

CONTRACT MA-080-21010437

FOR

**STORM DRAIN, SEWER PIPE INSPECTION AND
MAINTENANCE SERVICES**

BETWEEN

OC PUBLIC WORKS

AND

DOWNSTREAM SERVICES, INC.



**CONTRACT MA-080-21010437
FOR
STORM DRAIN, SEWER PIPE INSPECTION AND MAINTENANCE SERVICES
WITH
DOWNSTREAM SERVICES, INC.**

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

THIS Contract MA-080-21010437 for Storm Drain, Sewer Pipe Inspection and Maintenance Services (“Contract”) is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California (“County”), Orange County Flood Control District, a body corporate and politic (hereinafter referred to as “District”), and Downstream Services, Inc., with a place of business at 2855 Progress Place, Escondido CA 92029 (“Contractor”), with County and Contractor sometimes referred to as “Party” or collectively as “Parties.”

ATTACHMENTS

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

Attachment A – Scope of Work

Attachment B – Payment/Compensation

RECITALS

WHEREAS, Contractor and County are entering into this Contract for Storm Drain, Sewer Pipe Inspection and Maintenance Services under a Usage Contract; and,

WHEREAS, County solicited Contract for Storm Drain, Sewer Pipe Inspection and Maintenance Services as set forth herein, and Contractor represented that it is qualified to provide Storm Drain, Sewer Pipe Inspection and Maintenance Services to the County as further set forth here; and,

WHEREAS, Contractor agrees to provide Storm Drain, Sewer Pipe Inspection and Maintenance 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 Storm Drain, Sewer Pipe Inspection and Maintenance Services with the Contractor; and,

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

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLESGeneral Terms and Conditions:

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.
- B. **Entire Contract:** This Contract contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Procurement Officer or designee.
- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.
- E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.
- F. **Acceptance Payment:** Unless otherwise agreed to in writing by County; 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in **article "Z"** below, and as more fully described in **article "Z,"** harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties,

faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in **article "Z"** below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.
- I. **Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.
- L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- N. **Performance Warranty:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall

at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

Amendment No. 1: Amend language to update to current requirements and include Orange County Flood Control District

O. Insurance Requirements:

Prior to the provision of services under this Contract, the Contractor agrees to carry 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 current, provide Certificates of Insurance, and endorsements to 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 (SIR)'s shall be clearly stated on the Certificate of Insurance. Any SIR in excess of Fifty Thousand Dollars \$50,000 shall specifically be approved by the County's Risk Manager, or designee. The County reserves the right to require current audited financial reports from Contractor. If Contractor is self-insured, Contractor will indemnify the County for any and all claims resulting or arising from Contractor's services in accordance with the indemnity provision stated in this contract.

- ~~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 combined single limit each accident
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per accident or disease
Contractor's Pollution Liability Including NODS	\$1,000,000 per claims made or occurrence

Increased insurance limits may be satisfied with Excess/Umbrella policies. Excess/Umbrella policies when required must provide Follow Form coverage.

Required Coverage Forms

The Commercial General Liability coverage shall be written on occurrence basis utilizing 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, the Orange County Flood Control District, and their elected and appointed officials, officers, agents and employees* as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT.**
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange 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, the Orange County Flood Control District, and their elected and appointed officials, officers, agents and employees** or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT.**

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

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

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

Insurance certificates should be emailed to OCPWCompliance@ocpw.ocgov.com

If email is not possible, then Insurance certificates should specifically be forwarded to:

OC Public Works
Attn: OCPW Procurement
601 N. Ross Street, 4th Floor
Santa Ana, CA 92701

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 provide acceptable Certificates of Insurance and endorsements to County** incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

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

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

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

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

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

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

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

- R. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.

- S. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

- T. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of **article "Z"** below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

- U. **Freight:** Prior to the County's express acceptance of delivery of products. Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.
- X. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.
- Y. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, District, and their elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County or District by a court of competent jurisdiction because of the concurrent active negligence of County, District or County Indemnitees, Parties agree that liability will be apportioned as determined by the court. No party shall request a jury apportionment.
- AA. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files,

financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

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

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

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

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

Additional Terms and Conditions:

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure Storm Drain, Sewer Pipe Inspection and Maintenance Services from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as "Attachment A".

Amendment No. 1: Renew Contract for 1 year

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

Contract shall be renewed for one (1) year from January 8, 2024 through and including January 7, 2025, unless otherwise terminated as provided herein.

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

4. **Aggregate Contract:** This is an Aggregate Contract with Nor-Cal Pipeline Services and Downstream Services, Inc. with a Total Aggregate Contract Amount not to exceed \$3,000,000.

The first renewal term for the Aggregate Contract with Nor-Cal Pipeline Services and Downstream Services Inc. shall have a Total Aggregate Contract Amount not to exceed \$2,000,000.00.

5. **Adjustments – Scope of Work:** No adjustments made to the Scope of Work will be authorized without prior written approval of the County assigned Deputy Purchasing Agent.
6. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- a) Terminate the Contract immediately, pursuant to Section K herein;
 - b) Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - c) Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
 - d) Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
7. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
8. **Conflict of Interest – Contractor’s Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor’s employees, agents, and subcontractors associated with accomplishing work and services hereunder. The Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.
9. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
10. **Contractor’s Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County’s Project Manager, which consent shall not be unreasonably withheld.

The Contractor's Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager from providing services to the County under this Contract. The County's Project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within five (5) business days after written notice by the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.

11. **Contractor Personnel – Reference Checks:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract. Contractor's employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.
12. **Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.

13. **Contractor Personnel – Uniform/Badges/Identification:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility under this Contract.

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

14. **Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange assigned DPA.
15. **Conditions Affecting Work:** The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
16. **Cooperative Agreement:** The provisions and pricing of this Contract will be extended to other California local or state governmental entities. Governmental entities wishing to use the pre-negotiated prices and terms in this Contract will be responsible for issuing their own purchase documents/contracts, providing for their own acceptance, and making any subsequent payments.

Contractor shall be required to include in any contract entered into with another department or entity that is entered into and incorporates by reference the pre-negotiated prices and terms of this Contract a contractual clause that will hold harmless the County of Orange from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this Contract. Failure to do so will be considered a material breach of this Contract by Contractor and grounds for immediate Contract termination. Departments or entities making use of the pre-negotiated prices and terms of this Contract are responsible for obtaining all certificates of insurance and bonds required when entering into their own contract. The Contractor is responsible for providing each cooperative entity a copy of the Contract upon request by the cooperative entity. The County of Orange makes no guarantee of usage by other users of this Contract.

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

17. **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.

18. **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.

19. **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 26. "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.

20. **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.

21. **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

22. **Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by the County, state or federal government, this Contract may be subjected to unusual usage. The Contractor shall service the County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the Contractor shall apply to serving the County’s needs regardless of the circumstances. If the Contractor is unable to supply the goods/services under the terms of the Contract, then the Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from the Contractor’s supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the Contractor shall show both the emergency purchase order number and the Contract number.
23. **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.

24. **Hazardous Conditions:** Whenever the Contractor’s operations create a condition hazardous to traffic or to the public, the Contractor shall provide flagmen and furnish, erect and maintain control devices as are necessary to prevent accidents or damage or injury to the public at Contractor’s expense and without cost to the County. The Contractor shall comply with County directives regarding potential hazards.

Emergency lights and traffic cones must also be readily available at all times and must be used in any hazardous condition. Emergency traffic cones must be placed in front of and behind vehicles to warn oncoming traffic.

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

25. **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.

26. **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: DownStream Services, Inc.
Attn: Wilma Roberts
2855 Progress Place
Escondido CA 92029
Phone: 760-746-2544
Email: Wilmar@downstreamservices.com

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

cc: OC Public Works/Procurement Services
Attn: Richard Nguyen, County DPA
1143 E. Fruit St.
Santa Ana, CA 92701

Phone: 714-667-9633

Email: Richard.Nguyen@ocpw.ocgov.com

27. **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.
28. **County's Project Manager:** The County shall appoint a project manager to act as liaison between the County and the Contractor during the term of this Contract. The County's project manager shall coordinate the activities of the County staff assigned to work with the Contractor.
- The County's project manager shall have the right to require the removal and replacement of the Contractor's project manager and key personnel. The County's project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice from the County's project manager. The County's project manager shall review and approve the appointment of the replacement for the Contractor's project manager and key personnel. Said approval shall not be unreasonably withheld. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.
29. **Safety Data Sheets (SDS):** The Contractor is required to provide a completed Safety Data Sheet (SDS) for each hazardous substance provided to the County under the Contractor's Contract with the County. This includes hazardous substances that are not directly included in the Contract, but are included in the goods or services provided by the Contractor to the County. The provision of the SDSs must be in accordance with the requirements of California Labor Code Sections 6380 through 6399, General Industry Safety Order Section 5194, and Title 8, California Code of Regulations. The SDSs for each substance must be sent to the place of shipment or provision of goods/service.
30. **Subcontracting:** No performance of this Contract or any portion thereof may be subcontracted by the Contractor without the express written consent of the County. Any attempt by the Contractor to subcontract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract.
31. **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.
32. **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.

33. **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.

34. **Prevailing Wage:**

a. **Threshold Requirements for Prevailing Wages:** Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

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

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

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

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

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

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

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

other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

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

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

- f. **Work Hour Penalty:** Eight (8) hours of labor constitute a legal day's work, and forty hours constitute a legal week's work. Pursuant to Section 1813 of the Labor Code of the State of California, the Contractor shall forfeit to the County Twenty Five Dollars (\$25) for each worker employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than the legal day's or week's work, except that work performed by employees of said Contractor and subcontractors in excess of the legal limit shall be permitted without the foregoing penalty upon the payment of compensation to the workers for all hours worked in excess of eight hours per day of not less than 1-1/2 times the basic rate of pay.
- g. **Apprentices:** The Contractor acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor Code Section 1777.5, this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of the Contractor to ensure compliance with this Article and with Labor Code Section 1777.5 for all apprenticeable occupations.

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

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

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

35. **Payment and Performance Bonds:** A payment bond and performance is required for a public works contract involving expenditure in excess of twenty-five thousand dollars (\$25,000) and no work can be commenced prior to both bonds being approved the County.

The Contractor shall furnish, at time of signing the Contract, one surety bond which shall protect the laborers and material men and shall be for \$60,000, in accordance with *Section 9554 of the Civil Code*, and one surety bond in the amount of \$60,000, guaranteeing the faithful performance of the Contract. If at any time the value of the total task orders is expected to exceed \$60,000, the Contractor shall furnish, in a manner acceptable to the County, evidence that the Contractor is bonded to the expected total value of outstanding task orders for both the faithful performance and laborers and material men bonds. Contractor shall not be entitled to, nor shall County authorize, task orders when the total outstanding value of the task orders under this contract exceeds the bond values for which the County is an obligee. Said bonds to be approved by the office of the County Counsel and the County Executive Office of Orange County. Such bonds shall be the forms provided in these specifications and issued and executed by an admitted surety insurer (authorized to transact surety insurance in California). (e.g., if the bonds are issued through a surplus line broker, both the surplus line broker and the insurer with whom he is doing business for purposes of this project must be licensed in California to issue such bonds.)

The faithful performance bond shall be issued by a Surety company with a minimum insurance rating of A- (Secure 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. The Surety Company must also be authorized to write in California by the Department of the Treasury, and must be listed on the most current edition of the Department of Treasury's Listing of Approved Securities.

If any surety upon any bond furnished in connection with this Contract becomes unacceptable to the County, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by OC Public Works, the Contractor shall promptly furnish such additional security as may be required by OC Public Works or the Board of Supervisors from time to time to protect the interests of the County and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.

If the County increases the total Contract amount the Contractor is to provide a new bond for the new total Contract amount or a bond for the difference.

Execution of the Agreement and Notice to Proceed: County will not execute the Agreement or issue a Notice to Proceed with the work until Bidder has submitted and County has approved Bidder's Faithful Performance and Labor and Material Payment Bonds, proof of insurance, and initial job progress schedule. All such submittals must be received by County within 10 calendar days of award of the Contract. Any claims by Contractor for adjustments in time and/or cost for delays in issuing the Notice to Proceed due to Contractor's failure to deliver bonds, insurance, and initial job progress schedule acceptable to County will not be considered.

36. **Execution of the Agreement and Notice to Proceed:** County will not execute the Contract or issue a Notice to Proceed with the work until Bidder has submitted and County has approved Bidder's Faithful Performance and Labor and Material Payment Bonds, proof of insurance, and initial job progress schedule. All such submittals must be received by County within 10 calendar days of award of the Contract. Any claims by Contractor for adjustments in time and/or cost for delays in issuing the Notice to Proceed due to Contractor's failure to deliver bonds, insurance, and initial job progress schedule acceptable to County will not be considered.
37. **County of Orange Local Small Business Preference Requirements:** Contractor certifies it is in compliance with County of Orange Local Small Business Preference requirements at the time this Contract is executed.

Signature Page follows

Signature Page

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

DOWNSTREAM SERVICES, INC.*

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

Signature	Name	Title	Date
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**APPROVED AS TO FORM:
County Counsel**

By _____
Deputy

Name: _____

Date: _____

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

**ATTACHMENT A
SCOPE OF WORK**

- I. SCOPE OF WORK:** Contractor shall provide all labor, materials, tools, equipment and testing, report/data submittal, incidentals, and related items required for complete cleaning and on-call physical and/or Closed Circuit Television (CCTV) Storm Drain, Pipe and facility inspection services for existing and new storm drain, sewer pipes, and boxes etc. Sewer Pipe will require regular and 24/7 emergency response, (CCTV), cleaning and repair of 8” VCP and manhole shafts.

The purpose of the inspections is to determine the structural condition of the storm drains, sewer and facilities and identify any defects or issues.

Physical and/or CCTV camera inspections shall include (but not limited to) a large elevating camera for box culverts which may have up to three feet of water or more in them and 8” Sewer pipe

The camera operator shall be National Association of Sewer Service Companies (NASSCO) and Pipeline Assessment & Certification Program (PACP) certified.

Facility cleaning in order to complete inspection and reports shall include (but not limited to) silt, rocks, debris, water and trash, sewage etc.

All services shall be provided on an as needed basis with Contractor available twenty four (24) hours per day, seven (7) days a week.

II. DRAINAGE STRUCTURES/LOCATIONS:

- A. Types of drainage structures include, but not limited to:
1. Approximately 662,202 linear feet of 36” pipes or bigger.
 2. Approximately 381,444 linear feet of 35” pipes or smaller.
- B. Work locations for this Contract will be Countywide in unincorporated areas of Orange County, Orange County Flood Control District Facilities, and incorporated cities serviced by County.
- C. Types of sewer pipe
1. 4,220 linear feet of 8” vitreous clay pipe.
 2. 17 manholes and shafts.
- D. Work location for sewer will be Buena Park Island

III. CONTRACTOR/EQUIPMENT REQUIREMENTS:

- A. Contractor shall:
1. Provide and maintain a telephone answering system which provides for contact twenty-four (24) hours per day, seven (7) days a week, including holidays.
 2. Be responsible for implementing, administering and maintaining a Confined Space Entry Program (CSEP) in accordance with Sections 5156, 5157 and 5158 of Title 8 of the

California Code of Regulations and in accordance with the Standard Specifications for Public Works Construction, latest edition.

3. Supply all pertinent licenses, permits, and fees necessary to perform the work under this Contract.
4. Licensed in the State of California as a General Engineering Contractor (Class A) or C42 Specialty Contractor with current and valid certificates of license.
5. Inspect all storm drain, sewer and other facilities as requested by County and District.
6. Adhere to all CAL-OSHA Confined Space Requirements.
7. All pipe video inspections shall be completed using PACP standards by PACP certified professionals. A current PACP certification number shall be included for each person creating/gathering inspection reports.
8. Provide Confined Space atmospheric monitoring services for County staff or engineers as needed.
9. Perform all work outlined in this Contract in such a manner as to meet all accepted standards for safe practices during operations and to maintain safe conditions or premises and ways at all times, including safely stored equipment, machines, and materials. This includes compliance with local County, State or other legal intents and terms of the applicable OSHA and CAL/OSHA Safety orders at all times so as to protect all persons, including Contractor's employees and County against injury or damage to their property.
10. All vehicles shall be equipped with adequate warning devices and lights for safe operation. Examples of acceptable warning devices and lights are: top-mounted warning light bars or rotational beacons and a rear-mounted left/right arrow stick shall be required for arterial lane closures.
11. All vehicles must meet the operating requirements of the State of California Department of Motor Vehicles, CAL OSHA regulations, and all other applicable codes required in the State of California.
12. All equipment shall be adequately maintained both mechanically and visually by Contractor and shall be fully operational during all operations.
13. Cameras used for the CCTV inspections shall be one specifically designed and constructed for such inspection. The camera used for inspections shall be capable of operation in 100 percent humidity, be waterproof and able to withstand long periods of submergence in wastewater and sewage. The camera shall be able to pan, tilt and rotate 360 degrees. The tilt arc should not be less than 225 degrees.
14. All cameras shall move through the main pipes via self-powered tractor assemblies. The tractor assemblies used for the inspections shall be the appropriate size assembly for the pipe being inspected.
15. Lighting for the camera shall be suitable to allow a clear picture of the entire periphery of the pipe.
16. All equipment shall be clearly and prominently marked with Contractor's name and unit/vehicle number.

17. Mobile vehicles used to perform inspections will be equipped with a viewable monitor for County/District use to observe inspections while on-site.
18. Cleaning equipment may consist of hydraulic high pressure jet machines, heavy duty power rodding machines, capable of cleaning distances in one step; heavy duty bucket machines, that can be used to drag line work with buckets, brushes, scrapers, swabs or other similar devices. The heavy duty equipment may be necessary for the removal of roots or heavy debris.
19. Have a sufficient number of back up cameras/equipment in the event of a breakdown to allow for completion within the timeframe required by the County's Project Manager.
20. Be responsible for any damages sustained to County equipment or facilities as a result of the Contractor's operations. All damage will be repaired or replaced, at the option of County, at Contractor's expense within three (3) days after notification of such damage by County's Project Manager. Repairs and/or replacements will be equal to original in all aspects.
21. Contractor's Personnel:
 - a. Background/Security: All Contractor personnel engaged in performance of this Contract shall be employees of Contractor and as such shall be warranted to possess sufficient experience and security records to perform this work. Contractor shall conduct a thorough background investigation of each employee providing services under this Contract, including but not limited to, investigation of employment and police records and shall maintain copy of that request.
 - b. Identification: All personnel shall wear uniforms, displaying company name, furnished by Contractor, at all times during performance of this work. Contractor and/or its area supervisor may wear badges in lieu of uniforms.
 - c. Conduct: Contractor personnel providing services under this Contract shall not be incompetent, disorderly, under the influence of alcohol or drugs, who fails or otherwise refuses to perform the work properly and acceptably, or is otherwise objectionable. County expressly retains the right to request any specific Contract personnel be precluded from providing services to County under this Contract. County is not required to provide any reason for requested removal of specified Contract personnel. Contractor shall remove requested Contractor personnel within three (3) business days.
 - d. Supervision: Contractor shall provide a supervisor or foreman who shall be present at all times during Contract operations, and who shall be responsible for both conduct and workmanship. Said supervisor or foreman shall be able to communicate effectively in both written and oral English.

IV. PERFORMANCE REQUIREMENTS:

A. Contractor shall:

1. Utilize the Maintenance Inspection Report (MIR) form, which will provide the Contractor with the specific location and request for work to be performed and the location maps, drawings, plans, etc. as provided by County and as directed by County's Project Manager or designee to locate and perform the specified work.

2. Be responsible for providing all required traffic controls (all labor, personnel, equipment, devices, and materials). In accordance with the guidelines of the of

Work Area Traffic Control Handbook (WATCH) manual. Shoulder closures are considered as part of the normal work;

3. Inspect the condition of storm drain, sewer pipes via CCTV or physical inspection as specified on the work order and as directed by County's Project Manager. Provide recommendations for facility repairs for grouting, point repairs and lining, etc., including a cost estimate.
4. All manholes and inlets shall be thoroughly cleaned of all foreign materials, obstacles, and buildups. This shall include, but is not limited to: removing grit, sand, silt, leaves, debris, rocks, bricks, sticks, sewage and sludge from the manhole or inlet. This work is considered incidental to the cleaning of the storm drain, sewage pipes, and will not be paid for on a separate basis. All screws and bolts shall be lubricated (high temperature threaded lubricant) and replaced as needed. If any of the anchor bolts are damaged, broken, missing, etc. they shall be replaced or re-anchored with the appropriate quick setting epoxy cement. In no case shall the manhole covers be left unsecured with less than the original number of secured anchor bolts. Contractor shall notify County's Project Manager or designee of any failed anchor bolts so County can schedule for proper replacement.
5. Pipe Cleaning:
 - a) Cleaning shall be performed within seventy-two (72)-hour period immediately before inspection.
 - b) All precautions shall be taken by Contractor to protect the storm drain from damage that might result from the use of unsuitable equipment or improper use of approved cleaning equipment. Any drains damaged during the cleaning operations as a result of Contractor's operations shall be promptly repaired to an acceptable condition (as determined by the Project Manager).
 - c) The intent of pipe cleaning is to remove all sludge, dirt, sand, rocks, grease, and other solids, sewage or semisolid material from the pipe so that defects are not obscured and to allow the water level to drop so that defects are visible. The pipe interior shall be clean enough to allow adequate viewing of the pipe during inspection. It is recognized that there are some conditions such as broken pipe and major blockages that prevent cleaning from being accomplished or where additional damage would result if cleaning were attempted or continued. Should such conditions be encountered, County and District shall be notified within 24 hours and shall direct Contractor on how to proceed with those specific pipe segments.
 - d) Contractor shall be responsible for obtaining water as necessary.
 - e) If cleaning of an entire section cannot be successfully performed from one manhole, the equipment shall be set up on the other manhole and cleaning again attempted. The cost of additional manhole set-ups shall be borne by Contractor. If, again, successful cleaning cannot be performed or the equipment fails to traverse the

entire manhole section, it will be assumed that a major blockage exists and County and District shall be notified as soon as possible.

f) Contractor shall be responsible for disposal of material removed during cleaning process. Under no circumstance shall Contractor dispose of any material or liquid into manholes or sanitary sewer manholes.

6. CCTV Digital Video Inspections:

a) The camera shall move through the storm drain in either direction at a uniform rate but not greater than 30 feet per minute. The camera shall be stopped at all major defects and connections and shall be panned, tilted, zoomed, and rotated to fully view the defects and connections. All such inspections shall be documented on computer-generated logs.

b) Inspections shall begin at the center of the structure, clearly show the pipe connection of the pipe to be inspected at the structure and shall pan and tilt around the structure to provide a clear view of the structure and all pipe connections. At every downstream structure, the camera shall be panned and tilted within the structure to provide a clear view of the structure and all pipe connections.

c) The television inspection shall include video documentation and computer generated logs to document the inspection. The camera shall be panned, tilted, and rotated at any defects and at service lateral connections for a complete video documentation. Footages and locations of any defects and connections shall be documented.

d) Each video shall include an overlay/text display. Each inspection start shall include the overlay display of section details including at a minimum:

- Owner Name;
- Project Name;
- Contractor Name;
- Street/Structure Name;
- Flood Control Channel Station Number/Sewer MH number (when applicable);
- Date/Time of inspection;
- MH Start #/MH End # (Coordinates and GPS at each entry point);
- Pipe Material;
- Pipe Size;
- Direction of video with respect to flow;
- Weather;
- Flow level; and
- GPS coordinates at each entry point

e) A constant display of the Structure Begin # and the Structure End #, date and distance shall appear on the screen. As an observation/defect is noted by the inspector, a text display shall appear with the text describing the observation/defect. Text shall be displayed for a minimum of 4 seconds.

7. SEWER

- a) Bulkheads shall be removed along the entire segment of the sewer line from manhole to manhole. Otherwise, the segment is considered incomplete.
- b) A full 360 degree pan of all manholes is required. This video footage shall occur at the beginning of each pipe segment survey inspection from the bottom of the manhole panning up the manhole shaft. The Contractor shall cover the manhole opening to prevent too much light from entering the structure and to ensure a clear and focused view of the manhole interior. In instances when the manhole is the terminating manhole, then the pan shall occur at the end of the pipe segment survey inspection.
- c) Video footage shall be taken centered on the pipe with the water level running horizontally. The camera shall run along the invert of the pipe and not at its side, unless it is passing a point obstacle. If extended driving on the side of the pipe is required, then either the pipe needs a more thorough cleaning or an observation should be noted from the PACP codes describing the nature of the obstacle
- d) Obstructions may be encountered during the course of the CCTV inspection that prevent the travel of the camera. In instances

when obstructions are not passable, the Contractor shall withdraw the equipment and begin a CCTV inspection from the opposite end of the sewer reach.
- e) If a particular line is inspected more than once, then the Contractor shall include all versions of the inspections in the database. The MGO observation shall be used on all inspections except at the first occurrence. The Contractor shall provide an explanation for the additional inspections in the Remarks section.

8. Excessive Depth of Flow:

- a) Maximum depth of flow for CCTV inspections shall be 25 percent of the pipe diameter. If the depth of flow is greater, then the CCTV inspection shall be performed during the low flow periods between the hours of 10:00 p.m. to 6:00 a.m.
- b) The Contractor shall pay special attention to all local jurisdiction rules and regulations, especially regarding activities during off-peak hours.
- c) If the flow is still above 25 percent on the return trip, then the Contractor can use a flow-controlling mechanism (i.e. flow reducer) to control the flow and proceed with the inspection. After the initial screen and AMH observation, the MGO observation shall be used to note the reason for the return to this location and indicate the use of such flow-controlling equipment, in the appropriate box in the section header information screen.
- d) The Contractor shall include the original inspection in the final submittal even with high flow conditions.
- e) If the Contractor encounters a surcharging manhole (whereas the flow at the manhole is at least 50 percent of the sewer pipe diameter), then the Contractor shall immediately notify the County

9. Reporting Completed Work:

- a) Return all completed MIR's to the County's Project Manager. Each completed MIR must have the firm's name, date of completion, name and signature of Contractor's representative certifying completion of work.

Completed MIR's shall be returned to County's Project Manager within five (5) days of completion of work order.

- b) Provide picture and video documentation of any facility deficiencies to the County's Project Manager or designee on a USB 2.0 compatible data storage device by the end of the work week. Picture files shall be in JPEG format and named with the facility's respective ID number as shown on location maps. Picture files shall be organized in folders by date with the facility number (to be provided) or identification. The format needs to be "plug-and-play" on any computer. This shall be provided along with the completed work order within five (5) days after completion.
- c) Contractor shall provide County and/or District with a printed report and in PDF format noting any structural defects needing engineer evaluation using the PACP defect coding system to define the severity of pipe and structure defects within five (5) days after completion. Contractor shall include a brief repair recommendation with each pipe/RCB segment, if warranted.
- d) Provide Pipeline Observation System Management videos, photographs, and reports on an external hard drive. The final condition assessment report shall be provided on printed binders and in PDF format. This shall be provided along with the completed work order within five (5) days after completion.

V. ADDITIONAL WORK:

- A. Upon County request, Contractor shall submit supplemental proposals for additional work covering Storm Drain, Sewer Pipe Inspection and Maintenance Services not specifically called for under the Scope of Work of this Contract. Contractor must obtain County Project Manager's written approval for the hours to be worked and hourly rates prior to commencing any additional work.
- B. County reserves the right to obtain supplemental proposals for Storm Drain, Sewer Pipe Inspection and Maintenance Services from, and use, alternate sources for completion of the additional work and to utilize the data provided under this Contract to obtain necessary services.
- C. If County authorizes work by an alternate source, Contractor may be relieved of responsibilities pertaining to the equipment affected by the project while work is being performed and during the subsequent warranty period.
- D. Contractor shall continue to provide services to all areas not affected by work provided by alternate sources.

ATTACHMENT B
PAYMENT/COMPENSATION

I. COMPENSATION: This is a firm fixed-rate Contract between the County and Contractor for Storm Drain, Sewer Pipe Inspection and Maintenance 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.

Amendment No. 1: Renew Contract for 1 year

II. FEES AND CHARGES: Payment shall be made in accordance with the provisions of this Contract.

- A. Physical Inspection of Storm Drain Pipe 36 Inch and above: \$2.95/Linear Foot
B. Physical Inspection of Storm Drain Pipe 35 Inch and below: \$2.95/Linear Foot
C. CCTV Video Inspection of Storm Drain Pipe 36 Inch and above: \$2.95/Linear Foot
D. CCTV Video Inspection of Storm Drain Pipe 35 Inch and below: \$2.95/Linear Foot
E. Atmospheric Monitoring: \$1.00/Hour
F. Storm Drain Pipe Cleaning 36 Inch and above: \$135.00/Linear Foot
G. Storm Drain Pipe Cleaning 35 Inch and below: \$40.00/Linear Foot
H. Sewer Pipe Cleaning of 8" VCP: \$0.57/Linear Foot
I. Sewer Pipe CCTV Video inspection of 8" VCP: \$0.70/Linear Foot
J. Sewer Pipe Point repair of 8" VCP: \$3,500.00/Per Foot

K. Additional Work: Any additional services not listed in the Contract must be approved by County's Project Manager or designee in accordance with Attachment "A", Section V.

L. Reserved

M. TOTAL AGGREGATE CONTRACT AMOUNT FOR THREE (3) YEARS SHALL NOT EXCEED:.....\$3,000,000.00

N. First Renewal Term Total Aggregate Contract Amount Not to Exceed:.....\$2,000,000.00

III. PRICE INCREASES/DECREASES: No price increases will be permitted during the first period of the Contract. All price decreases will automatically be extended to County. County requires

bona fide proof of cost increases on Contracts prior to any price adjustment. A minimum of one hundred twenty (120) days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. County may enforce, adjust, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing Contractor's profit will not be allowed.

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

V. PAYMENT TERMS: Invoices are to be submitted in arrears, after services have been received. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange. Invoices shall be verified and approved by County and subject to routine processing requirements. The responsibility for providing an acceptable invoice to County for payment rests with Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to Contractor for correction.

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

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

VI. INVOICING INSTRUCTIONS: 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/OC Operations and Maintenance
Attn: Kris Ruiz
2301 N. Glassell street, 2nd Floor
Orange, CA 92865-2703