

**CONTRACT MA-080-10010678**  
**BETWEEN**  
**THE COUNTY OF ORANGE**  
**AND**  
**NAUTILUS ENVIRONMENTAL, LLC**  
**FOR**  
**WATER TOXICITY TESTING SERVICES**

THIS Contract MA-080-10010678 for Water Toxicity Testing Services, (hereinafter referred to as “Contract”) is made and entered into as of the date fully executed by and between the County of Orange, OC Public Works, a political subdivision of the State of California, (hereinafter referred to as “County”) and Nautilus Environmental, LLC, with a place of business at 5550 Morehouse Drive, San Diego, CA 92121, (hereinafter referred to as “Contractor”), which are sometimes individually referred to as (“Party”), or collectively referred to as (“Parties”).

**RECITALS**

WHEREAS, Contractor and County are entering into this Contract for Water Toxicity Testing Services under a firm fixed price Contract;

WHEREAS, the County solicited the scope of products and services as set forth herein, and Contractor has represented that it is qualified to provide scope of products and services to the County; and,

WHEREAS, Contractor agrees to provide products and services as more specifically described in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor’s Pricing, attached hereto as Attachment B and incorporated herein;

**ARTICLES**

NOW, THEREFORE, the Parties mutually agree as follows:

1. **Scope of Services:** This Contract, including Attachments specify the contractual terms and conditions by which the Contractor shall provide to the County Water Toxicity Testing Services under a firm fixed price Contract, as set forth herein.
2. **Contract Term:** ~~This Contract shall commence upon execution of all necessary signatures and shall continue for one (1) year from that date unless otherwise terminated as provided herein. This Contract may be renewed upon expiration of the initial term, for four (4) additional one-year periods, upon mutual agreement of both Parties. The County is not obligated to give a reason or notice if it elects not to renew. Renewal amendments may require approval of the County Board of Supervisors.~~

**AMENDMENT RENEWAL (2<sup>ND</sup> YEAR)**

This Contract shall commence upon execution of all necessary signatures and shall continue for one (1) year from that date unless otherwise terminated as provided herein. This Contract may be renewed upon expiration of the initial term, for ~~four (4)~~ three (3) additional one-year periods, upon mutual agreement of both Parties. The County is not obligated to give a reason or notice if it elects not to renew. Renewal amendments may require approval of the County Board of Supervisors.

**AMENDMENT #1**

This Contract shall commence upon execution of all necessary signatures and shall continue ~~for one (1) year from that date~~ through February 9, 2012, unless otherwise terminated as provided herein. This Contract may be renewed upon expiration of the initial term, for three (3) additional one-year periods, upon mutual agreement of both Parties. The County is not obligated to give a reason or notice if it elects not to renew. Renewal amendments may require approval of the County Board of Supervisors.

**AMENDMENT #2**

This Contract shall commence upon execution of all necessary signatures and shall continue through ~~February 9, 2012~~ March 9, 2012, unless otherwise terminated as provided herein. This Contract may be renewed upon expiration of the initial term, for three (3) additional one-year periods, upon mutual agreement of both Parties. The County is not obligated to give a reason or notice if it elects not to renew. Renewal amendments may require approval of the County Board of Supervisors.

**AMENDMENT RENEWAL (3<sup>ND</sup> YEAR)**

~~This Contract shall commence upon execution of all necessary signatures and shall continue through March 9, 2012, unless otherwise terminated as provided herein. This Contract may be renewed upon expiration of the initial term, for three (3) additional one year periods, upon mutual agreement of both Parties. The County is not obligated to give a reason or notice if it elects not to renew. Renewal amendments may require approval of the County Board of Supervisors.~~ The initial term of Contract was for one year, from November 10, 2009 through November 9, 2010. The Contract was then renewed for one additional year and four months, from November 10, 2010 through March 9, 2012. The Contract shall now be renewed for one (1) additional year, March 10, 2012, in the amount of \$700,000.00. When the renewal period is completed, Contract may then be renewed for one (1) additional year, upon mutual agreement of the Parties and approval by the County Board of Supervisors.

**AMENDMENT RENEWAL (4<sup>TH</sup> YEAR)**

~~The initial term of Contract was for one year, from November 10, 2009 through November 9, 2010. The Contract was then renewed for one additional year and four months, from November 10, 2010 through March 9, 2012. The Contract shall now be renewed for one (1) additional year, March 10, 2012, in the amount of \$700,000.00. When the renewal period is completed, Contract may then be renewed for one (1) additional year, upon mutual agreement of the Parties and approval by the County Board of Supervisors.~~ The initial term of Contract was for one year, from November 10, 2009 through November 9, 2010. The Contract was then renewed for one additional year and four months, from November 10, 2010 through March 9, 2012. The Contract was then renewed for one additional year, from March 10, 2012 through March 9, 2013. The Contract shall now be renewed, effective March 10, 2013 through November 9, 2014, in the amount of \$1,000,000.

3. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
4. **Usage:** No guarantee is given by the County to the contractor regarding usage of this contract. Usage figures, if provided, are approximate, based upon the last usage. The contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the contract, regardless of quantity requested.

5. **Precedence:** The Contract documents consist of this Contract 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 attachments.
6. **Contractor's Project Manager and Key Personnel:** Contractor shall appoint a Project Manager, as specified in Article 25, to act as liaison between the County and the Contractor during the term of this Contract and 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 and Key Personnel shall be assigned to this Contract for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. Contractor's Key Personnel are those individuals who report directly to the Contractor's Project Manager.

7. **County's Project Manager:** The County shall appoint a Project Manager, as specified in Article 25, to act as liaison between the County and the Contractor during the term of this Contract. The County's Project Manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager and Key Personnel under this Contract. The County's Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within 14 calendar days after written notice by the County's Project Manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor Project Manager or Key Personnel be removed from performing services under this Contract. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager and Personnel. Said approval shall not be unreasonably withheld.

8. **Contractor's Personnel:** 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 anticipated under this Contract. All Contractor's personnel shall be required to wear uniforms, badges and/or other means of identification which are to be issued and provided by the Contractor and must be worn at all times while working on County property. The County Project Manager must be notified in writing, within seven 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 days prior to any changes in this procedure.
9. **Conflict of Interest:** 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. 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 relatives; sub-tier Consultants; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.

10. **Expenditure Limit:** The Contractor shall notify the County Project Manager in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless an amendment to cover those costs has been issued and been approved by the Orange County Board of Supervisors..
11. **Existing Site Conditions:** Information respecting the site of the work given in drawings or specifications has been obtained by County's representatives and is believed to be reasonably correct, but the County does not warrant either the completeness or accuracy of such information, and it is the responsibility of the Contractor to verify all such information.
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. **Contractor's Records:** The contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three years after final payment is received from the County. Storage of records in another county will require written approval from the County DPA.
14. **Audits/Inspections:** Contractor agrees to permit the County, which may include the Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County), access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

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

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

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's Project Manager.

15. **Child Support Enforcement Requirements:** Contractor is required to comply with the child support enforcement requirements of the County. 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. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.
16. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by the County unless otherwise agreed to by both Parties.
  17. **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.
  18. **Reports/Meetings:** In addition to the requirements set forth in the Scope of Work, Attachment A, upon County's request, the Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's Project Manager and the Contractor's Project Manager will meet on reasonable notice to discuss the Contractor's performance and progress under this Contract. If requested, the Contractor's Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
  19. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute 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. Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
    - b. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
    - c. Terminate the Contract immediately without penalty.
  20. **Contract Disputes:** 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, such matter shall be brought to the attention of the County Deputy Purchasing Agent (DPA), as specified in Article 25 by way of the following process:
    - a. The Contractor shall submit to the County DPA 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.

- b. 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.
  - c. 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 DPA. 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. The County's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences action in a court of competent jurisdiction to contest such decision within 90 days following the date of the County's final decision or one year following the accrual of the cause of action, whichever is later.
21. **Orderly Termination:** 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 execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.
22. **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 personnel 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 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.
23. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become, and remain, the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.
24. **Title to Data:** 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.

25. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the County's Project Manager and Contractor's Project Manager 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 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.

County: OC Public Works,  
Watershed Management Program  
Ted VonBitner, Project Manager  
300 N. Flower St.  
Santa Ana, CA 92703

Phone: 714.834.0680  
Email: Theodore.VonBitner@ocpw.ocgov.com

cc: OC Public Works/Purchasing  
Attn: Sandy Romero, DPA  
300 N. Flower St. 8<sup>th</sup> Floor, Suite 838  
Santa Ana, CA 92703  
Phone: 714.834.3280  
Sandy.Romero@ocpw.ocgov.com

Contractor: Nautilus Environmental  
Attn: John Rudolph, Project Manager  
5550 Morehouse Drive  
San Diego, CA 92121

Phone: 858.587.7010  
Email: john@nautilusenvironmental.com

26. **Health and Safety Provisions:** Caution shall be exercised at all times for the protection of persons, including employees, and property. The safety provisions of applicable laws and building and construction codes shall be observed. Work, materials, and equipment used, shall comply with the Occupational Safety & Health Administration (OSHA) requirements, and federal and state safety orders.

The Contractor shall have (at the work site) copies of, or suitable extracts of, "General Industry Safety Orders" issued by the California State Division of Industrial Safety. The Contractor shall comply with the provisions of these and all other applicable laws, ordinances, and regulations.

27. **Wage Rates:** Contractor shall post a copy of wage rates at the job site and shall pay the adopted prevailing wage as a minimum. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the Board of Supervisors has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime

- work in this locality for each craft, classification, or type of workman needed to execute this Contract from the Director of the Department of Industrial Relations. These rates are on file with the Clerk of the Board of Supervisors. The Contractor shall comply with the provisions of Part 7, Chapter 1 of the California Labor Code including Section 1774, 1775, 1776 and 1813 of the Labor Code. Contractor shall keep accurate payroll records showing name, address, social security number, worker classification, straight time and overtime hours worked each day and week, and actual per diem wages. Payroll records shall be certified and available for inspection and furnished to the County with each invoice. [LC 1776]
28. **Fiscal Appropriations, Subject to:** This contract is subject to and contingent upon applicable budgetary appropriations being approved by the County of Orange Board of Supervisors for each fiscal year during the term of this contract. If such appropriations are not approved, the contract will be terminated without penalty to the County.
29. **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 trial to another County.
30. **Entire Contract:** This Contract, including Attachments A, B and C which are attached hereto and incorporated herein by this reference, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing County's Purchasing Agent or his designee.
31. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
32. **Taxes:** All prices shall include any applicable sales tax.
33. **Deliver:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or description, or services that do not conform to the prescribed Scope of Work. Acceptance of any part of the order for goods shall not bind County to accept future shipments, nor deprive it of the right to return goods already accepted, at Contractor's expense. Overshipments and undershipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods, or services, have actually been received and accepted in writing by County.
34. **Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after services have been provided.



**AMENDMENT RENEWAL (3<sup>ND</sup> YEAR)**

35. **Warranty:** Contractor expressly warrants that the goods/services covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in article "~~44-62~~" below, and as more fully described in article "~~44-62~~", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
36. **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 "~~44-62~~" below, it shall indemnify, defend and hold County and County Indemnities 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, but not limited to, attorney's fees, costs and expenses.
37. **Assignment or Subcontracting:** 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 or subcontracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
38. **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 all the penalties imposed for a violation of Anti-Discrimination Law or regulation, including but not limited to, Section 1720 et seq. of the California Labor Code.
39. **Termination :** In addition to any other remedies or rights it may have by law and those set forth in this Contract, County has the right to terminate this Contract without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of Contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations.
40. **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.

41. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.
42. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither the Contractor, its employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.
43. **Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.

#### AMENDMENT RENEWAL (3<sup>ND</sup> YEAR)

~~44. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.~~

~~**Insurance Provisions:** Prior to the provisions of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.~~

~~All insurance policies required by this Contract shall declare any deductible or self-insured retention (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management. Contractor shall be responsible for reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance.~~

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

~~**Qualified Insurer:** The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier).~~

~~Minimum insurance company ratings as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com** shall be A (Secure Best's Rating) and VIII (Financial Size Category).~~

~~If the carrier is a non-admitted carrier in the state of California, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings.~~

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

<del>Coverage</del>	<del>Minimum Limits</del>
<del>Commercial General Liability with broad form property damage and contractual liability</del>	<del>\$1,000,000 combined single limit per occurrence \$2,000,000 aggregate</del>
<del>Automobile Liability including coverage for owned, non-owned and hired vehicles</del>	<del>\$1,000,000 combined single limit per occurrence</del>
<del>Workers' Compensation</del>	<del>Statutory</del>
<del>Employers' Liability Insurance</del>	<del>\$1,000,000 per occurrence</del>
<del>Professional Liability Insurance</del>	<del>\$1,000,000 per claims made or per occurrence</del>

~~All liability insurance required by this Contract shall be at least \$1,000,000 combined single limit per occurrence. The minimum aggregate limit for the Commercial General Liability policy shall be \$2,000,000.~~

~~The County of Orange shall be added as an additional insured on all insurance policies required by this Contract with respect to work done by the Contractor under the terms of this Contract (except Worker's Compensation/Employers' Liability). An additional insured endorsement evidencing that the County of Orange is an additional insured shall accompany the Certificate of Insurance.~~

~~All insurance policies required by this Contract shall be primary insurance, and any insurance maintained by the County of Orange shall be excess and non-contributing with insurance provided by these policies. An endorsement evidencing that the Contractor's insurance is primary and non-contributing shall specifically accompany the Certificate of Insurance for the Commercial General Liability.~~

~~All insurance policies required by this Contract shall give the County of Orange 30 days notice in the event of cancellation. This shall be evidenced by an endorsement separate from the Certificate of Insurance. In addition, the cancellation clause must include language as follows, which edits the pre-printed ACORD certificate:~~

~~SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.~~

~~All insurance policies required by this Contract shall waive all rights to subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed~~

~~officials, officers, agents and employees when acting in the scope of their appointment or employment.~~

~~The Commercial General Liability policy shall contain a severability of interests clause.~~

~~The Contractor is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or be self-insured in accordance with the provisions of that code. The Contractor will comply with such provisions and shall furnish the County satisfactory evidence that the Contractor has secured, for the period of this Contract, statutory Workers' Compensation insurance and Employers' Liability insurance with minimum limits of \$1,000,000 per occurrence.~~

~~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 days of notification by OCPW/Purchasing, or designee, award may be made to the next qualified vendor.~~

~~County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.~~

~~County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty 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.~~

### **Insurance Provisions**

Prior to the provision of services under this Contract, the contractor agrees to purchase all required insurance at contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for contractor.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management.

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

**Qualified Insurer**

Minimum insurance company ratings as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com** shall be A- (Secure A.M. Best's Rating) and VIII (Financial Size Category).

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier). If the carrier is a non-admitted carrier in the state of California and does not meet or exceed an A.M. Best rating of A-/VIII, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings. If the non-admitted carrier meets or exceeds the minimum A.M. Best rating of A-/VIII, the agency can accept the insurance.

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

<b>Coverage</b>	<b>Minimum Limits</b>
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
Professional Liability Insurance	\$1,000,000 per claims made or 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 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that the contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

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

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

All insurance policies required by this Contract shall give the County of Orange 30 days notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

If contractor's Professional Liability policy is a "claims made" policy, contractor shall agree to maintain professional liability coverage for two years following completion of 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:

County of Orange, OC Public Works  
ATTN: Sandy Romero  
300 N. Flower, Suite 838  
Santa Ana, CA 92703

If the contractor fails to provide the insurance certificates and endorsements within seven days of notification by OC Public Works Procurement Services, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty 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.

### **AMENDMENT RENEWAL (3<sup>ND</sup> YEAR)**

45. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of article "~~44-62~~" above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.

46. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
47. **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, 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 County.
48. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
49. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

#### **AMENDMENT RENEWAL (3<sup>ND</sup> YEAR)**

50. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of article "~~44-62~~" above, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
51. **Freight (F.O.B. Destination):** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
52. **Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Scope of Work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
53. **Waiver of Jury Trial:** Each Party acknowledges that it is aware of and has had the opportunity to seek advise of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and /or any other claim of injury or damage.
54. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.

55. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
56. **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.
57. **Calendar Days:** Any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
58. **Attorneys Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney’s fees, costs and expenses.
59. **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 has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this 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.
60. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
61. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

#### **AMENDMENT RENEWAL (3<sup>ND</sup> YEAR)**

62. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County’s Board of Supervisors acts as the governing Board (“County Indemnitees”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising



from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates shown below their respective signatures below.

\*\*\*\*\*

**NAUTILUS ENVIRONMENTAL, LLC\***

By \_\_\_\_\_

By \_\_\_\_\_

Print  
Name \_\_\_\_\_

Print  
Name \_\_\_\_\_

Title \_\_\_\_\_  
Corporate Officer

Title \_\_\_\_\_  
Corporate Officer

Date \_\_\_\_\_

Date \_\_\_\_\_

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

By \_\_\_\_\_

Print  
Name Sandy Romero

Title Procurement Contract Specialist

Date \_\_\_\_\_

**APPROVED AS TO FORM:**  
**County Counsel**

By \_\_\_\_\_  
Deputy

Date \_\_\_\_\_

\* If the contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signator to bind the corporation.

**ATTACHMENT A  
SCOPE OF WORK  
WATER TOXICITY TESTING SERVICES**

**I. BACKGROUND**

Toxicity evaluations of ecological conditions is one of several key environmental monitoring efforts the County manages for protecting aquatic resources. In response to the National Pollutant Discharge Elimination System (NPDES) Stormwater Permits R9-2002-0001 and R8-2009-0030 requirements and other special directives, the County conducts toxicity sampling in freshwater, estuarine, and marine environments of Orange County to evaluate seasonal and long term impacts of urban stormwater and runoff on inland and coastal waterways. The monitoring program utilizes numerous bioassay test species as indicators of water and benthic sediment quality to develop a comprehensive assessment of the status and trends of the County's aquatic resources. Information for the overall management effort is collected through collaborative regional monitoring programs such as;

- The Stormwater Monitoring Coalition (SMC), a group of regulatory and regulated agencies dealing with issues related to municipal stormwater monitoring in Southern California.
- The 2008 Southern California Bight Regional Marine Monitoring Program (Bight '08).

Where the results of the toxicity analyses will have implications for environmental management on a larger stakeholder scale. In addition, the County conducts targeted assessments within watershed management areas designed to evaluate and protect critical environmental habitats.

**II. SCOPE OF SERVICES**

- A. Contractor shall provide Water Toxicity Testing Services to the County on an as needed basis.
- B. Contractor will be required to evaluate the toxicity of aqueous and sediment samples to test organisms including but not limited to *Strongylocentrotus purpuratus*, *Mysidopsis bahia*, *Ceriodaphnia dubia*, *Hyallolella azteca*, *Pimephales promelas*, *Selenastrum capricornutum*, *Mytilus galloprovincialis*, and *Eohaustorius estuarius*.
- C. During dry-weather conditions before and after the rainy season (usually in May and October), County will collect samples from freshwater environments. Toxicity testing will be conducted by the Contractor using freshwater test organisms *Ceriodaphnia dubia*, *Selenastrum capricornutum*, *Hyallolella azteca*, and *Pimephales promelas*. For selected samples acute toxicity will be measured using juvenile *Pimephales promelas*. The tests will be conducted on undiluted (100%) and 50% sample concentrations. Based on County's analyses of test results, subsequent samples may also be submitted for 5-dilution tests. Test methods for *Ceriodaphnia dubia* and *Selenastrum capricornutum* shall be consistent with the procedures described by the U.S. EPA in Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms. For *Pimephales promelas* test methods shall be consistent with the procedures described in Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, Fourth Edition. For *Hyallolella azteca*, the test method shall be a modified version of reference toxicant tests described by the U.S. EPA in Methods for Measuring the Toxicity and Bioaccumulation of Sediment-associated Contaminants with Freshwater Invertebrates, Second Edition. A thin layer of laboratory silica sand and Nitex screening shall be used in as the substrate for this 96-hr test.

- D. The stormwater runoff samples collected by County from freshwater environments will consist of discrete or composite samples. The toxicity evaluation will be conducted using a combination of three to four of the following tests:
1. 7-day Mysid (*Mysidopsis bahia*) survival and growth test
  2. Sea urchin (*Strongylocentrotus purpuratus*) fertilization test (20-minute exposure)
  3. 96 hr *Hyallela azteca* survival test.
  4. Freshwater cladocera (*Ceriodaphnia dubia*) survival and reproduction test,
  5. Fathead minnow (*Pimephales promelas*) survival test

Tests "1-3" use marine species representative of organisms likely to be exposed to stormwater discharge plumes. All three tests are recommended by the State of California Ocean Plan for assessing the toxicity of discharges to marine waters. Test methods for each species shall be consistent with the procedures described by the U.S. EPA in Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine and Estuarine Organisms. The testing of stormwater runoff samples will include multiple dilutions with a concentration series of 100%, 50%, 25%, 12.5%, and 6.25%. The salinity levels of samples for tests 1-3 shall be adjusted to fall within the recommended range for each species.

- E. Dry-weather samples from estuarine or marine environments will be collected by County throughout each year on a quarterly basis. These samples, as well as, stormwater runoff samples from estuarine and marine environments will be evaluated using the same marine organisms described above. The dry weather testing will be conducted on an undiluted and a 50% sample concentration, adjusted if necessary for salinity. The stormwater runoff testing will be conducted using multiple dilutions with a concentration series of 100%, 50%, 25%, 12.5%, and 6.25%.
- F. Sediment samples from estuarine and marine environments will be collected throughout the year on a quarterly basis and will be evaluated for toxicity using the 10-day amphipod survival test with the marine organism *Eohaustorius estuarius*. Test methods for this species shall be consistent with the procedures described by the U.S. EPA in Methods for Assessing the Toxicity of Sediment-associated Contaminants with Estuarine and Marine Amphipods.
- G. Sediment samples from freshwater environments will be collected throughout the year on a quarterly basis and will be evaluated for toxicity using the 10-day *Hyallela azteca* survival/growth test.
- H. A laboratory control sample containing a reference toxicant shall be tested concurrently with each batch of samples and for each test method. Tests not meeting the acceptability criteria specified by U.S. EPA for each method shall be repeated at the Contractor's expense.
- I. **Sample Submissions:** Contractor's primary purpose is to support the monitoring program for County's NPDES stormwater permit, the submission of a large percentage of aqueous samples to the Contractors laboratory will be contingent upon the episodic nature of storms in Southern California. The Santa Ana and San Diego Region NPDES stormwater permit require that the first flush of the first measurable rainfall event of each monitoring year (July 1- June 30) be monitored. Sediment samples, which are collected almost exclusively during dry-weather periods, will also be submitted to the Contractors laboratory.

Contractor must be able to accept between 2 and 8, aqueous and/or sediment samples during dry weather periods and up to a maximum of 17 aqueous samples during periods of stormwater

runoff. The average number of samples per submission is typically 4-8 for both types of matrices. Toxicity tests shall be initiated within 24 hours of sample receipt.

#### J. Additional Testing Services

1. An adaptive protocol will be used to initiate additional testing on each sample submitted. During the first hour of any test, if a 100% effect is seen in both the 100% and 50% sample concentrations, additional dilutions will be added to that test. For tests initially involving only 100% and 50% concentrations, three (3) additional dilutions (25%, 12.5%, and 6.25% sample concentrations) will be added. For five-dilution tests, two (2) additional dilutions (3.12% and 1.56% sample concentrations) will be added. Contractor will notify County Project Manager by e-mail as soon possible if testing on additional dilutions is performed.
2. Contractor shall also include 48 hour acute testing results in conjunction with all performed chronic bioassays with the exception of when the duration of the bioassay is less than 48 hours.
3. County may also request that testing include additional dilutions beyond the five-dilution analysis. These additional dilutions will expand the concentration series to 100%, 50%, 25%, 12.5%, 6.25%, 3.12% and 1.56%.
4. County may request that a Phase I Toxicity Identification Evaluation (TIE) be conducted on a water sample if the result of the initial toxicity test meets specific criteria defined by County. The Phase I TIE shall include the following treatments and corresponding blanks:
  - a. Baseline toxicity;
  - b. Particle removal by centrifugation;
  - c. Solid phase extraction of the centrifuged sample using C18 media;
  - d. Complexation of metals using EDTA addition to the raw sample;
  - e. Neutralization of oxidants/metals using sodium thiosulfate addition to the raw sample; and
  - f. Inhibition of Organophosphate (OP) pesticide activation using piperonyl butoxide (PBO) addition to the raw sample (crustacean toxicity tests only).

TIE procedures should be consistent with the guidelines published by the U.S. EPA for freshwater or marine species.

### III. GENERAL REQUIREMENTS

#### CONTRACTOR SHALL:

- A. Be a qualified toxicity testing laboratory, meeting requirements for certification by the California Dept. of Health Services Environmental Laboratory Accreditation Program (ELAP), whose work is supervised by graduate professional toxicologists, and which is well equipped and capable of rendering said services.
- B. Participate in BIGHT '08 or SMC intercalibration exercises for all relevant bioassays consistent with County environmental monitoring program. Continued usage of analytical services from Contractor is contingent upon Contractor's participation in future SMC or BIGHT intercalibration exercises during the Contract term.

- C. Be fully equipped and staffed, at a level capable of providing all analytical services.
- D. Cover all fees related to labor, courier services, materials (coolers, sample containers (cubitainers), jars, etc.), special equipment and permits (where applicable) needed to provide analytical services.
- E. Provide a 24-hour contact number or answering service.
- F. Be located in close proximity to County laboratory, so as to, provide regularly scheduled and on-demand sample pick-up within the required holding times.
  - 1. Scheduled pick-up is defined as a minimum 12-hour advanced notice by County personnel.
  - 2. On-demand pick-up, typically 3-4 samples, is defined as a 4-hour advanced notice by County personnel for analysis of a sample on the following day.
- G. Upon County request; pick up and deliver samples in quantity adequate for analysis at:

2245 N. Glassell St.  
Orange, CA 92865
- H. Provide weekend service and operate at extended hours when necessary for special projects and storm-runoff sample pick-up and preliminary analyses.
- I. Provide rapid and emergency analysis of water and sediment samples within period of time specified by County.
- J. Upon request; provide personnel for field collection of samples.
- K. Be available for services on major holiday's (Thanksgiving week, Christmas Eve and Christmas Day, New Year's Eve and New Year's Day, Memorial Day, Fourth of July, and Labor Day). These rare occasions include the first storm of the storm season or a major water pollution investigation.
- L. Provide "RUSH" services on the reporting of analyses for some time-sensitive projects.
- M. Accept the following analytical quality control provisions and penalties for failure to perform to stated levels of accuracy and precision as listed below:
  - 1. LIMITS OF ERROR, AND PENALTIES RELATED THERETO
    - a. Determinations of satisfactory accuracy and/or precision may be made by County, on notification of Contractor, from information provided with Performance Evaluation samples from certified vendors. For samples prepared from Proficiency Testing (PT) standards, performance thresholds from the PT standard vendor will be used as the criteria for acceptability of results.
    - b. In the case of deviation from performance acceptance limits for the analysis of PT samples, County may, at its option, either notify Contractor, if County believes the error is of a random nature or submit to Contractor another PT sample. County may request Contractor to provide additional quality assurance documentation for the test in question or for all tests (involving the same species) on samples within the

same batch as the PT sample. These follow-up investigations will be conducted at the sole expense of Contractor. On the second occurrence, within 45 days (based on sample submittal date), of failure of PT sample acceptance criteria for the same toxicity test, Contractor's invoice(s), for all analyses using that test on samples submitted during the calendar month of the initial error, shall be discounted by 20%.

- c. After the second occurrence, within 60 days (based on sample submittal date), of a reported result failing PT sample acceptance criteria, a meeting will be held between County and Contractor to discuss a resolution to the problem. Within 30 days subsequent to the meeting, another PT sample from a certified vendor will be submitted by County to Contractor. Failure to produce a result within performance acceptance limits as defined by the PT vendor shall be cause for cancellation of this agreement by County.
- N. Report analytical results on or before the 21st day after receipt of samples from County and accept penalties for failure to perform within this time period.
- O. Provide lab reports electronically in Portable Document Format (.pdf) referenced by County's chain of custody "entry set number". Acrobat Files with electronic signatures of the laboratory director will be acceptable. Must also provide results in the Electronic Data Report (EDR) format shown in Attachment E. Submittal of PDF and EDR files shall be subject to reporting timeframes. EDR files shall also be subject to a maximum allowable error rate of 0.1% of the total data values within the respective EDR.
- P. Be prepared to provide lab reports electronically in the Surface Water Ambient Monitoring Program (SWAMP) compatible format referenced by County's chain of custody "entry set number". Contractor must be able to provide SWAMP consistent format data reports upon County receiving notification of State mandated reporting requirement or within six months from start of Contract, whichever is less. Submittal of SWAMP electronic files shall be subject to reporting timeframes as described in Section III.8., above. SWAMP electronic files shall also be subject to a maximum allowable error rate of 0.1% of the total data values within the respective report. *(SWAMP compatible electronic reporting will be contingent upon final format yet to be determined by the State Water Resources Control Board.)*
- Q. Laboratory procedures for the analyses of aqueous and sediment toxicity of samples from freshwater estuarine and marine environments. County hereby engages Contractor to examine and perform toxicological analyses of aqueous and benthic sediment samples from freshwater, estuarine and marine environments by County. Contractor shall perform all analyses according to published methods presented in the following documents or their subsequent updates:
1. U.S. EPA. 1991a. *Methods for Aquatic Toxicity Identification Evaluations: Phase I Toxicity Characterization Procedures*, 2nd ed., EPA/600/6-91/003. U.S. Environmental Protection Agency, Office of Research and Development, Environmental Research Laboratory, Duluth, Minnesota.
  2. U.S. EPA, 2002. *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms*, 5th Edition. EPA-821-R-02-012. U.S. Environmental Protection Agency, Office of Water, Washington, DC.
  3. U.S. EPA. 1992. *Toxicity Identification Evaluation: Characterization of Chronically Toxic Effluents, Phase I*, EPA/600/6-91/005F. U.S. Environmental Protection Agency,

Office of Research and Development, Environmental Research Laboratory, Duluth, Minnesota.

4. U.S. EPA. 1994. Methods for Assessing the Toxicity of Sediment-associated Contaminants with Estuarine and Marine Amphipods. EPA/600/R-94/025, U.S. Environmental Protection Agency, Office of Research and Development, Narragansett, Rhode Island.
5. U.S. EPA. 1994. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms. EPA/600/4-91/002. U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory, Cincinnati, Ohio
6. U.S. EPA. 1995. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine and Estuarine Organisms. EPA/600/R-95/136, U. S. Environmental Protection Agency, National Exposure Research Laboratory, Cincinnati, Ohio.
7. U.S. EPA 2002. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms, 3rd Edition.. EPA-821-R-02-014. U.S. Environmental Protection Agency, Office of Water, Washington, DC.
8. U.S. EPA. 1996b. Marine Toxicity Identification Evaluation (TIE): Phase I Guidance Document. EPA/600/R-95/054. U.S. Environmental Protection Agency, Environmental Effects Research Laboratory, Narragansett, Rhode Island.
9. U.S. EPA. 2000. Methods for Measuring the Toxicity and Bioaccumulation of Sediment-associated Contaminants with Freshwater Invertebrates, 2nd Edition. EPA/600/R-99/064. U. S. Environmental Protection Agency, Office of Research and Development, Mid-Continent Ecology Division, Duluth, Minnesota.
10. Other procedures established as EPA protocol and published in the Federal Register.
11. Variation from procedures detailed in the above publications by the Contractor must be approved by County.

#### **IV. CONTRACTOR MINIMUM REQUIREMENTS**

- A. Contractor shall be certified by the State of California Environmental Laboratory and Accreditation Program (ELAP) for all species within the categories of analyses listed in this Contract. For subcontracted analyses, the subcontractor must hold certification for the subcontracted method of analyses. Contractor must be able to provide two (2) of their most recent ELAP Proficiency Evaluation study results.
- B. Contractor must have participated in the 2003 or 2008 Southern California Bight Regional Marine Monitoring Program (Bight '03 or Bight '08) laboratory inter-calibration exercises. Documentation of participation in these inter-calibrations exercises, and Contractor's results relative to the performance thresholds are required.
- C. The Contractor's primary function must be that of a commercial environmental toxicity testing laboratory. Contractor's serving as clearinghouses for subcontracting analytical services are not acceptable.



- D. Contractor shall have at least three years of professional experience as a corporate entity.
- E. The total amount of Contractor's Pricing (sum of the products of quoted category prices and respective anticipated County annual usages) cannot account for more than 25% of a Contractor's current annual billings (total annual services dollar amount) – evidence to be provided upon request. "Current annual billings" shall be interpreted to include the amount of the Contractor's Contract pricing.
- F. Specialization of firm in water, wastewater and sediment toxicity analysis
- G. Must employ rigid internal quality control and conform to acceptable accuracy and precision standards on a day-to-day operating basis.
- H. Must be staffed with competent professional and support personnel with the following minimum qualifications as follows:
  - 1. Laboratory Director or Senior Toxicologist with at least 10 years experience as a director of at a toxicity testing facility.
  - 2. Supervising Toxicologist: must be graduate environmental scientist (4-year degree) with relevant coursework in environmental toxicology
  - 3. Technicians: Preferable at associate level (2-year degree) or above;
  - 4. Information Technology Staff: Consistent error-free transmission of data.
  - 5. The staff must be fully and currently informed on Federal, State and Local Water Quality Legislation and Regulations, and perform services in accordance with procedures specified therein as required.

I. QUALITY CONTROL

1. Internal Quality Control

- a. Contractor must maintain formal internal quality assurance program by means of reference toxicant spikes, replicates, etc., and program must be maintained for periodic inspection by County. Contractor must also provide County a periodic report on the extent and results of the internal quality control program. The format of the monthly quality control report will be mutually agreed upon by Contractor and County.
- b. Contractor must analyze a laboratory control sample containing a reference toxicant, concurrently with each batch of samples and for each test method. Tests not meeting the acceptability criteria specified by U.S. EPA for each method shall be repeated at the Contractors expense.

J. ACCURACY

Periodically, County may prepare and submit for analysis to Contractor, without prior notification of identification as such, solution or other materials of precisely known composition. Unsatisfactory reports, herein below defined, on the composition of such solutions or substances may be cause for cancellation of this contract by County, and/or for penalty discounts of Contractor's invoices.

K. **SAMPLE CONTAINERS**

The Contractor shall either provide County with disposable or recyclable sample containers of adequate number, size and type (sample container must be quality assured to be free of residual organic and trace metal contaminants). Sample containers shall be adequately prepared or pretreated by Contractor to prevent contamination of the samples. Contractor shall periodically provide County with data on "container blank" analyses to assure that adequate pretreatment is performed.

County will accept pre-cleaned containers from approved Companies, such as I-Chem, and may request certified containers supported by quality control documentation.

L. **SAMPLE HOLDING TIME**

All samples shall be analyzed by Contractor as soon as possible after submission by County. The times listed are the maximum times that samples may be held before analysis and still considered valid. Samples may be held longer only if Contractor can show by historical data that samples with the specific matrix under consideration are stable longer than listed below. County may request "rush" analyses where the maximum sample holding times do not apply.

Maximum Holding Time

<i>Aqueous toxicity samples</i>	<i>36 hours</i>
<i>Sediment toxicity samples</i>	<i>14 days</i>

Chemist shall refrigerate samples when required by EPA standard methods.

M. **MINIMUM SAMPLE VOLUMES**

Upon County request, Contractor shall provide County with a table of minimum sample volumes required to conduct each of the analysis listed in the Group and Individual analyses. County and Contractor will discuss program requirements and develop a mechanism to insure adequate sample volume is collected to complete required number of dilutions with each sample. Contingencies for unexpected volume changes due composite sample collections will be developed.

N. **RECORDS AND REPORTS**

1. Contractor shall maintain an electronic data file of all analyses performed for County; data shall be filed numerically by the identifying sample numbers, as assigned by County. Hard copies of all the reports shall be maintained by Contractor for a period of three years.
2. Contractor shall report water/sediment analysis in the form acceptable to County. County may, at its option, request Contractor to redesign or otherwise modify the report format.
3. Contractor shall provide data results by electronic mail. The format of these data shall be compatible with County's monitoring database. The costs for developing this type of data reporting format shall be borne solely by the Contractor. The development of the process to provide data in this format to County shall be completed by the effective date of this contract.
4. If requested by County, Portable Document Format (PDF) files of reports signed by the laboratory director shall also be sent to County by the Contractor via electronic mail.

5. Contractor shall maintain records of all testing results for inspection by County for a period of three (3) years.
6. If Contractor, in County's opinion, fails to maintain a timely schedule of analysis and reports, Contractor's bill for each overdue sample will be discounted by 10% for each week or portion thereof elapsing between the due date and the receipt of a satisfactory report of the analysis of such sample.
7. For purposes of this paragraph, a timely schedule of analysis and reports shall be construed as a 21-day period between delivery of sample and transmittal of report, except in cases in which some other period of time specifically agreed upon herein or at the time of sample delivery to Contractor. Electronic data reports (EDRs) in a format specified by County shall be submitted by Contractor to County under the time frame described above. The time stamp on the electronic mail containing the EDR file shall constitute the date of receipt of the EDR.
8. The maximum allowable data management error rate in an electronic data report (EDR) shall be 0.1% of the total data values in that report. If the maximum allowable error is exceeded in an EDR, Contractor's bill for each affected sample will be discounted by 10%. For purposes of this paragraph, examples of unacceptable data management errors include but are not limited to erroneous parameter codes, erroneous qualifiers, transcription errors in the data values, and missing values.

**O. ADDITIONAL WORK:**

- A. Upon County request, the Contractor shall submit supplemental proposals for Additional Work not called for under the Scope of Work of this Contract. Contractor must obtain County Project Manager written approval prior to commencing any Additional work.
- B. The Contractor shall provide supplemental proposals in accordance with Attachment B, Additional Work section II. H.
- C. The County reserves the right to obtain supplemental proposals from, and use, alternate sources for completion of the Additional Work and to utilize the data provided under this Contract relative to necessary services.
- D. If the County authorizes work by an alternate source, the Contractor may be relieved of responsibilities pertaining to the equipment affected by the project while work is being performed and during the subsequent warranty period.
- E. Contractor shall continue to provide services to all areas not affected by work provided by alternate sources.
- F. Upon completion of any Additional Work, whether by Contractor or an alternative source, the County's Project Manager or designee and Contractor will inspect the finished product at no additional cost to the County. Upon mutual acceptance of the Additional Work, the Contractor shall again be responsible for all services originally covered under this Contract and the work performed under this section.

**ATTACHMENT B  
CONTRACTOR PRICING**

- I. COMPENSATION:** This is an all-inclusive, firm fixed price Contract between the County and Contractor for Water Toxicity Testing Services, 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 remuneration for performing all services and furnishing all staffing, labor, insurance, bonds, prevailing wage, vehicles, equipment, tools, materials, overhead, travel, etc. 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 below for work performed in accordance with the Scope of Work. The County shall not pay any sum in excess of the Fixed Prices specified below, unless work is authorized by County’s Project Manager in accordance with the Attachment A, Section V “Additional Work”, or unless authorized by amendment in accordance with Articles 31 and 46 of the Contract Terms and Conditions.

- II. PRICING:** Payment shall be made in accordance with the provisions of this Contract. Partial progress payments may be allowed at the discretion of the County Project Manager. Payment is as follows:

**A. INDIVIDUAL BIOASSAYS**

	<b>Determination</b>	<b>Dilutions</b>	<b>Analysis and Billing Code</b>	<b>Analysis Price</b>
1	Chronic Ceriodaphnia (<24hr old) 7-day Survival & Reproduction ( <i>Ceriodaphnia dubia</i> )	100, 50%	CERIO2	\$ 560.00
2	Chronic Ceriodaphnia 7-day Survival & Reproduction	100, 50, 25, 12.5, 6.25%	CERIO5	\$ 880.00
3	Chronic Ceriodaphnia 7-day Survival & Reproduction <i>Seven Dilutions</i>	100, 50, 25, 12.5, 6.25, 3.12, 1.62%	CERIO7	\$ 1,180.00
4	<i>Ceriodaphnia dubia</i> Chronic 7-day Survival & Reproduction Phase 1 TIE	N/A	CERIO7TIE	\$ 3,600.00
5	Chronic <i>Daphnia magna</i> 7-day Survival & Reproduction	100, 50%	DM2	\$ 560.00

6	Chronic <i>Daphnia magna</i> 7-day Survival & Reproduction	100, 50, 25, 12.5, 6.25%	DM5	\$ 880.00
7	Eohaustorius 10-day Survival in Sediment ( <i>Eohaustorius estuarius</i> )	100%	EOHAUS	\$ 720.00
8	<i>Eohaustorius estuarius</i> 10-day Survival in Sediment: Phase 1 TIE	N/A	EOHTIE	\$ 5,000.00
9	Mytilus 48-hour Survival in Sediment ( <i>Eohaustorius estuarius</i> )	100%	MYTIL	\$ 800.00
10	<i>Mytilus galloprovincialis</i> 48-hour Survival in Sediment: Phase 1 TIE	N/A	MYTTIE	\$ 4,500.00
11	Chronic Fathead Minnow Larvae (24-hr old) 96 hr Survival & Growth ( <i>Pimephales promelas</i> )	100, 50%	FHM2	\$ 500.00
12	Chronic Fathead Minnow Larvae Survival & Growth	100, 50, 25, 12.5, 6.25%	FHM5	\$ 780.00
13	Chronic Fathead Minnow Larvae Survival & Growth <i>Seven Dilutions</i>	100, 50, 25, 12.5, 6.25, 3.12, 1.62%	FHM7	\$ 880.00
14	<i>Pimephales promelas</i> Chronic Survival & Growth: Phase 1 TIE	N/A	FHMTIE	\$ 4,000.00
15	Chronic Giant Kelp Germination & Growth ( <i>Macrocystis</i> )	100, 50%	GKM2	\$ 780.00
16	Chronic Giant Kelp Germination & Growth	100, 50, 25, 12.5, 6.25%	GKM5	\$ 920.00
17	Acute <i>Hyallolella</i> Survival Aqueous sample ( <i>Hyallolella Azteca</i> )	100, 50%	HYAZ2	\$ 380.00
18	Acute <i>Hyallolella</i> Survival Aqueous sample	100, 50, 25, 12.5, 6.25%	HYAZ5	\$ 520.00

19	<i>Hyallolela Azteca</i> Acute Survival in aqueous sample: Phase 1 TIE	N/A	HYAZTIE	\$ 3,600.00
20	Hyallolela 10-day Survival in Sediment ( <i>Hyallolela Azteca</i> )	N/A	HYAZ-S	\$ 720.00
21	<i>Hyallolela Azteca</i> 10-day Survival in Sediment: Phase 1 TIE	N/A	HYSTIE	\$ 4,800.00
22	Chronic Inland Silverside Survival & Growth ( <i>Menidia beryllina</i> )	100, 50%	ISS2	\$ 560.00
23	Chronic Inland Silverside Survival & Growth	100, 50, 25, 12.5, 6.25%	ISS5	\$ 820.00
24	Chronic (96 hr) Mysid Shrimp (7-day old) Survival & Growth ( <i>Mysidopsis bahia</i> )	100, 50%	MSG2	\$ 580.00
25	Chronic Mysid Shrimp Survival & Growth	100, 50, 25, 12.5, 6.25%	MSG5	\$ 800.00
26	Chronic Mysid Shrimp Survival & Growth <i>Seven Dilutions</i>	100, 50, 25, 12.5, 6.25, 3.12, 1.62%	MSG7	\$ 1,000.00
27	<i>Mysidopsis bahia</i> Survival & Growth: Phase 1 TIE	N/A	MYSTIE	\$ 4,800.00
28	Chronic (48-hr) Abalone Larval Development ( <i>Haliotis rufescens</i> )	100, 50%	RALD2	\$ 600.00
29	Chronic Abalone Larval Development	100, 50, 25, 12.5, 6.25%	RALD5	\$ 720.00
30	Chronic (96-hr) Selenastrum Algae Growth ( <i>Selenastrum capricornutum</i> )	100, 50%	SELE2	\$ 380.00
31	Chronic Selenastrum Algae Growth	100, 50, 25, 12.5, 6.25%	SELE5	\$ 600.00

32	<i>Selenastrum capricornutum</i> Algae Growth Phase 1 TIE	N/A	SELETIE	\$ 3,600.00
33	Chronic Sea Urchin Embryo Development ( <i>Strongylocentrotus purpuratus</i> )	100, 50%	SUED2	\$ 450.00
34	Chronic Sea Urchin Embryo Development	100, 50, 25, 12.5, 6.25%	SUED5	\$ 580.00
35	Chronic Sea Urchin Embryo Development <i>Seven Dilutions</i>	100, 50, 25, 12.5, 6.25, 3.12, 1.62%	SUED7	\$ 700.00
36	<i>Strongylocentrotus purpuratus</i> Embryo Development Phase 1 TIE	N/A	SUEDTIE	\$ 3,600.00
37	Chronic Sea Urchin Fertilization ( <i>Strongylocentrotus purpuratus</i> )	100, 50%	SUF2	\$ 350.00
38	Chronic Sea Urchin Fertilization	100, 50, 25, 12.5, 6.25%	SUF5	\$ 500.00
39	Chronic Sea Urchin Fertilization <i>Seven Dilutions</i>	100, 50, 25, 12.5, 6.25, 3.12, 1.62%	SUF7	\$ 640.00
40	<i>Strongylocentrotus purpuratus</i> Fertilization Phase 1 TIE	N/A	SUFTIE	\$ 3,600.00
41	Chronic Topsmelt Survival & Growth ( <i>Atherinops affinis</i> )	100, 50%	TOP2	\$ 560.00
42	Chronic Topsmelt Survival & Growth	100, 50, 25, 12.5, 6.25%	TOP5	\$ 820.00

**B. GROUP ANALYSES**

	Category	Analyses Performed	Analyses and Billing Code	Unit Price
1	Dry Weather Fresh Water Organisms (2 dilutions)	CERIO2, HYAZ2, SELE2	TXF2	\$ 1,200.00

2	Dry Weather Fresh Water Organisms (5 dilutions)	CERIO5, HYAZ5, SELE5	TXF5	\$ 1,940.00
3	Dry Weather Fresh Water and Marine Organisms (2 dilutions)	CERIO2, HYAZ2, SELE2, SUF2	TXFS2	\$ 1,620.00
4	Dry Weather Fresh Water and Marine Organisms (5 dilutions)	CERIO5, HYAZ5, SELE5, SUF5	TXFS5	\$ 2,500.00
5	Dry Weather and Storm Runoff Marine Organisms (2 dilutions)	MSG2, SUF2	TXM2	\$ 900.00
6	Dry Weather and Storm Runoff Marine Organisms (5 dilutions)	MSG5, SUF5	TXM5	\$ 1,260.00
7	Dry Weather and Storm Runoff Marine Organisms (7 dilutions)	MSG7, SUF7	TXM7	\$ 1,600.00
8	Storm Runoff Marine & Freshwater Organisms (2 dilutions)	CERIO2, MSG2, SUF2	TXMF2	\$ 1,490.00
9	Storm Runoff Marine & Freshwater Organisms (5 dilutions)	CERIO5, MSG5, SUF5	TXMF5	\$ 2,180.00
10	Storm Runoff Marine & Freshwater Organisms (7 dilutions)	CERIO7, MSG7,, SUF7	TXMF7	\$ 2,820.00
11	Storm Runoff Marine & Freshwater Organisms (2 dilutions)	MSG2, HYAZ2, SUF2, Acute CERIO2	TXMFA2	\$ 1,640.00
12	Storm Runoff Marine & Freshwater Organisms (5 dilutions)	MSG5, HYAZ5, SUF5, Acute CERIO5	TXMFA5	\$ 2,340.00
13	Storm Runoff Marine & Freshwater Organisms (7 dilutions)	MSG7, HYAZ7, SUF7, Acute CERIO7	TXMFA7	\$ 3,100.00



**C. LABOR RATES OF EXPERT PERSONNEL**

	<b>Job Title</b>	<b>Hourly Rate</b>
1.	Lab Director	\$ 150.00
2.	Senior Toxicologist	\$ 175.00
3.	Supervising Toxicologist	\$ 110.00
4.	Technicians	\$ 68.00
	Clerical Staff	\$ 60.00

**D. CANCELLATION FEES:** With County Project Managers approval under certain conditions, due to unforeseeable circumstances, County shall pay Contractor cancellation fees if samples are not submitted to the Contractor as pre arranged

	<b>Category</b>	<b>Analyses and Billing Code</b>	<b>Unit Price</b>
1.	Cancel any 2 Dilution Test	CANCEL2	<u>\$ 150.00</u>
2.	Cancel any 5 Dilution Test	CANCEL5	<u>\$ 300.00</u>
3.	Cancel any 7 Dilution Test	CANCEL7	<u>\$ 350.00</u>

**E. HOLIDAY SURCHARGE:** With County Project Managers approval, County shall pay a 50% surcharge to the normal unit cost if any portion of the Contractors laboratory analyses is conducted on the major holiday. Results of analyses from these special requests that reported after the due date will not be eligible for the surcharge and will be subject penalties.

**F. RUSH SURCHARGE:** With County Project Managers approval, County shall pay a 50% surcharge to the normal unit cost rate for analyses reported within that time period. Rush samples reported after the due date will not be eligible for the surcharge and will be subject to the penalties.

**G. TOTAL CONTRACT AMOUNT SHALL NOT EXCEED: \$ 700,000.00**

**H. ADDITIONAL WORK:** Any additional services not listed in the Contract must be approved by the County Project Manager in accordance with Attachment A, Section V, B.

**III. PRICE INCREASES/DECREASES:** No price increases will be permitted during the first period of the Contract. All price decreases will automatically be extended to the County. The County requires bona fide proof of cost increases on Contracts prior to any price adjustment. A minimum of ninety (90) days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. The County may enforce, adjust, 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, fax communications, and parking while on County sites during the performance of work and services under this Contract.
- VI. PAYMENT TERMS:** Invoices are to be submitted in arrears, after services have been completed, to the address specified below along with an electronic copy emailed to the County Project Manager. Payment will be net 30 days after receipt of an invoice in a format acceptable to Orange County. Invoices shall be verified and approved by the County 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 Orange County 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. PAYMENT- INVOICING INSTRUCTIONS:** The Contractor will provide an invoice\* on the Contractor's letterhead. Each invoice will have a unique number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address, if different from 1, above
3. Name of County agency/department
4. Delivery/service address
5. Contract number
6. Service Date
7. Description of Tasks/Services (as specified above)
8. Hourly Rate, Classification/Title and Number of Hours for each Task/Service
9. Total
10. Taxpayer ID number

*\*SEE ATTACHMENT D, FOR FURTHER INVOICE INSTRUCTION.*

The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction. Invoices and support documentation are to be forwarded to:

OCPW/Purchasing  
Attn: Accounts Payable  
300 N. Flower Street  
Santa Ana, CA 92703-5000

**ATTACHMENT C  
STAFFING PLAN/SUBCONTRACTOR INFORMATION**

**1. KEY PERSONNEL TO PERFORM CONTRACT DUTIES**

<b>Name</b>	<b>Classification/Designation</b>
John Rudolph, M.S.	Project Manager/Supervising Toxicologist
Chris Stransky, M.S.	Laboratory Director
Howard Bailey, PhD	Senior Toxicologist
Kelllyn Lupfer	Technician/Laboratory Supervisor
Ericka George	Technician/Quality Assurance Officer
Katie Flocken	Technician
Nathan Hall	Technician

Substitution or addition of Contractor’s key personnel in any given category or classification shall be allowed only with prior written approval of the County Project Manager.

The Contractor may reserve the right to involve other Contractor personnel, as their services are required. The specific individuals will be assigned based on the need and timing of the service/classification required. Assignment of additional key personnel shall be subject to County written approval. 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.

**2. SUBCONTRACTOR(S)**

**In accordance with Article 36, “Assignment or Sub-Contracting”, listed below are Sub-Contractor(s) anticipated by Contractor to perform services specified in Attachment A.**

<b>Subcontractor Company Name /Location Address</b>	<b>Contact Name and Telephone Number</b>	<b>Division of Work or Trade</b>
N/A		

As required by California State Law, the General Contractor will state above the subcontractor who will be the subcontractor on the job for each particular trade or subdivision of the work in an amount in excess of one-half of one percent of the General Contractor’s total bid and will state the firm name and principal location of the office of each. If a General Contractor fails to specify a subcontractor or if he specifies more than one subcontractor for the same portion of work to be performed under the Contract in excess of one-half of one percent, he agrees that he is fully qualified to perform that portion himself and that he shall perform that portion himself. The Contractor shall not, without the consent of County either: 1.) Substitute any person, firm, or corporation as subcontractor in place of the subcontractor designated above; or, 2.) Permit any subcontract to be assigned or transferred allow it to be performed by anyone other than the original Subcontractor listed above.

**ATTACHMENT D  
 FORMAT FOR ANALYTICAL SERVICES INVOICING**

(CONTRACTOR LETTERHEAD)

Bill to:	County of Orange	Contract No.	
	OCPW/Purchasing	Invoice No.*	
	300 N. Flower Street	Lab Request No. +	
	Santa Ana, CA 92703	Project No(s). from CoC	
		Invoice Date:	
		Invoice Due Date:	
		Tax Payer I.D. No.	

Example of itemized billing:

CONTRACTOR LAB NUMBER	RDMD SAMPLE NUMBER	BILLING AND ANALYSIS CODE	UNIT COST	SAMPLE QUANTITY	TOTAL COST
2000-2005	WR1050-1055	TXF2 <sup>c</sup>	\$1215 <sup>e</sup>	6	\$7290.00
2006-2008	WR1056-1058	RALD2 <sup>c</sup>	\$550x <sup>d</sup>	3	\$1650.00
Invoice Total					\$8940.00

- a.) If amended invoice code “R” after Contractor Invoice No.
- b.) If amended lab request code “R” after lab request number.
- c.) These abbreviations to be taken from the approved price list for analyses from the IFB.
- d.) If unit price is different from that established in the Price Agreement code x after unit price with explanation (e.g. rush surcharge or late report penalty)
- e.) If requested analysis is coded as a group, the invoice must provide a total price for that group of analyses and not individual costs for each of the analyses performed.

**ATTACHMENT E  
 FORMAT FOR ELECTRONIC DATA REPORT (EDR) OF ANALYTICAL RESULTS**

(Submitted as a text file by electronic mail)

	Comments
C,Toxicity Analysis Aqueous – RALD2 and RALD5	{Line 1} – a comment line, here showing the Type of Analyses (comments preceded by C,)
FORMAT=WQS	{Line 2} – first no-comment line must be FORMAT=WQS
LA,LABNAME	{Line 3} – Lab identifier (always preceded by LA,)
LN,115131,7/1/06	{Line 4} – Laboratory Request Number for linking data to invoices, date of report, always preceded by LN,)
PN,T100, T101, T102, T103	{Line 5} –Parameter Numbers (STORET Codes) (always preceded by PN) Codes will be provided in a separate file.
DC,WR105601,452001,25.45,38.72,12.5, 8.00	{Lines 6-8} – Data Cards= the results of the analyses
DC, WR105602,452002, 75.15, 95.24, 100.00, 1.00	Format= DC,RDMD sample ID#, lab sample ID#, data value with qualifier, if applicable, for each parameter number
DC, WR105603,452003, 100.00L,100.00L,100.00,1.00	
DC,WR65010,452004,nr,nr,nr,nr	{Line 9} – Missing sample or cancelled analysis. Code nr as result for each parameter number
LN,115132,7/2/06	{Line 10} – Laboratory Request Number for linking data to invoices, date of report, always preceded by LN,)
PN, T104,T105,T106,T107	{Line 11} – Parameter Numbers (STORET Codes) (always preceded by PN)
DC,WR65052, 100.00L,100.00L,50.00,2.00	{Lines 12-13} – Data Cards
DC,WR65053, 10.12,19.13,6.25K,18.00L	Format= DC,RDMD sample ID#, lab sample ID#, data value with qualifier, if applicable, for each parameter number

Note:

- Each set of data for a specific Laboratory Request Number must be preceded with the LN number
- Filename must begin with lab identifier, e.g. Labname051108Data.txt, and be unique (including invoice files)
- Files are submitted in text format (.txt)
- All entries are comma-delimited.
- If a value is not available for any parameter in a given sample, use two successive commas, with no space between, to signify such (See line 8 -no value for NOEC (RALD2))
- Data Qualifiers
  - K – less than
  - L – greater than
  - J – estimated
- One file can include as many series of LN, PN, DC combinations as desired.
- If this is an amended data report, code an “R” after the Laboratory Request Number (e.g. 115131R)
- Comment lines can be included on any line. Comment lines, preceded with C, are ignored by the input program
- The first non-comment line must be a line with “FORMAT=WQS”.

**ATTACHMENT F**  
**FORMAT FOR ELECTRONIC ANALYTICAL SERVICES INVOICING**

(Submitted as a text file by electronic mail)

	Comments
FORMAT=INVOICE	<i>{Line 1} FORMAT=INVOICE line required. Must be first non-comment line.</i>
PA,N2000003381	<i>{Line 2} Purchase Agreement number (always preceded with PA,)</i>
LN,115131,8/21/03	<i>{Line 3} Laboratory Request Number (linked to EDR), date of invoice (always preceded by LN,)</i>
DC,TXF5,3,1260,3780	<i>{Line 4} Analysis billing code, number of analyses, unit price per analysis (or group analysis), subtotal (always preceded by LN,)</i>
DC,CERIO2,4,415,1260	<i>{Line 5} Analysis billing code, number of analyses, unit price per analysis (or group analysis), subtotal (always preceded by LN,)</i>
T,50400	<i>{Line 6} Total of invoice associated with above Laboratory Request Number (always preceded with T,)</i>
LN,115132,8/24/03	<i>{Line 7} Laboratory Request Number (linked to EDR), date of invoice (always preceded by LN,)</i>
DC,EOHAUS,2,400,800	<i>{Line 8} Analysis billing code, number of analyses, unit price per analysis (or group analysis), subtotal (always preceded by LN,)</i>
T,800	<i>{Line 9} Total of invoice associated with above Laboratory Request Number (always preceded with T,)</i>

*Note:*

- *Filename must include lab identifier, e.g. LABNAME0511104INV.txt, and must be unique (including data files)*
- *Files submitted are in text format (.txt)*
- *Use only valid codes for analysis type*
- *If amended invoice code "R" after Laboratory Request Number (e.g. 115131R)*
- *Comment lines are allowed on any line (preceded with C,)*
- *If unit price is different from that established in the Price Agreement code X after unit price (e.g. CERIO2,3,600X,1800)*
- *If requested analysis is coded as a group, the invoice must provide a total price for that group of analyses and not individual costs for each of the analyses performed.*
- *One file can include as many series of LN, DC, T combinations as desired.*