

**CONTRACT MA-080-15010314
FOR
MITIGATION MAINTENANCE SERVICES**

THIS Contract, MA-080-15010314, to provide Mitigation Maintenance 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 and the Orange County Flood Control District, (hereinafter referred to as "County and District") and Natures Image, Inc., (hereinafter referred to as "Contractor"), with County, District and Contractor sometimes individually referred to as ("Party"), or collectively referred to as ("Parties").

RECITALS

WHEREAS, County and District desire to enter into a Contract for Mitigation Maintenance Services under a Fixed Fee Contract; and,

WHEREAS, County and District solicited services as set forth herein, and Contractor has represented that it is qualified to provide Mitigation Maintenance Services to the County and District as further set forth herein; and,

WHEREAS, Contractor agrees to provide Mitigation Maintenance Services to the County and District as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County and District 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, including attachment(s), specifies the contractual terms and conditions by which Contractor will provide services under a fixed-fee contract, inclusive of, but not limited to, the requirements set forth in the Scope of Work identified as Attachment A to this Contract.
2. **Term:** ~~The initial term of this~~ Contract shall ~~become~~ be effective ~~upon execution of all authorized signature~~ December 1, 2016 and shall ~~continue be in effect~~ for one (1) year from that date, unless otherwise terminated as provided herein. This Contract may be renewed upon expiration of the initial term, for ~~four (4)~~ two (2) additional years, upon mutual agreement of both Parties. The County and District is not obligated to give a reason or notice if it elects not to renew. Renewal amendments may require approval of the County Board of Supervisors.
3. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County and District; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are

not forthcoming, or are otherwise limited, County and District may immediately terminate or modify this Contract without penalty.

4. **Bonds:**

Contractor will furnish a Faithful Performance Bond and a Labor and Material Payment Bond, each in an amount equal to 100% of the Total Annual Contract Amount pursuant to Section 20473 of Public Contract Code.

i. **Performance Bond:** Contractor shall furnish a surety bond to guarantee faithful performance. Said bond shall be for one hundred percent (100%) of the total Contract price. Said bond shall be submitted upon the forms provided by County and District and duly executed by Contractor and a responsible corporate Surety, authorized to issue such bonds in State of California and secured through an authorized agent with an office in California and registered with County and District. Contractor shall pay all bond premiums, costs, and incidentals.

ii. **Payment Bond:** Contractor shall furnish a surety bond to guarantee payment of claims of labors, mechanics, material man, and other persons as set forth by law. Said bond shall be for one hundred percent (100%) of the total Contract price. Said bond shall be submitted upon the forms provided by County and District and duly executed by Contractor and a responsible corporate Surety, authorized to issue such bonds in State of California and secure through an authorized agent with an office in California and registered with County and District. Contractor shall pay all bond premiums, costs, and incidentals.

Said bonds shall be secured from an admitted surety company authorized to conduct surety insurance in California and satisfactory to County Risk Management and Office of the County Counsel.

Should any Surety at any time be unsatisfactory to County and District, or should any bond become insufficient, Contractor will be given notice to that effect. No further payment shall be deemed due or will be made under Contract until a new Surety and/or bond is furnished to County and District.

5. **County and District's Project Manager:** County and District shall appoint a Project Manager, as specified in Article 33. Notices, to act as liaison between County and District and Contractor during the term of this Contract. County and District's Project Manager shall coordinate the activities of County and District staff assigned to work with Contractor.

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

6. **Contractor's Project Manager and Key Personnel:** Contractor shall appoint a Project Manager, as specified in Article 33. Notices, to act as liaison between the County and District and the Contractor during the term of this Contract and to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to

approval by the County and District and shall not be changed without the written consent of the County and District's Project Manager, which consent shall not be unreasonably withheld.

Contractor's Project Manager and Key Personnel shall be assigned to this Contract for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. Contractor's Key Personnel are those individuals who report directly to the Contractor's Project Manager.

7. **Conditions Affecting Work:** 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 Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to County and District. County and District 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 County and District are expressly stated in the Contract.
8. **Existing Site Conditions:** Information respecting the site of the work given in Scope of Work, drawings and/or specifications has been obtained by County and District's representatives and is believed to be reasonably correct, but County and District does not warrant either the completeness or accuracy of such information, and it is the responsibility of Contractor to verify all such information.
9. **Hazardous Conditions:** Whenever Contractor's operations create a condition hazardous to traffic or to the public, Contractor shall provide flagmen and furnish, erect and maintain control devices as are necessary to prevent accidents or damage or injury to the public at Contractor's expense and without cost to County and District. Contractor shall comply with County and District directives regarding potential hazards.

Emergency lights and traffic cones must also be readily available at all times and must be used in any hazardous condition. Emergency traffic cones must be placed in front of and behind vehicles to warn oncoming traffic.
10. **No Waiver by County and District:** The failure of County and District in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option herein conferred, shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.
11. **Contractor's Licenses:** Contractor and his subcontractors, if any, shall, at all time during the term of this Contract, maintain in full force and effect such licenses or permits as may be required by the State of California or any other government entity. Contractor and his subcontractors, if any, shall strictly adhere to, and obey, all governmental rules and regulations now in effect or as subsequently enacted or modified, as promulgated by any local, state, or federal governmental entity.
12. **Wage Rates:** 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/DpreWageDetermination.htm>. The Contractor shall post a copy of such wage rates at the jobsite and shall pay the adopted prevailing wage rates. The Contractor shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.

Travel and subsistence payments to each workman needed to execute the Work shall be made as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Section 1773.8 of the Labor Code.

The County and District will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the Contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining his bid, and will not under any circumstances be considered as the basis of a claim against the County and District on the Contract.

The Contractor and subcontractors shall comply with Section 1777.6 which stipulates that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077.

13. **Wage Rate Penalty:** Pursuant to the provisions of the Labor Code Section 1775, the Contractor shall forfeit to the County and District, as a penalty, the sum of Twenty-five Dollars (\$25.00) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for Work done under this Contract, by Contractor or by subcontractors, in violation of the provisions of this Contract.
14. **Work Hour Penalty:** Eight hours of labor constitute a legal day's Work, and forty hours constitute a legal week's Work. Pursuant to Section 1813 of the Labor Code of the State of California, the Contractor shall forfeit to the County and District Twenty Five Dollars (\$25) for each worker employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to Work more than the legal day's or week's Work, except that Work performed by employees of said Contractor and subcontractors in excess of the legal limit shall be permitted without the foregoing penalty upon the payment of compensation to the workers for all hours worked in excess of eight hours per day of not less than 1-1/2 times the basic rate of pay.
15. **Withholding of Wage Differentials:** The County and District may withhold from the Contractor as much of any accrued payments as may be necessary to pay laborers, craft workmen and mechanics employed on the Project any difference between the rate of wages required to be paid pursuant to California law and the rate of wages actually paid to such laborers, craft workmen and mechanics.
16. **Craft Labor Time Records:** The Contractor shall keep full, true and accurate records of the names and actual hours worked by the respective workers and laborers employed under this Contract in accordance with California Labor Code and shall allow access to the same any reasonable hour to the County and District, its agents or representatives and to any person having the authority to inspect the same as contemplated under the provisions of said California Labor Code, or when requested by the County and District.

Eight (8) hours of labor shall constitute a legal day's Work. The Contractor shall comply with Labor Code regarding legal day's Work and overtime.

17. **Contractor's Personnel:** Contractor warrants that all Contractor personnel engaged in the performance of work under this Contract shall possess sufficient experience and/education to

perform the services requested by County and District. County and District expressly retains the right to have any of Contractor personnel removed from performing services under this Contract. Contractor shall effectuate the removal of the specified Contractor personnel from providing any services to County and District under this Contract within one business day of notification by County and District. County and District shall submit the request in writing to Contractor's Project Manager. County and District is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor personnel be removed from performing services under this Contract.

18. **Usage:** No guarantee is given by County and District to Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. Contractor agrees to supply services and/or commodities requested, as needed by County and District, at prices listed in the Contract, regardless of quantity requested. Orders may be placed against this contract at the convenience of the using agency/department.
19. **Usage Reports:** Upon County and District request, Contractor shall submit usage reports to the County and District which shall include, at minimum, summarized hourly quantities by service descriptions. The usage report shall be in a format specified by the County and District.
20. **Conflict of Interest:** Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of County and District. This obligation shall apply to Contractor; Contractor's employees, agents, and relatives; subcontractors; and third parties associated with accomplishing work and services hereunder. 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 County and District.
21. **Child Support Enforcement Requirements:** Contractor is required to comply with the child support enforcement requirements of County and District. Failure of Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within 60 calendar days of notice from County and District shall constitute grounds for termination of the Contract.
22. **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 County and District, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County and District approval.
23. **News/Information Release:** Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said news media contact from County and District through County and District's Inspector/Project Manager. Any requests for interviews or information received by the media should be referred directly to County and District. Contractors are not authorized to

serve as a media spokespersons for County and District projects without first obtaining permission from County and District's Inspector/Project Manager.

24. **Reports/Meetings:** Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. County and District's Inspector/Project Manager and Contractor's Project Manager will meet on reasonable notice, at a County and District designated location, to discuss Contractor's performance and progress under this contract. If requested, Contractor's Project Manager and other project personnel shall attend all meetings. Contractor shall provide such information that is requested by County and District for the purpose of monitoring progress under this Contract.
25. **Breach of Contract:** The failure of Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event County and District may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - i. Afford 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;
 - ii. Discontinue payment to Contractor for and during the period in which Contractor is in breach and offset against any monies billed by Contractor but yet unpaid by County and District those monies disallowed pursuant to the above.
 - iii. Terminate the Contract immediately without penalty.
26. **Contract Disputes:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by Contractor's Project Manager and County and District's Inspector/Project Manager, such matter shall be brought to the attention of the County and District Deputy Purchasing Agent (DPA), as specified in Article 33. Notices, by way of the following process:
 - i. Contractor shall submit to County and District DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless County and District, on its own initiative, has already rendered such a final decision.
 - ii. Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, 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 Contractor believes County and District is liable.
 - iii. Pending the final resolution of any dispute arising under, related to, or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. Contractor's failure to diligently proceed shall be considered a material breach of this Contract. Any final decision of County and District shall be expressly identified as such, shall be in writing, and shall be signed by County and District DPA or his designee. If County and District fails to render a decision within 90 days after receipt of Contractor's demand, it shall be

deemed a final decision adverse to Contractor's contentions. County and District's final decision shall be conclusive and binding regarding the dispute unless Contractor commences action in a court of competent jurisdiction to contest such decision within 90 days following the date of County and District's final decision or one year following the accrual of the cause of action, whichever is later.

27. **Stop Work:** County and District may, at any time, by written stop work order to Contractor, require Contractor to stop all or any part of the work called for by this Contract for a period of 90 working days after the stop work order is delivered to Contractor and for any further period to which the Parties may agree. The stop work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the stop work order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within a period of 90 working days after a stop work order is delivered to Contractor or within any extension of that period to which the Parties shall have agreed, County and District shall either:
- i. Cancel the stop work order; or
 - ii. Terminate the Contract immediately in whole or in part in writing as soon as feasible. County and District is not required to provide thirty-day (30) day notice of the termination of the Contract to Contractor if a stop work has been issued.
28. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.
29. **Contractor Bankruptcy/Insolvency:** If 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 Contractor's insolvency, County and District may terminate this Contract.
30. **Expenditure Limit:** Contractor shall notify County and District's Inspector/Project Manager in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. County and District will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.
31. **Delivery Parking:** The County and District of Orange will not provide free parking for delivery services.
32. **Material Safety Data Sheets (MSDS):** Contractor is required to provide a completed Material Safety Data Sheet (MSDS) for each hazardous substance provided to County and District under the Contract. This includes hazardous substances that are not directly included in the Contract, but are included in the goods or services provided by Contractor to County and District. The provision of the MSDS must be in accordance with the requirements of California Labor Code Sections 6380 through 6399, General Industry Safety Order Section 5194, and Title 8, California Code of Regulations. The MSDS for each substance must be sent to County and District's Inspector/Project Manager and must also be sent to:

County of Orange CEO/Risk Management

Attn: Safety and Loss Prevention Program
PO Box 327
Santa Ana, CA 92702

33. **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.

County: OC Public Works/Engineering
~~Attn: Thomas Distanislaio, County and District Inspector /Project Manager~~
~~Address 2301 N Glasspell St~~
~~City ST Zip: Orange, CA 92865~~
~~Phone: (714) 955-0263~~
~~Email: Thomas.Distanislaio@ocpw.ocgov.com~~
Attn: Jennifer Shook, Project Manager
2301 N. Glassell Street
Orange, CA 92865
Phone: (714) 955-0615
Email: Jennifer.Shook@ocpw.ocgov.com

Cc:OC Public Works/Procurement
Attn: Debbie Temple, County DPA
Address: 300 N Flower St, Suite 808
City ST Zip Santa Ana, CA 92703
Phone: (714) 667-9624
Email: Debbie.Temple@ocpw.ocgov.com

Contractor: Natures Image, Inc.
Attn: Daniel Slinger
Address: 20361 Hermana Circle
City ST Zip: Lake Forest, CA 92630
Phone: (949) 680-4400 x 114
Email: dslinger@naturesimage.net

34. **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 and District, 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 and District.

35. **Entire Contract:** This Contract, including Attachments which are attached hereto and incorporated herein by this reference, when accepted by 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 and District unless authorized by County and District in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County and District employee or agent, including but not limited to installers of software, shall not be valid or binding on County and District unless accepted in writing County and District's Purchasing Agent or his designee.
36. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County and District unless authorized by County and District in writing.
37. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
38. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County and District reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or description, or services that do not conform to the prescribed Scope of Work. Acceptance of any part of the order for goods shall not bind County and District to accept future shipments, nor deprive it of the right to return goods already accepted, at Contractor's expense. Overshipments and undershipments of goods shall be only as agreed to in writing by County and District. Delivery shall not be deemed to be complete until all goods, or services, have actually been received and accepted in writing by County and District.
39. **Acceptance/Payment:** Unless otherwise agreed to in writing by County and District; 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County and District, and 2) payment shall be made in arrears.
40. **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 District and its indemnities as identified in Article 67, and as more fully described in Article 67, harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County and District by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
41. **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 67, it shall indemnify, defend and hold County and District and County and District Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.

42. **Assignment or Subcontracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or subcontracted by Contractor without the express written consent of County and District. 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 and District shall be invalid and shall constitute a breach of this Contract.
43. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Anti-Discrimination Law or regulation, including but not limited to, Section 1720 et seq. of the California Labor Code.
44. **Termination:** In addition to any other remedies or rights it may have by law and those set forth in this Contract, County and District 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 Contractor. Exercise by County and District of its right to terminate the Contract shall relieve County and District of all further obligations.
45. **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.
46. **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.
47. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither Contractor, its employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County and District. Neither Contractor, employees nor anyone working for Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County and District.
48. **Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County and District's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and

coordination of all documentation and other goods/services furnished by 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 and District 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.

49. **Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense and to deposit with the County and District Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County and District 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 and District during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

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 and District Executive Office (CEO)/Office of Risk Management.

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

Qualified Insurer

The policy or policies of insurance must be issued by an insurer 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 and District 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
Employer's Liability	\$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 2010 or CG 2033 or a form at least as broad naming County and District of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that Contractor's insurance is primary and any insurance or self-insurance maintained by County and District of Orange shall be excess and non-contributing.

All insurance policies required by this Contract shall waive all rights of subrogation against the County and District 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 and District 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 and District 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.

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 days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

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

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

50. **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 67, indemnify, defend, and hold County and District harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
51. **Changes:** Contractor shall make no changes in the work or perform any additional work without County and District's specific written approval.
52. **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 and District..
53. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County and District within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
54. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and District and County and District and County and District-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.
55. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County and District in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County and District. Contractor acknowledges that County and District is relying on Contractor to ensure such compliance, and pursuant to the requirements of Article 67, Contractor agrees that it shall defend, indemnify and hold County and District and County and District Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
56. **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.
57. **Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in Contractors Pricing attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
58. **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.

59. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
60. **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.
61. **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.
62. **Calendar Days:** Any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
63. **Attorneys Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney’s fees, costs and expenses.
64. **Interpretation:** This Contract has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the Party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Contract.
65. **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.
66. **Employee Eligibility Verification:** 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. 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. Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. Contractor shall indemnify, defend with counsel approved in writing by County and District, and hold harmless, County and

District, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against Contractor or County and District 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.

67. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County and District, and hold County and District, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County and District's Board of Supervisors acts as the governing Board ("County and District Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County and District by a court of competent jurisdiction because of the concurrent active negligence of County and District or County and District Indemnitees, Contractor and County and District agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
68. **Audits/Inspections:** Contractor agrees to permit the County and District's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County and District) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County and District will provide reasonable notice of such an audit or inspection. The County and District reserves the right to audit and verify the Contractor's records before final payment is made.

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

Should the contractor cease to exist as a legal entity, the contractor's records pertaining to this agreement shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County and District's Inspector/Project Manager.

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

NATURES IMAGE, INC.*
a State of California corporation

By: _____

By: _____

Print Name: _____

Print Name: _____

Title _____
Corporate Officer

Title _____
Corporate Officer

Date _____

Date _____

COUNTY AND DISTRICT OF ORANGE
a political subdivision of the State of California

By: _____

Print Name: _____

Title _____
Deputy Purchasing Agent

Date _____

APPROVED AS TO FORM
County and District Counsel

By: _____
Deputy

Date _____

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

ATTACHMENT A
SCOPE OF WORK

- I. **SCOPE OF WORK:** Contractor shall furnish all staffing, labor, equipment, materials and incidentals required for Mitigation Maintenance Services. Services shall be provided on an as-needed basis as required by County and District.
- II. **DESCRIPTION OF WORK:** This Contract is for Mitigation Maintenance Services at various County and District locations as required by County and District.
 - A. **Location of Work:** Work locations for this Contract shall be flood control facilities and assigned mitigation sites of various sizes and locations throughout Orange County. This Contract does not include work on any City or County and District roadways, or private streets, with the County and District.
 - B. **Flood control facilities and mitigation sites' Mitigation Maintenance Services** consists of those items of work necessary to maintain the overall integrity of designated mitigation sites per Habitat Mitigation and Monitoring Plan (HMMP) and as deemed necessary by County and District Inspector/Project Manager.
- III. **CONTRACTOR REQUIREMENTS:**
 - A. Contractor shall hold an active Class A License issued by the California State Contractors License Board.
 - B. Contractor will maintain accurate records showing names of employees, California Department of Pesticides Regulation (CA DPR) license number for licensed Pest Control Advisor (PCA) and Qualified Applicator Certificate (QAC)/Qualified Applicator License (QAL) where applies, classification, actual hours worked, wages paid and benefits paid to each employee and certified payroll. All PCA recommendations for herbicide use will be made available to County and District Inspector/Project Manager prior to the application of herbicides. This record will be subject to inspection of County and District and State Division of Labor Law Enforcement in accordance with provisions of the State Labor Code 1776.
 - C. Contractor agrees to permit County and District's Auditor-Controller or Director, OC Public Works, or their authorized representative, access during normal working hours to all books, accounts, records, reports files and other papers of property of Contractor for purpose of auditing any aspects of performance under Contract.
 - D. **Conduct:** Contractor personnel providing services under this Contract shall not be incompetent, disorderly, under the influence of alcohol or drugs, or fail or refuse to perform the work properly and at a level acceptable to the County and District expressly retains the right to request any specific Contract personnel be precluded from providing services to County and District under this Contract. County and District is not required to provide any reason for requested removal of specified Contract personnel. Contractor shall effectuate removal of the requested Contractor personnel within three (3) business days.
 - E. **Supervision:** Contractor shall provide a supervisor or foreman who shall be present at all times during Contract operations, and who shall be responsible for both conduct and workmanship. Said supervisor or foreman shall be able to communicate effectively in both written and oral English.

IV. CONTRACTOR PERFORMANCE REQUIREMENTS:

- A. **Worksite Limits:** All operations shall be restricted to Orange County and District Flood Control District (OCFCD) channel right-of-way. Contractor shall not enter upon any adjacent property for the purpose of conducting any operations required under this Contract unless Contractor has obtained permission from County and District's Inspector/Project Manager and written permission from affected property owner.
- B. **Equipment and Tools:** Contractor shall furnish all hand tools, power equipment and safety equipment necessary to accomplish specified work.
 - 1. Contractor shall provide portable water readily available at all times for each crew.
 - 2. Contractor shall conform to all Air Quality Management District (AQMD) regulations, which may apply to the types of equipment utilized under this Contract.
 - 3. Hand tools shall include, but not be limited to, gas powered weed eaters, chain saws, loppers, pole pruners, hand saws, whip hoes, shovels, hoes, rakes, trash cans and/or tarps and other tools and equipment as required for the removal of weeds, debris, minor silt, and vegetative growth.
 - 4. All equipment shall be fueled and maintained outside of County and District right-of-ways.
- C. **Required Hauling Equipment:** Contractor shall provide proper hauling equipment such as suitable flatbed hydraulic dump trucks with high sides, chipper trucks, and/or trash compactor trucks throughout the Contract operations.
 - 1. All equipment shall be kept in good repair and conform to all State and local laws.
 - 2. All trucks shall be equipped with rear flashing lights.
 - 3. All Contractor personnel operating haul equipment for County and District purposes must have a valid California Driver's License issued by the California Department of Motor Vehicles (DMV).
 - 4. Contractor is responsible for ensuring that all proper DMV requirements such as medical certificate, proper endorsements, etc. are current and shall provide a copy this information to County and District's Inspector/Project Manager upon request.
 - 5. No equipment shall be operated in pond or flowing water at any time.
 - 6. All equipment shall be fueled and maintained outside of County and District right-of-ways
- D. **Travel Time:** No Portal to Portal charges shall be allowed. All costs for travel time between flood control channels and/or to and from refuse disposal sites shall be considered as included in various items of work involved and no additional compensation shall be allowed therefore.
- E. **Disposal Fees:** All costs for refuse disposal shall be considered as included in various items of work involved and no additional compensation will be allowed therefore. Contractor shall be responsible for all dump/disposal fees in all unit prices quoted.
- F. **Working Hours:** Contractor shall conduct all operations between 7 a.m. and 4 p.m., Monday through Friday. If Contractor desires to work hours or days other than as provided, it may file a

written request, subject to approval by County and District's Inspector/Project Manager, stating their intended operations, hours and dates, and a reason for schedule change.

- G. Sound Control: Contractor shall comply with all County and District and local sound control and noise level rules, regulations, and ordinance, which apply to any work performed pursuant to the Contract, and will make every effort to control any undue noise resulting from its operation.
- H. Dust Control: Contractor shall perform his operations in such a manner as to limit dust.
 - 1. Contractor will not create dust in such a quantity as to violate the AQMD regulations.
 - 2. Contractor is responsible for sweeping adjacent sidewalks and roadways of any dirt and debris left behind from their equipment entering and exiting OCFD channels. This should include the use of a street sweeper if necessary to completely remove any debris on the roadways.
- I. Debris Removal: All trash and debris generated from each work will be removed from work area by the end of each working day.
 - 1. At other times during the progress of work, when required, Contractor shall remove all surplus materials, rubbish, and debris resulting from the work.
 - 2. Work area will be left in a neat, clean and acceptable condition as approved by County and District's Inspector/Project Manager.
 - 3. No stockpile of debris will be allowed at the site unless prior authorization is given by County and District's Inspector/Project Manager.
 - 4. Contractor shall pick up and dispose of materials at a site outside of County and District right-of-way approved for disposal of such materials.
 - 5. Any debris dropped on the public street during entrance or exit of the site will be removed immediately by Contractor.
- J. Water: Contractor shall furnish all water required for performance of this work, will make all arrangements for obtaining all water with the governing water district, and will comply with all requirements set forth by the governing water district.
- K. Utilities: Underground main distribution conduits such as water, gas, sewer, electrical power, telephone, or cable television may not be affected by the work indicated in the work packages since only surface excavation is required. Contractor shall assume that every property parcel will be served by a service connection for each type of utility and will protect all such service connection. Contractor shall contact UNDERGROUND SERVICE ALERT (USA) at (800) 422-4133 for all subsurface excavation and will contact utility companies to mark locations if necessary.
- L. Protection Maintenance of Existing Areas: Contractor shall protect all furnishings and improvements from damage by its operations. All damage shall be repaired or replaced, at the option of County and District, at Contractor's expense within three (3) days after notification of such damage by County and District's Inspector/Project Manager. Repairs and/or replacements shall be equal to original in all aspects.

M. Safety: Contractor agrees to perform all work outlined in this Contract in such a manner as to meet all accepted standards for safe practices during operations and to maintain safe conditions or premises and ways at all times, including safely stored equipment, machines and materials. This includes compliance with local County and District, State or other legal intents and terms of the applicable Occupational Safety and Health Administration (OSHA) and CAL/OSHA Safety orders at all times so as to protect all persons, including Contractor's employees and agents, against injury or damage to property.

N. Best Management Practices:

1. Contractor shall conduct operations under this Contract so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems ("Stormwater Drainage System"), and to ensure that pollutants do not directly impact "Receiving Waters" (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).
2. The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System (NPDES) permits ("Stormwater Permits") to the County and District of Orange, and to the Orange County and District Flood Control District (District) and cities within Orange County and District, as co-permittees (hereinafter collectively referred to as "County and District Parties") which regulate the discharge of urban runoff from areas within the County and District of Orange, including the Premises under this Contract. The County and District Parties have enacted water quality ordinances that prohibit conditions and activities that may result in polluted runoff being discharged into the Stormwater Drainage System. RWQCB Permits are National Pollutant Discharge Elimination System (NPDES) Permit No. 2013-0002-DWQ. Copies of the RWQCB Permits are available for review.

Work performed under this CONTRACT will conform to Permit requirements, Drainage Area Management Plan (DAMP), and Model Maintenance Procedures. CONTRACTOR will fully understand Model Maintenance Procedures applicable to activities that are being conducted under this CONTRACT prior to conducting them and maintain copies of Model Maintenance Procedures throughout CONTRACT duration. Applicable Model Maintenance Procedures are included as Exhibits C of this CONTRACT.

Evaluation of activities subject to DAMP requirements performed under this CONTRACT will be conducted to verify compliance with DAMP requirements and may be required through CONTRACTOR self-evaluation as determined by COUNTY AND DISTRICT.

Full compensation for conforming to requirements of NPDES REQUIREMENTS will be considered as included in various items of work involved and no additional compensation will be allowed therefore.

3. To assure compliance with the Stormwater Permits and water quality ordinances, the County and District Parties have developed a DAMP which includes a Local Implementation Plan (LIP) for each jurisdiction that contains Best Management Practices (BMPs) that parties using properties within Orange County and District must adhere to. As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. These BMPs are found within the County and District's LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model

Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as "BMP Fact Sheets") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.

4. BMP Fact Sheets shall include but not be limited to the following which may be viewed and downloaded at:
<http://ocwatersheds.com/documents/bmp/industrialcommercialbusinessesactivities>
 - a) IC7
 - b) IC17
 - c) IC18
 - d) IC19
 - e) IC21
5. These BMP Fact Sheets may be modified during the term of the Contract; and County and District's Inspector/Project Manager shall provide Contractor with any such modified BMP Fact Sheets.
6. Contractor shall, throughout the term of this Contract, comply with the BMP Fact Sheets as they exist now or are modified, and shall comply with all other requirements of the Stormwater Permits, as they exist at the time this Contract commences or as the Stormwater Permits may be modified. Contractor agrees to maintain current copies of the BMP Fact Sheets on the job sites throughout the term of this Contract. The BMPs applicable to uses authorized under this Contract must be performed as described within all applicable BMP Fact Sheets.
7. Contractor may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP Fact Sheets. Any such alternative BMPs shall be submitted to the County and District's Inspector/Project Manager for review and approval prior to implementation.
 - a) County and District's Inspector/Project Manager may visit the job sites and/or review Contractor's records at any time to assure that activities conducted on the job sites comply with the requirements of this section. Contractor may be required to implement a self-evaluation program to demonstrate compliance with the requirements of this section.
8. Best management practices (BMPs) (e.g., silt fences, clean straw bales, straw wattles) will be used where necessary to effectively reduce the escape of sediments and pollutants from habitat restoration areas during the maintenance program. Remedial measures that address significant channel erosion will be developed in consultation with the resource agencies if annual monitoring results indicate that channel degradation is continuing. All BMP's used in project will be included as part of unit cost.

The deposition of debris, herbicides, fertilizers, pesticides, petroleum products, or any other pollutants within the habitat restoration areas will be avoided.

- O. Scheduling: County and District staff reviews, prioritizes and "packages" mitigation site locations.
 1. County and District staff reviews, prioritizes and issues all task orders for maintenance activities. When it is determined by County and District Inspector/Project Manager that an activity is required at a given habitat restoration site the County and District Inspector/Project Manager issue a work order describing work to be performed by the Contractor.

2. Contractor shall furnish a schedule to County and District's Inspector/Project Manager within forty-eight (48) hours of receiving work package indicating the dates and locations for scheduled work.
 3. Contract shall start working within five (5) business days upon receipt of packaged work from County and District's Inspector/Project Manager.
- P. Identification and Scheduling of Work: Work requests for Contract work are reviewed, prioritized and packaged by County and District staff.
1. Upon receipt of a package, County and District's Inspector/Project Manager shall forward the work requested to Contractor by mail, fax or email.
 2. The packages shall include example photos, facility name, location, map page, cross streets, and estimated linear footage to be completed.
 3. This Contract is considered seasonal work and is normally accomplished from May to September of each Contract year, but may be utilized at any time during the Contract year.
 4. Contractor shall notify the County and District Inspector/Project Manager at least twenty-four (24) hours in advance of commencement of work. All work shall be diligently prosecuted to the satisfaction of the County and District Inspector/Project Manager.
- Q. Acceptance of Work: All work is to be completed within the allotted time or as determined by County and District's Inspector/Project Manager.
1. Contractor shall provide County and District's Inspector/Project Manager with a list of project locations requiring final inspection within two working days of completion.
 2. The list may be verbal or faxed to (714) 955-0378 to County and District's Inspector/Project Manager. County and District will notify Contractor of any deficiencies within three (3) business days.
 3. Correction of work is required within seven (7) calendar days of receipt of the notification by County and District.
 4. All work at a location must be satisfactorily completed and approved by County and District prior to final approval for payment of that location.
- R. Deficient Performance: Liquidated damages shall be applied to deficient performance and/or late completion. Parties hereto agree that it is impracticable or extremely difficult to determine actual damages County and District shall sustain by reason of delay in performance. Therefore, Two Hundred Fifty Dollars (\$250.00) will be deducted and withheld from payments due or to become due to Contractor for each calendar day work is incomplete beyond the scheduled day, unless Contractor receives prior authorization for an extension of time by County and District's Inspector/Project Manager.

V. SPECIFICATIONS:

A. Herbicide Application:

Apply herbicides to unwanted vegetation in compliance with all herbicide application requirements as set forth by the California Department of Pesticide Regulations (CA DPR),

County and District of Orange Agricultural Department, Federal Environmental Protective Agency (U.S. EPA), the manufacturer's instructions on the herbicide FIFRA label, the Material Safety Data Sheet, and the site specific HMMP. Herbicides will be applied by a spot spray application directly to select species' foliage or a basal bark treatment/hack and treat method. Herbicide application must be done in a way to preserve and protect native habitat. Contractor shall, throughout the length of the Contract, provide all personnel, equipment, vehicles, tools, materials, qualified supervision and other items and services necessary to perform herbicide applications.

Herbicide solutions include the following:

1. Aquatic Registered Glyphosate with Aquatic Adjuvant; 2-4 quarts/50 gallons of water
2. 2,4D with Adjuvant; Minimum 2 quarts/50 gallons of water
3. Aquatic Triclopyr with Adjuvant; at 1:1 ratio with water
4. Aquatic Diquat with Adjuvant; 1 quart/50 gallons of water

Any herbicides used will be registered for use with the state of California and U.S. Environmental Protection Agency (EPA). Contractor assumes all liability for damage and/ or injury for use of these products and equipment. County and District Inspector/Project Manager shall be notified prior to applications and advised of any danger associated with the use of these products. During avian nesting season, generally between February 15 and September 15, herbicide applications will be limited if approved by the County and District, and only conducted with a certified biologist's supervision on site. A qualified licensed PCA will be provided by the Contractor to create and sign pesticide recommendations in accordance with California State law. Each person actually performing the herbicide application or operating any spray equipment must possess, or be supervised by individuals in possession of, a current and valid QAC/QAL, issued by the CA DPR, and be able to furnish it on site during all applications.

All equipment used for herbicide application shall comply with all applicable State, Federal and Cal OSHA regulations. Primary means of vegetation control shall be a foliar application. However, if there are woody plants/ trees that need to be treated, a cut-bark treatment shall be used. Contractor will provide all water required for performance of this work, will make all arrangements for obtaining all water with the governing water district, and will comply with all requirements set forth by the governing water district.

Full compensation for the requirements of HERBICIDE APPLICATIONS shall be made on the Contract unit price per ACRE which includes labor, tools, equipment, herbicides, materials, water and all incidentals necessary and no additional payments will be allowed therefor.

B. Manual Weed Removal:

Plant species listed in the site pertinent HMMP to be removed shall be eradicated from restoration areas to reduce the amount of competition for natural resources, including water, nutrients, and sunlight. The amount of weeding required will be determined by the amount of weed seed in the soil, weather conditions, and the diligence and persistence in removing the weeds before they produce more seed, thereby reducing the weed seed bank.

Cut or pull weeds using hand-operated equipment where possible. Weeds present shall be removed manually. With most species it is expected that the root be removed and destroyed along with the entire plant.

Full compensation for the requirements of MANUAL WEED REMOVAL shall be made on the Contract unit price per ACRE which includes labor, tools, equipment, materials and all incidentals necessary and no additional compensation will be allowed therefor.

C. Tree Removal:

Perennial non-native species identified for removal in the site specific HMMP are to be removed manually or with an appropriate herbicide approved by said HMMP.

Safely cut down trees with hand equipment, treat stumps with aquatic triclopyr with an aquatic adjuvant at a 1:1 ratio with water, and properly remove and dispose of green waste. A wood chipper may be necessary. Cutting the stump flush with the ground may be necessary.

Full compensation for the requirements of TREE REMOVAL: > 4" DIAMETER including labor, tools, equipment, materials, disposal, and all incidentals necessary to complete the work shall be made on the Contract unit price per EACH and no additional compensation will be allowed therefor.

Full compensation for the requirements of TREE REMOVAL: < 4" DIAMETER including labor, tools, equipment, materials, disposal, and all incidentals necessary to complete the work shall be made on the Contract unit price per EACH and no additional compensation will be allowed therefor.

D. Planting

- a. Plant Materials: Contractor to provide all plant material. Plant materials will include a combination of container plants, vegetative cuttings (propagules) and seed mixes. Seeding will be performed by a method specified in site specific HMMP but will be either by broadcast or Hydroseed method. Plant species, so indicated by site specific HMMP and any pertinent permits will be installed via instruction of site specific HMMP. Vegetation species seed, container plants and cutting origin will be specified by respective site HMMP and permits.

Seed mixes will be clearly labeled showing type of seed, test date, supplier name, seed source, and percentage of the following: pure seed, crop seed, inert matter, weed seed, noxious weeds, and total germination content. All seed mixes are expected to be clean, without undesirable non-native and noxious weed seed.

Receipts of nursery stock will be made available to County and District Inspector/Project Manager.

- b. Remedial Planting: As planted cuttings, container stock and seed fail to survive or germinate, remedial replanting will become necessary. The independent Restoration Specialist or County and District Inspector/Project Manager will designate areas with heavy weed invasion or unsuccessful container plants to be replanted with species from the original seed and container plant list. Planting will be scheduled at a time of year using methods dictated by the site specific HMMP. If indicated by the independent Restoration Specialist and County and District Inspector/Project Manager, soil treatments will be implemented to improve success of subsequent seeding. Hydro-seeding may also

be used in the process for remedial replanting if allowed by the site specific HMMP. The independent Restoration Specialist and County and District Inspector/Project Manager will approve all rates and categories.

- c. Container Plants: Plantings will be spaced in natural-looking patterns. The placement and spacing of plantings will be similar to the natural groupings and patterns of vegetation growing in similar native habitats. Planting of container plants will be done in accordance with site specific HMMP and permits. Planting will be initiated no later than 10 working days after the "Notice to Proceed" is issued by the County and District Inspector/Project Manager.

No pruning of plant materials will be allowed unless specified by the site specific HMMP and permits. The roots of the container stock will be protected from drying during planting. All plant installations will be in accordance with site specific HMMP. Contractor is expected to prepare soil for container stock in a way to ensure successful transplanting and survival.

Full compensation for the requirements of CONTAINER PLANT STOCK (1 to 5 GALLONS) including labor, tools, equipment, materials and all incidentals necessary to complete the work shall be made on the Contract unit price per EACH and no additional compensation will be allowed therefor.

Full compensation for the requirements of CONTAINER PLANT STOCK (6 to 15 GALLONS) including labor, tools, equipment, materials, and all incidentals necessary to complete the work shall be made on the Contract unit price per EACH and no additional compensation will be allowed therefor.

- d. Vegetative Propagule/Cuttings: Providing vegetative propagules from plant cuttings is a common way to increase the value of native habitat mitigation sites. Propagules can be provided through cutting branches from native species onsite or through a nursery, depending on direction from the pertinent HMMP.

Propagule cuttings are prepared by cutting branches from native perennial species (i.e. willow species, mule-fat, etc.), make a clean cut at a forty-five degree angle, remove all stems and branches and soak the cutting in water with the sharp end in the water. Prepare a hole deep enough to reach water. Take the cutting and place it in the whole so that the sharp end is at the bottom of the hole and so a foot to two feet of the branch is above soil. Pack the hole with dirt to support the freshly planted cutting.

Full compensation for the requirements of VEGETATIVE PROPAGULE/CUTTINGS including labor, tools, equipment, materials, and all incidentals necessary to complete the work shall be made on the Contract unit price per EACH and no additional compensation will be allowed therefor.

- e. Hydroseeding: Hydroseeding activity involves applying a seed slurry mix to an area of land using equipment outfitted to perform such a task. The typical equipment used includes a truck with a tank, a pump and a hose.

Full compensation for the requirements of HYDROSEEDING including labor, tools, equipment, materials, and all incidentals necessary to complete the work shall be made on the Contract unit price per POUND of material and no additional compensation will be allowed therefor.

- f. Broadcast Seeding: Broadcast seeding activity includes hand scattering or using equipment to disperse seed over bare ground. Raking the seed into the soil and watering seed after dispersion is necessary.

Full compensation for the requirements of BROADCAST SEEDING including labor, tools, equipment, materials, and all incidentals necessary to complete the work shall be made on the Contract unit price per POUND of material and no additional compensation will be allowed therefor.

E. Irrigation

- a. Maintenance Watering: Sites without irrigation systems in place will require supplemental watering. The need for watering will dictate the amount and frequency. Schedules will vary seasonally with a minimum of once monthly. Water used for irrigation shall be free of impurities, excess chlorine, and salts. Watering will be done in such a way to protect existing habitat and native, desirable species in accordance with the site HMMP.

Hand watering may involve the use of watering trucks with water delivery systems allowing adequate watering of individual plantings. Some sites may not be accessible by truck and may require walking with water to access vegetation. Contractor will provide all water required for performance of this work, will make all arrangements for obtaining all water with the governing water district, and will comply with all requirements set forth by the governing water district.

The Contractor shall perform maintenance watering as necessary and per HMMP instructions until the independent Restoration Specialist and County and District Inspector/Project Manager determines root developments sufficient to ensure continued survival without supplemental watering. The duration and frequency of maintenance watering will be determined by the independent Restoration Specialist and County and District Inspector/Project Manager in consultation with the Contractor based on the weather and conditions observed onsite.

Full compensation for the requirements of HAND WATERING including labor, tools, equipment, materials, and all incidentals necessary to complete the work shall be made on the Contract unit price per HOUR and no additional compensation will be allowed therefor.

- b. Temporary Irrigation Systems Installation and Maintenance: The Contractor shall be responsible for the installation, inspection and maintenance of the irrigation system within the restoration area when applicable. Contractor shall maintain the irrigation system for optimum performance, as per manufacturer's specifications, by inspecting the entire system on an ongoing basis. This includes repairing, cleaning, and adjusting all sprinkler and bubbler heads, drip emitters and valves for proper coverage. Sprinkler heads shall be modified as needed to avoid overlapping or gaps in coverage.

Full compensation for the requirements of TEMPORARY SPRINKLER IRRIGATION SYSTEM including labor, tools, equipment, materials, disposal, and all incidentals necessary to complete the work shall be made on the Contract unit price per ACRE and no additional compensation will be allowed therefor.

Full compensation for the requirements of TEMPORARY DRIP IRRIGATION SYSTEM including labor, tools, equipment, materials, disposal, and all incidentals

necessary to complete the work shall be made on the Contract unit price per ACRE and no additional compensation will be allowed therefor.

F. Miscellaneous Maintenance:

- a. **Trash and Debris Removal:** This line-item is separate from trash and debris removal expected to occur at the end of each work period. When trash and debris is identified by the County and District Inspector/Project Manager to exceed an acceptable amount, a work order will be issued to the Contractor to remove trash and debris. Excess trash and debris will be removed using hand tools and through manual labor. The trash will be bagged and disposed of appropriately at an offsite location. All trash and debris will be removed from work area by the end of each working day. At other times during the progress of work, when required, Contractor will remove all surplus materials, rubbish, and debris resulting from the work. Work area will be left in a neat, clean and acceptable condition as approved by independent Restoration Specialist and County and District Inspector/Project Manager. No stockpile of debris will be allowed at the site unless prior authorization is given by independent Restoration Specialist and County and District Inspector/Project Manager. Contractor will pick up and dispose of materials at a site outside of County and District right-of-way approved for disposal of such materials. Any debris dropped on the public street during entrance or exit of the site will be removed immediately by Contractor. Dump slip receipts will be made available to County and District Inspector/Project Manager with invoice.

Full compensation for the requirements of TRASH AND DEBRIS REMOVAL including labor, tools, equipment, materials, disposal, and all incidentals necessary to complete the work shall be made on the Contract unit price per TON and no additional compensation will be allowed therefor.

- b. **Temporary Fence Installation:** Contractor will be responsible for the installation of a temporary perimeter fence around the mitigation site when specified by the HMMP or County and District Inspector/Project Manager. Because the surrounding areas are open for public use, construction fencing will be installed and maintained throughout the monitoring period.

Orange mesh temporary fence with t-posts will be installed to border the mitigation site providing delineation and protection of the mitigation site.

Full compensation for the requirements of TEMPORARY FENCE INSTALLATION including labor, tools, equipment, materials, disposal, and all incidentals necessary to complete the work shall be made on the Contract unit price per LINEAR FEET and no additional compensation will be allowed therefor.

- c. **Temporary Fence Repair/Replacement:** Installed temporary fence will need maintenance via repairing salvageable orange mesh fence and replacing fence that is not salvageable. Replacement includes replacing broken and degraded orange mesh fence and t-posts.

Full compensation for the requirements of TEMPORARY FENCE REPAIR/REPLACEMENT including labor, tools, equipment, materials, disposal, and all incidentals necessary to complete the work shall be made on the Contract unit price per LINEAR FEET and no additional compensation will be allowed therefor.

- d. Sign Installation: Signs are placed along mitigation site borders to make people aware of the sensitivity of the native habitat being established. When signs are broken, faded or degraded replacement and installation is necessary. County and District will provide signs to be installed by the Contractor; all other materials are to be provided by the Contractor. Existing t-posts can be reused if they are intact and functional. If t-posts are broken or degraded the Contractor must replace them along with the sign.

Full compensation for the requirements of SIGN INSTALLATION including labor, tools, equipment, materials, disposal and all incidentals necessary to complete the work shall be made on the Contract unit price per EACH and no additional compensation will be allowed therefor.

ATTACHMENT B
CONTRACTOR’S PRICING

I. **COMPENSATION:** This is a usage Contract between County and District and Contractor for Mitigation Maintenance Services on an as needed basis, as set forth in Attachment A “Scope of Work”.

Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, equipment, materials and incidentals 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 and District shall have no obligation to pay any sum in excess of the Price per Unit Cost and Total Contract Amount specified herein unless authorized by amendment in accordance with Articles 36 and 51 of County and District Contract Terms and Conditions.**

II. **FEES AND CHARGES:** County and District will pay the following prices in accordance with the provisions of this Contract.

A. Pricing: Pricing shall be per unit per activity, as determined in the line item.

SCHEDULE OF WORK ITEMS

	Description	Unit	Cost
1.	Herbicide Application	AC	\$400.00
2.	Manual Weed Removal	AC	\$550.00
3.	Container Plant Stock (1 to 5 gallon)	EA	\$28.00
4.	Container Plant Stock (5 to 15 gallon)	EA	\$80.00
5.	D-40/Liner	EA	\$4.50
6.	Vegetative Propagule/Cuttings	EA	\$3.00
7.	Hand Watering	HR	\$85.00
8.	Temporary Fence Installation	LF	\$1.75
9.	Temporary Fence Repair/Replacement	LF	\$2.00
10.	Tree Removal: > 4 inches trunk diameter	EA	\$700.00
11.	Tree Removal: < 4 inches trunk diameter	EA	\$100.00
12.	Hydroseed	LB	\$197.00
13.	Hand Broadcast Seeding	LB	\$105.00

14.	Sign Installation	EA	\$100.00
15.	Temporary Sprinkler Irrigation System Installation and Maintenance	AC	\$7,263.00
16.	Temporary Drip Irrigation System Installation and Maintenance	AC	\$8,200.00
17.	Trash and Debris Removal	TON	\$100.00

Items 10-17 are less frequent work. There is no guarantee of actual work.

TOTAL ANNUAL CONTRACT AMOUNT NOT TO EXCEED: \$400,000.00

- III. **QUANTITIES OF WORK:** Exact quantity and type of service required under this Contract is unknown. The quantities are estimates only to establish unit prices and to determine the lowest responsive, responsible bidder. During the course of the Contract, County and District's Inspector/Project Manager or the independent restoration specialist may identify additional quantities beyond the estimated quantities listed above. Upon written authorization by County and District's Inspector/Project Manager, Contractor shall provide/perform all additional quantities at the unit prices listed above. The actual quantities of work for the scheduled items may vary but will not exceed the Total Annual Contract amount.
- IV. **PRICE INCREASES/DECREASES:** No price increases will be permitted during the first year of the Contract. Contractor can request price adjustment based on the increase in the Consumer Price Index for the Orange County and District area. County and District requires bona fide proof of cost increases on Contracts prior to any price adjustment. To secure such adjustment, a minimum of one hundred twenty (120) days advance notice in writing is required prior to the renewal of Contract. No retroactive price adjustments will be considered. County and District 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 Contractor's profit will not be allowed. All price decreases will automatically be extended to County and District.
- V. **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 County and District during the term of this Contract not otherwise specified and provided for within this Contract.
- VI. **PAYMENT TERMS:** Invoices are to be submitted in arrears, after services have been received. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County and District of Orange. Invoices shall be verified and approved by County and District and subject to routine processing requirements. The responsibility for providing an acceptable invoice to County and District for payment rests with Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to Contractor for correction.

Billing shall cover services not previously invoiced. Contractor shall reimburse the County and District of Orange for any monies paid to Contractor for services not provided, or when services do not meet the Contract requirements.

Payments made by County and District shall not preclude the right of County and District from thereafter disputing any items involved or billed under this Contract and shall not be construed as acceptance of any part of the services.

VII. **INVOICING INSTRUCTIONS:** Contractor will provide an invoice on Contractor's letterhead. Each invoice will have a unique number and will include the following information:

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

Invoices and support documentation are to be forwarded to:

OC Public Works/Operations & Maintenance Division
Attn: Nina Quimsing
2301 N. Glassell St., 2nd Floor
Orange, CA 92865

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 and District via an EFT Authorization Form. To request a form, please contact the DPA.

ATTACHMENT C
SUBCONTRACTOR INFORMATION

As required by California State Law, the General Contractor bidding will hereinafter state the subcontractor who will be the subcontractor on the job for each particular trade or subdivision of the work in an amount in excess of one-half of one percent of the General Contractor's total bid and will state the firm name and principal location of the office of each. If a General Contractor fails to specify a subcontractor or if he specifies more than one subcontractor for the same portion of work to be performed under CONTRACT in excess of one-half (1/2) of one percent (1%), he agrees that he is fully qualified to perform that portion himself and that he shall perform that portion himself.

Subcontractor Name	Location Address	Subcontractors' License Number	Division of Work or Trade
None			