: Denoit
We the second	CHAIRMAN, BOARD OF SUPERVISORS
Date: 10/13/16	Date:

EXHIBIT 1

SAMPLE TASK ORDER FORM

(Use additional pages as necessary)

		Task Order						
Task Order No.:		Agreement No.:		Revision No.:				
COUNTY:								
Authorized Resources / Other Costs:								
	Scop	e of Services Required						
Deliverable Items / Milestones								
Period of Performance	From:		To:					
□ Not to Exceed □ Fixed Price Amount			10.					
I Not to Exceed I Fixed File Amount	\$	Payment Schedule						
	Speci	al Terms & Conditions						
		Approvals						
Authorized COUNTY Represe	entative:			Date:				
COUNTY Agreement Admin		······································	Date:					

