

CONTRACT MA-080-21011342

FOR

CHANNEL CLEANING SERVICES

BETWEEN

OC PUBLIC WORKS

AND

NATURES IMAGE, INC.



**CONTRACT MA-080-21011342
FOR
CHANNEL CLEANING SERVICES
WITH
NATURES IMAGE, INC.**

Amendment No. 1: Amend language to include Orange County Flood Control District

THIS Contract MA-080-21011342 for Channel Cleaning Services (“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 (“County”), Orange County Flood control District, a body corporate and politic, (“District”), and Natures Image, Inc., with a place of business at 20361 Hermana Circle, Lake Forest CA 92630 (“Contractor”), with County and Contractor sometimes referred to as “Party” or collectively as “Parties.”

ATTACHMENTS

This Contract is comprised of this document and the following Attachments, which are attached hereto and incorporated by reference into this Contract:

Attachment A – Scope of Work

Attachment B – Payment/Compensation

RECITALS

WHEREAS, Contractor and County are entering into this Contract for Channel Cleaning Services under a Usage Contract; and,

WHEREAS, County solicited Contract for Channel Cleaning Services as set forth herein, and Contractor represented that it is qualified to provide Channel Cleaning Services to the County as further set forth here; and,

WHEREAS, Contractor agrees to provide Channel Cleaning Services to the County as further set forth in the Scope of Work, attached hereto as Attachment A; and,

WHEREAS, County agrees to pay Contractor based on the schedule of fees set forth in Payment/Compensation, attached hereto as Attachment B; and,

WHEREAS, the County Board of Supervisors has authorized the Procurement Officer or designee to enter into a Contract for Channel Cleaning Services with the Contractor; and,

WHEREAS, the District relies on County staff to carry out its duties pursuant to the Orange County Flood Control District Act, Water Code App. §§ 36-1 et seq., and County staff may request Contractor to perform services under this Contract on behalf of District; and

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

General Terms and Conditions:

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be

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

- B. **Entire Contract:** This Contract contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Procurement Officer or designee.
- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.
- E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.
- F. **Acceptance Payment:** Unless otherwise agreed to in writing by County; 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in **article "Z"** below, and as more fully described in **article "Z,"** harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software

as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in **article "Z"** below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.

- I. **Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.
- L. **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.
- M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- N. **Performance Warranty:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.
- O. **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
Contractor's Pollution Liability Including NODS	\$1,000,000 per claims made or 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 and Orange County Flood Control District, their 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 and Orange County Flood Control District, shall be excess and non-contributing.
- 3) The Contractor's Pollution Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
 - a. An Additional Insured endorsement naming the *County of Orange and Orange County Flood Control District, their elected and appointed officials, officers, agents and employees* as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT**.
 - b. A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange and Orange County Flood Control District 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 and Orange County Flood Control District, their 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 and Orange County Flood Control District, their 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.

If the Contractor's Pollution Liability policy is a claims-made policy, Contractor shall agree to maintain coverage for two (2) years following completion of contract.

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

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

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

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

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

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

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

Q. **Change of Ownership/Name, Litigation Status, Conflicts with County Interests:**

Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and obligations contained in this Contract, and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any

litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

- R. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
- S. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- T. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of **article "Z"** below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- U. **Freight:** Prior to the County's express acceptance of delivery of products. Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- V. **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.
- W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.
- X. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the

opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.

- Y. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County and Orange County Flood Control District, their elected and appointed officials, officers, employees, agents and those special districts and agencies which County’s Board of Supervisors acts as the governing Board (“County Indemnitees”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
- AA. **Audits/Inspections:** Contractor agrees to permit the County’s Auditor-Controller or the Auditor-Controller’s authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

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

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

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

- BB. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County’s Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
- CC. **Expenditure Limit:** The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

Additional Terms and Conditions:

- 1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure Channel Cleaning Services from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as “Attachment A”.

Amendment No. 1: Renew Contract for 1 year

- 2. **Term of Contract:** The term of this Contract shall be effective upon execution of all authorized signatures or approval by the Orange County Board of Supervisors, whichever occurs later, and shall continue for three (3) years from that date unless otherwise terminated as provided herein.

Contract shall be renewed for one (1) year from June 10, 2024 through June 9, 2025, unless otherwise terminated by the County.

- 3. **Renewal:** This Contract may be renewed upon expiration of the initial term, for two (2) additional one year terms, upon mutual agreement of both parties. The County is not obligated to give a reason or notice if elects not to renew. Renewal amendments may require County Board of Supervisors approval.

Amendment No. 1: Added language to include not to exceed amount for renewal term

- 4. **Aggregate Contract:** This is an Aggregate Contract with J. Orozco Enterprises Inc. dba Orozco Landscape and Tree Company and Natures Image Inc. with a Total Aggregate Contract Amount not to exceed \$3,000,000.

The first renewal term for the Aggregate Contract with J. Orozco Enterprises Inc. DBA Orozco Landscape and Tree Company and Natures Image Inc. shall have a Total Aggregate Contract Amount not to exceed \$1,000,000.00.

- 5. **Adjustments – Scope of Work:** No adjustments made to the Scope of Work will be authorized without prior written approval of the County assigned Deputy Purchasing Agent.
- 6. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

- a) Terminate the Contract immediately, pursuant to Section K herein;
 - b) Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - c) Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
 - d) Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
7. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
8. **Conflict of Interest – Contractor’s Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor’s employees, agents, and subcontractors associated with accomplishing work and services hereunder. The Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.
9. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
10. **Contractor’s Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County’s Project Manager, which consent shall not be unreasonably withheld.
- The Contractor’s Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s Project Manager from providing services to the County under this Contract. The County’s Project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within five (5) business days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor’s Project Manager from providing further services under the Contract.
11. **Contractor Personnel – Reference Checks:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract. Contractor’s employees assigned to this project

must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.

12. **Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.
13. **Contractor Personnel – Uniform/Badges/Identification:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility under this Contract.

All Contractor's employees shall be required to wear uniforms, badges, or other means of identification which are to be furnished by the Contractor and must be work at all times while working on County property. The assigned Deputy Purchasing Agent must be notified in writing, within seven (7) days of notification of award of Contract of the uniform and/or badges and/or other identification to be worn by employees prior to beginning work and notified in writing seven (7) days prior to any changes in this procedure.

14. **Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange assigned DPA.
15. **Conditions Affecting Work:** The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
16. **Cooperative Agreement:** The provisions and pricing of this Contract will be extended to other California local or state governmental entities. Governmental entities wishing to use the pre-negotiated prices and terms in this Contract will be responsible for issuing their own purchase documents/contracts, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any contract entered into with another department or entity that is entered into and incorporates by reference the pre-negotiated prices and terms of this Contract a contractual clause that will hold harmless the County of Orange from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this Contract. Failure to do so will be considered a material breach of this Contract by Contractor and grounds for immediate Contract termination. Departments or entities making use of the pre-negotiated prices and terms of this Contract are responsible for obtaining all certificates of insurance and bonds required when entering into their own contract. The Contractor is responsible for providing each cooperative entity a copy of the Contract upon request by the cooperative entity. The County of Orange makes no guarantee of usage by other users of this Contract.

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

17. **Safety and Loss Prevention Resource Manual:** CONTRACTOR shall comply with the COUNTY'S Safety and Loss Prevention Resource Manual and submit a copy of their Injury and Illness Prevention Program (IIPP) to the Project Manager prior to the start of the project. The IIPP shall meet the minimum requirement of California Code of Regulations, Title 8, Section 1509 or 3203. CONTRACTOR shall submit other safety programs that pertain to the type of job that will be performed on site.
18. **Data – Title To:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
19. **Default – Reprocurement Costs:** In case of Contract breach by Contractor, resulting in termination by the County, the County may procure the goods and/or services from other sources. If the cost for those goods and/or services is higher than under the terms of the existing Contract, Contractor will be responsible for paying the County the difference between the Contract cost and the price paid, and the County may deduct this cost from any unpaid balance due the Contractor. The price paid by the County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.
20. **Disputes – Contract:**
- A. The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Project Manager and the County's Project Manager, as specified in Article 27. "Notices," such matter shall be brought to the attention of the County Deputy Purchasing Agent by way of the following process:
1. The Contractor shall submit to the agency/department assigned Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
 2. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.
- B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

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

County's right to terminate the Contract for cause or termination for convenience as stated in section K herein.

21. **Drug-Free Workplace:** The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:
1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).
 2. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace;
 - b. The organization's policy of maintaining a drug-free workplace;
 - c. Any available counseling, rehabilitation and employee assistance programs; and
 - d. Penalties that may be imposed upon employees for drug abuse violations.
 3. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:
 - a. Will receive a copy of the company's drug-free policy statement; and
 - b. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County contracts if the County determines that any of the following has occurred:

1. The Contractor has made false certification, or
2. The Contractor violates the certification by failing to carry out the requirements as noted above.

22. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, the County of Orange is required to file in accordance with subdivision (a) of Section 6041A of the Internal Revenue Code for services received from a "service provider" to whom the County pays \$600 or more or with whom the County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

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

entity for California purposes and who receives compensation or executes a contract for services performed for that ... government entity either in or outside of California.”

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at

http://www.edd.ca.gov/Employer_Services.htm

23. **Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by the County, state or federal government, this Contract may be subjected to unusual usage. The Contractor shall service the County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the Contractor shall apply to serving the County’s needs regardless of the circumstances. If the Contractor is unable to supply the goods/services under the terms of the Contract, then the Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from the Contractor’s supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the Contractor shall show both the emergency purchase order number and the Contract number.
24. **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11246 entitled, “Equal Employment Opportunity” as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

25. **Hazardous Conditions:** Whenever the Contractor’s operations create a condition hazardous to traffic or to the public, the 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 the County. The Contractor shall comply with County 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.

Signs, lights, flags, and other warning and safety devices shall conform to the requirements set forth in Chapter 6 of the current traffic manual, Traffic Control for Construction and Maintenance Work Zones, published by the state of California Department of Transportation.

26. **News/Information Release:** The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County's Project Manager.
27. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor: Natures Image, Inc.
Attn: Daniel Slinger
20361 Hermana Circle
Lake Forest CA 92630
Phone: 949-680-4400
Email: dslinger@naturesimage.net

County's Project Manager: OC Public Works/OC Operations and Maintenance
Attn: Kris Ruiz
2301 N. Glassell St.
Orange, CA 92865
Phone: 714-955-0346
Email: Kris.Ruiz@ocpw.ocgov.com

cc: OC Public Works/Procurement Services
Attn: Richard Nguyen, County DPA
1143 E. Fruit St.
Santa Ana, CA 92701
Phone: 714-667-9633
Email: Richard.Nguyen@ocpw.ocgov.com

28. **Precedence:** The Contract documents consist of this Contract and its exhibits and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the exhibits and attachments.

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

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

30. **Safety Data Sheets (SDS):** The Contractor is required to provide a completed Safety Data Sheet (SDS) for each hazardous substance provided to the County under the Contractor's Contract with the County. This includes hazardous substances that are not directly included in the Contract, but are included in the goods or services provided by the Contractor to the County. The provision of the SDSs 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 SDSs for each substance must be sent to the place of shipment or provision of goods/service.

31. **Subcontracting:** No performance of this Contract or any portion thereof may be subcontracted by the Contractor without the express written consent of the County. Any attempt by the Contractor to subcontract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract.

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

33. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at rates/prices listed in the Contract, regardless of quantity requested.

34. **Usage Reports:** The Contractor shall submit usage reports on an annual basis to the assigned Deputy Purchasing Agent of the County of Orange user agency/department. The usage report shall be in a format specified by the user agency/department and shall be submitted 90 days prior to the expiration date of the contract term, or any subsequent renewal term, if applicable.

35. **Prevailing Wage:**

a. **Threshold Requirements for Prevailing Wages:** Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than

the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

b. **Wage Rates:** Contractor shall post a copy of the wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the Board of Supervisors has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Contract from the Director of the Department of Industrial Relations. These rates are on file with the Clerk of the Board of Supervisors. Copies may be obtained at cost at the office of County's OC Public Works/OC Facilities & Asset Management/A&E Project Management or visit the website of the Department of Industrial Relations, Prevailing Wage Unit at www.dir.ca.gov/DLSR/PWD. The Contractor shall comply with the provisions of Sections 1774, 1775, 1776 and 1813 of the Labor Code.

c. **Apprenticeship Requirements:** The Contractor shall comply with Section 230.1(A), California Code of Regulations as required by the Department of Industrial Relations, Division of Apprenticeship Standards by submitting DAS Form to the Joint Apprenticeship Committee of the craft or trade in the area of the site.

d. **Registration of Contractor:** All contractors and subcontractors must comply with the requirements of Labor Code Section 1771.1(a), pertaining to registration of contractors pursuant to Section 1725.5. Bids cannot be accepted from unregistered contractors except as provided in Section 1771.1. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. After award of the contract, Contractor and each Subcontractor shall furnish electronic payroll records directly to the Labor Commissioner in the manner specified in Labor Code Section 1771.4.

Prevailing Wage and DIR Requirement: Awarding agencies are not required to submit the notice of contract award through DIR's PWC-100 system on projects that fall within the small project exemption. The small project exemption applies for all public works projects that do not exceed:

- \$25,000 for new construction, alteration, installation, demolition or repair
- \$15,000 for maintenance

If the project meets or exceeds these amounts, the County and the Contractor are required to register the project with the California Department of Industrial Relations.

e. **Payroll Records:** Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide, in summary:

- i. Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- ii. The information contained in the payroll record is true and correct.
- iii. The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
- iv. The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.
- v. Contractor shall inform County of the location of the payroll records, including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and address of the records.
- vi. Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have 10 days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit \$100, or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.
- vii. Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.
- f. **Work Hour Penalty:** Eight (8) 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 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.
- g. **Apprentices:** The Contractor acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor

Code Section 1777.5, this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of the Contractor to ensure compliance with this Article and with Labor Code Section 1777.5 for all apprenticeable occupations.

Pursuant to Labor Code Section 1777.5 if that Section applies to this Contract as indicated above, the Contractor and any subcontractors under him employing workers in any apprenticeable craft or trade in performing any work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the work.

Pursuant to Labor Code Section 1777.5 if that Section applies to this Contract as indicated above, he Contractor and any subcontractor under him may be required to make contributions to the apprenticeship program.

The Contractor and all subcontractors under him shall comply with Labor Code Section 1777.6 which Section forbids certain discriminatory practices in the employment of apprentices.

36. **County of Orange Local Small Business Preference Requirements:** Contractor certifies it is in compliance with County of Orange Local Small Business Preference requirements at the time this Contract is executed.
37. **Disabled Veteran Business Enterprise Preference Requirements:** Contractor certifies it is in compliance with County of Orange Disabled Veteran Business Enterprise Preference requirements at the time this Contract is executed.

Signature Page follows

Signature Page

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

NATURES IMAGE, INC.*

Signature	Name	Title	Date
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Signature	Name	Title	Date
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COUNTY OF ORANGE, A political subdivision of the State of California
COUNTY AUTHORIZED SIGNATURE:

Signature	Name	Title	Date
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APPROVED AS TO FORM:
County Counsel

By _____
Deputy

Date _____

* If the contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signee 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 Channel Cleaning Services. Services shall be provided on an as-needed basis as required by County and District.
- II. DESCRIPTION OF WORK:** This Contract is for Channel Cleaning 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 channels of various sizes and locations throughout Orange County. This Contract does not include work on any City or County roadways, or private streets, with the County and District.
 - B. Flood control channel general maintenance cleaning consists of those items of work necessary to maintain channel water flow and permit access of maintenance vehicles and personnel.
 - C. Work to be done shall consist of removal of trash, debris, obstructions and silt from the channel invert; trimming and clearing vegetation along vehicular and pedestrian access roads; and the removal of vegetation from channel slopes, inverts, expansion joints, weep holes and side inlets.
- III. CONTRACTOR REQUIREMENTS:**
- A. Contractor shall hold an active C-27 – Landscaping Contractor license issued by the California State Contractors License Board.
 - B. Contractor shall maintain an accurate record showing name of employee, classification, actual hours worked, wages paid and benefits paid to each employee. This record will be subjected 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’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 Flood Control District 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’s 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 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's 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, debris, trash disposal for Channel Cleaning only 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.
- Disposal fees for routine trash and debris removal only will be included on the invoice with attached dump tickets. 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.
- 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's 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 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 Air Quality Management District (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 County Flood Control 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 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's Project Manager.
 - 3. No stockpile of debris will be allowed at the site unless prior authorization is given by County's 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 and Restoration 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's 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, 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 of Orange, and to the Orange County Flood Control District (District) and cities within Orange County, as co-permittees (hereinafter collectively referred to as "County Parties") which regulate the discharge of urban runoff from areas within the County of Orange, including the Premises under this Contract. The County Parties have enacted water quality ordinances that prohibit conditions and activities that may result in polluted runoff being discharged into the Stormwater Drainage System.
3. To assure compliance with the Stormwater Permits and water quality ordinances, the County Parties have developed a Drainage Area Management Plan (DAMP) which includes a Local Implementation Plan (LIP) for each jurisdiction that contains Best Management Practices (BMPs) that parties using properties within Orange County 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'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> as
 - 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's 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's Project Manager for review and approval prior to implementation.

- a) County's 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.
- O. Scheduling: County and District staff reviews, prioritizes and "packages" channel cleaning locations.
 - 1. Contractor shall furnish a schedule to County's Project Manager within forty-eight (48) hours of receiving work package indicating the dates and locations for scheduled work.
 - 2. Contract shall start working within five (5) business days upon receipt of packaged work from County's 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's Project Manager shall forward the work requested to Contractor by mail, fax or email with the requested due date.
 - 2. The packages shall include example photos, facility name, location, map page, cross streets, and estimated linear footage to be completed, and due date.
 - 3. Channeling Cleaning shall be provided on an as-needed basis throughout the contract term. Routine trash and debris removal is anticipated to be performed on a continuous basis throughout the contract term as directed by the County's Project Manager.
- Q. Acceptance of Work: All work is to be completed within the allotted time or as determined by County's Project Manager's due date.
 - 1. Contractor shall provide County's 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's 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's Project Manager.
- S. Contractor shall have the resources to dedicate a full-time crew (minimum size of 6- 1 crew supervisor, 3 laborers, 2 operators/drivers) to perform routine debris and trash removal services on any of the Orange County Flood Control Districts Flood Control Channels Right of Way in accordance with the provisions of this Contract.

T. Contractor shall also have the resources to provide two (2) additional full time crews (minimum size of 6- 1 crew supervisor, 3 laborers, 2 operators/drivers) to perform Channel Cleaning services on an as-needed basis as directed by the County's Project Manager in accordance with the provisions of this Contract.

V. SPECIFICATIONS:

A. Debris Removal: All trash, debris, litter and obstructions including but not limited to shopping carts, rocks, limbs or branches, paper, wood, cans, tires, building materials, mattresses, bicycles, furniture, electronics, etc. shall be removed from the channel invert, levees, access roads, under bridges and walkways. Access roads and walkways should be cleaned of all debris and neat in appearance. Concrete channel inverts shall have a swept appearance when completed.

1. Routine Trash and Debris Removal Only: shall consist of the above mention items and be charged on an hourly rate per crew along with disposal fees. Disposal fees will be for tonnage only and as described in Section D and E. Invoices for Routine Trash and Debris Removal will include amount of hours approved by County's Project Manager and must be accompanied by dump receipts from a licensed local landfill. County's Project Manager will estimate the amount of tonnage prior to start of work and approve dump receipts when task is completed.

B. Silt Removal: Only minor deposits of silt in concrete bottom channels should be removed manually and only when such deposits restrict low volume water flow creating pools etc. Large silt deposits should be noted by Contractor's Project Manager on the Work Assignment Sheet for consideration of removal by mechanical means. No silt should be removed from earth or soft bottom channels.

C. Tree Trimming: Trimming shall be done in a neat manner utilizing the proper tools. Trees over hanging channel right-of-way shall be trimmed in a vertical line with the right-of-way fence. The trees should be trimmed to the minimum height requirements as stated below. Please note: Contractor must notify owner prior to trimming any fruit trees.

- 1. Vehicles roadway side: 16' – 0"
- 2. Inspection walkway side: 10' – 0"
- 3. Equestrian Trail: 12' – 0"

D. Shrub Trimming:

1. Shrubs Outside Right-of-way: All shrubs and vegetation growing on or through the right-of-way fence shall be cut back to right-of-way fence fabric. All shrubs and vegetation growing over the right-of-way fence shall be cut in a vertical line with the fence to the following minimum height requirements:

- a. Vehicle roadway side: 16' – 0"
- b. Inspection walkway side: 10' – 0"

2. Shrubs Inside Right-of-way: All shrubs intentionally planted on County and District right-of-way shall be trimmed to the specifications provided by County's Project Manager and subject to the approval of landscape supervisor to top of fence. This shall include removal of any portions of shrubs that might be growing through or over the right-of-way fence.

- a. Clear distance to top of channel: 16' – 0"
- or
- b. Distance from shrub trunk to channel side trim line: 3' – 0"

3. In addition, shrubs shall be trimmed for overall shape and appearance (Intent of trimming is to reduce shrub size to allow access and prevent encroachment through or over fences and over roadways while maintaining the screening effect).
4. All branches and limbs shall be removed to a height of eighteen (18) inches above the ground for clearance.

E. Groundcover:

1. Concrete Channels: All ice plant, ivy and vegetation shall be removed from the concrete lining to a point twelve (12) inches above or behind the concrete lining; thus exposing a twelve (12) inch area of dirt. All ice plant, ivy, and vegetation shall be removed from expansion joints, weep holes and side inlets. Vegetation shall be pulled rather than cut to retard growth.
2. Earth Channels: All ice plant, ivy and vegetation shall be removed from the channel bottom, in front of and around all side inlets, and from the entire slope area. Vegetation shall be pulled rather than cut to retard growth.
3. Roadway Areas: All ice plant, ivy and vegetation shall be removed from the roadway area, from the top of the channel slope or wall to the right-of-way fence.
4. Gate Areas: All ice plant, ivy and vegetation shall be removed from the area around all gates to allow free swing with an additional one foot clearance.
5. Exception: Grasses shall not be removed where acting as erosion control. These grasses shall be cut to a height ranging from four to six (4” – 6”) inches. Large areas should be noted on the Work Assignment Sheet and rescheduled for mechanical mowing.

F. Vegetation Removal:

1. Crews shall remove all shrubs and vegetation unintentionally growing on channel slopes and access walkways.
2. Where the trunk is less than four (4) inches vegetation shall be removed by pulling to remove roots.
3. Where the trunk is greater than four (4) inches vegetation shall be cut a maximum of two (2) inches above the ground and the stump shall be completely and thoroughly sprayed.
4. Crew shall be familiar with and not remove or trim any native vegetation species. Any native vegetation shall be noted on the work order and brought to the attention of County’s Project Manager.

VI. ADDITIONAL WORK:

- A. Upon County request, Contractor shall submit supplemental proposals for additional work covering Channel Cleaning Services not specifically called for under the Scope of Work of this Contract. Contractor must obtain County Project Manager’s written approval for the hours to be worked and hourly rates prior to commencing any additional work.

- B. County reserves the right to obtain supplemental proposals for Channel Cleaning Services from, and use, alternate sources for completion of the additional work and to utilize the data provided under this Contract to obtain necessary services.
- C. If County authorizes work by an alternate source, Contractor may be relieved of responsibilities pertaining to the equipment affected by the project while work is being performed and during the subsequent warranty period.
- D. Contractor shall continue to provide services to all areas not affected by work provided by alternate sources.

ATTACHMENT B
PAYMENT/COMPENSATION

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

The Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. **The County shall have no obligation to pay any sum in excess of the Fixed Prices and Total Contract Amount specified herein unless authorized by amendment in accordance with Articles C and P of the County Contract Terms and Conditions, which may require approval by the County Board of Supervisors.**

Amendment No. 1: Added language to include not to exceed amount for renewal term

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

A. Pricing:

Line	Description	Unit	Unit Cost
1	Channel Cleaning (right-of-way to right-of-way) Shall include: Removal of trash, debris, obstructions, and silt from the channel invert; trimming and clearing vegetation along vehicular and pedestrian access roads; and the removal of vegetation from channel slopes, inverts, expansion joints, weep holes and side inlets.	LF	\$1.31
2	Routine Trash and Debris Removal	Hour (Per Crew)	\$449.00
3	Disposal Fees for Routine Trash and Debris Removal Only	Ton	\$91.00

Amendment No. 1: Added language to include not to exceed amount for renewal term

II. **TOTAL AGGREGATE CONTRACT AMOUNT NOT TO EXCEED:\$3,000,000**

B...First Renewal Term Total Aggregate Contract Amount Not to exceed.....\$1,000,000

III. **PRICE INCREASES/DECREASES:** No price increases will be permitted during the first period of the Contract. All price decreases will automatically be extended to County and District. County and District requires bona fide proof of cost increases on Contracts prior to any price adjustment. A minimum of one hundred twenty (120) days advance notice in writing is required to secure such adjustment. 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.

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

V. 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 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 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 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.

VI. 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 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: Kris Ruiz
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 via an EFT Authorization Form. To request a form, please contact the DPA.