

CONTRACT

THIS Contract **MA-299-12011560** for Native Plant Habitat Management & Maintenance Services for OC Waste & Recycling, (hereinafter referred to as “Contract”) is made and entered into as of the date fully executed by and between the County of Orange, OC Waste & Recycling, a political subdivision of the State of California, (hereinafter referred to as “County”) and **Natures Image, Inc.** with a place of business at 20361 Hermana Circle, Lake Forest, CA 92630 (hereinafter referred to as “Contractor”), which are sometimes individually referred to as (“Party”), or collectively referred to as (“Parties”).

RECITALS

WHEREAS, Contractor and County are entering into this Contract for Native Plant Habitat Management and Maintenance for OC Waste & Recycling under a time and materials Contract; and

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

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

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor Compensation and Payment, attached hereto as Exhibit B and incorporated herein; and

WHEREAS, THEREFORE, in consideration of mutual covenants and conditions hereinafter set forth, the Parties agree as follows:

ARTICLES

GENERAL TERMS AND CONDITIONS

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.
- B. **Entire Contract:** This Contract, its Attachments and Exhibits, 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, hereinafter “Purchasing Agent”.
- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
- E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services or 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 statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments, nor deprive it of the right to return goods already accepted, at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods, or services, have actually been received and accepted in writing by County.
- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the goods/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 indemnitees as identified in paragraph "P" below, and as more fully described in paragraph "P", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "P" below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
- I. **Assignment or Sub-contracting:** 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 sub-contracted 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.
- J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.

- K. **Termination:** In addition to any other remedies or rights it may have by law and as set forth in paragraphs 22-24, 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. See termination clauses listed within Additional Terms and Conditions, paragraphs 22-24.
- L. **Consent to Breach Not Waiver:** No term or provision of this Contractor shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. **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.
- N. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither Contractor, its employees nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor its employees nor anyone working under Contractor, shall qualify for workers' compensation or other fringe benefits of any kind through County.
- O. **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.
- P. **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 Provision: 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

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier) or have a minimum rating be A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**.

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

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

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

Attachment B

- 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 the OC Waste & Recycling address listed on this Contract.

If the Contractor fails to provide the insurance certificates and endorsements within seven days of notification by OC Waste & Recycling/Purchasing division, award may be made to the next qualified Contractor.

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

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

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

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

- T. **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 (thirty-six) hours of the start of the delay and Contractor avails himself of any available remedies.
- U. **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.
- V. **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 paragraph "P" 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.
- W. **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.
- X. **Pricing:** The Contract bid price 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 services attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
- Y. ~~Waiver of Jury Trial: Each party acknowledges that it is aware of and has had the opportunity to seek advice 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.~~ Intentionally left blank.
- Z. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
- AA. **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.
- BB. **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.

- CC. **Calendar Days:** Any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- DD. **Attorney’s 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.
- EE. **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 affect the purpose of the parties and this Contract.
- FF. **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.

Additional Terms and Conditions

1. Term

The term of this Contract shall be for a ~~three~~one year period, effective 7/1/~~12~~16 – 6/30/~~15~~17, unless this Contract is earlier terminated by the Parties in accordance with Article K, 22, 23, or 24, Termination.

2. Project Manager - County

The County shall appoint a Project Manager to act as liaison between the County and the Contractor during the term of this Contract. The County’s Project Manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s Project Manager and key personnel. The County’s Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within 14 calendar days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager and key personnel. Said approval shall not be unreasonably withheld.

3. Contractor’s Project Manager and Key Personnel

Contractor shall appoint a Project Manager to direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without 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 project for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. Key personnel are those individuals who report directly to the Contractor’s Project Manager.

4. Entirety

This Contract and all of its Attachments and Exhibits comprise the entire Contract between the Contractor and the County. Additional or new terms contained in this Contract, which vary from the Contractor's proposal, are deemed accepted by the Contractor by execution of this Contract or other commencement of performance hereunder. All previous proposals, offers, discussions, preliminary understandings, and other communications relative to this Contract, oral or written, are hereby superseded, except to the extent that they have incorporated into this Contract. No future waiver of, exception to, addition to, or alteration of any of the terms, conditions and/or provisions of this Contract shall be considered valid unless specifically agreed to in writing by both parties.

5. Precedence

The documents herein consist of this Contract and its attachments and exhibits. 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 and exhibits.

6. Compensation

This is a fixed price Contract. Contractor agrees to accept the specified compensation set forth in Exhibit B, Cost/Compensation for Contractor Services, as full remuneration for performing all services and furnishing all staffing and materials called for; and for any reasonably foreseeable difficulties which may arise or be encountered in the execution of the services until acceptance; and for risks connected with the services; and for performance by the Contractor of all of its duties and obligations hereunder.

7. Prevailing Wage

Pursuant to the provisions of Section 1773 of the Labor Code of the state of California, the Contractor shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute this Contract. The rates are available from the Director of the Department of Industrial Relations at the following website:

http://www.dir.ca.gov/DLSR/statistics_research.html

The Contractor shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates. The Contractor shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.

8. 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.

9. 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 remains 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.

10. Data – Title to

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

11. Reports/Meetings

The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirement 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, 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. Meetings held between OC Waste & Recycling staff and Contractor's staff to discuss Contractor's non-performance or lack thereof shall not be billable to the County.

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. Records

Contractor shall keep an accurate record of time expended by Contractor and/or Subcontractors working for Contractor in the performance of this Contract. Such record shall be available for periodic inspection by the County at reasonable times.

14. Conflict of Interest

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 Contractors; 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.

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.

15. Child Support Enforcement Requirements (Attachment A-1)

In order to comply with child support enforcement requirements of the County of Orange, within ten (10) days of notification of selection of award of Contract, but prior to official award of Contract, the

selected Contractor hereby agrees to furnish OC Waste & Recycling with the required Contractor data and certifications, Attachment A-1, Child Support Enforcement Certification Requirements.

Failure of the Contractor to timely submit the data and/or certifications required may result in the Contract being awarded to another Contractor. In the event a Contract has been issued, 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 (sixty) calendar days of notice from the County shall constitute grounds for termination of this Contract.

16. Contractor Bankruptcy/Insolvency

If the Contractor should be adjudged bankrupt or should have a general assignment for the benefit of its creditors or if a receiver should be appointed on account of the Contractor's insolvency, the County may terminate this Contract.

17. 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.

18. Subject to Fiscal Appropriations

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, this Contract will be terminated without penalty to the County.

19. Breach of Contract

The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

- a. 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
- c. Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.

20. Interpretation of Contract

In the event of a conflict or question involving the provisions of any part of this Contract, interpretation and clarification as necessary shall be determined by the County's assigned buyer. If disagreements exist between the Contractor and the County's assigned buyer in interpreting the provision(s), final interpretation and clarification shall be determined by the County's Purchasing Agent or his designee.

21. Disputes

- A. The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Project Manager and the County's Project Manager, such matter shall be brought to the attention of the County's Purchasing Agent by way of the following process:
1. The Contractor shall submit to the agency/department assigned buyer a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
 2. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.
- B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County's Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. The County's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences action in a court of competent jurisdiction.

22. Termination -- Default

If Contractor is in default of any of its obligations under this Contract and has not commenced cure within 10 (ten) days after receipt of a written notice of default from County and cured such default within the time specified in the notice, the County shall immediately be entitled to either commence resolution in accordance with this paragraph or to terminate this Contract by giving written notice to take effect immediately. Default shall include failure to carry out any of the requirements of this Contract, including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the work as agreed to herein, or otherwise substantially violating any provision of this Contract. Upon termination of the Contract with Contractor, the County may begin negotiations with a third-party Contractor to provide goods and/or services as specified in this Contract. The right of either party to terminate this Contract hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous default.

23. Termination -- Convenience of the County

Notwithstanding any other provision of the Contract, County may at any time and without cause terminate in whole or in part, upon not less than thirty (30) days written notice to the contractor. Such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the effective date of the termination, whether the Contract shall be terminated in whole or in part and if applicable the portion of work to be terminated. The Contractor shall immediately stop work in accordance with the Notice of Termination and comply with any other direction as may be specified in the Notice of Termination or as provided subsequently by County. The County shall pay the Contractor for the work completed and accepted by County prior to the effective date of the termination, and such payment shall be Contractor's

sole remedy. Under no circumstances will the Contractor be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination in whole or in part under this provision. The Contractor shall insert in all subcontracts that the subcontractors shall stop work on the date of and if applicable the portion of work to be terminated in a Notice of Termination, and shall require sub-consultants to insert the same condition in any lower tier subcontracts.

24. Termination -- Orderly

After receipt of a termination notice from the County of Orange, the Contractor shall submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 (sixty) days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation plus previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of 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.

25. Errors and Omissions

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

26. EDD Independent Contractor Reporting Requirements (Attachment A-2)

Effective January 1, 2001 The County of Orange is required to file federal Form 1099-Misc for services received from a "service provider" to whom the County pays \$600 or more or with whom the County enters into a Contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

To comply with the reporting requirements, County procedures for contracting with independent Contractors mandate that the following information be completed and forwarded to the contracting agency/department immediately upon request:

- First name, middle initial and last name
- Social Security Number
- Address
- Start and expiration dates of Contract
- Amount of Contract

27. Safety and Health Laws and Regulations (Attachment A-3)

Contractor shall prepare a Health and Safety Plan within 10 days of contract award. Health and Safety Plan shall be in compliance with all local, municipal, State, and Federal safety and health laws, orders, and regulations applicable to Contractor's operations in the performance of the Scope of Work hereunder. While on the premises of County, Contractor and its employees, subcontractors, and agents shall comply with the requirements of the Occupational Safety and Health Act of 1970 (P.L. 91-596), as amended, and any State plan approved under such Act, and the regulations there under, to the extent applicable and shall ensure that all its employees, subcontractors, and agents have a safe place of work on the premises of County. Said plan shall be approved by OC Waste & Recycling Safety Officer, and Contractor's personnel assigned to the Project must read and sign the Safety Plan before they visit and/or work at the Project site.

28. 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.

29. Emergency/Declared Disaster Requirements

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

30. 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 parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four 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.

Attachment B

TO: COUNTY
OC Waste & Recycling
300 N. Flower Street, Ste. 400
Santa Ana, CA 92703
Attn: Mike Kashani
Project Manager

TO: CONTRACTOR
Nature's Image, Inc.
20361 Hermana Circle
Lake Forest, CA 92630
Attn: Steven Reinoehl
Director

Contract Signature Page

IN WITNESS WHEREOF, the parties hereto have executed this Contract the day and year first above written.

Natures Image, Inc.

By _____

Title _____

*By _____

Title _____

County of Orange, a political
Subdivision of the State of California

By _____

Title _____

Date _____

APPROVED AS TO FORM:

County Counsel

By _____

Deputy

Date _____

*If a corporation, this document must be signed by two corporate officers. The first signature must be either the Chairman of the Board, President, or any Vice President. The second signature must be the Secretary, an Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer.

**Attachment A-1
County of Orange Child Support Enforcement
Certification Requirements**

"I certify that _____ is in full compliance with all applicable federal, state, and local reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of Contract _____ with the County of Orange. I understand that failure to comply shall constitute a material breach of the Contract and that failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contact.

Signature *Name (Please Print)*

Title *Date*

Company Name

Contract Number

*Signature** *Name (Please Print)*

Title *Date*

Company Name

MA-299- 12011560

Contract Number

***Two signatures required if a corporation.**

Attachment A-2
EDD Independent Contractor Reporting Requirements

Effective January 1, 2001, the County of Orange is required to file federal Form 1099-Misc for services received from a “service provider” to whom the County pays \$600 or more or with whom the County enters into a Contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

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

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies. Additional information on this reporting requirement can be found at the California Employment Development Department web site located at www.edd.ca.gov

To comply with the reporting requirements, County procedures for contracting with independent contractors mandate that the following information be completed and forwarded to the contracting agency/department immediately upon request:

- First name, middle initial and last name
- Social Security Number
- Address
- Start and expiration dates of Contract
- Amount of Contract

First Name	Middle Initial	Last Name
SSN _____		
Contract Number _____		Dollar value of Contract _____
Start Date _____		
Expiration Date _____		

Attachment A-3 Health & Safety Plan Requirements

As of 1991, the Department of Occupational Safety and Health (DOSH) - commonly referred to as Cal/OSHA - requires a written and effective ***Injury and Illness Prevention Program*** (IIPP). This is mandated in T8 CCR §3203, *General Industry* Safety Orders, and T8 CCR §1509, *Construction* Safety Orders. The IIPP is the primary component of a comprehensive Health & Safety Plan (HSP), and one that is closely evaluated by DOSH Compliance Officers. The OC Waste & Recycling Safety Inspector will review the corporate HSP according to these IIPP requirements:

- **Responsibility** - 3203(a)(1): Identify the person(s) with authority and responsibility for implementing the Program. [NOTE: This is overall authority for the program – field and office]
- **Compliance** – 3203(a)(2): Include a system for ensuring that employees comply with safety and healthy work practices. This includes employee recognition, i.e. safety incentives, disciplinary actions, remedial training or other means to ensure compliance.
- **Communication** – 3203(a)(3): Implement a system to communicate safety and health matters to all affected employees, including provisions whereby the employee can inform the employer of worksite hazards without fear of reprisal. This includes safety or “tailgate” meetings, written communications and/or postings, anonymous hazard reporting by employees, labor/management safety and health committees, or other means to ensure communication with employees.
- **Inspections** – 3203(a)(4): Include procedures for identifying and evaluating work place hazards, i.e. unsafe conditions and/or work practices. Also to be included in the inspection process is the addition of a new or previously unrecognized occupational safety and health hazard (substance, process, procedure or equipment).
- **Accident Investigations** – 3203(a)(5): The Program must include a procedure(s) to investigate injury or occupational illness.
- **Hazard Correction** – 3203(a)(6): Include methods and/or procedures for correcting unsafe and unhealthy work conditions, or practices, in a timely manner.
- **Safety Training & Instruction** – 3203(a)(7): Provide safety training and relevant instruction to employees:
 - New hires, re-classified employees and supervisors.
 - Upon discovery of new or previously unrecognized hazards, or introduction of new materials, policy or equipment.
- **Record Keeping & Documentation:** Records taken to implement and maintain the Program shall include:
 - Safety Inspections – 3203(b)(1): Inspection records, as required by subsection (a)(4), shall include person(s) conducting inspection, identified hazards and corrective actions taken. Retain records for at least one (1) year.
 - Training - 3203(b)(2): Employee training records, as required by subsection (a)(7), shall include employee name or other identifier, dates, type of training, and instructor(s). Retain records for at least one (1) year.

The IIPP is one of a handful of programs that may be required by DOSH. Depending on your operations, your work as a Contractor may require other written programs such as those defined below. It is your responsibility as a Contractor to maintain compliance with applicable standards beyond the basic IIPP requirements, and to submit for review any programs requested by the Safety Inspector should the need arise. The Safety Inspector can be contacted at (714) 834-4117 for additional guidance.

- Emergency Action Plan - T8 CCR 3220; Fire Prevention Plan - T8 CCR 3221; Hazard Communication Program - T8 CCR 5194; Confined Space Entry - T8 CCR 5156-5159; Respiratory Protection - T8 CCR 5144; Lockout/Tagout - T8 CCR 3314, 6003 & 2320; Chemical Hygiene - T8 CCR 5191 & Article 110; Bloodborne Pathogens - T8 CCR 5193; and Hearing Conservation - T8 CCR 5096 – 5100.

EXHIBIT A

**NATIVE PLANT HABITAT MANAGEMENT
& MAINTENANCE SERVICES
SCOPE OF WORK**

OC Waste & Recycling is required by local, state and federal resource agencies to conduct California native plant habitat management & maintenance. The scope of work (SOW) shall consist of California native plant habitat management & maintenance services for OC Waste & Recycling Central Region landfills.

BACKGROUND

OC Waste & Recycling owns and operates the County of Orange’s waste disposal system comprised of three active landfills, one inactive landfill, twenty former waste disposal stations, and four household hazardous waste collection centers. The active landfills are divided into three geographical regions: North Region, Central Region and South Region. The Central Region is the area that encompasses the Frank R Bowerman (FRB) Landfill (active) and the Santiago Landfill (closed.) This SOW addresses the native plant habitat management & maintenance at the FRB Landfill and Santiago Canyon Landfill. Native plant habitat management & maintenance are a priority to OC Waste & Recycling at these sites as the department works to mitigate the impact of landfill operations upon its environmental surroundings.

CONCEPT

OC Waste & Recycling seeks to secure a Contractor to provide management & maintenance services for the native plant habitat sites within the Central Region landfills. The Contractor shall be responsible for developing a maintenance plan for the identified sites, implementing the plan and monitoring its success. The Contractor shall meet monthly with the OC Waste & Recycling Biological Resources Monitor (BRM) to report the progress of the habitat management sites, and to recommend activities in addition to those regularly scheduled that are determined necessary or beneficial to the success of the management sites. The Contractor shall implement an “*adaptive management*” approach to guarantee the success of these management sites. *Adaptive management* is defined as the ongoing evaluation of habitat management techniques in light of monitoring results and other new information. These periodic evaluations are used over time to adapt both the management objectives and techniques to better achieve overall resource management goals.

DEFINITIONS

The following definitions shall serve as basic terminology for the SOW.

Native Plant Habitat Management & Maintenance Areas: Areas, at this time, include the following:

FRB Landfill Native Plant Habitat Management & Maintenance Areas:

- a) **Bee Canyon Monument/Site Entrance**
 - Ornamental native vegetation – 0.65 acre
- b) **FRB Office Landscaping**
 - Ornamental drought tolerant vegetation – 1.3 acre
- c) **Desilting Basin Mitigation Site**
 - Coastal sage scrub habitat – 2.5 acres
- d) **West Channel Mitigation Site**
 - Coastal sage scrub habitat – .41 acres
 - Sycamore woodland habitat – 1.31 acres (50 *Platanus racemosa*),
 - Riparian scrub habitat – 0.14 acres
 - Oak woodland habitat – 0.84 acres (46 *Quercus agrifolia*)

Santiago Canyon Landfill Native Plant Habitat Management & Maintenance Areas:

- a) **Coastal Sage Scrub Habitat within Landfill Footprint**
 - Approximately 100 acres.

Native Plant Habitat Management & Maintenance Areas on FRB Landfill: Areas, at this time, include the following:

- a) **Landslide Backcut Mitigation Site**
 - a. Native grassland habitat – Approximately 15 acres
- b) **Phase VIII-C**
 - a. Native grassland habitat – Approximately 6 acres
 - b. Coastal sage scrub habitat – Approximately 4 acres
- c) **East Flank Landslide**
 - a. Native grassland habitat – Approximately 12 acres
 - b. Coastal sage scrub habitat – Approximately 8 acres
- d) **Onsite Wetland Basin**
 - a. Wetland – Approximately 2 acres
 - b. Riparian – Approximately 3 acres

Although these are the habitat management & maintenance areas identified at this time, it is possible that future unforeseen events related to landfill operations and/or regulatory requirements may result in unexpected native plant habitat impacts. Additional tasks may occur on other landfills within the OC Waste & Recycling Central Region, or on properties adjacent to landfills within Central Region. Contractor shall provide for the addition of an unanticipated habitat area on a pre-approved time and materials basis.

Responsible Entities: Shall be those individuals or entities responsible for the successful implementation of a three-year maintenance program, for monitoring maintenance procedures and site performance, or for providing interim and final approval of the habitat mitigation program, and shall include the:

- OC Waste & Recycling Biological Resources Monitor
- OC Waste & Recycling Landfill Staff
- Native Plant Habitat Management & Maintenance Contractor
- Resource Agencies

OC Waste & Recycling Biological Resources Monitor (BRM): Is responsible for monitoring site conditions and maintenance activities within all native habitat sites, and for facilitating compliance with project performance standards. The BRM shall serve as the day-to-day contact regarding mitigation site status and the implementation of site remedial measures.

The BRM shall be responsible for monitoring maintenance activities, site conditions, and site performance, identifying appropriate remedial measures in coordination with the Contractor and OC Waste & Recycling Landfill Staff, and for facilitating compliance with the resource agency permit requirements. The BRM shall also be responsible for coordinating with the Contractor, the County Biological Resources Monitor OC Waste & Recycling Landfill Staff and the Resource Agencies regarding site status. The BRM shall attend, as appropriate, all onsite meetings during all maintenance procedures.

OC Waste & Recycling Landfill Staff: OC Waste & Recycling owns and operates the Frank R. Bowerman Landfill (active) and the Santiago Canyon Landfill (closed). Operational and engineering staff is located on-site to provide support to daily activities. Landfill staff or workforces will not be developing, implementing or maintaining the revegetation efforts at the service areas. However, OC Waste & Recycling reserves the right to use County forces at the direction of the BRM as a supplement to the Contractor's work effort if desired.

Native Plant Habitat Management & Maintenance Contractor (Contractor): Shall be responsible for facilitating the successful establishment and management of native habitat within all habitat sites. The Contractor shall be responsible for performing all site maintenance procedures including weed control, management of irrigation systems and regimes, replacement plant establishment and protection, as described herein. The Contractor shall also be responsible for coordinating with the BRM as the primary contact, and OC Waste & Recycling Landfill Staff as needed regarding ongoing site maintenance status. The Contractor shall be responsible for communicating all maintenance issues and problems in an expeditious manner to facilitate the timely implementation of appropriate remedial measures.

The Contractor shall have a full-time, English speaking foreman assigned to the project and that foreman shall be onsite during the performance of all tasks described herein and shall be responsible for compliance with specifications listed herein and in resource agency permits. The name, phone number, and contact information of the foreman assigned to the maintenance activities described herein shall be provided to the BRM prior to the initiation of maintenance activities. The foreman shall have in their possession at all times the name and contact information for the BRM and OC Waste & Recycling Landfill Staff. The County shall not be responsible for Contractor's drinking water, telephone, fax, and toilet needs while its workers are on site premises. The Contractor shall provide portable toilet facilities for their staff.

Resource Agencies: Are responsible for permit processing and program approval associated with the Native Plant Habitat Management & Maintenance and include the U.S. Army Corps of Engineers (ACOE), California Department of Fish and Game (CDFG), Regional Water Quality Control Board (RWQCB), and U.S. Fish and Wildlife Service (USFWS). The mitigation site maintenance specifications included in this document are based on requirements listed in the ACOE, CDFG, RWQCB, and USFWS permits and authorizations. The Contractor shall be responsible for complying with the specific water quality protection measures listed herein, but not limited to the ACOE, CDFG (1601), and RWQCB, permits and authorizations.

Native Plant Species: Plant species that are indigenous to Southern California and, specifically, typical of the riparian and coastal sage scrub plant communities located within southern Orange County.

Native Plant Species Suppliers: OC Waste & Recycling currently has a contract with a nursery supplier for the provision of container plants and replacement plant species. All replacement plant species specified by the Biological Monitor shall be obtained under the terms of this contract.

Exotic and Weed Species: Ornamental plant species and invasive plant species that are native to other areas of the United States (outside of Southern California) and to Europe, Asia, Africa, etc. Exotic and weedy species found onsite include, but are not limited to, the following: cocklebur (*Xanthium strumarium*), artichoke thistle (*Cynara cardunculus*), mustard (*Brassica nigra*), gum tree (*Eucalyptus* spp.), pampas grass (*Cortaderia selloana*) and tree tobacco (*Nicotiana glauca*). Invasive exotic species shall also include all species listed on the California Invasive Pest Plant Council (Cal-IPC) Invasive Plant Inventory. The BRM may identify additional exotic and weed species for removal throughout the maintenance period.

SERVICE AREA GOALS, OBJECTIVES AND PERFORMANCE STANDARDS

The BRM has developed preliminary goals, objectives and performance standards for each targeted service area. The goals, objectives and performance standards provide clear expectations and measurable progress benchmarks for reporting compliance to the resource agencies, and to demonstrate OC Waste & Recycling's commitment to native plant habitat management & maintenance.

1. FRB Landfill Habitat Maintenance Areas Landfill (See Figure -A)

- a. **Bee Canyon Monument/Site Entrance**
 - Ornamental native vegetation – Minimal maintenance. Keep healthy, weed-free vegetation. Maintain irrigation system. May need summer irrigation via water truck hook-up to irrigation system.
- b. **FRB Office Landscaping**
 - Ornamental drought tolerant vegetation – Minimal maintenance. Keep healthy, weed-free vegetation. Maintain irrigation system and provide summer irrigation.
- c. **Desilting Basin Mitigation Site**
 - CSS habitat – Establish self-sustaining, self-propagating CSS that is capable of surviving over the long term without maintenance.
- d. **West Channel Mitigation Site**
 - CSS habitat – 80 percent survival of container plantings, 70 percent native plant coverage.
 - Riparian scrub habitat – 80 percent container plant survival, 75 percent native plants coverage
 - Sycamore woodland habitat – 80 percent container plant survival, 75 percent native plants coverage
 - Oak woodland habitat – 80 percent container plant survival, 75 percent native plants coverage
- e. **Landslide Backcut Mitigation Site**
 - Grassland habitat – Establish self-sustaining, self-propagating native grassland that is capable of surviving over the long term without maintenance.
- f. **Loma Ridge and Round Canyon Mitigation Site**
 - CSS habitat – Establish self-sustaining, self-propagating CSS that is capable of surviving over the long term without maintenance.

2. Santiago Canyon Landfill Habitat Maintenance Area (See Figure – B)

- a. **Coastal Sage Scrub Habitat within Landfill Footprint**
 - CSS Habitat – Establish self-sustaining, self-propagating CSS habitat that is capable of surviving over the long term without maintenance.
- b. **Coastal Sage Scrub Habitat in Easement Areas**
 - CSS Habitat – Maintain self-sustaining, self-propagating CSS habitat that is capable of surviving over the long term without maintenance.

Although these are the habitat management & maintenance areas identified at this time, it is possible that future unforeseen events related to landfill operations may result in unexpected native plant habitat impacts.

CONTRACTOR TASK REQUIREMENTS

The Contractor shall be responsible for facilitating the successful establishment and management of native habitat within all mitigation sites. The Contractor shall be responsible for performing all site maintenance procedures including, but not limited to, weed control, management of irrigation systems, replacement plant establishment and protection, as described herein. The Contractor shall also be responsible for coordinating with OC Waste & Recycling Biological Monitor regarding ongoing site maintenance status. The Contractor shall be responsible for communicating all maintenance issues and problems in an expeditious manner to facilitate the timely implementation of appropriate remedial measures.

The Contractor shall complete the following tasks within the scope of this project:

TASK 1 – DEVELOP NATIVE HABITAT MAINTENANCE SERVICE AREA IMPLEMENTATION PLAN AND SCHEDULE

The Contractor shall develop a brief Native Plant Habitat Management & Maintenance Implementation Plan for the identified areas. The plan shall use the OC Waste & Recycling goals and objectives identified by OC Waste & Recycling for each service area and shall expand upon, quantify or clarify the goals as needed. The Contractor shall develop an implementation plan and schedule to meet those goals and objectives. The plan shall also include performance standards tied to resources agency and permit criteria to judge the success of the revegetation efforts. The plan shall include the tasks that are called out within this SOW but shall propose additional/alternative means of promoting revegetation as well.

TASK 2 - MONTHLY MONITORING, REPORTING AND MEETING (if needed)

The Contractor shall monitor and submit to OC Waste & Recycling one report for each service area on a monthly basis (if needed). The reports shall describe all maintenance activities conducted during the previous monthly period, including photographs and daily reports. Additionally, the Contractor shall include in each report recommended activities and associated costs for the upcoming monthly monitoring period. A tailgate meeting shall be held each month at FRB to discuss each report and approve recommended activities for the following monitoring period.

TASK 3 – MAINTENANCE ACTIVITIES

The Contractor shall employ a combination of any or all of the following maintenance activities to achieve the service area goals and objectives.

The Contractor shall implement an “*adaptive management*” approach to guarantee the success of these management sites. *Adaptive management* is defined as the ongoing evaluation of habitat management techniques in light of monitoring results and other new information. These techniques are used over time to adapt both the management objectives and activities to better achieve overall resource management goals.

A - Weed Abatement:

Service areas are to be maintained in an invasive weed-free condition. Contractor shall cut and remove selected vegetation to 12” above ground, and/or spray with herbicide, regardless of condition, which is deemed invasive or non-native in nature. All rubbish and/or litter is to be removed by the Contractor. Contractor is to apply *Round-Up Pro Herbicide* to abate weed growth using sprayer. For identification purposes, *Round-Up Pro Herbicide* is to be dyed to distinguish newly sprayed areas from those previously sprayed. Contractor shall be responsible for disposing of all trimmings and rubbish. The following is a list of invasive species that are known to exist at Central Region landfills, although it is by no means comprehensive.

<u>Latin Name</u>	<u>Common Name</u>
<i>Atriplex semibaccata</i>	Australian saltbush
<i>Brassica nigra</i>	black mustard
<i>Cortaderia selloana</i>	pampas grass
<i>Cynara cardunculus</i>	artichoke thistle
<i>Cytisus scoparius</i>	Scotch broom
<i>Foeniculum vulgare</i>	wild fennel
<i>Hirschfeldia incana</i>	summer mustard
<i>Nicotiana glauca</i>	tree tobacco
<i>Pennisetum setaceum</i>	fountain grass
<i>Senecio mikanioides</i>	German ivy
<i>Tamarix chinensis</i>	tamaris, salt cedar

B - Native Plant Installation:

Service areas are to be maintained with eighty (80) percent native plant coverage. To achieve this, the Contractor shall install California native plants from container and seed. The Contractor shall replace any dead or otherwise unhealthy plant material. Seed material and container plants will be either provided by OC Waste & Recycling or by the contractor upon request by the County Project Manager/BRM or designee. All parts and materials purchased by the Contractor or by its subcontractor, shall be reimbursed at actual cost plus the allowable percentage. The Contractor also has the option to conduct or contract a company with seed collection experience to perform on-site native seed collection. When native plants on the landfill are observed to bear seed, the Contractor shall collect the seed, using care to only collect seed from native plant species. The seed shall be properly cleaned, stored, and provided to the BRM staff upon request. Container plants will be provided by OC Waste & Recycling; however, the Contractor may choose to contract with a nursery to provide native container plants with a source of origination within a 50 mile radius of FRB Landfill.

C - Supplemental Irrigation:

Supplemental irrigation shall be provided to ensure native plant health and survival. Contractor shall be responsible for the design, installation and maintenance of automatic irrigation systems. Contractor shall determine appropriate interval and quantity of supplemental irrigation during monitoring. Hand watering, polymers, automatic irrigation systems, or a combination of these methods may be used. Automatic irrigation systems shall be drip type irrigation; no overhead spray systems shall be permitted.

D - Protection of Existing Native Plant Habitat Resources:

The Contractor shall be responsible for complying with the natural resource and water quality protection measures listed in the USFWS, ACOE, RWQCB, and CDFG permits and authorizations (specific conditions listed in Part 1). Existing Plant Species: Existing native plant species and other resources including sensitive bird species such as least Bell’s vireo (*Vireo bellii pusillus*) and coastal California gnatcatcher (*Polioptila californica californica*) that are within or adjacent to the mitigation sites shall be retained and protected from damage by people and equipment. Use of heavy equipment and/or implementation of other noisy, disruptive activities shall be subject to nesting season

restrictions (February 15 to September 15). Prior to start of work, all existing resources that are to be protected shall be identified by the BRM.

TASK 4 – PERFORMANCE STANDARDS EVALUATION AND REPORTING

The BRM shall report annually on the service area goals and objectives and the success of each service area with respect to its predetermined performance standards. The evaluation report shall draw on the Contractor's monthly meetings/reports and the adaptive management strategy employed throughout the project. The evaluation shall be prepared in a standard format to be reviewed and submitted to the resources agencies as part of OC Waste & Recycling's annual reporting as required by the permits.

In areas that have not met performance standards, the Contractor shall provide narrative detailing why the standards were not met, what activities were implemented, what adaptive management strategies were proposed and how this affected the goals and objectives of the service area. In the same light, if the goals or objectives changed over the course of the year, the Contractor shall note those changes, the corresponding justification for the change, and provide revised goals and/or objectives as appropriate.

ADDITIONAL CONTRACTOR REQUIREMENTS

Labor Requirements: The Contractor shall furnish all labor, equipment and tools required for the native plant habitat management & maintenance services at OC Waste & Recycling Landfills and designated closed sites. The Contractor at his own expense shall furnish supervision of the crews. Contractor shall be responsible for disposing of all trimmings and rubbish at their own expense.

Existing Plant Species: The Contractor, at his own expense, shall replace any damaged native plants or habitat areas (damaged from Contractor operations) with plants or acreage of equal value at a replacement ratio of 1:1 (or as determined by the BRM and as required by project permits), or reimburse OC Waste & Recycling for the cost of replacement based on this ratio. The BRM shall be the sole judge of the replacement of the plants.

Water Quality/Soils Quality Control: The Contractor shall not introduce foreign material and/or liquid such as oil, gasoline, or other petroleum products to any soil within the mitigation sites, the drip line (the outside edge of foliage overhang) of any native plant species, or within existing drainages. Should any such contamination of the soil occur due to Contractor activities, the Contractor shall remove the affected soil as directed by the BRM and replace it with acceptable soil. Also, the Contractor shall be responsible for complying with the specific water quality protection measures listed herein and in the ACOE, CDFG (1601), and RWQCB, permits and agreements.

Storage and Staging: All staging and storage of equipment, vehicles, and materials shall be located outside of the mitigation sites and existing drainages. Construction equipment, vehicles, and materials shall not be placed on planted/seeded mitigation species, existing native vegetation, or within sensitive resource areas. The location of equipment staging and storage areas shall be identified on a map submitted to the BRM. In the event that temporary storage of replacement plant materials is necessary, these materials shall be stored in a safe, inconspicuous location, and protected from vandalism.

PROJECT DELIVERABLES

- Service Area Native Habitat Maintenance Implementation Plan and Schedule
- Monthly Monitoring Reports, including future recommendations of maintenance activities and daily reports (See Task 2)

CONTRACTOR EXPERIENCE

The Contractor shall have a minimum of five (5) years of experience with maintaining native habitat management site(s) and shall have successfully completed installation/maintenance at a minimum of two native riparian habitat creation/management sites that are at least five (5) acres in size and two (2) native coastal sage scrub habitat creation/management sites that are at least five (5) acres in size. These projects shall include expertise and experience with 1) non-native species control and management within natural habitat areas; 2) management of mitigation site irrigation systems and application regimes; 3) native plant and seed mix establishment; 4) protection of natural resources; and 5) implementation of erosion control measures. The Contractor must hold, at a minimum, a Qualified Applicator License.

The workers who plant and maintain the vegetation must possess specialized skills. They must be capable of distinguishing numerous native species of plants and weeds. Workers must be capable of following specified weed eradication procedures such as weed whipping. In order to use herbicides and a respirator, the Contractor must have a Pest Control Business License and at least one field working individual must have a Qualified Applicator's License. They must be capable of learning to identify CSS and following procedures that take into consideration the threatened California Gnatcatcher nesting therein. They must be capable of following a complex watering and compaction process following planting to avoid future settlement, and must be capable of planting to exact tolerances with respect to the level of the plant crown above grade to ensure survival with new plantings.

EXHIBIT B
Cost/Compensation for Contractor Services

Section I: Compensation

A. General

This is a fixed ceiling, time and materials contract between the County and the Contractor for Native Plant Habitat Management & Maintenance Services as provided in Exhibit A, Scope of Work, for the County of Orange, OC Waste & Recycling.

The Contractor agrees to accept the compensation specified herein as full remuneration for performing all services and furnishing all staffing and materials called for; and for any reasonably foreseeable difficulties which may arise or be encountered in the prosecution of the services; and for performance by the Contractor of all its duties and obligations hereunder.

The ceiling amount of this contract shall include all expenses related to the performance of work and services required to meet the tasks and deliverables as set forth in Exhibit A, Scope of Work.

The Contractor shall notify the County Project Manager and Deputy Director in writing when expenditures against the Contract reach 75% of the total dollar limit of the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the total dollar limit of the Contract unless an amendment to cover those costs has been issued by the County. This notification must come within 3 working days of receipt of invoice that is within the notification limit.

The County shall have no obligation to pay any sum in excess of said ceiling price, unless authorized by a written modification issued in accordance with Article R of this Contract. The Contractor shall fully perform and complete its duties and obligations under this Contract, regardless of the number of man-hours required of the Contractor in effectuating such performance and completion. Labor hours and other costs incurred to complete the services and materials as set forth in this Contract, which exceed the total project cost, shall be borne by the Contractor.

All extra work resulting in an increase in the Contract total project cost must be authorized by written modification to this Contract. Said modification shall be issued by the County of Orange, Purchasing Agent or his designee and may be subject to approval by the County Board of Supervisors.

Section II: Payment

A. Invoicing Instructions:

Invoices and supporting documentation are to be sent to:

OC Waste & Recycling
Attn: Accounts Payable
300 N. Flower Street, Suite 400
Santa Ana, CA 92703

The County's Project Manager/BRM is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing payment.

Acceptable invoicing format:

The Contractor may bill on the standard invoice form but the following references must be made:

- County MA #
- Task or Sub Task Number (if available)
- Copy of pre-approved task order quote (signed by County Project Manager/BRM)
- Detailed description of tasks/services and deliverables
- Date of service
- Cost per hour (for labor, unless lump sum basis)
- Material costs (including any back-up documentation, as required, unless lump sum basis)
- Subcontractor costs (if applicable)
- Equipment costs (if applicable)
- Total Invoice Amount

The responsibility for providing an acceptable invoice to the County of Orange for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction. The invoice shall be verified and approved by the County's Project Manager/BRM and is subject to routine processing requirements of the County. 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 services.

B. Terms:

The Contractor shall submit an invoice monthly in arrears. Payment due to the Contractor will be made within forty-five (45) days after receipt of a correctly submitted invoice.

Monthly progress payments, will be made as approved by County's Project Manager/BRM.

C. Task and Deliverable Payment Schedule

- Task 1 – Develop Native Habitat Maintenance Service Area Implementation Plan and Schedule
- Task 2 – Monthly Monitoring, Reporting and Meeting
- Task 3 – Maintenance Activities
- Task 4 – Performance Standards Evaluation

TOTAL FOR TASK 1 – 4 shall not to exceed \$1,500,000

Contractor costs should be budgeted per task and habitat area but monthly billing may be allocated based on actual time and material basis that results from Contract performance in each specific area not-to- exceed total contract amount.

The total not-to-exceed compensation will be broken down into individual tasks. It will be the sole responsibility of the County's Project Manager assigned to this Contract to monitor, track and approve task orders within the not-to-exceed budget.

Each activity under this Contract will be covered by a Task Order. It is expressly understood that the tasks to which the Contractor is asked to respond to, will be on an "as-needed" basis, and authorized by the County Project Manager/BRM. As each task is identified, the Contractor will prepare a "Task Order" which details the scope of work to be accomplished, list of deliverables, schedule for completion, and a not-to-exceed cost for its completion. Each task order will be reviewed and approved by the County Project Manager/BRM prior to commencement of the proposed work. These services may be paid on a time and materials basis or lump

sum basis as mutually agreed by County Project Manager/BRM and Contractor. The County Project Manager/BRM's Task Order authorization must be submitted with the invoice in order for payment to be made.

D. Time and Materials

LABOR REQUIREMENTS: The hourly and/or per call rate(s) include direct and indirect labor charges, truck, all necessary equipment, tools, overhead, travel, other expenses, and all profit applicable to services identified by Contractor. Overtime will not be paid on non-emergency response requests, unless specifically authorized by the County's Project Manager/BRM at the time the request for service is initiated.

Straight time is eight hours a day. The start time and the lunchtime are flexible depending upon the nature of the work. Overtime is any time after the straight time hours on weekdays, all day Saturday and Sunday, and will only be paid for emergency time and materials work. The Contractor must obtain prior written approval from County's Project Manager/BRM before working overtime except on emergency calls.

Labor Classifications/Rates:

Project Manager:	\$64/hour
Landscape Maintenance Foreman	\$33/hour
Landscape Maintenance Laborer	\$22/hour
Landscape Maintenance Spray Laborer	\$22/hour
Landscape Maintenance Driver	\$53/hour
Operations Manager	\$120/hour
Superintendent	\$48/hour
Operator	\$53/hour

SUBCONTRACTOR COSTS: When pre-approved by the County's Project Manager/BRM or designee, the use of subcontractors or specialized services labor and equipment shall be reimbursed at the actual cost. No markup for subcontractor labor and equipment shall be allowed in this contract.

MATERIAL COSTS: When approved by the County's Project Manager/BRM or designee, all parts and materials purchased by the Contractor or by its subcontractor, shall be reimbursed at actual cost plus the percentage. All parts shall be F.O.B Destination. All applicable taxes on materials will be applied after the mark-up has been added; no additional cost or mark-up will be applied to the sales tax amount. The Contractor shall provide with every invoice, a copy of the supplier's invoice for any part or material costing \$100.00 or more.

All replacement parts shall be new, except when rebuilt or remanufactured parts are most cost effective and pre-authorized by the OC Waste & Recycling.

Materials shall be billed at Contractor's Actual Cost Plus 10%. The markup shall be applied only to the actual cost of the parts or materials, excluding tax.

Contractor shall warrant all labor and materials used in the work for a period of one (1) year (or in accordance with Contractor's or Manufacturer's Warranty, if longer) after completion of repairs, if applicable.

EQUIPMENT RATES: When approved by the County's Project Manager/BRM or designee, equipment provided by the Contractor shall be reimbursed at the rates provided on Attachment 1 to Exhibit B, Hourly Equipment Rental.

Attachment 1 to EXIBIT B
Hourly Equipment Rental

	Toyota (Tundra/Tacoma)	24.00
	Isuzu - Field Vehicles	28.00
	Isuzu - Dump Trucks	30.00
1016	1983 Int'l Hydroseeder	110.00
1023	1990 International Water Truck	68.00
1092	1999 Freightliner D120064ST	110.00
1094	2007 Freightliner Water TM2106	68.00
2000	New Holland TV140A Tractor	129.00
2003	Barko Loader 885B	197.00
2004	Landini C80 Crawler	110.00
2005	Case Backhoe 1999 580L W/Bucke	110.00
2006	Forklift EASI R45TT	28.00
2007	Kubota RTV900G6H4x4- 2007	20.00
2009	Kubota RTV900G6H4x4- 2009	20.00
2010	Kobelco- Excavator SK210 - BH80	197.00
2011	Massey Ferguson MF- 1030 Tracto	71.00
2012	John Deere Gator HPX 4x4	15.00
2013	Storage Container- 40ft	10.00
2014	Storage Container 8x8x20ft	10.00
2015	Reach Lift 2003 Terex GHT- 1056	34.00
2016	Skid Steer Tracked	71.00
2017	Fecon Head 5 Ft	10.00
3000	Mower 6 FT Green	20.00
3001	Mower 5 FT Red	20.00
3002	Empire Tractor HD 7 FT Yellow	20.00
3003	Eberhardt Disk 8' for Tractor	20.00
3004	BH250 W/ Barco / Attachment	68.00
3006	BH 100 PTO W/ TV 140 / Attachm	59.00
3007	2002 Finn Straw Blower - B260	59.00
3008	1997 Straw Blower Model B- 70	39.00
3009	Seed Imprinter 8' Green	24.00
3010	Seed Imprinter 7' Blue	24.00
3011	Seed Slope Imprinter 6' Orange	24.00
3012	Spray Rig W/5.5 Motor 100 Gal	20.00
3013	Spray Rig PTO 100 Gal	20.00
3014	Spray Rig W/5.5 Motor 100 Gal	20.00
3015	Spray Rig W/ 5.0 Motor 30 Gal	10.00
3016	Spray Rig PTO 100 Gal	20.00
3017	Basket Tractor 5' x 6'	10.00
3018	Rake Tractor 3 Point Hitch	10.00
3019	Basket /Tractor 5' x 6'	10.00
3020	Vermeer BC1800A Brush Chipper	59.00

EQ # Description Hourly

3024	Gearmore Spray w/8 HP 200 Gal	10.00
3025	Intelli- spray rig	10.00
3026	Storage Container 40'	10.00
3027	Ing Rand 12.5HP Comp - 50' reel	6.00
3028	Welder- Generator Miller 225	6.00
3029	Scaffolding	10.00
3030	Billygoat Mower	9.00
3031	Billygoat Mower	9.00
4001	Boat 10 FT	10.00
4002	Boat 12 FT	10.00
5000	Chainsaw MASTER	1.00
5901	Blower- backpack Shihl BR600	1.00
6000	Line Trimmer MASTER	1.00
6500	Hedge Trimmer - MASTER	2.00
6505	Pole Pruner Stihl HT131	1.00
6600	Auger - 2 Man MASTER	2.00
6800	Auger - 1 Man MASTER	2.00
7000	Water Pump QP202TH	10.00
7001	Water Pump PT2A	10.00
7002	Water Pump Small 5.5 hp	10.00
7003	Water Pump QP202TH	10.00
7004	Water Pump WX15 4 Stroke	10.00
7005	Water Pumo - WX15 4 Stroke	10.00
7006	Water Pump - Mitsub High Pressu	10.00
7007	Water Pump 3.5 hp	10.00
7008	Water Pump - Mitsub High Pressu	10.00
7009	Water Pump - Northstar 2" HI- P	10.00
7300	Generator - 4000XL	10.00
7301	Generator - 400EXL	10.00
7400	Alpine Magnum Stump Grinder	10.00
8001	Trailer Redih Imprinter	10.00
8003	Utility Trailer (Water)	10.00
8004	Utility Trailer 1997 Trail Eze	30.00
8005	1994 Trailmob Air Box 24ft.	10.00
8006	Gorman Rupp Gas Pump	5.00
8008	Goulds Pump 2" X 2" Bostr 10	5.00
8010	Mig Welder / Cart / Helmet	2.00
8016	Backpack Sprayer	1.00
8017	Trailer, Aztec 19FT Carrier	2.00
8019	Ronco Dual Axel Trailer	3.00

E. Warranty Bond

Notwithstanding any other provisions of these Contract Documents, Contractor shall warranty all labor, equipment, and materials incorporated into this work for a period of not less than one (1) year from the date of acceptance, as evidenced by the Notice of Completion. Contractor shall take immediate action to correct any deficiency reported by County orally or in writing. Corrective action on items affecting use of a facility, safety, or preservation of property shall be initiated within twenty-four (24) hours after notification; corrective action on other items shall be initiated within ten (10) calendar days after notification. If Contractor fails to take corrective action or fails to correct the deficiency within a reasonable time, County may initiate whatever corrective action it deems necessary. All costs resulting from such action shall be due and payable by Contractor either by claim against Contractor or, if necessary, by claim against Contractor's Warranty Bond.

Commencing with the expiration date of the Contract, Contractor shall provide a Warranty Bond payable to County in the amount of one (1) percent of the final Contract amount valid for a period of three hundred sixty-five (365) calendar days, to assure warranty performance and correction of deficiencies during the warranty period. The bond shall not exceed a total of One Hundred Thousand Dollars (\$100,000) regardless of the Contract amount. The amount of the Warranty Bond provided for herein shall not be deemed a limitation upon the responsibility of Contractor to carry out the terms of the Contract Documents.

F. Reimbursable Costs

Contractor's reasonable out-of-pocket expenses will be directly reimbursable by the County with prior approval by the County's Project Manager. Reimbursable items shall be billed on an actual cost basis with no markup and submitted with complete back-up documentation as may be required by the County's Project Manager.



Figure A: FRB Landfill Habitat Management & Maintenance Services Areas

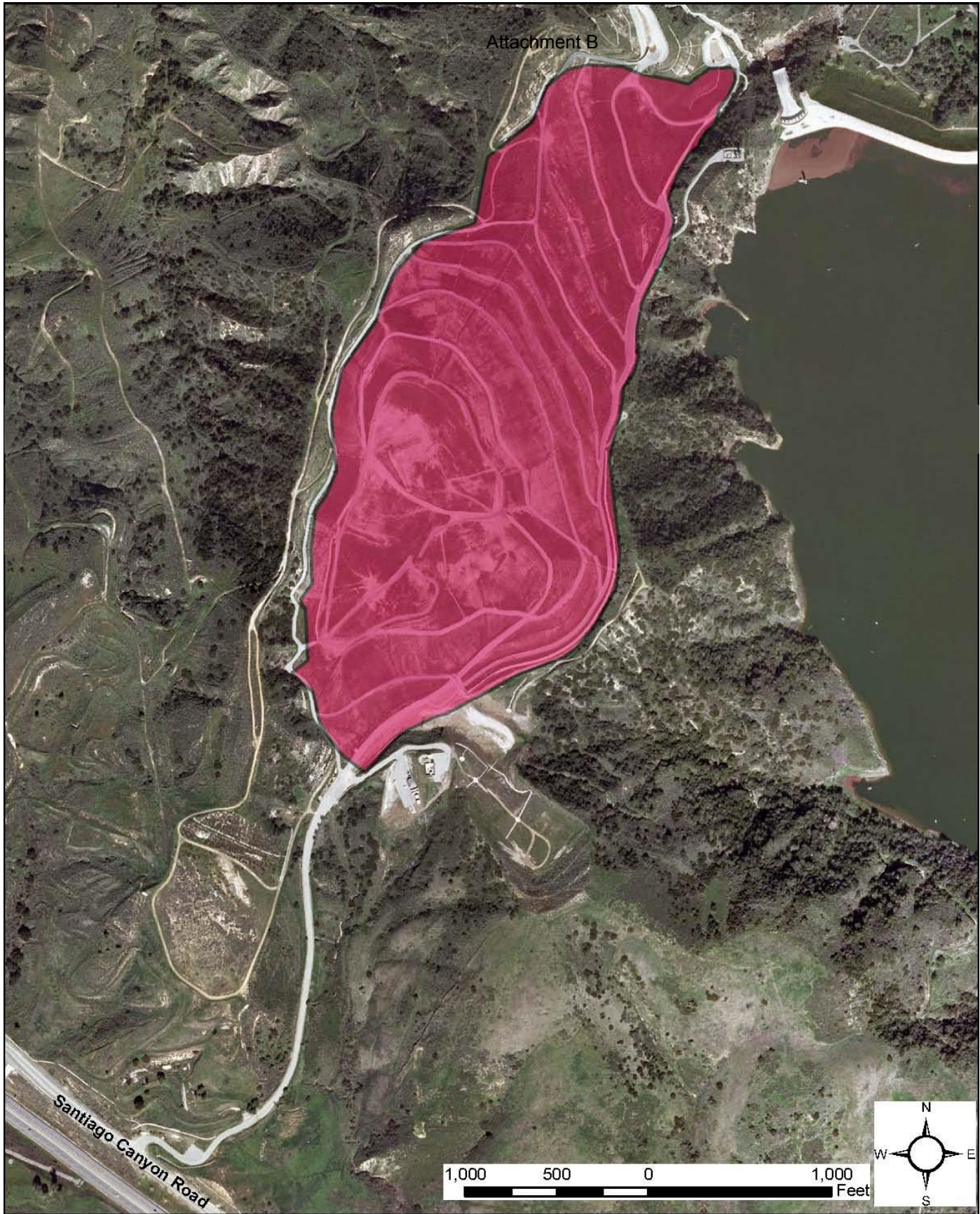


Figure B: Santiago Landfill Habitat Management & Maintenance Area