

**UPPER NEWPORT BAY NATURE PRESERVE
MARINE LIFE DOCUMENTARY PROJECT
FUNDING AGREEMENT**

This UPPER NEWPORT BAY NATURE PRESERVE NATURE PRESERVE MARINE LIFE DOCUMENTARY PROJECT FUNDING AGREEMENT (hereinafter “Agreement”), dated this _____ day of _____, 20___, this made by and between the COUNTY OF ORANGE, a political subdivision of the State of California, (hereinafter referred to as “COUNTY”) and the NEWPORT BAY NATURALISTS AND FRIENDS, a California non-profit corporation (herein referred to as “NATURALISTS”).

RECITALS

WHEREAS, COUNTY, by Minute Order dated June 17, 2008, entered into Agreement No. D07-171 with the NATURALISTS to formalize a partnership in supporting the Upper Newport Bay Nature Preserve (“UNBNP”); and

WHEREAS, UNBNP is part of a larger open space known as the Upper Newport Bay in Newport Beach, CA, managed by OC Parks; and

WHEREAS, NATURALISTS have proposed to develop the Marine Life Documentary (“Documentary”) for the Upper Newport Bay for a total cost estimated at no more than \$120,000; and

WHEREAS, COUNTY desires to contribute up to \$100,000 to support the NATURALISTS in the creation of the Documentary featuring Upper Newport Bay; and

WHEREAS, NATURALISTS intend to provide an additional \$20,000, consistent with the purpose and terms of Agreement No. D07-171, which it may obtain, in whole or in part, from philanthropic giving and corporate sponsorships.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, the parties agree as follows:

1. EFFECTIVE PERIOD – TERMINATION DATE

The effective period of this Agreement shall be from the date of execution through June 30, 2021, subject to the terms of this Agreement.

2. PARTIES REPRESENTATIVES

a. NATURALISTS shall designate its President, or designee (hereinafter referred to as “President”) to be the NATURALISTS’ liaison for all matters related to this AGREEMENT.

b. COUNTY shall designate the COUNTY’s Director of OC Parks, or designee (hereinafter referred to as “Director”), to be the COUNTY’s liaison for all matters related to this AGREEMENT.

3. PROJECT PROPOSAL AND SERVICES

a. NATURALISTS seek to produce, including writing, directing, filming and editing,

the Documentary in and around the UNBNP. Prior to the start of filming, NATURALISTS shall submit final plans and cost estimates to the Director for approval; such approval shall not be unreasonably withheld.

b. NATURALISTS agree to comply with all provisions, to perform all work, and provide all services set forth in this Agreement in a professional, timely, and diligent manner. The parties hereto agree that the COUNTY shall be the controlling body in matters not specifically contained within the body of this Agreement.

c. NATURALISTS further agree that lack of compliance, in addition to those remedies set forth in Section 16 of this Agreement, constitute grounds for COUNTY to reduce the level of payment otherwise provided under Section 5 of the Agreement. Such reduction shall occur only as a result of action of COUNTY's Board of Supervisors. Before any such reduction may be made, COUNTY shall provide NATURALISTS at least ten (10) days written notice of the proposed reduction and of the time and place where the Board of Supervisors shall consider the reduction.

d. Electronic copies in a format approved by the County of the raw footage, edited footage, and completed film, in addition to five DVDs of the completed film shall be delivered to the County by June 30, 2021.

4. AUDIT/EVALUATION

NATURALISTS agree and understand that an audit or evaluation is an essential condition to this Agreement and that COUNTY may audit or evaluate NATURALISTS in accordance with the terms of this Agreement. The parties hereto agree that at any time, and for any purpose, the Director may call for an audit or evaluation to be conducted.

5. PAYMENTS BY COUNTY

a. The total funding pursuant to this Agreement shall be limited to a maximum of one-hundred thousand dollars (\$100,000).

b. NATURALISTS shall submit invoices to COUNTY at the address identified in Section 14 of this Agreement for reimbursement for the Documentary expenses, which shall be paid by COUNTY within thirty (30) days of receipt.

c. COUNTY shall reimburse NATURALISTS solely for expenses related to the Documentary.

d. No expense of NATURALISTS will be reimbursed by COUNTY if incurred after June 30, 2021.

6. CONFLICT OF INTEREST

NATURALISTS agree and understand that COUNTY's funds shall not be used by NATURALISTS to pay or reimburse any staff person or consultant who is a member or officer of the Board of Directors, or any other official governing body, of the NATURALISTS.

7. ACCESS AND RECORDS

Unless otherwise agreed in writing by the Director, NATURALISTS shall maintain separate accounting records for all funds received from COUNTY under this Agreement. All accounting records and evidence pertaining to all costs of NATURALISTS shall be kept available at NATURALIST'S office or place of business during the duration of this Agreement

and thereafter for a period of not less than five (5) years. NATURALISTS shall make all of its records available to COUNTY upon request during regular business hours for the purpose of an audit or evaluation and shall furnish clerical assistance for these purposes to COUNTY as required. NATURALISTS agree to implement all recommendations made by COUNTY. In the event NATURALISTS do not make their books and financial records available to COUNTY, NATURALISTS agree to pay all necessary and reasonable expense, including attorney's fees, incurred by COUNTY in obtaining the records and conducting an audit or evaluation.

8. ACCOUNTING REPORTS

A final accounting report of all financial records pertaining to the costs expended for the Documentary project shall be submitted to the Director within ninety (90) days of expiration or termination of this Agreement. The final accounting report shall include a reconciliation of all expenditures and payments for the entire term this Agreement is in effect.

9. INDEMNIFICATION

NATURALISTS agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies which COUNTY's Board of Supervisors act as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the performance provided by NATURALISTS pursuant to this Agreement. If judgement is entered against NATURALISTS and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of COUNTY or COUNTY INDEMNITEES, NATURALISTS and COUNTY agree that liability will be apportioned as determined by the court or jury.

10. INSURANCE REQUIREMENTS

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

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

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

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

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

Qualified Insurer

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

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

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

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

Required Coverage Forms

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

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

Required Endorsements

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

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

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

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

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

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

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

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase

or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

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

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

11. INDEPENDENT CONTRACTOR

NATURALISTS shall be considered an independent contractor and neither NATURALISTS, its employees, nor anyone working under NATURALISTS shall be considered an agent or an employee of COUNTY. Neither NATURALISTS, its employees, nor anyone working under NATURALISTS shall qualify for workers' compensation or other fringe benefits of any kind through COUNTY.

12. NON-DISCRIMINATION

In the performance of this Agreement, NATURALISTS agree that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractor to engage in discrimination in employment of persons because of sex, sexual orientation, race, color, religious creed, marital status, denial of family and medical care leave, ancestry, national origin, medical condition (cancer/genetic characteristics), age (40 and above), disability (mental or physical) including HIV and AIDS, denial of pregnancy disability leave or reasonable accommodation. NATURALISTS acknowledge that a violation of this provision shall subject NATURALISTS 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.

13. PERMITS, LICENSES AND LAWS

NATURALISTS shall be required to obtain any and all permits and/or licenses which may be required by law, in connection with the operation of the activities as set forth herein. NATURALISTS agree to maintain these licenses and permits in effect for the duration of this AGREEMENT. Further, NATURALISTS shall comply with any and all applicable Federal, State and local laws, rules or regulations with respect to the work to be done pursuant to this AGREEMENT.

14. NOTICES

Notices or other communications which may be required or provided under the terms of this AGREEMENT shall be given as follows:

COUNTY: Director, OC Parks
13042 Old Myford Road
Irvine, CA 92602-2304
Fax No. (714) 667-6512

NATURALISTS: President, Newport Bay Naturalists and Friends
P.O. Box 10804
Newport Beach, CA 92658
Fax No. (949) 640-1742

15. PROHIBITION AGAINST LOBBYING

NATURALISTS shall not use any part of the funds received under this Agreement for the purpose of lobbying or for other activities intended to influence any legislation or the outcome of any election.

16. BREACH-SANCTIONS

If, through any case, NATURALISTS fail to fulfill in a timely and proper manner any of its obligations under this Agreement, or if NATURALISTS violate any of the terms and conditions of this Agreement or any prior Agreement whereby COUNTY funds were received by NATURALISTS, or if NATURALISTS report inaccurately, or if an audit report makes disallowances, NATURALISTS shall promptly remedy its acts or omissions or repay COUNTY all amounts spent in violation of thereof. For any such failures or violations, COUNTY shall have the right to:

- a. Discontinue program support until such time as NATURALISTS fulfill its obligation under this Agreement or any prior Agreement;
- b. Collect such outstanding amounts as are determined by COUNTY to be due to the COUNTY from NATURALISTS;
- c. Terminate this Agreement immediately by giving written notice to NATURALISTS of such termination and specifying the effective date thereof.

17. DOCUMENTARY OWNERSHIP

Ownership of the Documentary, including all components of the Documentary project and production shall become the sole property of COUNTY. The components owned by COUNTY shall include, but are not limited to all physical and intellectual property related to the Project, including scripts, screenplays, raw footage, and edited footage produced or created before, during and after completion of the Documentary project. COUNTY maintains complete authority and control (artistic and otherwise) over the Documentary and all related materials created in furtherance thereof. NATURALISTS shall obtain Director's written approval of the Documentary in order for the Documentary project to be deemed complete. NATURALISTS are not authorized to distribute, screen, or otherwise display the Documentary or its components without the prior written authorization of Director.

18. DELEGATION AND ASSIGNMENT

NATURALISTS may not delegate the obligations or assign the rights hereunder, either in whole or in part unless specifically approved in writing in advance by the Director.

19. SOLE AGREEMENT

This Agreement expresses all the understandings of the parties concerning all matters covered herein. No addition to or alteration of the terms of this Agreement shall be valid unless made in the form of a written Amendment to this Agreement formally approved by the parties hereto. Any addition or alteration of this Agreement shall be subject to approval by the COUNTY's Board of Supervisors.

20. GOVERNING LAW AND VENUE

This Agreement 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 Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

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IN WITNESS WHEREOF, the parties hereto certify that they have read and understand all the terms and condition contained herein and have duly authorized and caused this Agreement to be executed as of the date first above written.

COUNTY

County of Orange, a subdivision of the State of California

DATE: _____

BY: _____
Chair, Board of Supervisors

SIGNED AND CERTIFIED THAT A
COPY OF THIS DOCUMENT HAS
BEEN DELIVERED TO THE CHAIRMAN
OF THE BOARD PER G.C. Sec 25103,
RESO 79-1535

ATTEST:

Robin Stieler
Clerk of the Board of Supervisors
Orange County, California

APPROVAL AS TO FORM:
County Counsel

DATE: 11/2/19

BY: 
Deputy

NATURALISTS

Newport Bay Naturalists and Friends,
A California non-profit corporation

DATE: Nov 3, 2019

BY: 
President