

CONTRACT MA-080-20010042

FOR

WATER TOXICITY TESTING SERVICES

BETWEEN

OC PUBLIC WORKS

AND

AQUATIC BIOASSAY AND CONSULTING LABS



**CONTRACT MA-080-20010042
WITH
AQUATIC BIOASSAY AND CONSULTING LABS
FOR
WATER TOXICITY TESTING SERVICES**

THIS CONTRACT MA-080-20010042 for Water Toxicity Testing Services (hereinafter referred to as “Contract”) is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, (hereinafter referred to as “County”) and Aquatic Bioassay and Consulting Labs, with a place of business at 29 N. Olive St. Ventura, CA 93001 (hereinafter referred to as “Contractor”), with a 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 Services

Attachment B – Payment/Compensation

RECITALS

WHEREAS, Contractor and County are entering into this Contract for Water Toxicity Testing Services under a firm fixed fee Contract; and,

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

WHEREAS, Contractor agrees to provide Water Toxicity Testing 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 Water Toxicity Testing Services with the Contractor; and,

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

DPA shall mean the Deputy Purchasing Agent assigned to this Contract.

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 "Y"** below, and as more fully described in **article "Y"** 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 “Y”** 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
Professional Liability*	\$1,000,000 per claims-made

\$1,000,000 aggregate

Employers Liability Insurance

\$1,000,000 per occurrence

Required Coverage Forms

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

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

Required Endorsements

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

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

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

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

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

If Contractor’s Professional Liability, Technology Errors & Omissions and/or Network Security & Privacy Liability are “Claims-Made” policy(ies), Contractor shall agree to maintain coverage for two (2) years following the completion of the 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 "Y"** 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. **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.
- V. **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.
- W. **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.
- X. **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.
- Y. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided

by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

- Z. **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.

- AA. **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.
- BB. **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 Water Toxicity Testing Services from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as “Attachment A”.
- 2. **Term of Contract:** This Contract shall commence upon execution of all necessary signatures and continue for three (3) calendar years from that date, unless otherwise terminated by County. This Contract may be renewed as set forth in article 3 below.

Amendment No. 1

Contract shall be renewed for one (1) year from November 8, 2022 to November 7, 2023, unless otherwise terminated as provided herein.

3. **Renewal:** This Contract may be renewed by mutual written agreement of both Parties for two (2) additional one (1) year terms. The County does not have to give reason if it elects not to renew. Renewal periods may be subject to approval by the County of Orange Board of Supervisors.
4. **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.
5. **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.
6. **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.
7. **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.
8. **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.
9. **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.

10. **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.

11. **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.

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

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

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

13. **County of Orange Child Support Enforcement:** All Contractors are required to comply with the child support enforcement requirements of the County of Orange. Failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. In order to comply with the child support enforcement requirements of the County of Orange, all bidders/proposers must furnish to the Contract administrator, the Procurement Officer, or the agency/department Deputy Purchasing Agent:

- A. In the case of an individual Contractor, his/her name, date of birth, Social Security number, and residence address;
- B. In the case of a Contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the Contracting entity;
- C. A certification that the Contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
- D. A certification that the Contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

- 14. **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.
- 15. **Default – Reprourement 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.
- 16. **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 22. “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.

17. **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.

18. **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

19. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as project manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor’s reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor’s reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

20. **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.

- 21. **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.
- 22. **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: Aquatic Bioassay and Consulting Labs
Attn: Michael Machuzak
29 N Olive St.
Ventura, CA 93001
Phone: 805-643-5621
Email: michael@aquaticbioassay.com

County's Project Manager: OC Public Works/OC Environmental Resources
Attn: Bryan Pastor
2301 N. Glassell St.
Orange, CA 92865
Phone: 714-955-0662
Email: bryan.pastor@ocpw.ocgov.com

cc: OC Public Works/Procurement Section
Attn: Jessica Loy, County DPA
2301 N. Glassell St.
Orange, CA 92865
Phone: 714-667-9630
Email: Jessica.loy@ocpw.ocgov.com

- 23. **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.
- 24. **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.

25. **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.

26. **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.

Signature Page follows

Signature Page

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

AQUATIC BIOASSAY & CONSULTING, INC.*

Signature	Name	Title	Date

Signature	Name	Title	Date

COUNTY OF ORANGE, A political subdivision of the State of California

COUNTY AUTHORIZED SIGNATURE:

Signature	(Print) Name	Title	Date
		Deputy Purchasing Agent	

**APPROVED AS TO FORM:
County Counsel**

By _____
Mark Sanchez

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. BACKGROUND:

Toxicity evaluations of ecological conditions are one of several key environmental monitoring efforts the County manages for protecting aquatic resources. In response to the National Pollutant Discharge Elimination System (NPDES) Stormwater Permits R9-2015-0001 and R8-2009-0030 requirements and other special directives, the County conducts toxicity sampling in freshwater, estuarine, and marine environments of Orange County to evaluate seasonal and long-term impacts of urban stormwater and runoff on inland and coastal waterways. The monitoring program utilizes numerous bioassay test species as indicators of water and benthic sediment quality to develop a comprehensive assessment of the status and trends of the County's aquatic resources. Information for the overall management effort is collected through collaborative regional monitoring programs such as:

- The Stormwater Monitoring Coalition (SMC), a group of regulatory and regulated agencies dealing with issues related to municipal stormwater monitoring in Southern California.
- The Southern California Bight Regional Monitoring Program (e.g. Bight '18).

The results of the toxicity analyses will have implications for environmental management on a larger stakeholder scale. In addition, the County conducts targeted assessments within watershed management areas designed to evaluate and protect critical environmental habitats.

II. CONTRACTOR MINIMUM REQUIREMENTS

Contractor Shall:

- A. Be certified by the State of California Environmental Laboratory and Accreditation Program (ELAP) for all species within the categories of analyses listed in this Contract. For subcontracted analyses, the subcontractor must hold certification for the subcontracted method of analyses.
- B. Provide two (2) of their most recent ELAP Proficiency Evaluation study results.
- C. Provide documentation of successful participation in the 2018 Southern California Bight Regional Monitoring Program (e.g. Bight '18) laboratory inter-calibration exercises. Documentation of participation in these inter-calibration exercises, and Contractor's results relative to the performance thresholds are required.
- D. Provide the majority of toxicity testing services. Contractors serving as clearinghouses for subcontracting analytical services are not acceptable.
- E. Have at least three years of professional experience conducting these types of laboratory services.
- F. Specialize in water, wastewater and sediment toxicity analysis.
- G. Ensure they employ robust internal quality control and conform to acceptable accuracy and precision standards on a day to day operating basis.
- H. Ensure staff are competent, professional, and qualified to support personnel with the following minimum qualifications:
 1. Laboratory Director or Senior Toxicologist with at least 10 years' experience as Director of a toxicity testing facility.

2. Supervising Toxicologist: must have a bachelor's degree in an environmental science field with relevant coursework in environmental toxicology.
3. Technicians: Preferable to have associate level (2-year degree) or above.
4. Information Technology Staff: Consistent error free transmission of data.
5. The staff must be fully and currently informed on federal, state and local water quality legislation and regulations, and perform services in accordance with procedures specified therein as required.

III. CONTRACT REQUIREMENTS

Contractor Shall:

- A. Be a qualified toxicity testing laboratory, meeting requirements for certification by the California State Water Resources Control Board Environmental Laboratory Accreditation Program (ELAP), whose work is supervised by graduate professional toxicologists, and which is well equipped and capable of rendering said services.
- B. Participate in BIGHT '18 and SMC inter-calibration exercises for all relevant bioassays consistent with County environmental monitoring program. Continued usage of analytical services from Contractor is contingent upon Contractor's participation in future SMC or Bight inter-calibration exercises during the Contract term.
- C. Be fully equipped and staffed at a level capable of providing all analytical services.
- D. Cover all fees related to labor, courier services, materials [coolers, sample containers such as cubitainers, jars, etc.], special equipment, and permits (where applicable) needed to provide analytical services.
- E. Provide a 24-hour contact name and number or answering service.
- F. Be located in close proximity to County laboratory, so as to provide regularly scheduled and on demand sample pick up within the required holding times.
 1. Scheduled pick-up is defined as a minimum 12-hour advanced notice by County personnel.
 2. On-demand pick-up, typically 3-4 samples, is defined as a 4-hour advanced notice by County personnel for analysis of a sample on the following day.
- G. Upon County request, pick up and deliver samples in quantity adequate for analysis at the following location:

2245 N. Glassell St.
Orange, CA 92865
- H. Provide weekend service and operate at extended hours when necessary for special projects and storm-runoff sample pick-up and preliminary analyses.

- I. Provide rapid and emergency analysis of water and sediment samples within period of time specified by County upon request.
- J. Upon request, provide personnel for field collection of samples.
- K. Be available for services on major holidays (Thanksgiving week, Christmas Eve and Christmas Day, New Year's Eve and New Year's Day, Memorial Day, Fourth of July, and Labor Day). These rare occasions include the first storm of the storm season or a major water pollution investigation.
- L. Provide "RUSH" services on the reporting of analyses for certain time-sensitive projects. Rush services shall take no longer than 5 days from assay completion.
- M. Accept the following analytical quality control provisions and penalties for failure to perform to stated levels of accuracy and precision as listed below:
 - 1. LIMITS OF ERROR, AND PENALTIES RELATED THERETO:
 - a. Determinations of satisfactory accuracy and/or precision may be made by County, on notification of Contractor, from information provided with Performance Evaluation samples from certified vendors. For samples prepared from Proficiency Testing (PT) standards, performance thresholds from the PT standard vendor will be used as the criteria for acceptability of results.
 - b. In the case of deviation from performance acceptance limits for the analysis of PT samples, County may, at its option, either notify Contractor, if County believes the error is of a random nature or submit to Contractor another PT sample. County may request Contractor to provide additional quality assurance documentation for the test in question or for all tests (involving the same species) on samples within the same batch as the PT sample. These follow up investigations will be conducted at the sole expense of Contractor. On the second occurrence, within 45 days (based on sample submittal date), of failure of PT sample acceptance criteria for the same toxicity test, Contractor's invoice(s), for all analyses using that test on samples submitted during the calendar month of the initial error, shall be discounted by 20%.
 - c. After the second occurrence, within 60 days (based on sample submittal date), of a reported result failing PT sample acceptance criteria, a meeting will be held between County and Contractor to discuss a resolution to the problem. Within 30 days subsequent to the meeting, another PT sample from a certified vendor will be submitted by County to Contractor. Failure to produce a result within performance acceptance limits as defined by the PT vendor may be cause for cancellation of this agreement by County.
- N. Report analytical results on or before the 21st day after receipt of non-RUSH samples from the County (or other reporting schedule proposed by the contractor and approved by the County) and accept penalties for failure to perform within the specified reporting time period.
- O. Provide lab reports electronically in Portable Document Format (.pdf) referenced by County's chain of custody identification number provided by the County. Acrobat Files with electronic signatures of the laboratory director will be acceptable. Must also provide results and internal laboratory quality control data in the Electronic Data Report (EDR) format specified by the County. Submittal

of PDF and EDR files shall be subject to reporting timeframes. EDR files shall also be subject to a maximum allowable error rate of 0.1% of the total data values within the respective EDR.

- P. Provide lab reports electronically in the Surface Water Ambient Monitoring Program (SWAMP) and/or California Environmental Data Exchange Network (CEDEN) compatible format referenced by County's chain of custody identification number provided by the County. Contractor must be able to provide SWAMP/CEDEN consistent format data reports upon County receiving notification of State mandated reporting requirement. Submittal of SWAMP/CEDEN electronic files shall be subject to reporting timeframes as described in Section III.N., above. SWAMP/CEDEN electronic files shall also be subject to a maximum allowable error rate of 0.1% of the total data values within the respective report.
- Q. Laboratory procedures for the analyses of aqueous and sediment toxicity of samples from freshwater estuarine and marine environments. County hereby engages Contractor to examine and perform toxicological analyses of aqueous and benthic sediment samples from freshwater, estuarine and marine environments by County. Contractor shall perform all analyses according to published methods presented in the following documents or their subsequent updates:
1. U.S. EPA. 1991a. Methods for Aquatic Toxicity Identification Evaluations: Phase I Toxicity Characterization Procedures, 2nd ed., EPA/600/6-91/003. U.S. Environmental Protection Agency, Office of Research and Development, Environmental Research Laboratory, Duluth, Minnesota.
 2. U.S. EPA, 2002. Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, 5th Edition. EPA-821-R-02-012. U.S. Environmental Protection Agency, Office of Water, Washington, DC.
 3. U.S. EPA. 1992. Toxicity Identification Evaluation: Characterization of Chronically Toxic Effluents, Phase I, EPA/600/6-91/005F. U.S. Environmental Protection Agency, Office of Research and Development, Environmental Research Laboratory, Duluth, Minnesota.
 4. U.S. EPA. 1994 Methods for Assessing the Toxicity of Sediment-associated Contaminants with Estuarine and Marine Amphipods. EPA/600/R-94/025, U.S. Environmental Protection Agency, Office of Research and Development, Narragansett, Rhode Island.
 5. U.S. EPA. 1994. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms. EPA/600/4-91/002. U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory, Cincinnati, Ohio
 6. U.S. EPA. 1995. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine and Estuarine Organisms. EPA/600/R-95/136, U. S. Environmental Protection Agency, National Exposure Research Laboratory, Cincinnati, Ohio.
 7. U.S. EPA 2002. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms, 3rd Edition. EPA-821-R-02-014. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

8. U.S. EPA. 1996b. Marine Toxicity Identification Evaluation (TIE): Phase I Guidance Document. EPA/600/R-95/054. U.S. Environmental Protection Agency, Environmental Effects Research Laboratory, Narragansett, Rhode Island.
 9. U.S. EPA. 2000. Methods for Measuring the Toxicity and Bioaccumulation of Sediment-associated Contaminants with Freshwater Invertebrates, 2nd Edition. EPA/600/R-99/064. U. S. Environmental Protection Agency, Office of Research and Development, Mid-Continent Ecology Division, Duluth, Minnesota.
 10. USEPA. 2010. National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document. EPA 833-R-10-003. US Environmental Protection Agency, Office of Wastewater Management, Washington D.C.
 11. Other procedures established as EPA protocol and published in the Federal Register.
 12. Variation from procedures detailed in the above publications by the Contractor must be approved via electronic mail or other writing by County.
- R. Allow other toxicity testing as required due to changes in State or Federal regulations.

IV. SCOPE OF SERVICES

- A. Contractor shall provide Water Toxicity Testing Services to the County on an as needed basis. Water toxicity will either be tested using a dilution series or the Test of Significant Toxicity (TST) method as requested by the County.
- B. Contractor will be required to evaluate the toxicity of aqueous and sediment samples to test organisms including but not limited to *Strongylocentrotus purpuratus*, *Americamysis bahia*, *Ceriodaphnia dubia*, *Hyallela azteca*, *Pimephales promelas*, *Selenastrum capricornutum*, *Mytilus galloprovincialis*, and *Eohaustorius estuarius*.
- C. County will collect discrete or composite samples from freshwater environments during dry-weather conditions throughout the year and specify the toxicity tests required. Toxicity testing will typically be conducted by the Contractor using approved freshwater test organisms. The tests will be conducted with appropriate dilution sample concentrations, by using the TST method, or through another EPA approved method (if available). Based on County's analyses of test results, subsequent samples may also be submitted for 5-dilution tests.
- D. The stormwater runoff samples collected by County from freshwater environments will consist of discrete or composite samples. The toxicity evaluation will be conducted using one or more of the following tests:
 1. 7-day Mysid (*Americamysis bahia*) survival and growth test
 2. Sea urchin (*Strongylocentrotus purpuratus*) fertilization test (20-minute exposure)
 3. 96 hour *Hyallela azteca* survival test.
 4. Freshwater cladocera (*Ceriodaphnia dubia*) survival and reproduction test,
 5. Fathead minnow (*Pimephales promelas*) survival test

*Tests "1-3" use marine species representative of organisms likely to be exposed to stormwater discharge plumes. All three tests are recommended by the State of California Ocean Plan for assessing the toxicity of discharges to marine waters. Test methods for each species shall be

consistent with the procedures described by the U.S. EPA in Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine and Estuarine Organisms. The testing of stormwater runoff samples will either be tested using multiple dilutions with a concentration series of 100%, 50%, 25%, 12.5%, and 6.25%, the TST method, or other EPA approved method (if available). The salinity levels of samples for tests 1-3 shall be adjusted to fall within the recommended range for each species.

- E. Dry-weather samples from estuarine or marine environments will be collected by the County throughout each year on a quarterly basis. These samples, as well as, stormwater runoff samples from estuarine and marine environments will be evaluated using the same marine organisms described above. The dry weather testing will be conducted on an undiluted and a 50% sample concentration or the TST method, adjusted if necessary for salinity. The stormwater runoff testing will either be conducted using multiple dilutions with a concentration series of 100%, 50%, 25%, 12.5%, and 6.25% the TST method, or another EPA approved method (if available).
- F. Sediment samples from estuarine and marine environments will be collected throughout the year on a quarterly basis and will be evaluated for toxicity using the 10-day amphipod survival test with the marine organism *Eohaustorius estuarius* and the 48 hour larval development test using *Mytilus galloprovincialis*. Test methods for this species shall be consistent with the procedures described by the U.S. EPA in Methods for Assessing the Toxicity of Sediment-associated Contaminants with Estuarine and Marine Amphipods and Short-Term Methods for Measuring the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine and Estuarine Organisms.
- G. Sediment samples from freshwater environments will be collected throughout the year on a quarterly basis and will be evaluated for toxicity using the 10-day *Hyallela azteca* survival/growth test.
- H. A laboratory control sample containing a reference toxicant shall be tested concurrently with each batch of samples and for each test method. Tests not meeting the acceptability criteria specified by U.S. EPA for each method shall be repeated, at the Contractor's expense.
- I. Sample Submissions: Contractor's primary purpose is to support the regional monitoring programs required by the County's two NPDES stormwater permits. Monitoring includes both dry and wet weather samples, with the submission of a large percentage of stormwater samples to the Contractor or being contingent upon the episodic nature of storms in Southern California. The NPDES stormwater permits may require that the first flush of the first measurable rainfall event of each monitoring year (July 1- June 30) be monitored. Sediment samples, which are collected almost exclusively during dry-weather periods, will also be submitted to the Contractor's laboratory. Contractor must be able to accept between 2 and 8 aqueous and/or sediment samples during dry weather periods and up to a maximum of 17 aqueous samples during periods of stormwater runoff. The average number of samples per submission is typically 4-8 for both types of matrices. Toxicity tests shall be initiated within 24 hours of sample receipt.
- J. Additional Testing Services
 - 1. An adaptive protocol will be used to initiate additional testing on each sample submitted. During the first hour of any test, if a 100% effect is seen in both the 100% and 50% sample concentrations, additional dilutions will be added to that test. For tests initially involving only 100% and 50% concentrations, three (3) additional dilutions (25%, 12.5%, and 6.25% sample concentrations) will be added. For five-dilution tests, two (2) additional dilutions (3.12% and 1.56% sample concentrations) will be added. Contractor will notify County Project Manager by e-mail as

soon possible if testing on additional dilutions is performed. If the TST method is requested on samples, adaptive protocol will also be used in accordance with TST method guidelines.

2. Contractor shall also include 48 hour acute testing results in conjunction with all performed chronic bioassays with the exception of when the duration of the bioassay is less than 48 hours.

3. County may also request that testing include additional dilutions beyond the five-dilution analysis. These additional dilutions will expand the concentration series to 100%, 50%, 25%, 12.5%, 6.25%, 3.12% and 1.56%.

4. County may request that a Phase I Toxicity Identification Evaluation (TIE) be conducted on a water sample. The Phase I TIE shall include the following treatments and corresponding blanks:

1. Baseline toxicity;
2. Particle removal by centrifugation;
3. Solid phase extraction of the centrifuged sample using C18 media;
4. Complexation of metals using EDTA addition to the raw sample;
5. Neutralization of oxidants/metals using sodium thiosulfate addition to the raw sample;
6. Inhibition of Organophosphate (OP) pesticide activation using piperonyl butoxide (PBO) addition to the raw sample (crustacean toxicity tests only).

*TIE procedures should be consistent with the guidelines published by the U.S. EPA for freshwater or marine species.

K. Quality Control

1. Internal Quality Control

- a. Contractor must maintain formal internal quality assurance program by means of reference toxicant spikes, replicates, etc., and program must be maintained for periodic inspection by County. Contractor must also provide County a periodic report on the extent and results of the internal quality control program. The format of the monthly quality control report will be mutually agreed upon by Contractor and County.
- b. Contractor must analyze a laboratory control sample containing a reference toxicant, concurrently with each batch of samples and for each test method. Tests not meeting the acceptability criteria specified by U.S. EPA for each method shall be repeated at the Contractors expense.

L. Accuracy

Periodically, County may prepare and submit for analysis to Contractor, without prior notification of identification as such, solution or other materials of precisely known composition. Unsatisfactory reports, herein below defined, on the composition of such solutions or substances may be cause for cancellation of this contract by County, and/or for penalty discounts of Contractor's invoices.

M. Sample Containers

The Contractor shall either provide County with disposable or recyclable sample containers of adequate number, size and type (sample container must be quality assured to be free of residual organic and trace metal contaminants). Sample containers shall be adequately prepared or pretreated by Contractor to prevent contamination of the samples. Contractor shall periodically provide County with data on "container blank" analyses to assure that adequate pretreatment is performed.

County will accept pre-cleaned containers from approved Companies, such as I Chem, and may request certified containers supported by quality control documentation.

N. Sample Holding Time

All samples shall be analyzed by Contractor as soon as possible after submission by County. The times listed are the maximum times that samples may be held before analysis and still considered valid. Samples may be held longer only if Contractor can show by historical data that samples with the specific matrix under consideration are stable longer than listed below. County may request "rush" analyses where the maximum sample holding times do not apply.

Maximum Holding Time

Aqueous toxicity samples	36 hours
Sediment toxicity samples	14 days

Chemist shall refrigerate samples when required by EPA standard methods.

O. Minimum Sample Volumes

Upon County request, Contractor shall provide County with a table of minimum sample volumes required to conduct each of the analysis listed in the Group and Individual analyses County and Contractor will discuss program requirements and develop a mechanism to insure adequate sample volume is collected to complete required number of dilutions with each sample. Contingencies for unexpected volume changes due to composite sample collections will be developed.

P. Records and Reports

1. Contractor shall maintain an electronic data file of all analyses performed for County; data shall be filed numerically by the identifying sample numbers, as assigned by County. Hard copies of all the reports shall be maintained by Contractor for a period of three years.
2. Contractor shall report water/sediment analysis in the form acceptable to County. County may, at its option, request Contractor to redesign or otherwise modify the report format.
3. Contractor shall provide data results by electronic mail. The format of these data shall be compatible with County's monitoring database. The costs for developing this type of data reporting format shall be borne solely by the Contractor. The development of the process to provide data in this format to County shall be completed by the effective date of this contract.
4. If requested by County, Portable Document Format (PDF) files of reports signed by the laboratory director shall also be sent to County by the Contractor via electronic mail.
5. Contractor shall maintain records of all testing results for inspection by County for a period of three (3) years.
6. If Contractor, in County's opinion, fails to maintain a timely schedule of analysis and reports, Contractor's bill for each overdue sample will be discounted by 10% for each week or portion thereof elapsing between the due date and the receipt of a satisfactory report of the analysis of such sample.
7. For purposes of this paragraph, a timely schedule of analysis and reports shall be construed as a 21-day period between delivery of sample and transmittal of report, except in cases in

which some other period of time specifically agreed upon herein or at the time of sample delivery to Contractor. Electronic data reports (EDRs) in a format specified by County shall be submitted by Contractor to County under the time frame described above. The time stamp on the electronic mail containing the EDR file shall constitute the date of receipt of the EDR.

7. The maximum allowable data management error rate in an electronic data report (EDR) shall be 0.1% of the total data values in that report. If the maximum allowable error is exceeded in an EDR, Contractor's bill for each affected sample will be discounted by 10%. For purposes of this paragraph, examples of unacceptable data management errors include but are not limited to erroneous parameter codes, erroneous qualifiers, transcription errors in the data values, and missing values.

**ATTACHMENT B
PAYMENT/COMPENSATION**

1. **Compensation:** This is a firm-fixed fee Contract between the County and Contractor for Water Toxicity Testing Services 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.**

2. **FEES AND CHARGES:** County will pay the following fees in accordance with the provisions of this Contract. Payment shall be as follows:

A. INDIVIDUAL BIOASSAYS:

Line Item	Determination	Dilutions	Analysis and Billing Code	Analysis Price
1.	Chronic Ceriodaphnia (<24hr old) 7-day Survival & Reproduction (<i>Ceriodaphnia dubia</i>)	100, 50%	CERIO2	\$500.00
2.	Chronic <i>Ceriodaphnia</i> 7-day Survival & Reproduction	100, 50, 25, 12.5, 6.25%	CERIO5	\$900.00
3.	Chronic <i>Ceriodaphnia</i> 7-day Survival & Reproduction <i>Seven Dilutions</i>	100, 50, 25, 12.5, 6.25, 3.12, 1.62%	CERIO7	\$925.00
4.	<i>Ceriodaphnia dubia</i> Chronic 7-day Survival & Reproduction Phase 1 TIE	N/A	CERIO7TIE	\$1,500.00
5.	Chronic <i>Daphnia magna</i> 7-day Survival & Reproduction	100, 50%	DM2	\$500.00
6.	Chronic <i>Daphnia magna</i> 7-day Survival & Reproduction	100, 50, 25, 12.5, 6.25%	DM5	\$900.00
7.	<i>Eohaustorius estuarius</i> 10-day Survival in Sediment	100%	EOHAUS	\$400.00
8.	<i>Eohaustorius estuarius</i> 10-day Survival in Sediment: Phase 1 TIE	N/A	EOHTIE	\$2,000.00
9.	<i>Mytilus</i> 48-hour Survival in Sediment	100%	MYTIL	\$450.00
10.	<i>Mytilus galloprovincialis</i> 48-hour Survival in Sediment: Phase 1 TIE	N/A	MYTTIE	\$2,000.00
11.	Chronic Fathead Minnow Larvae (24-hr old) 96 hr Survival & Growth (<i>Pimephales promelas</i>)	100, 50%	FHM2	\$450.00
12.	Chronic Fathead Minnow Larvae Survival & Growth	100, 50, 25, 12.5, 6.25%	FHM5	\$800.00
13.	Chronic Fathead Minnow Larvae Survival & Growth <i>Seven Dilutions</i>	100, 50, 25, 12.5, 6.25, 3.12, 1.62%	FHM7	\$825.00
14.	<i>Pimephales promelas</i> Chronic Survival & Growth: Phase 1 TIE	N/A	FHMTIE	\$2,000.00
15.	Chronic Giant Kelp Germination & Growth (<i>Macrocystis</i>)	100, 50%	GKM2	\$500.00

Line Item	Determination	Dilutions	Analysis and Billing Code	Analysis Price
16.	Chronic Giant Kelp Germination & Growth	100, 50, 25, 12.5, 6.25%	GKM5	\$850.00
17.	Acute <i>Hyalella</i> / <i>Hyalella azteca</i> Survival Aqueous sample	100, 50%	HYAZ2	\$350.00
18.	Acute <i>Hyalella</i> Survival Aqueous sample	100, 50, 25, 12.5, 6.25%	HYAZ5	\$520.00
19.	Chronic <i>Hyalella</i> Survival Aqueous sample	100, 50%	CHRONHYAZ2	\$500.00
20.	Chronic <i>Hyalella</i> Survival Aqueous sample	100, 50, 25, 12.5, 6.25%	CHRONHYAZ5	\$900.00
21.	<i>Hyalella azteca</i> Acute Survival in aqueous sample: Phase 1 TIE	N/A	HYAZTIE	\$2,000.00
22.	<i>Hyalella</i> / <i>Hyalella azteca</i> 10-day Survival in Sediment at 23 degrees Celcius	N/A	HYAZ-S-23	\$450.00
23.	<i>Hyalella</i> 10-day Survival in Sediment at 15 degrees Celcius (<i>Hyalella azteca</i>)	N/A	HYAZ-S-15	\$450.00
24.	<i>Hyalella azteca</i> 10-day Survival in Sediment: Phase 1 TIE	N/A	HYSTIE	\$2,000.00
25.	Chronic Inland Silverside Survival & Growth (<i>Menidia beryllina</i>)	100, 50%	ISS2	\$500.00
26.	Chronic Inland Silverside Survival & Growth	100, 50, 25, 12.5, 6.25%	ISS5	\$800.00
27.	Chronic (96 hr) Mysid Shrimp (7-day old) Survival & Growth (<i>Americamysis bahia</i>)	100, 50%	MSG2	\$400.00
28.	Chronic Mysid Shrimp Survival & Growth	100, 50, 25, 12.5, 6.25%	MSG5	\$750.00
29.	Chronic Mysid Shrimp Survival & Growth Seven Dilutions	100, 50, 25, 12.5, 6.25, 3.12, 1.62%	MSG7	\$750.00
30.	<i>Americamysis bahia</i> Survival & Growth: Phase 1 TIE	N/A	MYSTIE	\$2,000.00
31.	Chronic (48-hr) Abalone Larval Development (<i>Haliotis rufescens</i>)	100, 50%	RALD2	\$500.00
32.	Chronic Abalone Larval Development	100, 50, 25, 12.5, 6.25%	RALD5	\$700.00
33.	Chronic (96-hr) <i>Selenastrum capricornutum</i> Algae Growth	100, 50%	SELE2	\$300.00
34.	Chronic <i>Selenastrum</i> Algae Growth	100, 50, 25, 12.5, 6.25%	SELE5	\$575.00
35.	<i>Selenastrum capricornutum</i> Algae Growth Phase 1 TIE	N/A	SELETIE	\$2,000.00
36.	Chronic Sea Urchin Embryo Development (<i>Strongylocentrotus purpuratus</i>)	100, 50%	SUED2	\$375.00
37.	Chronic Sea Urchin Embryo Development	100, 50, 25, 12.5, 6.25%	SUED5	\$525.00
38.	Chronic Sea Urchin Embryo Development Seven Dilutions	100, 50, 25, 12.5, 6.25, 3.12, 1.62%	SUED7	\$525.00
39.	<i>Strongylocentrotus purpuratus</i> Embryo Development Phase 1 TIE	N/A	SUEDTIE	\$2,500.00
40.	Chronic Sea Urchin Fertilization (<i>Strongylocentrotus purpuratus</i>)	100, 50%	SUF2	\$375.00
41.	Chronic Sea Urchin Fertilization	100, 50, 25, 12.5, 6.25%	SUF5	\$525.00
42.	Chronic Sea Urchin Fertilization Seven Dilutions	100, 50, 25, 12.5, 6.25, 3.12, 1.62%	SUF7	\$525.00

Line Item	Determination	Dilutions	Analysis and Billing Code	Analysis Price
43.	<i>Strongylocentrotus purpuratus</i> Fertilization Phase 1 TIE	N/A	SUFTIE	\$2,500.00
44.	Chronic Topsmelt Survival & Growth (<i>Atherinops affinis</i>)	100, 50%	TOP2	\$500.00
45.	Chronic Topsmelt Survival & Growth	100, 50, 25, 12.5, 6.25%	TOP5	\$800.00
46.	<i>Chironomus dilutus</i> in Sediment	N/A	TBD	\$450.00
47.	<i>Chironomus tentans</i> in Sediment	N/A	TBD	\$450.00

B. GROUP ANALYSIS:

Line	Category	Analyses Performed	Analyses and Billing Code	Unit Price
1	Dry Weather Fresh Water Organisms (2 dilutions)	CERIO2, HYAZ2, SELE2	TXF2	\$1,035.00
2	Dry Weather Fresh Water Organisms (5 dilutions)	CERIO5, HYAZ5, SELE5	TXF5	\$1,700.00
3	Dry Weather Fresh Water and Marine Organisms (2 dilutions)	CERIO2, HYAZ2, SELE2, SUF2	TXFS2	\$1,300.00
4	Dry Weather Fresh Water and Marine Organisms (5 dilutions)	CERIO5, HYAZ5, SELE5, SUF5	TXFS5	\$2,300.00
5	Dry Weather and Storm Runoff Marine Organisms (2 dilutions)	MSG2, SUED2, SUF2	TXM2	\$1,035.00
6	Dry Weather and Storm Runoff Marine Organisms (5 dilutions)	MSG5, SUED5, SUF5	TXM5	\$1,600.00
7	Dry Weather and Storm Runoff Marine Organisms (7 dilutions)	MSG7, SUED7, SUF7	TXM7	\$1,600.00
8	Storm Runoff Marine & Freshwater Organisms (2 dilutions)	CERIO2, MSG2, SUF2	TXMF2	\$1,275.00
9	Storm Runoff Marine & Freshwater Organisms (5 dilutions)	CERIO5, MSG5, SUF5	TXMF5	\$2,175.00
10	Storm Runoff Marine & Freshwater Organisms (7 dilutions)	CERIO7, MSG7, SUF7	TXMF7	\$2,200.00
11	Storm Runoff Marine & Freshwater Organisms (2 dilutions)	MSG2, HYAZ2, SUF2, Acute CERIO2	TXMFA2	\$1,355.00
12	Storm Runoff Marine & Freshwater Organisms (5 dilutions)	MSG5, HYAZ5, SUF5, Acute CERIO5	TXMFA5	\$2,100.00
13	Storm Runoff Marine & Freshwater Organisms (7 dilutions)	MSG7, HYAZ7, SUF7, Acute CERIO7	TXMFA7	\$2,145.00

C. BIOASSAYS USING TST METHOD:

Line	Determination	Analysis and Billing Code	Analysis Price
1	Chronic <i>Ceriodaphnia dubia</i> (<24hr old) 7-day Survival & Reproduction	TBD	\$825.00
2	Chronic <i>Daphnia magna</i> 7-day Survival & Reproduction	TBD	\$825.00
3	Chronic Fathead Minnow Larvae (24-hr old) 96 hr Survival & Growth (<i>Pimephales promelas</i>)	TBD	\$725.00
4	Chronic Giant Kelp Germination & Growth (<i>Macrocystis</i>)	TBD	\$900.00
5	Acute <i>Hyallolella azteca</i> Survival Aqueous sample	TBD	\$350.00
6	Chronic <i>Hyallolella</i> Survival Aqueous sample	TBD	\$500.00
7	Chronic Inland Silverside Survival & Growth (<i>Menidia beryllina</i>)	TBD	\$855.00
8	Chronic (96 hr) Mysid Shrimp (7-day old) Survival & Growth (<i>Americamysis bahia</i>)	TBD	\$855.00
9	Chronic (48-hr) Abalone Larval Development (<i>Haliotis rufescens</i>)	TBD	\$900.00
10	Chronic (96-hr) <i>Selenastrum capricornutum</i> Algae Growth	TBD	\$500.00
11	Chronic Sea Urchin Embryo Development (<i>Strongylocentrotus purpuratus</i>)	TBD	\$550.00
12	Chronic Sea Urchin Fertilization (<i>Strongylocentrotus purpuratus</i>)	TBD	\$550.00
13	Chronic Topsmelt Survival & Growth (<i>Atherinops affinis</i>)	TBD	\$900.00

D. GROUP ANALYSIS USING TST METHOD:

Line	Category	Analyses Performed	Analyses and Billing Code	Unit Price
1	Dry Weather Fresh Water Organisms	Chronic Ceriodaphnia, Acute Hyalella, Chronic Selenastrum	TBD	\$1,600.00
2	Dry Weather Fresh Water and Marine Organisms	Chronic Ceriodaphnia, Acute Hyalella, Chronic Selenastrum, Chronic Sea Urchin Fertilization	TBD	\$2,200.00
3	Dry Weather and Storm Runoff Marine Organisms	Chronic Mysid, Chronic Sea Urchin Embryo Development, Chronic Sea Urchin Fertilization	TBD	\$1,900.00
4	Storm Runoff Marine & Freshwater Organisms	Chronic Ceriodaphnia, Chronic Mysid, Chronic Sea Urchin Fertilization	TBD	\$2,200.00
5	Storm Runoff Marine & Freshwater Organisms	Chronic Mysid, Acute Hyalella Chronic Sea Urchin Fertilization, Acute Ceriodaphnia	TBD	\$1,900.00

E. LABOR RATES OF EXPERT PERSONNEL:

Line	Job Title	Hourly Rate
1	Lab Director/ Senior Toxicologist	\$160.00
2	Supervising Toxicologist	\$110.00
3	Technicians	\$50.00
4	Clerical Staff	\$25.00

F. CANCELLATION FEES: With County Project Managers written approval under certain conditions, due to unforeseeable circumstances, County shall pay Contractor cancellation fees if samples are not submitted to the Contractor as pre-arranged.

Line	Category	Analyses and Billing Code	Unit Price
1	Cancel any 2 Dilution Test	CANCEL2	\$75.00
2	Cancel any 5 Dilution Test	CANCEL5	\$180.00
3	Cancel any 7 Dilution Test	CANCEL7	\$200.00

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

Amendment No. 1

RENEWAL TERM CONTRACT AMOUNT NOT TO EXCEED: **\$200,000**

- 4. **Price Increase/Decreases:** No price increases will be permitted during the first period of the Contract. The County requires documented proof of cost increases on Contracts prior to any price adjustment. A minimum of 120-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. All price decreases will automatically be extended to the County of Orange. The County may enforce, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.
- 5. **Firm Discount and Pricing Structure:** Contractor guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to the County during the term of this Contract not otherwise specified and provided for within this Contract.
- 6. **Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of work and services under this Contract.
- 7. **Payment Terms – Payment in Arrears:** Invoices are to be submitted in arrears to the user agency/department to the ship-to address, unless otherwise directed in this Contract. Contractor shall reference Contract number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

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

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

- 8. **Taxpayer ID Number:** The Contractor shall include its taxpayer ID number on all invoices submitted to the County for payment to ensure compliance with IRS requirements and to expedite payment processing.
- 9. **ETF Payment – Invoicing Instructions:** The Contractor will provide an invoice on the Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:
 - A. Contractor's name and address
 - B. Contractor's remittance address, if different from A above
 - C. Contractor's Taxpayer ID Number
 - D. Name of County Agency/Department
 - E. Delivery/service address
 - F. Master Agreement (MA) or Purchase Order (PO) number
 - G. Agency/Department's Account Number
 - H. Date of invoice
 - I. Product/service description, quantity, and prices
 - J. Sales tax, if applicable
 - K. Freight/delivery charges, if applicable
 - L. Total

Invoices and support documentation are to be forwarded to:

OC Public Works/Procurement Services
Attn: Accounts Payable
PO Box 4048
Santa Ana, CA 92702-4048
Email: accountspayables@ocpw.ocgov.com

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

ATTACHMENT C

**FORMAT FOR ANALYTICAL SERVICES INVOICING
(CONTRACTOR LETTERHEAD)**

A. INVOICE HEADER

Bill to:	County of Orange	Contract No.
	OC Public Works/Accounts Payable	Invoice No.*
	300 N. Flower Street	Lab Request No. +
	Santa Ana, CA 92703	Project No(s). from CoC
		Invoice Date:
		Invoice Due Date:
		Tax Payer I.D. No.

B. EXAMPLE OF ITEMIZED BILLING:

Contractor Lab Number	OC Public Works Sample Number	Billing and Analysis Code	Unit Cost	Sample Quantity	Total Cost
2000-2005	WR1050-1055	TXF2 ^c	\$1215 ^c	6	\$7,290.00
2006-2008	WR1056-1058	RALD2 ^c	\$550x ^d	3	\$1,650.00
Invoice Total					\$8,940.00

ATTACHMENT D

Data types for electronic data report (edr) of analytical results (submitted as a text file by electronic mail)

ID	Field Name	Required	Datatype	Notes
1	lab_name	Y	text	The subcontract laboratory unique Identifier (e.g., WECK).
2	submission_date	Y	date (MM/DD/YYYY HH24:MI)	The date the file was submitted: this helps uniquely identify the submission and any subsequent resubmissions.
3	qc_group	Y	text	The batch used to associate samples together for a particular test: Typically, this would be the prep batch where the QC was created. If no prep is performed for the test, specify the analytical batch. This value used in conjunction with the lab_name will be the unique batch identifier in SDI (Subcontract Data Interface).
4	fraction		text	The specific test grouping: typically used to “bin” like analyses together (Metals, Volatiles, etc.)
5	lab_sample_id	Y	text	The subcontract lab’s specific identification for an analyzed sample.
6	cust_sample_id		text	Unique identifier supplied by the OCPW/OCES used to track the sample throughout the sampling and analysis processes. Production samples (those sent out) will have a cust_sample_id representing the OCPW/OCES sample ID; QC generated by the subcontract lab will not and this field will be null. If this record represents a <u>non</u> -OCPW/OCES original, then this value <u>must</u> be set to “NON-PROJECT”.
7	matrix	Y	text	The matrix of the sample

ID	Field Name	Required	Datatype	Notes
8	collect_date		date (MM/DD/YYYY)	The date / time the sample was collected
9	receive_date		date (MM/DD/YYYY)	The date / time the sample was received
10	prep_batch		text	Sub contract lab preparatory batch, if applicable
11	ana_batch		text	Sub contract lab analytical batch
12	sample_type	Y	text	The type of sample collected or analyzed (e.g., SAMPLE).
13	original_sample	* - see note	text	Original samples are production samples which are related to other QC. Typically DUPs, MS, MSDs, etc. If a record from these types of samples are included, its parent (original) subcontract
14	paired_sample	* - see note	text	Paired samples are spiked samples which have a relationship with another sample for the purposes of calculation of RPDs (an LCD is a duplicate of an LCS). This field would be required for sample types of LCSD or MSD. If a record from these types of samples are included, its related sample (paired) subcontract lab sample number (unique ID) must be placed in this field to provide the appropriate linkage.

ID	Field Name	Required	Datatype	Notes
15	result_type	Y	text	This is the type of result. Valid Values are: TRG for target compounds; SPK for spiked analytes; and SUR for surrogates.
16	analyst	Y	text	The laboratory user who performed the analysis
17	analysis_date	Y	date (MM/DD/YYYY)	The date the analysis was performed.

ID	Field Name	Required	Datatype	Notes
18	analysis_method	Y	text	The method used by the laboratory to analyze the sample.
19	prep_date		date (MM/DD/YYYY HH24:MI)	The date the preparation was performed. If none, this field can be left blank.
20	prep_method		text	The digestion or extraction method performed on the sample prior to analysis. If no preparatory method, it can be left blank
21	dilution	Y	number	Default value should be 1, if no dilution is performed
22	compound_name	Y	text	The name of the analyte or parameter for which the test is conducted and result is reported.
23	result		text	<u>This is a multi-purpose field</u> whose contents varies based on sample type and result_type. For Production samples the value is the result for the TRG compound. For spiked QC samples, the recovered amount is stored here (a SPK result_type). For SUR result_types the recovered_amount for the surrogate is placed here.
24	qualifier		text	The description of any special conditions, situations or outliers that occurred during or prior to the analysis. Multiple qualifiers can be placed in this field with a ' ' pipe
25	result_units		text	The result measurement unit.
26	mdl		number	The MDL (method detection limit) is the lowest possible calculated detection limit associated with a given method and analyte.

ID	Field Name	Required	Datatype	Notes
27	pql		number	The PQL (practical quantitation limit) of the sample analyzed is the minimum value below which data are documented as non- quantifiable, as determined by the laboratory.
28	basis		text	Results reported on wet or dry basis. Valid Values are WET ; DRY ; or NA
29	constituent		text	Part (or whole) of the target analyte for the test. Valid Values are TOTAL ; or DISSOLVED
30	spike_conc		number	This field contains the expected value from the analysis of a spiked QC sample (SPK result_type). SUR result_type records also require this field.
31	spike_lcl		number	The lower control limits for a spiked QC sample (SPK result_type). SUR result_type records also require this field.
32	spike_ucl		number	The upper control limits for a spiked QC sample (SPK result_type). SUR result_type records also require this field.
33	spike_recovery		number	The calculated %recovery from the analysis of a spiked QC sample (SPK result_type). SUR result_type records also require this field.
34	rpd		number	The calculated RPD from the analysis of a duplicate spike QC sample (SPK result_type).
35	rpd_cl		number	The upper control limit for the calculated RPD of a duplicate spike QC sample (SPK result_type).

ID	Field Name	Required	Datatype	Notes
36	batch_cmts		text	Any special notes or comments that need to be associated to the batch. Multiple comments can be placed in this field with a ' ' pipe delimiter. It is not required that the comment be on every record for the batch; but it must be on at least one.
37	sample_cmts		text	Any special notes or comments that need to be associated to the sample. Multiple comments can be placed in this field with a ' ' pipe delimiter. It is not required that the comment be on every record for the sample but it must be on at least one.
38	analyte_cmts		text	Any special notes or comments that need to be associated to the analyte. Multiple comments can be placed in this field with a ' ' pipe delimiter.

Attachment E

Format for Electronic Analytical services invoicing

(submitted as a text file by electronic mail)

	Comme
FORMAT=INVOICE	{Line 1} FORMAT=INVOICE line required Must be first non-comment line.
PA,N2000003381	{Line 2} Purchase Agreement number (always preceded with PA,)
LN,115131,8/21/03	{Line 3} Laboratory Request Number (linked to EDR), date of invoice (always preceded by LN,)
DC,TXF5.3,1260,3780	{Line 4} Analysis billing code, number of analyses, unit price per analysis (or group analysis), subtotal (always
DC,CERIO2,4,415,1260	{Line 5} Analysis billing code, number of analyses, unit price per analysis (or group analysis), subtotal (always
T,50400	{Line 6} Total of invoice associated with above Laboratory Request Number (always preceded with T,)
LN,115132,8/24/03	{Line 7} Laboratory Request Number (linked to EDR), date of invoice (always preceded by LN.)
DC,EOHAUS,2,400,800	{Line 8} Analysis billing code, number of analyses, unit price per analysis (or group analysis), subtotal (always
T,800	{Line 9} Total of invoice associated with above Laboratory_ Request Number (always preceded with T,)

Note:

- Filename must include lab identifier, e.g. LABNAME0511104INV.txt, and must be unique (including data files)
- Files submitted are in text format (.txt)
- Use only valid codes for analysis type
- If amended invoice code “R” after Laboratory Request Number (e.g. 115131R)
- Comment lines are allowed on any line (preceded with C,)
- If unit price is different from that established in the Price Agreement code X after unit price (e.g. CERIO2,3,600X,1800)
- If requested analysis is coded as a group, the invoice must provide a total price for that group of analyses and not individual costs for each of the analyses performed.

One file can include as many series of LN, DC, T combinations as desired.