

**MASTER SERVICES CONTRACT
Maintenance & Repair Services
Specification No. S-2021-1234BD**

THIS CONTRACT is made and entered into as of the date fully executed below, by and between Orange County Sanitation District, with a principal place of business at 10844 Ellis Avenue, Fountain Valley, CA 92708 (hereinafter referred to as "OC San") and **O'Connell Engineering & Construction, Inc.** with a principal place of business at **36572 Deauville Rd., Winchester, CA 92596** (hereinafter referred to as "Contractor") collectively referred to as the "Parties".

WITNESSETH

WHEREAS, OC San desires to retain the services of Contractor for Maintenance & Repair Services "Services"; and

WHEREAS, OC San has chosen Contractor to conduct Services in accordance with Ordinance No. OC SAN-56 and

WHEREAS, at its regular meeting on September 29, 2021, the Board of Directors of OC San, by minute order, authorized execution of this Contract between OC San and Contractor; and;

WHEREAS, Contractor is qualified by virtue of experience, training, and education and expertise to accomplish such Services,

NOW THEREFORE, in consideration of the promises and mutual benefits exchanged between the Parties, it is mutually agreed as follows:

1. Introduction

- 1.1 This Master Services Contract and all attachments hereto (called the "Contract") is made by OC San and Contractor. The terms and conditions herein exclusively govern the purchase of Services as described in the Scope of Services, attached hereto and incorporated herein by reference as Exhibit "A".
- 1.2 All Task Order Bids awarded under this Master Services Contract shall be incorporated by reference and made part hereof, upon issuance of the Task Order Bid Purchase Order.
- 1.3 Attachments to this Contract are incorporated by reference and made a part of this Contract as though fully set forth at length herein. Attachments to this Contract are as follows:

Individual Task Order Bids, inclusive of:
Task Order Bid Exhibit A - Scope of Services

Master Services Contract Exhibit "A" Scope of Services
Master Services Contract Exhibit "B" General Conditions
Master Services Contract Exhibit "C" Determined Insurance Requirement Form
Master Services Contract Exhibit "D" OC San Contractor Safety Standards
Master Services Contract Exhibit "E" Human Resources Policies

- 1.4 In the event of any conflict or inconsistency between the provisions of this Contract, provisions of the Task Order(s) and any of the provisions of the attachments hereto, the provisions of this Contract shall govern and control in the order of precedence set forth below:

Master Services Contract, and any amendments thereto
Master Services Contract Exhibit "B" General Conditions
Master Services Contract Exhibit "C" Determined Insurance Requirement Forms
Master Services Contract Exhibit "D" OC San Contractor Safety Standards
Master Services Contract Exhibit "E" Human Resources Policies

Individual Task Order Bids, inclusive of:
Task Order Exhibit A - Scope of Services
Master Services Contract Exhibit "A" Scope of Services

- 1.5 The provisions of this Contract and attachments hereto are applicable at the Task Order level. It is OC San's intent that all use of the word "Contract" in Exhibit "A" and the Task Order Attachments thereto shall mean Task Order Bid.
- 1.6 The provisions of this Contract and provisions of the Task Order(s) may be amended or waived only by a writing executed by authorized representatives of both Parties hereto.
- 1.7 The various headings in this Contract are inserted for convenience only and shall not affect the meaning or interpretation of this Contract or any Paragraph or provision hereof.
- 1.8 The term "days", when used in the Contract, shall mean calendar days, unless otherwise noted as business days.
- 1.9 OC San holidays (non-working days) are as follows: New Year's Day, Lincoln's Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve, and Christmas Day.
- 1.10 The term "hours", when used in this Contract, shall be defined in the Request for Task Order Bid, Exhibit "A" Task Order Scope of Services
- 1.11 Contractor shall provide OC San with all required premiums and/or overtime work at no charge beyond the price provided under the Task Order Bid.
- 1.12 Except as expressly provided otherwise, OC San accepts no liability for any expenses, losses, or action incurred or undertaken by Contractor as a result of work performed in anticipation of purchases of said services by OC San.

- 2. Prevailing Wage Rates** The Contractor shall comply with California Labor Code Section 1771 by the payment of prevailing wages as established by the Director of the State Department of Industrial Relations. In accordance with Labor Code Section 1775, the Contractor and any Subcontractor shall forfeit, as a penalty to OC San, not more than Two Hundred Dollars (\$200) for each calendar day or portion thereof for each worker paid less than the established prevailing rates for such work or craft in which such worker is employed for any Work done under the Contract in violation of the provisions of the California Labor Code Sections 1770 to 1780, inclusive. In addition to said penalty and pursuant to said Section 1775, for each day or portion thereof in which each worker was paid less than the prevailing wage rate the difference between such established prevailing wage rates and the

amount paid to each worker shall be paid to each worker by the Contractor. Per California Labor Code 1773.2, OC San will have on file copies of the prevailing rate of per diem wages at its principal office and at each job site, which shall be made available to any interested party upon request.

3. California Department of Industrial Relations (DIR) Registration and Record of Wages

3.1 To the extent Contractor's employees and/or its Subcontractors who will perform Work on a construction contract for which Prevailing Wage Determinations have been issued by the DIR and as more specifically defined under Labor Code Section 1720 et seq, Contractor and its Subcontractors shall comply with the registration requirements of Labor Code Section 1725.5. Pursuant to Labor Code Section 1771.4, the work is subject to compliance monitoring and enforcement by the DIR.

3.2 The Contractor and its Subcontractors shall maintain accurate payroll records and shall comply with all the provisions of Labor Code Section 1776, and shall submit payroll records to the Labor Commissioner pursuant to Labor Code 1771.4(a)(3). Penalties for non-compliance with the requirements of Section 1776 may be deducted from progress payments per Section 1776.

3.3 Pursuant to Labor Code Section 1776, the Contractor and its Subcontractors shall furnish a copy of all certified payroll records to OC San and/or general public upon request, provided the public request is made through OC San, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the Department of Industrial Relations.

3.4 The Contractor and its Subcontractors shall comply with the job site notices posting requirements established by the Labor Commissioner per Title 8, California Code of Regulation Section 16461(e).

4. Payments

Each individual task order shall specify the method of payment to be used. Payment may be based on milestones, lump sum or monthly methods.

Milestones: Payments shall be made upon approval by OC San Project Manager or his designee, of invoices submitted for milestones completed as described in the Task Order Bid. OC San, in its sole discretion, shall determine whether tasks and deliverables for each milestone has been satisfactorily completed.

Lump Sum: Payment will be made in one lump sum after completion and acceptance of the Services. OC San, at its sole discretion, shall be the determining party as to whether all Work has been satisfactorily completed.

Monthly: OC San shall pay monthly for Services rendered.

OC San shall pay, Net 30 days upon receipt of itemized invoices, submitted in duplicate, in a form acceptable to OC San to enable audit of the charges thereon.

5. Invoices

OC San shall pay within 30 days of completion and receipt and approval by OC San's Project Manager of an itemized invoice, in a form acceptable to OC San to enable audit of the charges thereon. All cash discounts shall be taken and computed from the date of completion of tasks or acceptance of equipment, material, installation and training, or from the date of receipt of invoice, whichever occurs last.

In an effort to provide quicker payment, OC San may offer payment by MasterCard.

Invoices shall be emailed by Contractor to OC San Accounts Payable at APStaff@OC.SAN.GOV and reference the following in the subject line: "INVOICE", the Purchase Order number, the Project Manager(s), and [Specification No.]

6. **Audit Rights** Contractor agrees that, during the term of this Contract and for a period of three (3) years after its termination, OC San shall have access to and the right to examine any directly pertinent books, documents, and records of Contractor relating to the invoices submitted by Contractor pursuant to this Contract.
7. **Scope of Services** Subject to the terms of this Contract, Contractor shall perform the Services identified in the individual Task Order Scope of Services, in accordance with the Standards and Requirements contained therein.
8. **Modifications to Scope of Services** Requests for modifications to the Task Order Scope of Services hereunder can be made by OC San at any time. All modifications must be made in writing and signed by both Parties. Refer to General Conditions.
9. **Contract Term** The Services provided under this Contract shall commence on December 1, 2021 and continue through November 30, 2022. Task Order Bids can be competed during the initial term and each renewal period of the Contract. The Contract shall remain in effect until all Task Order Services have been completed and accepted by OC San.
10. **Renewals**
OC San may exercise the option to renew the Contract for up to two (2) one-year periods as mutually agreed upon between both parties. OC San shall make no obligation to renew nor give reason if it elects not to renew.
11. **Termination**
 - 11.1 **Termination for Convenience** OC San reserves the right to terminate this Contract for its convenience, with or without cause, in whole or in part, at any time, by written notice from OC San of intent to terminate. Upon receipt of a termination notice, Contractor shall immediately discontinue all the Work under this Contract (unless the notice directs otherwise). OC San shall thereafter, within thirty (30) days, pay Contractor for the Work performed (cost and fee) to the date of termination. Contractor expressly waives any claim to receive anticipated profits to be earned during the uncompleted portion of this Contract. Such notice of termination shall terminate this Contract and release OC San from any further fee, cost or claim hereunder by Contractor other than for Work performed to the date of termination.
 - 11.2 **Termination for Default** If the Contractor refuses or fails to prosecute the Work in any awarded Task Order Bid or any separable part thereof with such diligence as will ensure its completion within the time specified herein, or any authorized extension thereof, or fails to perform the Work in a manner required by the Contract Documents and/or industry standards, or fails to complete such Work within such time as required under the Contract Documents or, if the Contractor should be adjudged as bankrupt, or is otherwise deemed insolvent by OC San based on good cause and is unable to proceed with the Work, or if the Contractor should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of insolvency, or if the Contractor files a petition to take advantage of any debtor's act, or should any Subcontractor violate any of the provisions of the Contract, or if the Contractor should persistently or repeatedly refuse or fail, except in cases for which an authorized extension of time is provided, to supply enough properly skilled workers or proper materials to complete the Work in the time specified, or if the

Contractor should fail to make prompt payment to Subcontractors for material or labor, or if the Contractor should persistently disregard laws, or instructions given by OC San, or if the Contractor otherwise substantially fails to fulfill its obligations under the Contract Documents, OC San may, without prejudice to any other right or remedy, serve written notice upon the Contractor and Sureties of OC San's intention to terminate the Contractor's performance under the Task Order Bid. Said notice shall contain the reasons for such intention to terminate the Contractor's performance under the Contract, and unless, within ten (10) days after the service of such notice, such violations cease and/or satisfactory arrangements for the corrections thereof have been made, the OC San may terminate Contractor's performance under the Task Order Bid and the Contractor shall not be entitled to receive any further payment until the Work is finished.

In the event of any such termination, OC San shall serve written notice thereof upon the Surety and Contractor, and the Surety shall have the right to take over and perform the Task Order Bid. However, if the Surety, within five (5) days after the service of a notice of termination, does not give OC San written notice of its intention to take over and perform the Task Order Bid, and if it serves such notice of its intent to take over and perform the Task Order Bid and does not begin performance thereof within fifteen (15) days from the date of serving said notice, OC San may take over the Work and prosecute the same to completion by contract or by any other method it may deem advisable for the account and at the expense of the Contractor, and the Sureties and/or Contractor shall be liable to OC San for any excess cost or other damage incurred by OC San thereby. In such an event OC San may without liability for so doing, take possession of and utilize such materials, tools, equipment, supplies and other property belonging to the Contractor and/or assume assignment of any and all subcontracts for Subcontractors and/or Suppliers that may be on the worksite and be necessary to complete the Work. For any portion of such Work that OC San elects to complete by furnishing its own employees, materials, tools, and equipment, OC San shall be compensated in accordance with the schedule of compensation for force account Work as stated in the General Conditions section entitled Task Order Bid Price Adjustments and Payments.

If the Surety assumes the Contractor's terminated Work, it shall take the Contractor's place in all respects for that part and shall be paid by OC San for all Work performed by it in accordance with the terms of the Contract Documents. If the Surety assumes the entire Task Order Bid, all money due the Contractor at the time of its default shall be payable to the Surety as the Work progresses, subject to the terms of the Task Order Bid.

Contractor hereby consents to assigning to OC San and/or OC San's replacement contractor all subcontracts and other agreements of any and all Subcontractors and/or Suppliers that may be on the worksite and/or may be necessary to complete the Work in the event of Termination for Default or Termination for Convenience, as set forth below. Contractor agrees to obtain, by way of a subcontract provision, the consent of each and every Subcontractor and/or Supplier for such assignment prior to the commencement of each such Subcontractor's and/or Supplier's Work on the Task Order Bid.

In the event of such termination, the Contractor will be paid the actual amount due based on unit prices or lump sums in any awarded Task Order Bid and the quantity of Work completed at the time of termination, less damages caused to OC San by acts of the Contractor causing the termination, including but not limited to, all costs to OC San arising from professional services and attorneys' fees and all costs generated to insure or bond the Work of substituted Contractors or Subcontractors utilized to complete the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the

Contractor shall pay the difference to OC San promptly upon demand. On failure of the Contractor to pay, the Surety shall pay on demand by OC San. Any portion of such difference not paid by the Contractor or Surety within thirty (30) days following the mailing of a demand for such costs shall earn interest at the maximum rate authorized by California law.

The Contractor and OC San agree that nothing in this section is intended to be or is a prevailing party clause as it pertains to attorney's fees.

The foregoing provisions are in addition to and not in limitation of any other rights or remedies under law or in equity available to OC San.

If it is later determined by OC San that the Contractor had an excusable reason for not performing, such as a fire, flood, or other event which was not the fault of or was beyond the control of the Contractor, OC San, after setting up a new performance schedule, may allow the Contractor to continue Work, or treat the termination as a termination for convenience, and the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of OC San.

All OC San property in the possession or control of Contractor shall be returned by Contractor to OC San upon demand, or at the termination of the Task Order Bid, whichever occurs first.

12. **Bonds** Contractor shall, before entering into the performance of any Task Order Bid awarded under this Contract, furnish bonds, if required as specified in an individual Request for Task Order Bid. The form of each bond shall be provided in the Request for Task Order Bid. The bonds shall be approved by OC San's General Counsel - one in the amount of one hundred percent (100%) of the Task Order Bid amount, to guarantee the faithful performance of the Work, and the other in the amount of one hundred percent (100%) of the Task Order Bid amount, to guarantee payment of all claims for labor and materials furnished. Task Order Bid shall not become effective until such bonds are supplied to and approved by OC San. Bonds must be issued by a surety authorized by the State Insurance Commissioner to do business in California and must be maintained throughout the life of the Task Order and during the warranty period.

Contractor is hereby notified that it is required that the person executing the Bonds must have on file with the County Clerk, County of Orange, a Power of Attorney and authorization to execute said Bonds for and on behalf of the corporate surety. The purpose of this requirement is to ensure that the provisions of Code of Civil Procedure Section 995.630 requiring such authority to be on file with the Orange County Clerk are satisfied in order for the OC San and its officers to approve the bond.

13. **Insurance** Contractor and all Subcontractors shall purchase and maintain, throughout the life of this Contract and any periods of warranty or extensions, insurance in amounts equal to the requirements set forth in the signed Acknowledgement of Insurance Requirements (attached hereto and incorporated herein as Exhibit "C"). Contractor shall not commence Work under this Contract until all required insurance is obtained in a form acceptable to OC San, nor shall Contractor allow any Subcontractor to commence service pursuant to a subcontract until all insurance required of the Subcontractor has been obtained. Failure to maintain required insurance coverage shall result in termination of this Contract. Nothing contained in these insurance requirements is to be construed as limiting the liability of the Contractor or the Contractor's Sureties.

14. **General Indemnification** The Contractor shall, with respect to all Work covered by or incidental to these Contract Documents, be responsible for any liability imposed by law and shall indemnify, defend and hold OC San, the Engineer, the Consultant and its subconsultants, and each of their directors, officers, agents and employees, and all public entities issuing permits to the Contractor, free and harmless from and against all of the following:

Any claim, suit or action of every name, kind, and description, loss, damage, cost, expenses, including reasonable attorney's fees and expert fees, costs of compliance with administrative orders and directives, litigation, arbitration, awards, fines, and administratively or judicially-imposed penalties or judgments, arising by reason of death or bodily injury to person(s), injury to property, or other loss, damage or expense, resulting from the construction of the Work, design defects (if design originated by the Contractor only), defects in the Work, or by or on account of acts, errors or omissions of the Contractor or Contractor's Subcontractors, Suppliers, employees, invitees, or agents or from any other cause whatsoever arising during the progress of the Work or at any time prior to its completion and Final Acceptance, including any of the same resulting from OC San's alleged or actual acts, errors, or omissions regardless of whether on or off of the worksite. Said responsibility shall extend to claims, demands or liability for loss, damage or injuries occurring or discovered after completion of the Work, as well as during the progress of the Work. However, the Contractor shall not be obligated under this Contract to indemnify OC San, the Engineer or its Consultant(s) with respect to the active negligence, sole negligence or willful misconduct of OC San, the Engineer, or its Consultant(s).

In addition, if any action is brought against the Contractor or any Subcontractor to enforce a stop payment notice or Notice to Withhold, which names OC San as a party to said action, OC San shall be entitled to reasonable attorney's fees, costs and necessary disbursements arising out of the defense of such action by OC San. OC San shall be entitled to deduct its costs for any stop payment notice filed, whether court action is involved or not.

In any and all claims against the indemnified parties by an employee of the Contractor, any Subcontractor, any Supplier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation as specified herein shall not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for the Contractor, or any Subcontractor, or any Supplier or other person under Workers' Compensation acts, disability benefit acts, or other employee acts.

The obligations of the Contractor as specified herein shall not extend to the liability of the Engineer, the Consultant or its subconsultants, and each of their directors, officers, agents and employees, arising out of or resulting from or in connection with the preparation of approval of maps, Drawings, opinions, reports, surveys, designs or Specifications, provided that the foregoing was the sole and exclusive cause of the loss, damage or injury.

The Contractor shall also be responsible for and shall indemnify, defend and hold harmless OC San, the Engineer, the Consultant and its subconsultants, and each of their directors, officers, employees, and agents from and against all losses, expenses, damages (including damages to the Work itself), attorney's fees, and other costs, including all costs of defense, which any of them may incur with respect to the failure, neglect, or refusal of the Contractor to faithfully perform the Work and all of the Contractor's obligations under the Contract.

Such costs, expenses, and damages shall include all costs, including attorney's fees incurred by the indemnified parties in any lawsuit to which they are a party.

In the event Contractor or its insurer refuses or fails to provide a legal defense to OC San after receiving written notice of the legal action and a tender and demand for defense, OC San shall have the right to select counsel of its own choice to represent all the interests of OC San at Contractor's cost and expense. Contractor agrees that the amount of legal costs and expenses, including attorneys' fees, may be withheld by OC San from any Contract amounts due and owing to Contractor until such time as a final determination is made as to the responsibility for payment of said fees and costs. Contractor further agrees that to the extent OC San incurs such damages and the damages exceed any remaining Contract amounts due and owing to Contractor, Contractor shall reimburse OC San for all such additional damages upon demand by OC San for the same.

Contractor and OC San agree that nothing in this section is intended to be or is a prevailing party clause as it pertains to attorney's fees.

15. **Safety Standards and Human Resources (HR) Policies** OC San requires all contractors to follow and ensure their employees and all subcontractors follow all State and Federal regulations as well as OC San requirements while working at OC San locations. If during the course of a contract it is discovered that OC San policies, safety manuals, or contracts do not comply with State or Federal regulations then the Contractor is required to follow the most stringent regulatory requirement at no additional cost to OC San. Contractor and all its employees and Subcontractors, shall adhere to all applicable OC San Contractor Safety Standards attached hereto in Exhibit "D" and the Human Resources Policies in Exhibit "E".
16. **Performance** Time is of the essence in the performance of this Contract and the provisions hereof.
17. **Delay and Liquidated Damages** Liquidated Damages, if any, shall be specified in any Task Order Bids. In the event the Contractor fails to achieve Final Completion of the Task Order within the required period of performance or fails to meet any other time requirements set forth in the Contract, including the timely submittal or update of the Task Order Schedule or achievement of any designated milestones or deadline as required in the approved Task Order Bid Price Form, after due allowance for extensions of time made in accordance with the Contract Documents, if any, OC San will sustain damage which would be extremely difficult and impracticable to ascertain. The parties therefore agree that in each such event, Contractor will pay to OC San a determined sum per day, as Liquidated Damages, and not as a penalty, for each and every calendar day during which Final Completion of the Task Order Bid is so delayed, or timely submittal or update of the Task Order Schedule is so delayed. If deadlines for milestones are identified in the approved Task Order Bid Price Form, Contractor shall pay OC San the Liquidated Damage amount corresponding to that milestone for each and every day during which the achievement of the milestone is delayed. Contractor agrees to pay such Liquidated Damages and further agrees that OC San may offset the amount of Liquidated Damages from any monies due or that may become due Contractor under this Contract. Contractor also agrees that to the extent the amount of Liquidated Damages exceeds any monies due to the Contractor under this Contract, Contractor shall pay all such amounts to OC San upon demand. Liquidated Damages due to delays in achieving a milestone or deadline will not be credited toward Liquidated Damages due to delays in achieving subsequent milestones, deadlines or Final Completion of the Task Order. If this Section herein entitled "Delay and Liquidated Damages," is found for any reason to be void, invalid or otherwise inoperative so as to

disentitle OC San from claiming Liquidated Damages, OC San is entitled to claim against the Contractor damages at law for the Contractor's failure to complete the Task Order by the Final Completion date.

18. **Force Majeure** Neither party shall be liable for delays caused by accident, flood, acts of God, fire, labor trouble, war, acts of government or any other cause beyond its control, but said party shall use reasonable efforts to minimize the extent of the delay. Work affected by a Force Majeure condition may be rescheduled by mutual consent or may be eliminated from the Contract.
19. **Freight (F.O.B. Destination)** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
20. **Familiarity with Services** By executing this Contract, Contractor warrants that: 1) it has investigated the services to be performed; 2) it has investigated the site of the services and is aware of all conditions there; and 3) it understands the facilities, difficulties and restrictions of the services under this Contract. Should Contractor discover any latent or unknown conditions materially differing from those inherent in the work or as represented by OC San, it shall immediately inform OC San of this and shall not proceed, except at Contractor's risk, until written instructions are received from OC San.
21. **Regulatory Requirements** Contractor shall perform all work under this Contract in strict conformance with applicable Federal, State, and local regulatory requirements.
22. **Licenses, Permits, Ordinances and Regulations** Contractor represents and warrants to OC San that it has obtained all licenses, permits, qualification and approvals of whatever nature that are legally required to engage in this Work. Any and all fees required by State, County, City and/or municipal laws, Codes and/or tariffs that pertain to the Work performed under the terms of this Contract will be paid by Contractor.
23. **Applicable Laws and Regulations** Contractor shall comply with all applicable Federal, State, and local laws, rules, and regulations. Contractor also agrees to indemnify and hold harmless from any and all damages and liabilities assessed against OC San as a result of Contractor's noncompliance therewith. Any permission required by law to be included herein shall be deemed included as a part of this Contract whether or not specifically referenced.
24. **South Coast Air Quality Management District's (SCAQMD) Requirements** It is Contractor's responsibility that all equipment furnished and installed be in accordance with the latest rules and regulations of the South Coast Air Quality Management District (SCAQMD). All Contract work practices, which may have associated emissions such as sandblasting, open field spray painting or demolition of asbestos containing components or structures, shall comply with the appropriate rules and regulations of the SCAQMD.
25. **Governing Law** This Contract shall be governed by and interpreted under the laws of the State of California and the Parties submit to jurisdiction in Orange County, in the event any action is brought in connection with this Contract or the performance thereof.
26. **Breach** The waiver of either party of any breach or violation of, or default under, any provision of this Contract, shall not be deemed a continuing waiver by such party of any other provision or of any subsequent breach or violation of this Contract or default

thereunder. Any breach by Contractor to which OC San does not object shall not operate as a waiver of OC San's rights to seek remedies available to it for any subsequent breach.

27. Remedies In addition to other remedies available in law or equity, if the Contractor fails to make delivery of the goods or Services or repudiates its obligations under this Contract, or if OC San rejects the goods or Services or revokes acceptance of the goods or Services, OC San may (1) cancel the Contract; (2) recover whatever amount of the purchase price OC San has paid, and/or (3) "cover" by purchasing, or contracting to purchase, substitute goods or Services for those due from Contractor. In the event OC San elects to "cover" as described in (3), OC San shall be entitled to recover from Contractor as damages the difference between the cost of the substitute goods or Services and the task order price, together with any incidental or consequential damages.

28. Dispute Resolution

28.1 In the event of a dispute as to the construction or interpretation of this Contract, or any rights or obligations hereunder, the Parties shall first attempt, in good faith, to resolve the dispute by mediation. The Parties shall mutually select a mediator to facilitate the resolution of the dispute. If the Parties are unable to agree on a mediator, the mediation shall be conducted in accordance with the Commercial Mediation Rules of the American Arbitration Contract, through the alternate dispute resolution procedures of Judicial Arbitration through Mediation Services of Orange County ("JAMS"), or any similar organization or entity conducting an alternate dispute resolution process.

28.2 In the event the Parties are unable to timely resolve the dispute through mediation, the issues in dispute shall be submitted to arbitration pursuant to California Code of Civil Procedure, Part 3, Title 9, Sections 1280 et seq. For such purpose, an agreed arbitrator shall be selected, or in the absence of Contract, each party shall select an arbitrator, and those two arbitrators shall select a third. Discovery may be conducted in connection with the arbitration proceeding pursuant to California Code of Civil Procedure Section 1283.05. The arbitrator, or three arbitrators acting as a board, shall take such evidence and make such investigation as deemed appropriate and shall render a written decision on the matter in question. The arbitrator shall decide each and every dispute in accordance with the laws of the State of California. The arbitrator's decision and award shall be subject to review for errors of fact or law in the Superior Court for the County of Orange, with a right of appeal from any judgment issued therein.

29. Attorney's Fees If any action at law or in equity or if any proceeding in the form of an Alternative Dispute Resolution (ADR) is necessary to enforce or interpret the terms of this Contract, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which he may be entitled.

30. Survival The provisions of this Contract dealing with Payment, Warranty, Indemnity, and Forum for Enforcement, shall survive termination or expiration of this Contract.

31. Severability If any section, subsection, or provision of this Contract, or any Contract or instrument contemplated hereby, or the application of such section, subsection, or provision is held invalid, the remainder of this Contract or instrument in the application of such section, subsection or provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, unless the effect of such invalidity shall be to substantially frustrate the expectations of the Parties.

32. **Damage to OC San's Property** Any of OC San's property damaged by Contractor, any Subcontractors or by the personnel of either will be subject to repair or replacement by Contractor at no cost to OC San.
33. **Disclosure** Contractor agrees not to disclose, to any third party, data or information generated from these Services without the prior written consent from OC San.
34. **Independent Contractor** The legal relationship between the parties hereto is that of an independent contractor, and nothing herein shall be deemed to make Contractor an OC San employee. During the performance of this Contract, Contractor and its officers, employees, and agents shall act in an independent capacity and shall not act as OC San's officers, employees, or agents. Contractor and its officers, employees, and agents shall obtain no rights to any benefits which accrue to OC San's employees.
35. **Limitations upon Subcontracting and Assignment** Contractor shall not delegate any duties nor assign any rights under this Contract without the prior written consent of OC San. Any such attempted delegation or assignment shall be void.
36. **Third Party Rights** Nothing in this Contract shall be construed to give any rights or benefits to anyone other than OC San and Contractor.
37. **Non-Liability of OC San Officers and Employees** No officer or employee of OC San shall be personally liable to Contractor, or any successor-in-interest, in the event of any default or breach by OC San or for any amount which may become due to Contractor or to its successor, or for breach of any obligation for the terms of this Contract.
38. **Read and Understood** By signing this Contract, Contractor represents that he has read and understood the terms and conditions of the Contract.
39. **Authority to Execute** The persons executing this Contract, inclusive of Task Order Bids on behalf of the Parties warrant that they are duly authorized to execute this Contract and that by executing this Contract, the Parties are formally bound.
40. **Entire Contract** This Contract constitutes the entire Contract of the Parties and supersedes all prior written or oral and all contemporaneous oral Contracts, understandings, and negotiations between the Parties with respect to the subject matter hereof.
41. **Task Orders** OC San does not guarantee that Contractor will receive any individual Task Order Bids, nor that the Contractor will receive an equal number of Task Order Bids as compared to any other awarded Contractors. OC San makes no guarantee that the Maintenance & Repair Services Program budget, identified in the RFQ, will be expended.
- 41.1 Each Task Order will be limited to no greater than \$300,000.
- 41.2 OC San will order the Services through a Request for Task Order Bid. Each Request for Task Order Bid will contain a detailed Scope of Services and may require attendance at a job walk (including Subcontractors, as needed) prior to the submission of a Task Order Bid.
- 41.3 Task Order Bid will be awarded on the basis of the lowest responsive Bid.

- 41.4 The Request for Task Order Bid will identify the project, location of the Work, and other general and special requirements.
- 41.5 All Task Order Bids will be lump sum.
- 41.6 Contractors will be required to list Subcontractors in accordance with Public Contract Code Section 4104.
- 41.7 Payment terms will be specified in each Request for Task Order Bid.
- 41.8 Payment & Performance Bond requirements, if applicable, will be specified in each Request for Task Order Bid. Notice to Proceed shall not be made until the bonds are approved by OC San.
- 41.9 OC San does not guarantee that any qualified Contractor will be awarded any individual Task Order Bids.
- 41.10 The Contractor shall submit its Task Order Bid within the time specified in the Request for Task Order Bid. Late Task Order Bids will not be accepted.
- 41.11 Changes to the Task Order Bid Services shall be made in accordance with Master Services Contract Exhibit "B" General Conditions.

42. Task Order Bid Protest Procedures

This section sets forth the procedure and remedies concerning submittal and consideration of all protests received by OC San with respect to this Request for Task Order Bid (RFTOB) issued under this Master Services Contract. All communications to OC San relating to a Protest shall be in writing and submitted electronically to Purchasing@ocsan.gov. By submitting a Task Order Bid (TOB), each Contractor hereby agrees and understands that the Contractor must comply with these protest procedures and exhaust all administrative remedies set forth herein prior to the initiation of any type of related legal action. Upon the express written consent of the parties, this protest procedure can also be used to resolve issues surrounding OC San's determination of a Contractor as not responsible. This procedure is not intended to address issues concerning TOB responsiveness. The following terms as used in this Section shall have the following meanings:

- **Affected Parties** shall mean proposers on a procurement, whose direct economic interest would be affected by a submitted protest.
- **Protest** shall mean a written objection by an interested party or Affected Party to
 - (i) the requirements or specifications contained in the RFTOB (solicitation protest); or
 - (ii) a proposed award recommendation (award protest).
- **Days** shall mean calendar days, unless otherwise specified.
- **Interested Party** shall mean (1) on solicitation, all Contractors or prospective Contractors; (2) on award, the unsuccessful Contractor(s) with a direct economic interest in the outcome of their protest.
- **Solicitation Protest Statement** shall mean a written objection during the solicitation phase of the procurement, which shall be submitted prior to the Task Order Bid due date

as specified herein.

- **Award Protest Statement** shall mean a written objection to the award recommendation prior to final action to award the Task Order Bid, which shall be submitted after receipt of Task Order Bids, but before award of a Task Order Bid, as specified herein.
- **File or Submit** shall refer to the date of receipt by OC San.

Specific procedures and requirements are as follows:

A. Solicitation Phase Protest

The purpose of this RFTOB is to obtain competitive TOBs from awarded Contractors. Any Interested Party who has reason to believe that a free and open competition has not taken place or that a particular specification or requirement is impractical, unduly restrictive, or ambiguous may advise OC San of its concerns by submitting a detailed Solicitation Protest Statement in accordance with the requirements set forth below in this Section A.

1. Contents and Requirements

A Solicitation Protest Statement must be submitted via email to Purchasing@OC.SAN.GOV and addressed to OC San's Buyer identified in the RFTOB by 4:00 p.m. (Pacific Time zone) no less than three (3) days prior to the TOB due date, and must contain all of the following to be considered:

- a. The name, address, and telephone number of the protestor;
- b. The title, TOB description, and number of the specification/ project number being protested;
- c. A detailed statement setting forth the grounds for protest, which shall include, in sufficient detail to establish the merits of the protest, all the factual and legal documentation in support of the protest; and
- d. The desired resolution to the protest.

If the submitted Solicitation Protest Statement does not comply with the requirements set forth herein, then it will not be considered for evaluation and will be returned to the protestor. The Solicitation Protest Statement shall not be amended after filing, and OC San will not consider any unsolicited information provided after filing. Any argument not raised in the Solicitation Protest Statement shall be deemed waived, including as a part of the award protest. Failure to file the Solicitation Protest Statement within the time period specified herein shall constitute a waiver of the right to protest the specifications or requirements of the RFTOB.

Solicitation Protest Statements are public documents. OC San will provide copies of the Solicitation Protest Statements upon written request.

2. Evaluation and Determination

No hearing will be held on the protest. OC San's Contracts, Purchasing and Materials Management Division Manager (Purchasing Manager), or designee, will review all material submitted, conduct an investigation of the facts, and may, but need not, request other Contractors to submit statements or arguments regarding the protest. OC San's Purchasing Manager, or designee, may in his/her sole discretion, discuss the protest with the protestor.

OC San's Purchasing Manager, or designee, shall issue a final written decision regarding any solicitation protest to each Contractors prior to TOB submittal due date. The written decision will cite any actions that will or will not be taken in response to the Solicitation Protest Statement. The decision of the Purchasing Manager concerning the Solicitation Protest Statement shall be final, and there shall be no further administrative recourse.

B. Award Protest

1. Award Recommendation

Following opening and evaluation of the TOBs, OC San will issue an award Recommendation to each Contractors through any one of the following methods:

- a. Delivery via overnight carrier; or
- b. Posting the Award Recommendation on OC San's online bidding system as identified within the RFTOB.

On the date OC San issues an award recommendation, OC San shall make copies of all submitted TOBs available upon request. Requests shall be made to Purchasing@ocsan.gov and shall contain the following in the subject line of the e-mail: "[Identify: Project/TOB name and Specification No.] – Request for Copies."

2. Contents and Requirements

Any Interested Party, who has reason to believe that a free and open competition has not taken place in the TOB submittal, evaluation of the TOBs, and award recommendation, is permitted to protest OC San's award recommendation by submitting an Award Protest Statement to OC San identified in the RFTOB, via electronic mail (e-mail) at Purchasing@ocsan.gov no later than 4:00 p.m. (Pacific Time zone) on the third (3rd) day after OC San issues the Award Recommendation or some similar announcement. OC San will not accept an Award Protest Statement, or similar document, prior to the date OC San issues its award recommendation to the Contractors. Award Protest Statements, or similar document, received prior to the issuance of OC San's award recommendation will be considered premature and will be immediately returned to the party filing the Protest without consideration.

The Award Protest Statement must be submitted timely and contain all of the following to be considered:

- a. The name, address and telephone number of the protestor;
- b. The title and number of the specification being protested;

- c. The OC San action or recommendation that is being protested;
- d. The name(s) of all Affected Parties;
- e. A detailed statement setting forth the grounds, legal authority and facts in support of the protest, including all documents and evidence ;
- f. Each and every ground on which the protestor bases the protest by specific references to parts of the RFTOB, which shall be attached as exhibits;
- g. Each and every reason that all other Affected Parties who may be in line for the purchase or contract award should not be awarded the purchase or contract;
- h. A clear statement of the relief requested and the statutory or case law basis for such relief; and
- i. Signed and sworn by a principal of the protestor.

If the submitted Award Protest Statement does not comply with the requirements set forth herein, then it will not be considered for evaluation, and will be returned to the protestor. The Award Protest Statement shall not be amended after filing, and OC San will not consider any unsolicited information provided after filing. Any argument not raised in the Award Protest Statement shall be deemed waived.

Award Protest Statements are public documents. OC San will notify the Affected Parties when a protest has been submitted, and will provide copies of the Protest Statements to the Interested Parties as soon as is reasonably practical.

3. Evaluation and Determination

The Affected Parties may file responsive statements in support of or in opposition to the protest no later than 4:00 p.m. on the third business day after the receipt of the Award Protest Statement from OC San. The Purchasing Manager, or designee, shall review the facts and all submittals relative to the Award Protest Statement and shall issue a written decision setting forth the basis for such decision. The written decision will be issued to the protestor and to all Affected Parties.

Unless otherwise required by law, no evidentiary hearing or oral argument shall be provided, except in the sole discretion of the Purchasing Manager, or designee.

In the event a hearing is conducted, the Purchasing Manager, or designee, shall issue written notice to the protestor and Affected Parties identifying the date and time for the hearing, along with rules concerning the hearing.

4. Appeal Process

In the event of an adverse decision by the Purchasing Manager, or designee, the protestor may submit a written appeal to the Director of Administrative Services and the Director of the Department requesting the Procurement, and immediately send copies to all Affected Parties. The appeal must be submitted via email to Purchasing@ocsan.gov no later than 4:00 p.m. (Pacific Time zone) within three (3)

days after the date the Purchasing Manager, or designee, rendered a decision. The protestor shall only submit: (1) information and documentation previously submitted to the Purchasing Manager, or designee; (2) a copy of the final decision of the Purchasing Manager, or designee; and (3) a brief statement setting forth all factual and legal bases for the appeal. The Director of Administrative Services, together with the Director of the Department requesting the Procurement shall evaluate each Award Protest Statement and determine whether to uphold or reject the Purchasing Manager's determination. For Task Orders to be awarded by the General Manager, the decision of the Director of Administrative Services and the Director of the Department requesting the Procurement shall be final.

C. Delay in Award

Execution of any proposed contract shall be delayed pending the resolution of the protest unless one or more of the following conditions is present:

1. The items or services being procured are urgently required;
2. Delivery or performance will be unduly delayed by failure to make award promptly; or
3. Failure to make prompt award will otherwise cause undue harm to OC San.

D. No Limitation on Remedies

Nothing contained herein shall be construed to act as a limitation on OC San's choice of remedies or confer any right upon any Interested Party or Affected Party to a remedy.

E. Basis for Choice of Remedy

In determining the appropriate remedy, OC San shall consider all the circumstances surrounding the RFTOB and/or award, including, but not limited to:

1. Seriousness of any deficiency found to exist in the contracting process;
2. The effect of the action on the competitive process;
3. Any urgency surrounding the contract requirement; and
4. The effect that implementing the remedy will have on OC San.

F. Remedies

If OC San determines that the award or proposed award was not made in accordance with applicable statutes, regulations, policies and/or procedure, OC San, in its sole discretion, may grant any of the following remedies or any other remedy it deems appropriate:

1. Prior to award, OC San may issue a new solicitation, make a new selection/award recommendation, or award a contract consistent with applicable statutes, regulations, policies and procedures.
2. In its sole discretion, take no further action; or

IN WITNESS WHEREOF, intending to be legally bound, the Parties hereto have caused this Contract to be signed by the duly authorized representatives.

ORANGE COUNTY SANITATION DISTRICT

Dated: _____

By: _____

John B. Withers
Chair, Board of Directors

Dated: _____

By: _____

Clerk of the Board

Dated: _____

By: _____

Ruth Zintzun
Purchasing and Contracts Manager

O'Connell Engineering & Construction, Inc.

Dated: _____

By: _____

Print Name and Title of Officer

IRS Employer's I.D. Number