

CONTRACT MA-080-18011518

FOR

**FUEL MODIFICATION, MOWING/DISCING, FIRE HAZARD AND WEED
ABATEMENT**

BETWEEN

COUNTY OF ORANGE

AND

ORANGE COUNTY FLOOD CONTROL DISTRICT

AND

NATURES IMAGE, INC.



**CONTRACT MA-080-18011518
WITH
NATURES IMAGE, INC.
FOR
FUEL MODIFICATION, MOWING/DISCING, FIRE HAZARD AND WEED
ABATEMENT**

THIS CONTRACT MA-080-18011518 for Fuel Modification, Mowing/Discing, Fire Hazard and Weed Abatement, (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 The Orange County Flood Control District, a body corporate and politic (hereinafter referred to as “District”) and Natures Image, Inc., with a place of business at 20361 Hermana Circle, Lake Forest, CA 92630 (hereinafter referred to as “Contractor”), which are sometimes individually referred to as “Party” or collectively referred to 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 Services

Attachment B – Payment/Compensation

RECITALS

WHEREAS, Contractor and County and District are entering into this Contract for Fuel Modification, Mowing/Discing, Fire Hazard and Weed Abatement under a fixed unit costs and hourly rates Contract; and,

WHEREAS, County and District solicited Contract for Fuel Modification, Mowing/Discing, Fire Hazard and Weed Abatement as set forth herein, and Contractor represented that it is qualified to provide Fuel Modification, Mowing/Discing, Fire Hazard and Weed Abatement to the County and District as further set forth here; and,

WHEREAS, Contractor agrees to provide Fuel Modification, Mowing/Discing, Fire Hazard and Weed Abatement to the County and District as further set forth in the Scope of Work, attached hereto as Attachment A; and,

WHEREAS, County and District 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 for Fuel Modification, Mowing/Discing, Fire Hazard and Weed Abatement; and,

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

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

ARTICLES

General 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 and District unless authorized by County and District in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County and District employee or agent, including but not limited to installers of software, shall not be valid or binding on County and District 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 and District unless authorized by County and District 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 and District 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 and District 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 and District. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County and District.
- F. **Acceptance Payment:** Unless otherwise agreed to in writing by County and District; 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 District, 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 District and its indemnities as identified in **article "Y"** below, and as more fully described in **article "Y,"** harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County and District 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 "Y"** 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 and District. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County and District 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 and District 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 and District of its right to terminate the Contract shall relieve County and District 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 and District. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County and District.

N. **Performance Warranty:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's and District'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 and District 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 and District 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 and District during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County and District 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 and District 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 and District 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 and District 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 and District was the insured.

If the Contractor fails to maintain insurance acceptable to the County and District for the full term

of this Contract, the County and District may terminate this Contract.

Qualified Insurer

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

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

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per occurrence

Required Coverage Forms

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

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

Required Endorsements

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

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the ***County of Orange its elected and appointed officials, officers, agents and employees*** as Additional Insureds, or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT.***
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers,***

agents and employees or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT.**

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

Contractor shall notify County and District 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 and District. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County and District may suspend or terminate this Contract.

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

Insurance certificates should be 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/Procurement or the agency/department procurement division, award may be made to the next qualified vendor.

County and District 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 and District.

County and District 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 and District incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

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

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

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

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 and District 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 District 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 and District 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 and District is relying on Contractor to ensure such compliance, and pursuant to the requirements of **article "Y"** below, Contractor agrees that it shall defend, indemnify and hold County and District and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- U. **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.
- V. **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.
- W. **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.
- X. **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 District, and hold harmless, the County and District, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or District 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.

- Y. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County and District, and hold County and District, 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 and District by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County and District agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
- Z. **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 and District) 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 and District will provide reasonable notice of such an audit or inspection.

The County and District 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 and District 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.

- AA. **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 District; 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 and District may immediately terminate or modify this Contract without penalty.
- BB. **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 and District 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 Fuel Modification, Mowing/Discing, Fire Hazard and Weed Abatement from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as “Attachment A”.
2. **Term of Contract:** This Contract shall commence upon execution of all necessary signatures or approval by the Orange County Board of Supervisors, whichever occurs later, and continue for three calendar years from that date, unless otherwise terminated by County. This Contract may be renewed as set forth in article 3 below.

Amendment#1

Contract shall be renewed for one (1) year from July 1, 2021 to June 30, 2022, unless otherwise terminated as provided herein

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 are subject to approval by the County of Orange Board of Supervisors.
4. **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.
5. **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.
6. **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.

7. **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.
8. **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.
9. **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.

10. **Contractor Personnel -** County reserves the right to have any of Contractor personnel removed from providing services to County under this Contract. County is not required to provide any reason for the request for removal of any Contractor personnel.
11. **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 worn 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.

12. **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.

13. **County of Orange Child Support Enforcement:** All Contractors are required to comply with the child support enforcement requirements of the County of Orange. Failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. In order to comply with the child support enforcement requirements of the County of Orange, all bidders/proposers must furnish to the Contract administrator, the Procurement Officer, or the agency/department Deputy Purchasing Agent:
- A. In the case of an individual Contractor, his/her name, date of birth, Social Security number, and residence address;
 - B. In the case of a Contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the Contracting entity;
 - C. A certification that the Contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
 - D. A certification that the Contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

14. **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.
15. **Default – Reprocurement 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.
16. **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 23. “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.

17. **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.

18. **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

19. **Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by the County, state or federal government, this Contract may be subjected to unusual usage. The Contractor shall service the County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the Contractor shall apply to serving the County’s needs regardless of the circumstances. If the Contractor is unable to supply the goods/services under the terms of the Contract, then the Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from the Contractor’s supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the Contractor shall show both the emergency purchase order number and the Contract number.
20. **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.

21. **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.

22. **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.
23. **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: Natures Image, Inc.
Attn: Shadi Lari
20361 Hermana Circle
Lake Forest, CA 92630
Phone: 949.680.4426
Email: slari@naturesimage.net

County's Project Manager: OC Public Works/Operations & Maintenance
Attn: Kris Ruiz
2301 N Glassell Street, 2nd Floor
Orange, CA 92865
Phone: 714.955.0346
Email: Kris.Ruiz@ocpw.ocgov.com

cc: OC Public Works/Procurement Section
Attn: Avelino Javier, County DPA
2301 N Glassell Street, 2nd Floor
Orange, CA 92865
Phone: 714.667.9627
Email: Avelino.Javier@ocpw.ocgov.com

24. **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.
25. **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.
26. **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.
27. **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.

Signature Page follows

**ATTACHMENT A
SCOPE OF WORK**

- I. SCOPE OF WORK:** Contractor shall furnish all staffing, labor, equipment materials and incidentals required for Fuel Modification, Mowing/Discing, Fire Hazard and Weed Abatement, Drainage System Maintenance, and Debris Removal. Services shall be provided on an as-needed basis as required by County and District. No guarantee is given on the quantity and amount of work to be provided under this Contract.
- II. DESCRIPTION OF WORK:** This Contract is for Fuel Modification, Mowing/Discing, Fire Hazard and Weed Abatement, Drainage System Maintenance, and Debris Removal Service as required by County and District.
- A. Work to be done consists of mowing, discing for weed abatement, fuel modification, and associated debris removal. The purpose is to provide a reasonable degree of fire safety and abate potential fire hazards by removing flammable materials as required by County and District.
- B. Work locations for this Contract will be countywide in unincorporated areas of Orange County, County Flood Control Facilities, incorporated cities and agencies serviced by County and County of Orange properties in the Riverside, Corona, Chino, and San Bernardino areas.
- III. CONTRACTOR REQUIREMENTS:**
- A. Contractor shall maintain an accurate record showing name of employee, classification, actual hours worked, wages paid and benefits paid to each employee. This record will be subjected to inspection of County and State Division of Labor Law Enforcement in accordance with provisions of the State Labor Code 1776.
- B. Contractor agrees to permit County's Auditor-Controller or Director, OC Public Works, or their authorized representative, access during normal working hours to all books, accounts, records, reports files and other papers of property of Contractor for purpose of auditing any aspects of performance under Contract.
- C. Conduct: Contractor personnel providing services under this Contract shall not be incompetent, disorderly, under the influence of alcohol or drugs, who fails or otherwise refuses to perform the work properly and acceptably, or is otherwise objectionable. County and District expressly retains the right to request any specific Contract personnel be precluded from providing services to County and District under this Contract. County and District are not required to provide any reason for requested removal of specified Contract personnel. Contractor shall effectuate removal of the requested Contractor personnel within three (3) business days.
- D. Supervision: Contractor shall provide a supervisor or foreman who shall be present at all times during Contract operations, and who shall be responsible for both conduct and workmanship. Said supervisor or foreman shall be able to communicate effectively in both written and oral English.
- IV. CONTRACTOR PERFORMANCE REQUIREMENTS:**
- A. Contractor shall provide portable water readily available at all times for each crew.

- B. Contractor shall conform to all South Coast Air Quality Management District's (hereinafter referred to as "AQMD") regulations, which may apply to the types of equipment utilized under this Contract.
- C. Equipment, Tools, and Manpower: Contractor shall furnish all hand tools, power equipment, and safety equipment necessary to accomplish the specified work. Equipment, Tools, and Manpower shall consist of, but not be limited to the following:
1. Contractor shall provide one (1) track layer tractor equipment with dirt pads with grousers worn not to exceed manufacture's specifications. The tractor used for pulling a disc shall be of a track layer type of the size and horsepower capable of pulling a double throw disc on slopes up to 35%. Tractor must be a minimum of 90 horsepower at the flywheel. Certification of horsepower shall be provided upon County's Project Manager's request.
 2. Contract shall provide one (1) double throw disc.
 3. Contractor shall provide one (1) truck transport with tilt trailer.
 4. Contractor shall provide one (1) rubber tire tractor. The rubber tire tractor for pulling a double throw, hydraulically actuated wheeled disc shall be provided for use in gentle terrain where frequent loading and unloading proves impractical. Tractor must be a minimum of 50 horsepower at the flywheel, and certification of horsepower will also be provided.
 5. Contractor shall provide two (2) high side hydraulic dump trucks equipped with rear flashing lights and traffic control cones.
 6. Hand tools shall include gas powered weed eaters, chain saws, whip hoes, shovels, hoes, rakes, trash cans and/or tarps and other tools and equipment as required for the removal of weeds, debris, and vegetative growth.
 7. Contractor shall provide a minimum of two (2) four-man hand crews with supervision, transportation, and tools. If more than two hand crews may be necessary to complete work Contractor shall have sufficient additional resources available to respond to additional work requirements as required by County and District.
 8. Hauling equipment: suitable flatbed hydraulic dump trucks with high sides for hauling are to be provided throughout handwork operations. All equipment shall be kept in good repair and conform to all State and local laws. All trucks shall be equipped with rear flashing lights and traffic control cones.
 9. Portable Toilet: Contractor shall furnish a portable toilet for Contractor's personnel. Portable toilet must have a containment tray, staked down, be clean in appearance, and area surrounding shall be clean and free of debris. Portable toilet will be placed in an obscure location and will not impede any residents. Toilet will be removed by the end of the last working day. Should the toilet not be removed on the last working day, Contractor shall be subject to a \$300.00 per day late penalty fee until toilet is removed. Late penalty fee will be deducted and withheld from payments due or become due to Contractor.
- D. Travel Time: All costs for travel time between parcels and/or to and from refuse disposal sites shall be considered as included in various items of work involved and no additional compensation shall be allowed therefore.

- E. Disposal Fees: All costs for refuse disposal shall be considered as included in various items of work involved and no additional compensation will be allowed therefore. Contractor shall be responsible for all dump/disposal fees in all unit prices quoted.
- F. Working Hours: Contractor shall conduct all operations between 7 a.m. and 4 p.m. during the normal work week, Monday through Friday on all local streets, and parks. All operations on arterial or collector streets will be performed between 9 a.m. and 3 p.m. If Contractor desires to work hours or days other than as provided, it may file a written request subject to approval stating intended operations, hours and dates, with a reason for schedule change.
- G. Sound Control: Contractor shall comply with all County and local sound control and noise level rules, regulations, and ordinance, which apply to any work performed pursuant to the Contract, and will make every effort to control any undue noise resulting from its operation.
- H. Dust Control: Contractor shall perform his operations in such a manner as to limit dust. Contractor will not create dust in such a quantity as to violate the South Coast Air Quality Management District (AQMD) regulations.
- I. Debris Removal: All trash and debris will be removed from work area by the end of each working day.
 - 1. At other times during the progress of work, when required, Contractor shall remove all surplus materials, rubbish, and debris resulting from the work.
 - 2. Work area will be left in a neat, clean and acceptable condition as approved by County's Project Manager.
 - 3. No stockpile of debris will be allowed at the site.
 - 4. Contractor shall pick up and dispose of materials at a site outside of County and District right-of-way approved for disposal of such materials.
 - 5. Any debris dropped on the public street during entrance or exit of the site will be removed immediately by Contractor.
- J. Water: Contractor shall furnish all water required for performance of this work, will make all arrangements for obtaining all water with the governing water district, and will comply with all requirements set forth by the governing water district.
- K. Utilities: Underground main distribution conduits such as water, gas, sewer, electrical power, telephone, or cable television may not be affected by the work indicated in the work packages since only surface excavation is required. Contractor shall assume that every property parcel will be served by a service connection for each type of utility and will protect all such service connection. Contractor shall contact UNDERGROUND SERVICE ALERT (USA) at (800)422-4133 for all subsurface excavation and will contact utility companies to mark locations if necessary.
- L. Parking Control: Parked cars may interfere with the work to be performed. Therefore Contractor shall post, maintain, and subsequently remove, temporary "Tow Away No Parking" signs along the streets work is to be performed with no less than 24 hours prior to the start of said work. Contractor shall furnish signs per sample provided by County and District. Contractor shall fill in day and date for scheduled work. Contractor shall be responsible for replacing any signs which are damaged or removed in order to maintain notice to the public. Contractor shall be responsible for the removal of all temporary "Tow Away No Parking" signs upon completion of the work in posted area.

- M. Traffic Control: Contractor shall conduct its operations in a manner which will minimize traffic congestion during A. M. and P. M. peak-hour traffic. This may require beginning work after the A. M. peak-hour traffic and ending work before the P. M. peak-hour traffic.
1. Contractor shall maintain access to schools and commercial areas at all times during project operation.
 2. Spillage resulting from hauling operations along or across any public traveled way will be removed immediately by Contractor, at his expense.
 3. When entering or leaving roadways carrying public traffic, Contractor's equipment, whether empty or loaded, will in all cases yield to public traffic.
 4. Special emphasis will be placed on the use of construction zone ahead (C18R) signs at the beginning, end and all access and/or intersecting streets with roads under construction. In addition to construction zone signs, rough road signs (W33) will be used on all roads with a posted or marked bicycle trail.
 5. Contractor shall provide and maintain all signs, barricades, pedestals, flashers, delineators and other necessary facilities for the protection of the motoring public within the limits of the construction area and all its approaches, including advanced signing and barricades. Contractor shall also post proper signs to notify public regarding condition of roadway, all in accordance with provisions of the Vehicle Code and "Manual of Traffic Controls", as published by the State of California, Department of Transportation, most current edition.
 6. Flashing arrow signs, of the appropriate type per the "Manual of Traffic of Traffic Controls", latest edition, will be provided for all lane closures on all arterial highways and collector streets.
 7. Portable delineators, either conical (traffic cone) or tubular shaped plastic devices, with a minimum height of 28 inches will be used for delineation of the travel way.
 8. If the traffic cones or portable delineators are damaged, displaced or unacceptable for any reason by County's Project Manager or are not in an upright position from any cause, said cones or portable delineators will immediately be replaced or restored to their original location, in an upright position, by Contractor.
 9. Contractor will maintain 11' lanes of traffic in each direction at all times.
 10. Contractor shall furnish such flagmen as are necessary to give adequate warning to traffic or to the public of any dangerous conditions to be encountered. Flagmen, while on duty and assigned to give warning to the public that the street is under construction and of any dangerous conditions to be encountered as a result thereof, will perform their duties and will be provided with the necessary equipment in accordance with the current "Instructions to Flaggers", by the State of California, Department of Transportation. The equipment will be furnished and kept clean and in good repair by Contractor, at its expense.
 11. Should Contractor appear to be neglectful or negligent in furnishing warning and protective measures as provided, County's Project Manager may direct attention to the existence of a hazard and necessary warning and protective measures will be furnished and installed by Contractor, at its expense. Should County's Project Manager point out the inadequacy of warning and protective measures, such action on the part of County's

Project Manager will not relieve Contractor from responsibility for public safety or abrogate its obligation to furnish and pay for these devices.

12. Contractor shall maintain safe working conditions at each work location.
 13. At the end of each day, all equipment and other obstructions shall be removed from the roadway.
- N. Protection and Restoration of Existing Areas: Contractor shall protect all furnishings and improvements from damage by its operations. All damage will be repaired or replaced, at the option of County, at Contractor's expense within three (3) days after notification of such damage by County's Project Manager. Repairs and/or replacements will be equal to original in all aspects.
- O. Safety: Contractor agrees to perform all work outlined in this Contract in such a manner as to meet all accepted standards for safe practices during operations and to maintain safe conditions or premises and ways at all times, including safely stored equipment, machines and materials. This includes compliance with local County, State or other legal intents and terms of the applicable Occupational Safety and Health Administration (OSHA) and CAL/OSHA Safety orders at all times so as to protect all persons, including Contractor's employees and Agency against injury or damage to their property.
- P. Best Management Practices:
1. Contractor shall conduct operations under this Contract so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems ("Stormwater Drainage System"), and to ensure that pollutants do not directly impact "Receiving Waters" (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).
 2. The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System (NPDES) permits ("Stormwater Permits") to the County of Orange, and to the Orange County Flood Control District (District) and cities within Orange County, as co-permittees (hereinafter collectively referred to as "County Parties") which regulate the discharge of urban runoff from areas within the County of Orange, including the Premises under this Contract. The County Parties have enacted water quality ordinances that prohibit conditions and activities that may result in polluted runoff being discharged into the Stormwater Drainage System.
 3. To assure compliance with the Stormwater Permits and water quality ordinances, the County Parties have developed a Drainage Area Management Plan (DAMP) which includes a Local Implementation Plan (LIP) for each jurisdiction that contains Best Management Practices (BMPs) that parties using properties within Orange County must adhere to. As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. These BMPs are found within the County's LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as "BMP Fact Sheets") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.

BMP Fact Sheets shall include but shall not be limited to the following which may be viewed and downloaded at:

<http://ocwatersheds.com/documents/bmp/industrialcommercialbusinessesactivities>

- | | | | | |
|---------|---------|---------|---------|---------|
| a) IC7 | b) IC10 | c) IC17 | d) IC18 | e) IC19 |
| f) IC20 | g) IC21 | h) IC24 | | |

4. These BMP Fact Sheets may be modified during the term of the Contract; and County's Project Manager shall provide Contractor with any such modified BMP Fact Sheets.
 5. Contractor shall, throughout the term of this Contract, comply with the BMP Fact Sheets as they exist now or are modified, and shall comply with all other requirements of the Stormwater Permits, as they exist at the time this Contract commences or as the Stormwater Permits may be modified. Contractor agrees to maintain current copies of the BMP Fact Sheets on the job sites throughout the term of this Contract. The BMPs applicable to uses authorized under this Contract must be performed as described within all applicable BMP Fact Sheets.
 6. Contractor may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP Fact Sheets. Any such alternative BMPs shall be submitted to the County's Project Manager for review and approval prior to implementation.
 - a) County's Project Manager may visit the job sites and/or review Contractor's records at any time to assure that activities conducted on the job sites comply with the requirements of this section. Contractor may be required to implement a self-evaluation program to demonstrate compliance with the requirements of this section.
- Q. Scheduling: County staff reviews, prioritizes and "packages" weed abatement, fuel modification, mowing, discing, drainage system maintenance and debris removal requests|
1. Contractor shall furnish a work plan indicating the day/date for work on each location in the work package.
 2. Contractor shall start work within five (5) working days upon written or verbal notification from County's Project Manager.
 3. Completion Date: all work shall be completed within the allotted time as determined by County's Project Manager.
- R. Identification and Scheduling of Work: Work requests for Contract work are reviewed, prioritized and packaged by County staff.
1. Upon receipt of a package, County shall forward the work requested to Contractor by mail, fax or email.
 2. A portion of this contract is considered seasonal work and is normally accomplished from April to June of each Contract year, but may be utilized at any time during the Contract year.
 3. Contractor shall begin the requested work within ten (5) days upon receipt of requested work unless otherwise approved by County's Project Manager.
 4. Contractor shall furnish a work plan indicating day/date for work on each location in the work package.

- S. Notification of Work: Except for next day emergency work Contractor shall notify County's Project Manager at least twenty-four (24) hours in advance of commencement of work. All work shall be diligently prosecuted to completion to satisfaction of County's Project Manager. Contractor must be capable of providing one or more craftsmen as needed to complete project in a diligent and timely manner.
- T. Acceptance of Work: Contractor shall provide County's Project Manager with a list of project locations requiring final inspection within two working days of completion.
 - 1. The list may be verbal or emailed to County's Project Manager. County and District will notify Contractor of any deficiencies within three (3) business days.
 - 2. Should corrections of work be necessary, the corrections shall be completed within seven (7) calendar days of receipt of the notification from County and District.
 - 3. All work at a location must be satisfactorily completed and approved by County and District prior to final approval for payment of that location.
- U. Deficient Performance: Liquidated damages shall be applied to deficient performance and/or late completion. Parties hereto agree that it is impracticable or extremely difficult to determine actual damages County and District shall sustain by reason of delay in performance. Therefore, Two Hundred Fifty Dollars (\$250.00) will be deducted and withheld from payments due or to become due to Contractor for each calendar day work is incomplete beyond the scheduled day, unless Contractor receives prior authorization for an extension of time by County's Project Manager.

V. SPECIFICATIONS:

- A. Weed Abatement Removal of all weeds, grasses and rubbish: Cut and remove all vegetation, regardless of condition, which is combustible brush in nature, such as weeds, brush, shrubs and grasses per County's Project Manager's direction. Vegetation shall be cut to ground level unless otherwise directed by County's Project Manager. Removal of all rubbish and/or litter.
 - 1. Furnish all labor tools, equipment and materials necessary for doing the work.
 - 2. Cutting and removing all vegetation to ground level.
 - 3. Removing all trash and debris.
 - 4. Leaving work site and surrounding area in a clean manner.
- B. Weed Abatement Non-Removal of weeds and grasses: Cut weeds and leave clippings. Vegetation shall be cut to ground level unless otherwise directed by County's Project Manager. Removal of all rubbish and/or litter.
 - 1. Furnish all labor tools, equipment and materials necessary for doing the work.
 - 2. Cutting all vegetation to ground level.
 - 3. Leave clippings.
 - 4. Removing all trash and rubbish.

5. Leaving work site and surrounding area in a clean manner.
- C. Fuel Modification: Reduction (thinning and removal) of natural vegetation, such as chaparral, trees, litter, scrub oak or similar non cultivated vegetation growth by 30 to 50 percent as required by the County Project Manager. Vegetation roots shall be removed below ground and grasses at ground level. Removal of all rubbish and/or litter.
1. Furnishing all labor, tools equipment and materials necessary for doing work.
 2. Reducing vegetation by 30 to 50 percent.
 3. Removing vegetation roots below ground level.
 4. Removing all grasses to ground level.
 5. Removing all trash and debris.
 6. Leaving work site and surrounding area in a clean manner.
 7. Full compensation for conforming to the requirements of Fuel Modification shall be considered as included in Contract unit price bid per square foot in accordance with these specifications and no additional compensation will be allowed therefore.
- D. Mowing: Contractor's equipment shall be of a commercial variety with a minimum cutting width of 4 feet in a single pass. It shall leave a finished product of all vegetation not exceeding 2" in height and 2" in length on the entire parcel. Mowing of the parcel will also include removal of any trash or debris which may be on site.
1. Contractor shall mow those parcels indicated, to include flat and slope areas including assigned parkways between curb and sidewalk. Mowing of slope areas shall be accomplished by mechanical equipment such as an arm mower attached to a motorized tractor.
 2. Mowers shall be equipped with safety guards to prevent or reduce throwing of rocks or other material that could result in injury or damage to persons or private property. Equipment will be approved by County's Project Manager prior to starting any work.
 3. Furnishing all labor, tools, equipment and materials necessary for doing work.
 4. Mowing all vegetation to a maximum height of 2" and 2" in length.
 5. Removing any trash or debris.
 6. Performing any hand work as required.
 7. Leaving work site and surrounding area in a clean manner.
- E. Discing: Discing shall be performed in such a manner as to completely eliminate all standing weeds. Discing shall be accomplished by using a double throw disc at a depth of 6 inches to place all weeds under soil surface. Where the nature of the soil is such that it is not receptive to the cutting edge of the discs, the area may be cross disced to reduce the magnitude of any exposed combustibles only as directed by County's Project Manager.

- F. Debris Removal: Litter, trash, and debris stockpiles not directly associated with vegetation control activities. Removal of noxious or combustible debris stockpiles to complement other parcel management practices. Final disposal to be at a legal dump site.
- G. Routine Trash/Litter/Debris Removal: On a routine basis of a maximum weekly or minimum monthly schedule or as needed, contractor shall perform litter, trash and debris removal along roadside shoulders, slopes, ditches, and parcels or as directed by County of Orange Project Manager.
1. Contractor shall provide routine Trash/Liter/Debris removal on approximately 150,000 square feet area of roadside shoulders, slopes, ditches and Parcels or as directed by County of Orange Project Manager.
 2. Furnishing all labor, tools, equipment and materials necessary for doing work.
 3. Require minimum of two (2) man crew and minimum 1 ton pick-up truck
 4. Final disposal of Trash/Liter/Debris at a legal dump site.
- H. Drainage System Maintenance: Contractor shall remove vegetation, silt, debris, and/or obstructions, from County and/or District drainage systems such as concrete v-ditches, terrace and down drains upon direction of OCPW/OM Project Manager. The removal of vegetation and/or debris will be done in a manner which preserves the functional performance of all County and/or District drainage systems.
- I. Drainage System Erosion Backfilling and Compaction: Contractor shall repair erosion damage adjacent to County and/or District drainage system or as directed by County Project Manager. Work shall consist of but not limited to Contractor providing suitable fill material approved by County Project Manager to project area to fill and compact erosion as directed by County Project Manager.
- J. Straw Waddle or Sandbag Installation: Contractor shall install straw waddles or sandbags along areas of right-of-way where potential flooding of adjacent properties may occur at OCPW/OM Project Managers direction.
- K. Herbicide Application Contact w/ Pre-emergent: Herbicide application will be on an as needed basis upon request by County Project Manager and shall be completed by a Certified Pest Control Applicator. All personnel shall be licensed, by the State of California and all work will have written Pest Control Recommendations by a Pest Control Advisor in accordance with the California Department of Pesticide Regulations. The Orange County Project Manager overseeing this contract will confer with the Pest Control Advisor to determine the best methods on any individual locations. This work may be supplemental to herbicide control that may be performed by Orange County Public Works (OCPW). The County Project Manager will identify areas that require Herbicide Control. County Project Manager shall be notified at least one week in advance of the time set for application of any chemicals so that a County and/or District representative may witness the application. Contractor shall provide all personnel, equipment, tools, materials, qualified supervision and other items and services necessary to perform herbicide applications. Contractor will furnish all water required for performance of this work, will make all arrangements for obtaining all

water with the governing water district, and will comply with all requirements set forth by the governing water district. No additional compensation will be allowed. Herbicide treatment cost shall include adjuvants/surfactants that are needed to perform the work safely and to protect the site from run off and drift.

- L. Herbicide Application Contact: Herbicide application will be on an as needed basis upon request by County Project Manager and includes all items identified within Section K of this scope of work.

**ATTACHMENT B
PAYMENT/COMPENSATION**

- I. **Compensation:** This is a fixed unit cost/hourly rate Contract between the County and District and Contractor for Fuel Modification, Mowing/Discing, Fire Hazard and Weed Abatement, Drainage System Maintenance, and Debris Removal 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 and District shall have no obligation to pay any sum in excess of the fixed unit costs/hourly rates 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.**

- II. **Fees and Charges:** County and District will pay the following fees in accordance with the provisions of this Contract. Payment shall be as follows:

- A. Pricing shall be per Square Foot (S.F.), per Acre, per Ton, per Linear Foot (L.F), and per Hour, as indicated for each line item:

Line Item	Description	Unit	Unit Cost
1.	Weed Abatement Removal of all weeds, grasses and rubbish	S.F.	\$0.0625
2.	Weed Abatement Non-Removal of weeds and grasses	S.F.	\$0.0625
3.	Fuel Modification	S.F.	\$0.22
4.	Mowing Vegetation	ACRE	\$300.00
5.	Discing	ACRE	\$440.00
6.	Debris Removal	TONS	\$285.00
7.	Drainage System Maintenance	L.F.	\$1.66
8.	Drainage System Erosion Backfilling and Compaction	S.F.	\$14.47
9.	Straw Waddle Installation	L.F.	\$3.00
10.	Sand Bag Installation	EACH	\$5.50
11.	Herbicide Application Contact w/ Pre-emergent)	S.F.	\$0.015

12.	Herbicide Application Contact	S.F.	\$0.0125
13.	Routine Trash/Litter/Debris Removal 150,000 square feet area twice a month.	HOURLY	\$120.00

B. TOTAL CONTRACT AMOUNT SHALL NOT EXCEED..... \$1,500,000

AMENDMENT#1

From July 1, 2021 to June 30, 2022, Contract Amount Not to Exceed.....\$700,000

From July 1, 2021, Total Contract Amount Not to Exceed... ..\$2,200,000

III. **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 120-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.

IV. **Firm Discount and Pricing Structure:** Contractor guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to the County during the term of this Contract not otherwise specified and provided for within this Contract.

V. **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.

VI. **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.

VII. **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.

VIII. **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 1 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/Operations & Maintenance
Attn: Kris Ruiz
2301 N Glassell Street, 2nd Floor
Orange, CA 92865
Email: Kris.Ruiz@ocpw.ocgov.com

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.