

**CONTRACT MA-080-18010124**  
**FOR**  
**STORMWATER EDUCATION AND**  
**OUTREACH SERVICES CAMPAIGN SERVICES**

THIS Contract MA-080-18010124 for Stormwater Education and Outreach Campaign Services, (hereinafter referred to as "Contract") is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, (hereinafter referred to as "County") and Action Research, (hereinafter referred to as "Contractor") with County and Contractor sometimes individually referred to as ("Party"), or collectively referred to as ("Parties").

**RECITALS**

WHEREAS, County and Contractor are entering into this Contract for Stormwater Education and Outreach Campaign Services under a Usage Contract; and,

WHEREAS, County solicited for Stormwater Education and Outreach Campaign Services as set forth herein, and Contractor has represented that it is qualified to provide Stormwater Education and Outreach Campaign Services to the County as further set forth herein; and,

WHEREAS, Contractor agrees to provide Stormwater Education and Outreach Campaign Services the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

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

NOW THEREFORE, the Parties mutually agree as follows:

**ARTICLES**

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure Stormwater Education and Outreach Campaign Services from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as "Attachment A".
2. **Term of Contract:** This Contract shall commence November 9, 2017 and continue for one calendar year from that date, unless otherwise terminated by County.
3. **Renewable Annually with Concurrence:** This Contract may be renewed, on an annual basis, by mutual written agreement of both Parties for four (4) additional one (1) year terms. The County does not have to give a reason if it elects not to renew. Renewal periods may be subject to approval by the County Board of Supervisors.
4. **Precedence:** The Contract documents consist of this Contract and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the exhibits and attachments.
5. **County's Project Manager:** The County shall appoint a project manager to act as liaison between the County and the Contractor during the term of this Contract. The County's project manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County's project manager shall have the right to require the removal and replacement of the Contractor's project manager and key personnel. The County's project manager shall notify the

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

6. **Contractor's Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County's Project Manager, which consent shall not be unreasonably withheld.

The Contractor's Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager from providing services to the County under this Contract. The County's Project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice by the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.

7. **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
8. **Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange assigned Deputy Purchasing Agent.
9. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at rates/prices listed in the Contract, regardless of quantity requested.
10. **Usage Reports - Annual:** The Contractor shall submit usage reports on an annual basis to the assigned Deputy Purchasing Agent of the County of Orange user agency/department. The usage report shall be in a format specified by the user agency/department and shall be submitted 90 days prior to the expiration date of the Contract Term, or any subsequent renewal term, if applicable.
11. **Cooperative Contract:** The provisions and pricing of this Contract will be extended to other California local or state governmental entities. Governmental entities wishing to use this Contract will be responsible for issuing their own purchase documents/price agreements, providing their own acceptance, and making any subsequent payments. Contractor shall be required to include in any

Contract entered into with another agency or entity that is entered into as an extension of this Contract a Contract clause that will hold harmless the County of Orange from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this contract. Failure to do so will be considered a material breach of this Contract and grounds for immediate Contract termination. The cooperative entities are responsible for obtaining all certificates of insurance and bonds required. The Contractor is responsible for providing each cooperative entity a copy of the Contract upon request by the cooperative entity. The County of Orange makes no guarantee of usage by other users of this Contract.

The Contractor shall be required to maintain a list of the cooperative entities using this Contract. The list shall report dollar volumes spent annually and shall be provided on an annual basis to the County, at the County's request.

12. **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 subcontractors associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.
13. **County of Orange Child Support Enforcement (After Submittal of Data and Certifications):** All Contractors are required to comply with the child support enforcement requirements of the County of Orange. Failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. In order to comply with the child support enforcement requirements of the County of Orange, all bidders/proposers must furnish to the Contract administrator, the Purchasing Agent, or the agency/department Deputy Purchasing Agent:
  - A. In the case of an individual Contractor, his/her name, date of birth, Social Security number, and residence address;
  - B. In the case of a Contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the Contracting entity;
  - C. A certification that the Contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
  - D. A certification that the Contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.
14. **News/Information Release:** The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County's Project Manager.
15. **Prevailing Wage (Labor Code §1773):** Pursuant to the provisions of Section 1773 et seq. of the California Labor Code, 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/DPreWageDetermination.htm>. 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.

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

- A. Terminate the Contract immediately, pursuant to Article 32. Termination herein;
- B. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
- C. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
- D. Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.

17. **Contract 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 Deputy Purchasing Agent by way of the following process:

1. The Contractor shall submit to the agency/department assigned Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
2. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

- B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Deputy Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for cause or termination for convenience as stated in section Article 32. Termination herein.

18. **Orderly Termination:** After receipt of a termination notice from the County of Orange, the Contractor may submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior

to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of performance of the Contract.

19. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of Article 47. Indemnification, 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.
20. **Parking for Delivery Services:** The County of Orange will not provide free parking for delivery services.
21. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

County's Project Manager: OC Public Works/OC Environmental Resources  
Attn: Christy Suppes  
2301 N. Glassell Street  
Orange, CA 92865  
Phone: 714-955-0673  
Email: christy.suppes@ocpw.ocgov.com

cc: OC Public Works/Procurement Services  
Attn: Anni Cerda  
2301 N. Glassell Street  
Orange, CA 92865  
Phone: 714-667-9623  
Email: anita.cerda@ocpw.ocgov.com

Contractor: Action Research  
Attn: Joey Schmitt  
3630 Ocean Ranch Blvd.  
Oceanside, CA 92056  
Phone: 760-722-4012  
Email: schmitt@actionresearch-inc.com

22. **Governing Law and Venue:** This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure

section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another County.

23. **Entire Contract:** This Contract contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or designee.
24. **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..
25. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.
26. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.
27. **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
28. **Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in Article 47. Indemnification, and as more fully described in Article 47. Indemnification, 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.
29. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in Article 47. Indemnification, it shall indemnify, defend

and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees..

30. **Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract..
31. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.
32. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.
33. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
34. **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.
35. **Performance Warranty:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.
36. **Insurance Requirements:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

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

### **Qualified Insurer**

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

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

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

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



### **Required Coverage Forms**

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

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

### **Required Endorsements**

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

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

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

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

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

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

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

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

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

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

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

37. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
38. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of the County.
- County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.
39. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
40. **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.
41. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of Article 47. Indemnification, 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.
42. **Freight:** Prior to the County's express acceptance of delivery of products. Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
43. **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.
44. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.
45. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section

1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.

46. **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.
47. **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.
48. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

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

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

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

49. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of

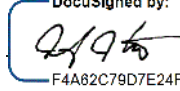
funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

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

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

**ACTION RESEARCH**, a state of California Corporation

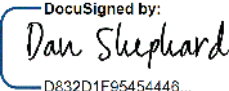
By:  \_\_\_\_\_  
Print Name: Jennifer J. Tabanico  
Title: President  
Corporate Officer  
Date: 7/27/2017

By:  \_\_\_\_\_  
Print Name: Jennifer J. Tabanico  
Title: Secretary  
Corporate Officer  
Date: 7/27/2017

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

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

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

By:  \_\_\_\_\_  
Date: 8/27/2017 \_\_\_\_\_  
Duty

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

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**ATTACHMENT A**  
**SCOPE OF WORK****I. INTRODUCTION**

The Orange County Stormwater Program (the *Program*) was formed in 1990 to enable the County of Orange, Orange County Flood Control District (OCFCD) and cities of Orange County to comply with area-wide municipal stormwater permits. It has been conducting water pollution themed public education and outreach since that time and public opinion surveys have since demonstrated increases in community awareness around stormwater issues, in addition to small, yet significant, changes in behavior.

In 2013, the campaign embraced a two-pronged approach (see *Public Education and Outreach: 5 Year Strategic Plan, 2013*), comprising a *Foundational Campaign* using traditional media tracked through surveys and impression counts and an *Action Campaign* focused on abating irrigation runoff, referred to as the *Overwatering Is Out* campaign. *Overwatering Is Out* applies Community- Based Social Marketing (CBSM) and social psychology principles to guide the strategy and is tracked through reported and verifiable behavior changes.

Operating parallel to one another, both campaigns have ensured the Program's compliance with regulatory requirements for achieving impressions and outreaching to residents and businesses as well as for achieving behavior changes protective of water quality. Consultant services are to assist the Program with the further development and delivery of the *Foundational Campaign* and *Action Campaign*.

**II. BACKGROUND**

The Program is a regulatory compliance partnership comprising the cities of Aliso Viejo, Anaheim, Brea, Buena Park, Costa Mesa, Cypress, Dana Point, Fountain Valley, Fullerton, Garden Grove, Huntington Beach, Irvine, La Habra, La Palma, Laguna Beach, Laguna Hills, Laguna Niguel, Laguna Woods, Lake Forest, Los Alamitos, Mission Viejo, Newport Beach, Orange, Placentia, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Santa Ana, Seal Beach, Stanton, Tustin, Villa Park, Westminster, and Yorba Linda, the County of Orange and the OCFCD (collectively the Permittees) who operate an interconnected municipal storm drain system which discharges stormwater and urban runoff pursuant to National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer Systems (MS4) Permits.

The MS4 Permits, administered by the Santa Ana and San Diego Regional Water Quality Control Boards (subsequently referred to as the Santa Ana Regional Board, the San Diego Regional Board or collectively as the Regional Boards), require the Permittees to develop and implement a surface water quality protection and management program and report annually on progress and program effectiveness. A public education and outreach campaign is a required program element. The Permittees must:

- A. Make a minimum of 10 million impressions per year in the Santa Ana Regional Board area (generally areas north of El Toro Road);
- B. Establish educational goals and related measureable objectives for high priority urban runoff pollution issues;
- C. Identify and analyze target audiences believed to have the greatest influence on the high priority urban runoff pollution issues;
- D. Create specific messages and implement message delivery mechanisms for the target audiences;
- E. Measurably increase knowledge and change the behavior of target communities and thereby reduce pollutant releases to the municipal storm drain system and the environment;
- F. Objectively evaluate the effectiveness of public education and outreach efforts; and

- G. Provide opportunities for public input and demonstrate consideration of that input, in the development of the public education and outreach campaign.

The Permittees' education and outreach campaign must therefore educate targeted public and business audiences, engage and retain audience participation in practices that will be protective of surface waters, and enable the Permittees to comply with regulatory mandates. On a countywide basis, surface water quality issues of concern are principally bacteria, nutrients, pesticide related toxicity, and unnatural water balance. These elements are anticipated to be the ongoing focus of both the action and foundational campaigns.

### III. ACTION CAMPAIGN

#### A. Goals

The primary goals of the action campaigns are to:

1. Enable the Program to comply with the public education and outreach elements of the Santa Ana and San Diego MS4 permits;
2. Engage target audiences in specific activities and behaviors that are sustained and protective of Orange County's creeks, streams, rivers and coastal waters; and

The specific qualifications for the firm providing these services are described below.

#### B. Description of Qualifications for Action Campaign

The qualifications sought shall include, but are not limited to:

1. An understanding of the potential adverse ecological impacts of storm and dry weather runoff from urban areas on streams, creeks and coastal waters;
2. Expertise in the actions residents can take to protect surface water quality with a focus on creating and maintaining climate-appropriate landscaping;
3. Expertise in strategically planning and effectively delivering environment protection themed short and long-term (i.e. multi-year) action campaigns that are grounded in CBSM principles;
4. A proven ability to engage with the general public and business interests to foster and sustain adoption of environmentally-protective behaviors and practices;
5. Expertise in social media;
6. The capability to evaluate public and business education campaign effectiveness using report and *dashboard* formats; and
7. A proven ability to work in a multi-jurisdictional local government setting to achieve consensus support for campaign strategies and tactics at staff, senior management and elected official levels.

#### C. Description of Action Campaign Services

The proposal to provide services should be consistent with the goals above (see Section II) and include, but not be limited to the following services:

1. Development of short and long-term action campaigns, including identification of target audiences and behaviors that will address the selected high-priority pollutant(s) of concern;
2. Implementation of short and long-term action campaigns;
3. Creation of artwork and advertising materials pertinent to each action campaign;
4. Incorporation of a "brand" name and development of a common theme/look for each campaign;

5. Establishment of key business partnership opportunities including identification of applicable trade associations, conferences, marketing opportunities and mailing lists;
6. Development of activity or pollutant focused articles/features for posting on municipal websites or for inclusion in local newspapers or newsletters;
7. Development and hosting of innovative webpages and webpage content and use of social media;
8. Provision of English/Spanish/Vietnamese/Korean versions of specified campaign materials;
9. Evaluation of overall program and program element effectiveness, including surveys of target audiences, summary reports for a range of audiences and program *dashboards*;
10. Participation in and provision of updates to the Public Education Sub-committee of the Program as well as provision of updates to other committees in the program management framework as requested;
11. Provision of reporting updates including 1) monthly summaries of activities provided to Permittee representatives and 2) annual reports that provide a comprehensive summary of the implementation activities, associated costs, number of impressions achieved; number of behavior changes effected, etc.; and
12. Development of plans and cost summaries identifying the specific campaign components that will be proposed for the subsequent fiscal year, additional outreach opportunities and the estimated number of impressions and increases in behavior change that the components will achieve (applicable to multi-year contracts only).

#### IV. FOUNDATIONAL CAMPAIGN

##### A. Goals

The primary goals of the foundational campaign are to:

1. Enable the Program to comply with the public education and outreach elements of the Santa Ana and San Diego MS4 permits;
2. Engage the general public and targeted businesses in broad activities and behaviors that are sustained and protective of Orange County's creeks, streams, rivers and coastal waters; and

##### B. Description of Foundational Campaign Qualifications

The qualifications sought shall include, but are not limited to:

1. An understanding of the potential adverse ecological impacts of storm and dry weather runoff from urban areas on streams, creeks and coastal waters and the programs for mitigating these impacts;
2. The expertise to strategically plan and create environmentally-themed messages on behalf of public agencies to a wide range of audiences;
3. The demonstrated ability to implement a short and long-term regional public and business education outreach campaign comprising high-potential, cost-effective messaging and engagement tactics;
4. A proven ability to educate the general public and business interests to foster and sustain adoption of more environmentally-protective behaviors and practices;
5. The capability to evaluate public and business education campaign effectiveness; and
6. A proven ability to work in a multi-jurisdictional local government setting to achieve consensus support for campaign strategies and tactics at staff, senior management and elected official levels.



**C. Description of Foundational Campaign Services**

The proposal to provide services should be consistent with the goals above and include, but not necessarily be limited to, the following services:

1. Creation of effective water pollution themed educational materials and messaging specifically designed for the general public and targeted businesses and which cover a broad range of pollution-prevention messaging;
2. Purchase of advertising including web banners, radio and newspapers (Orange County Register, O.C. Weekly, Excelsior, community newspapers, etc.), and out-of-home advertising, (movie theaters, gas pump top screens, etc.)
3. Solicitation and participation in key business outreach opportunities including identification of applicable trade associations, conferences, marketing opportunities and mailing lists;
4. Development and delivery of school education program materials for incorporation into or to support existing school-based efforts such as those conducted in coordination with the Program;
5. Incorporation of *brand* name and development of a common theme/look with all of the outreach materials;
6. Development of activity or pollutant focused articles/features for posting on municipal websites or for inclusion in local newspapers or newsletters;
7. Development of webpage content and use of social media;
8. Provision of English/Spanish/Vietnamese/Korean versions of specified countywide public and business education materials;
9. Evaluations of overall Program and program element effectiveness, including public opinion surveys;
10. Participation in and provision of updates to the Public Education Sub-committee of the Program as well as provision of updates to other committees in the program management framework as requested;
11. Provision of reporting updates including 1) monthly summaries of activities provided to Permittee representatives and 2) annual reports that provide a comprehensive summary of the implementation activities, associated costs, number of impressions achieved, etc.; and
12. Development of plans and cost summaries identifying the specific program components that will be proposed for the subsequent fiscal year, additional outreach opportunities and the estimated number of impressions that the components will achieve (applicable to multi-year contracts only).

**ATTACHMENT B  
CONTRACTOR’S PRICING**

**I. COMPENSATION:** This is a usage Contract between County and Contractor to provide Stormwater and Outreach Services, as set forth in Attachment A, “Scope of Work”.

Contractor agrees to accept the specified hourly rates as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder. Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. **County shall have no obligation to pay any sum in excess of the Total Not to Exceed Contract Amount specified herein below unless authorized by amendment in accordance with Article 24. Amendments and Article 39. Changes of the County Contract Terms and Conditions.**

**II. PRICING:** County will pay fees at the following hourly rates in accordance with the provisions of this Contract.

A. Billable Rates:

<b>CLASSIFICATION</b>	<b>HOURLY RATE</b>
President/Principal	\$185
Director of Research Operations	\$150
Research Analyst	\$125
Sr. Project Manager	\$100
Research Associate	\$ 75
Sr. Research Assistant	\$ 60
Research Assistant	\$ 50

**B. Contract Amount Not To Exceed: .....\$500,000.00/per year**

**III. PRICE INCREASES/DECREASES:** No price increases will be permitted during the term period of the Contract. All price decreases will automatically be extended to the County. The County requires bona fide proof of cost increases on Contracts prior to any price adjustment. A minimum of one hundred eighty (180) days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. The County may enforce, adjust, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor’s profit will not be allowed.

**IV. CONTRACTOR’S EXPENSE:** Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of work and services under this Contract.

**V. REIMBURSABLE ITEMS:** Reimbursable items are non-salary items that are included in the Scope of Work but necessary for completion of the work and must be authorized in writing by the County Project

Manager. Contractor may be entitled to reimbursement for the following, upon written approval by County:

- 1) Printing and advertising expenses paid to outside contractors; to the extent such contractors and reproduction rates have been approved in writing by the County Project Manager.
- 2) Other actual costs and/or payments specifically approved and authorized in writing by the County Project Manager and actually incurred by Contractor in performance of this Contract.

\*Invoices for reimbursable items shall be identified as such and include copies of receipts or other proof of payment as determined by the County. Contractor shall obtain written approval from County prior to incurring expenses for materials, advertising and reproduction costs.

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

**VII. INVOICING INSTRUCTIONS:** The Contractor shall submit invoices to County on Contractor's letterhead. Each invoice shall have a unique number and shall include the following information:

- A. Contractor's name and address
- B. Contractor's remittance address, if different from (A), above
- C. Name of County agency/department/contact person
- D. Delivery/service address
- E. Contract number
- F. Service Date
- G. Description of Services
- H. Total
- I. Taxpayer ID number

Invoices and supporting documentation are to be forwarded to:

OC Public Works/Procurement Services  
Attn: Accounts/Payables  
300 North Flower Street, 8th Floor  
Santa Ana, CA 92703  
Email: [accountspayables@ocpw.ocgov.com](mailto:accountspayables@ocpw.ocgov.com)

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

**ATTACHMENT C  
STAFFING PLAN***(Complete and submit as #2.a.1., in Part 3 of Section II "Response Requirements")*

1. Key Personnel to perform Contract duties, as needed, at the request of the County:

<b>Name</b>	<b>Classification/Designation</b>	<b>Years of Experience</b>
Jennifer Tabanico	Principal-In-Charge	14
Lori Large	Director of Research Operations	20
Sharon Danoff-Burg	Research Analyst	22
Joey Schmitt	Senior Project Manager	6
Dani Ballard	Research Associate	15

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

The specific individuals will be assigned based on the need and timing of the service/classification required at the County's request. Assignment of additional key personnel shall be subject to County written approval. County reserves the right to have any of Contractor personnel removed from providing services to County under this Contract. County is not required to provide any reason for the request for removal of any Contractor personnel.