

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT, (hereinafter referred to as "Agreement"), is made and entered into to be effective the 22nd day of February, 2023, by and between the ORANGE COUNTY SANITATION DISTRICT, (hereinafter referred to as "OC SAN"), and THE AUSTIN COMPANY, (hereinafter referred to as "CONSULTANT"). OC SAN and CONSULTANT are referred to herein collectively as the "Parties" or individually as a "Party."

WITNESSETH:

WHEREAS, OC SAN desires to engage CONSULTANT for **Project No. PS21-05, CAD Design Manual Update for 3D Design**, (Project) to provide professional services for updating OC San's CAD Manual, developing quality control tools, and training OC San personnel on use; and

WHEREAS, CONSULTANT is qualified to provide the necessary services in connection with these requirements and has agreed to provide the necessary professional services; and

WHEREAS, OC SAN has adopted procedures for the selection of professional services and has proceeded in accordance with said procedures to select CONSULTANT to perform this work; and

WHEREAS, at its regular meeting on February 22, 2023 the Board of Directors, by Minute Order, accepted the recommendation of the Operations Committee to approve this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual benefits, which will result to the Parties in carrying out the terms of this Agreement, it is mutually agreed as follows:

1. SCOPE OF WORK

CONSULTANT agrees to furnish necessary professional services to accomplish those Project elements outlined in the Scope of Work attached hereto as Attachment "A", and by this reference made a part of this Agreement.

- A. CONSULTANT shall be responsible for the professional quality, technical accuracy, and completeness and coordination of the work and services furnished by CONSULTANT under this Agreement, including the work performed by its subconsultants (Subconsultants). Where approval by OC SAN is indicated, it is understood to be conceptual approval only and does not relieve CONSULTANT of responsibility for complying with all applicable laws, regulations, codes, industry standards, and liability for damages caused by errors, omissions, noncompliance with industry standards, and/or negligence on the part of CONSULTANT or its Subconsultants.
- B. CONSULTANT is responsible for the quality of work prepared under this Agreement and shall ensure that all work is performed to the highest industry standards for clarity, uniformity, and completeness. CONSULTANT shall timely respond to all of OC SAN's questions, comments, suggestions, corrections, and recommendations. All comments from OC SAN, or its agent, shall be

incorporated into the work prior to the next review deadline or addressed, in writing, as to why the comment(s) has/have not been incorporated. CONSULTANT shall ensure that each submittal is 100% accurate for the level of work submitted (i.e., correct references, terms, capitalization, or equal status, spelling, punctuation, etc.)

- C. In the event that CONSULTANT's services and/or work product(s) is not to the satisfaction of OC SAN and/or does not conform to the requirements of this Agreement or the applicable industry standards, CONSULTANT shall, without additional compensation, promptly correct or revise any errors or deficiencies in its work product(s) within the timeframe specified by the Project Manager. OC SAN may charge to CONSULTANT all costs, expenses, and damages associated with any such corrections or revisions.
- D. Any CADD drawings, figures, and other work produced by CONSULTANT and Subconsultants must be performed using OC SAN CAD Manual. Conversion of CADD work from any other non-standard CADD format to OC SAN format shall not be acceptable in lieu of this requirement.

Electronic files shall conform to OC SAN specifications. Any changes to these specifications by CONSULTANT are subject to review and require advance written approval of OC SAN.

Electronic files shall be subject to an acceptance period of 30 calendar days during which OC SAN shall perform appropriate reviews, including CAD Manual compliance. CONSULTANT shall correct any discrepancies or errors detected and reported within the acceptance period at no additional cost to OC SAN.

- E. All professional services performed by CONSULTANT, including, but not limited to, all drafts, data, correspondence, proposals, and reports compiled or composed by CONSULTANT, pursuant to this Agreement, are for the sole use of OC SAN, its agents, and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of OC SAN. This provision does not apply to information that (a) was publicly known, or otherwise known to CONSULTANT, at the time that it was disclosed to CONSULTANT by OC SAN, or (b) subsequently becomes publicly known to CONSULTANT other than through disclosure by OC SAN.

2. COMPENSATION

Total compensation shall be paid to CONSULTANT for the services in accordance with the following provisions:

A. Total Compensation

Total compensation shall be in an amount not to exceed Four Hundred Sixteen Thousand Dollars (\$416,000). Total compensation to CONSULTANT including burdened labor (salaries plus benefits), overhead, profit, direct costs, and Subconsultant(s) fees and costs shall not exceed the sum set forth in Attachment "E" - Fee Proposal.

B. Labor

As a portion of the total compensation to be paid to CONSULTANT, OC SAN shall pay to CONSULTANT a sum equal to the burdened salaries (salaries plus benefits) actually paid by CONSULTANT charged on an hourly-rate basis to this Project and paid to the personnel of CONSULTANT. Upon request of OC SAN, CONSULTANT shall provide OC SAN with certified payroll records of all employees' work that is charged to this Project.

C. Overhead

As a portion of the total compensation to be paid to CONSULTANT, OC SAN shall compensate CONSULTANT and Subconsultants for overhead at the rate equal to the percentage of burdened labor as specified in Attachment "E" - Fee Proposal.

D. Profit

Profit for CONSULTANT and Subconsultants shall be a percentage of consulting services fees (burdened labor and overhead). When the consulting or subconsulting services amount is \$250,000 or less, the maximum profit shall be 10%. Between \$250,000 and \$2,500,000, the maximum profit shall be limited by a straight declining percentage between 10% and 5%. For consulting or subconsulting services fees with a value greater than \$2,500,000, the maximum profit shall be 5%. Addenda shall be governed by the same maximum profit percentage after adding consulting services fees.

As a portion of the total compensation to be paid to CONSULTANT and Subconsultants, OC SAN shall pay profit for all services rendered by CONSULTANT and Subconsultants for this Project according to Attachment "E" Fee Proposal.

E. Subconsultants

For any Subconsultant whose fees for services are greater than or equal to \$100,000 (excluding out-of-pocket costs), CONSULTANT shall pay to Subconsultant total compensation in accordance with the Subconsultant amount specified in Attachment "E" Fee Proposal.

For any Subconsultant whose fees for services are less than \$100,000, CONSULTANT may pay to Subconsultant total compensation on an hourly-rate basis per Attachment "K" Minor Subconsultant Hourly Rate Schedule and as specified in the Scope of Work. OC SAN shall pay to CONSULTANT the actual costs of Subconsultant fees and charges in an amount not to exceed the sum set forth in Attachment "E" Fee Proposal.

F. Direct Costs

OC SAN shall pay to CONSULTANT and Subconsultants the actual costs of permits and associated fees, travel and licenses for an amount not to exceed the

sum set forth in Attachment “E” - Fee Proposal. OC SAN shall also pay to CONSULTANT actual costs for equipment rentals, leases, or purchases with prior approval of OC SAN. Upon request, CONSULTANT shall provide to OC SAN receipts and other documentary records to support CONSULTANT’s request for reimbursement of these amounts, see Attachment “D” – Allowable Direct Costs. All incidental expenses shall be included in overhead pursuant to Section 2 – COMPENSATION, above.

G. Other Direct Costs

Other direct costs incurred by CONSULTANT and its contractor due to modifications to the Scope of Work resulting from field investigations and field work required by the Agreement. These items may include special equipment, test equipment and tooling, and other materials and services not previously identified. Refer to attachment “D” Allowable Direct Costs for payment information.

H. Reimbursable Direct Costs

OC SAN will reimburse CONSULTANT for reasonable travel and business expenses as described in this section and further described in Attachment “D” – Allowable Direct Costs, attached to this Agreement. The reimbursement of the above-mentioned expenses will be based on an “accountable plan” as considered by the Internal Revenue Service (IRS). The plan includes a combination of reimbursements based upon receipts and a “per diem” component approved by the IRS. The most recent schedule of the per diem rates utilized by OC SAN can be found on the U.S. General Service Administration website at <http://www.gsa.gov/portal/category/104711#>.

CONSULTANT shall be responsible for the most economical and practical means or management of reimbursable costs inclusive but not limited to travel, lodging, and meals arrangements. OC SAN shall apply the most economic and practical method of reimbursement which may include reimbursements based upon receipts and/or “per diem” as deemed the most practical.

CONSULTANT shall be responsible for returning to OC SAN any excess reimbursements after the reimbursement has been paid by OC SAN.

Travel and travel arrangements – Any travel involving airfare, overnight stays, or multiple day attendance must be approved by OC SAN in advance.

Local Travel is considered travel by CONSULTANT within OC SAN geographical area which includes Orange, Los Angeles, Ventura, San Bernardino, Riverside, San Diego, Imperial, and Kern Counties. Automobile mileage is reimbursable if CONSULTANT is required to utilize personal vehicle for local travel.

Lodging – Overnight stays will not be approved by OC SAN for local travel. However, under certain circumstances overnight stay may be allowed at the discretion of OC SAN based on reasonableness of meeting schedules and the

amount of time required for travel by CONSULTANT. Such determination will be made on a case-by-case basis and at the discretion of OC SAN.

Travel Meals – Per-diem rates as approved by the IRS shall be utilized for travel meals reimbursements. Per diem rates shall be applied to meals that are appropriate for travel times. Receipts are not required for the approved meals.

Additional details related to the reimbursement of the allowable direct costs are provided in Attachment “D” – Allowable Direct Costs, attached to this Agreement.

I. Limitation of Costs

If, at any time, CONSULTANT estimates that the cost of performing the services described in CONSULTANT’s Proposal will exceed seventy-five percent (75%) of the not-to-exceed amount of the Agreement, including approved additional compensation, CONSULTANT shall notify OC SAN immediately and in writing. This written notice shall indicate the additional amount necessary to complete the services. Any cost incurred in excess of the approved not-to-exceed amount, without the express written consent of OC SAN’s authorized representative shall be at CONSULTANT’s own risk. This written notice shall be provided separately from, and in addition to, any notification requirements contained in CONSULTANT’s invoice and monthly progress report. Failure to notify OC SAN that the services cannot be completed within the authorized not-to-exceed amount is a material breach of this Agreement.

3. REALLOCATION OF TOTAL COMPENSATION

OC SAN, by its Director of Engineering, shall have the right to approve a reallocation of the incremental amounts constituting the Total Compensation, provided that the Total Compensation is not increased.

4. PAYMENT

A. Monthly Invoice: CONSULTANT shall include in its monthly invoice a detailed breakdown of costs associated with the performance of any corrections or revisions of the work for that invoicing period, in a format acceptable to OC SAN. CONSULTANT shall warrant and certify the accuracy of these costs and provide all support documentation required by OC SAN. CONSULTANT understands that submitted costs are subject to Section 12 – AUDIT PROVISIONS.

B. CONSULTANT will submit monthly statements covering services and/or work performed for payment for those items included in Section 2 hereof no later than the second Wednesday of the following month and in the format required by OC SAN. The format must include, as a minimum: 1) current billing period invoicing, 2) current billing period “total percent invoiced to date”, 3) future activities, 4) previous billing period “total invoiced to date”, 5) potential items that are not included in the Scope of Work, 6) concerns and possible delays, 7) percentage of completion to date, and 8) budget status and amount remaining. Such requests shall be accompanied by such supporting data as may be required by OC SAN.

Upon approval of such payment request by OC SAN, payment shall be made to CONSULTANT as soon as practicable of one hundred percent (100%) of the invoiced amount on a per task basis.

If OC SAN determines that the work under this Agreement, or any specified task hereunder, is incomplete and that the amount of payment is in excess of:

- i. The amount considered by OC SAN's Director of Engineering to be adequate for the protection of OC SAN; or
- ii. The percentage of the work accomplished for each task

OC SAN may, at the discretion of the Director of Engineering, retain an amount equal to that which ensures that the total amount paid to that date does not exceed the percentage of the completed work for each task or the Project in its entirety.

- C. CONSULTANT may submit periodic payment requests for each 30-day period of this Agreement for the profit as set forth in Section 2 – COMPENSATION, above. Said profit payment request shall be proportionate to the work actually accomplished to date on a per task basis. In the event OC SAN's Director of Engineering determines that no satisfactory progress has been made since the prior payment, or in the event of a delay in the work progress for any reason, OC SAN shall have the right to withhold any scheduled proportionate profit payment.
- D. Upon satisfactory completion by CONSULTANT of the work called for under the terms of this Agreement, and upon acceptance of such work by OC SAN, CONSULTANT will be paid the unpaid balance of any money due for such work based on the monthly statements, including any retained percentages relating to this portion of the work.
- E. Upon satisfactory completion of the work performed hereunder and prior to final payment under this Agreement for such work, or prior settlement upon termination of this Agreement, and as a condition precedent thereto, CONSULTANT shall execute and deliver to OC SAN a release of all claims against OC SAN arising under or by virtue of this Agreement other than such claims, if any, as may be specifically exempted by CONSULTANT from the operation of the release in stated amounts to be set forth therein.
- F. Pursuant to the California False Claims Act (Government Code sections 12650-12655), any consultant that knowingly submits a false claim to OC SAN for compensation under the terms of this Agreement may be held liable for treble damages and up to a \$10,000 civil penalty for each false claim submitted. This section shall also be binding on all Subconsultants.

CONSULTANT or Subconsultant shall be deemed to have submitted a false claim when CONSULTANT or Subconsultant: (a) knowingly presents or causes to be presented to an officer or employee of OC SAN a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a

false record or statement to get a false claim paid or approved by OC SAN; (c) conspires to defraud OC SAN by getting a false claim allowed or paid by OC SAN; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to OC SAN; or (e) is a beneficiary of an inadvertent submission of a false claim to OC SAN and fails to disclose the false claim to OC SAN within a reasonable time after discovery of the false claim.

5. PREVAILING WAGES

To the extent CONSULTANT intends to utilize employees who will perform work during the contract, as more specifically defined under Labor Code section 1720, CONSULTANT shall be subject to prevailing wage requirements with respect to such employees.

6. CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION AND RECORD OF WAGES

- A. To the extent CONSULTANT's employees and/or Subconsultants will perform work during the design and preconstruction phases of a construction contract for which Prevailing Wage Determinations have been issued by the Department of Industrial Relations (DIR) and as more specifically defined under Labor Code section 1720 et seq., CONSULTANT and Subconsultants 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.
- B. CONSULTANT and Subconsultants 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 section 1771.4(a)(3). Penalties for non-compliance with the requirements of Labor Code section 1776 may be deducted from progress payments per Labor Code section 1776.
- C. Pursuant to Labor Code section 1776, CONSULTANT and Subconsultants 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 Enforcement of the Department of Industrial Relations.
- D. CONSULTANT and Subconsultants shall comply with the job site notices posting requirements established by the Labor Commissioner per Title 8, California Code of Regulations Section 16461(e).

7. DOCUMENT OWNERSHIP – CONSULTANT PERFORMANCE

- A. Ownership of Documents for the professional services performed.

All documents in all forms (electronic, paper, etc.), including, but not limited to, studies, sketches, drawings, computer printouts, disk files, and electronic copies prepared in connection with or related to the Scope of Work or professional

services, shall be the property of OC SAN. OC SAN's ownership of these documents includes use of, reproduction or reuse of, and all incidental rights, whether or not the work for which they were prepared has been performed. OC SAN ownership entitlement arises upon payment or any partial payment for work performed and includes ownership of any and all work product completed prior to that payment. This section shall apply whether CONSULTANT's professional services are terminated: a) by the completion of the Agreement, or b) in accordance with other provisions of this Agreement. Notwithstanding any other provision of this paragraph or Agreement, CONSULTANT shall have the right to make copies of all such plans, studies, sketches, drawings, computer printouts and disk files, and specifications.

- B. CONSULTANT shall not be responsible for damage caused by subsequent changes to or uses of the Project deliverables where the subsequent changes or uses are not authorized or approved by CONSULTANT, provided that the service rendered by CONSULTANT was not a proximate cause of the damage.

8. INSURANCE

A. General

- i. Insurance shall be issued and underwritten by insurance companies acceptable to OC SAN.
- ii. Insurers must have an "A-" Policyholder's Rating, or better, and Financial Rating of at least Class VIII, or better, in accordance with the most current A.M. Best's Guide Rating. However, OC SAN will accept State Compensation Insurance Fund for the required policy of Workers' Compensation Insurance subject to OC SAN's option to require a change in insurer in the event the State Fund financial rating is decreased below "B". Further, OC SAN will require CONSULTANT to substitute any insurer whose rating drops below the levels herein specified. Said substitution shall occur within twenty (20) days of written notice to CONSULTANT by OC SAN or its agent.
- iii. Coverage shall be in effect prior to the commencement of any work under this Agreement.

B. General Liability

CONSULTANT shall maintain during the life of this Agreement, including the period of warranty, commercial general liability insurance written on an occurrence basis providing the following minimum limits of liability coverage: One Million Dollars (\$1,000,000) per occurrence with Two Million Dollars (\$2,000,000) aggregate. If aggregate limits apply separately to this contract (as evidenced by submission of ISO form CG 25 03 or 25 04), then the aggregate limit may be equivalent to the per occurrence limit. Said insurance shall include coverage for the following hazards: premises-operations, blanket contractual liability (for this Agreement), products liability/completed operations (including any product manufactured or assembled), broad form property

damage, blanket contractual liability, independent contractors liability, personal and advertising injury, mobile equipment, owners and contractors protective liability, and cross liability and severability of interest clauses. A statement on an insurance certificate will not be accepted in lieu of the actual additional insured endorsement(s). If requested by OC SAN and applicable XCU coverage (Explosion, Collapse, and Underground) and Riggers/On Hook Liability must be included in the general liability policy and coverage must be reflected on the submitted certificate of insurance. Where permitted by law, CONSULTANT hereby waives all rights of recovery by subrogation because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or any other reason against OC SAN, its or their officers, agents, or employees, and any other consultant, contractor, or subcontractor performing work or rendering services on behalf of OC SAN in connection with the planning, development, and construction of the Project. In all its insurance coverages related to the work, CONSULTANT shall include clauses providing that each insurer shall waive all of its rights of recovery by subrogation against OC SAN, its or their officers, agents, or employees, or any other consultant, contractor, or subcontractor performing work or rendering services at the Project. Where permitted by law, CONSULTANT shall require similar written express waivers and insurance clauses from each of its Subconsultants of every tier. A waiver of subrogation shall be effective as to any individual or entity, even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium, directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

C. Umbrella Excess Liability

The minimum limits of general liability and automobile liability insurance required, as set forth herein, shall be provided for through either a single policy of primary insurance or a combination of policies of primary and umbrella excess coverage. Umbrella excess liability coverage shall be issued with limits of liability which, when combined with the primary insurance, will equal the minimum limits for general liability and automobile liability.

D. Automobile/Vehicle Liability Insurance – Not applicable

E. Drone Liability Insurance

If a drone will be used, drone liability insurance must be maintained by CONSULTANT in the amount of One Million Dollars (\$1,000,000) in a form acceptable by OC SAN.

F. Workers' Compensation Insurance

CONSULTANT shall provide such workers' compensation insurance as required by the Labor Code of the State of California in the amount of the statutory limit, including employer's liability insurance with a minimum limit of One Million Dollars (\$1,000,000) per occurrence. Such workers' compensation insurance shall be endorsed to provide for a waiver of subrogation in favor of OC SAN.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsements unless the insurance carrier is State of California Insurance Fund and the identifier "SCIF" and endorsement numbers 2570 and 2065 are referenced on the certificate of insurance. If an exposure to Jones Act liability may exist, the insurance required herein shall include coverage for Jones Act claims.

G. Errors and Omissions/Professional Liability

CONSULTANT shall maintain in full force and effect, throughout the term of this Agreement, standard industry form professional negligence errors and omissions insurance coverage in an amount of not less than Two Million Dollars (\$2,000,000) with limits in accordance with the provisions of this paragraph. If the policy of insurance is written on a "claims made" basis, said policy shall be continued in full force and effect at all times during the term of this Agreement and for a period of five (5) years from the date of the completion of the services hereunder.

In the event of termination of said policy during this period, CONSULTANT shall obtain continuing insurance coverage for the prior acts or omissions of CONSULTANT during the course of performing services under the term of this Agreement. Said coverage shall be evidenced by either a new policy evidencing no gap in coverage or by separate extended "tail" coverage with the present or new carrier.

In the event the present policy of insurance is written on an "occurrence" basis, said policy shall be continued in full force and effect during the term of this Agreement or until completion of the services provided for in this Agreement, whichever is later. In the event of termination of said policy during this period, new coverage shall be obtained for the required period to insure for the prior acts of CONSULTANT during the course of performing services under the term of this Agreement.

CONSULTANT shall provide to OC SAN a certificate of insurance in a form acceptable to OC SAN indicating the deductible or self-retention amounts and the expiration date of said policy, and shall provide renewal certificates not less than ten (10) days prior to the expiration of each policy term.

H. Proof of Coverage

CONSULTANT shall furnish OC SAN with original certificates and amendatory endorsements effecting coverage. Said policies and endorsements shall conform to the requirements herein stated. All certificates and endorsements are to be received and approved by OC SAN before work commences. OC SAN reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements, effecting the coverage required. The following are approved forms that must be submitted as proof of coverage:

- Certificate of Insurance ACORD Form 25 or other equivalent certificate of insurance form
- Additional Insurance (General Liability) The combination of (ISO Forms) CG 20 10 and CG 20 37
All other additional insured endorsements must be submitted for approval by OC SAN, and OC SAN may reject alternatives that provide different or less coverage to OC SAN.
- Additional Insured (Automobile Liability) Submit endorsement provided by carrier for OC SAN approval.
- Waiver of Subrogation Submit workers' compensation waiver of subrogation endorsement provided by carrier for OC SAN approval.
- Cancellation Notice No endorsement is required. However, CONSULTANT is responsible for notifying OC SAN of any pending or actual insurance policy cancellation, as described in Article I. Cancellation and Policy Change Notice, below.

I. Cancellation and Policy Change Notice

CONSULTANT is required to notify OC SAN in writing of any insurance cancellation notice it receives or other knowledge of pending or actual insurance policy cancellation within two (2) working days of receipt of such notice or acquisition of such knowledge. Additionally, CONSULTANT is required to notify OC SAN in writing of any change in the terms of insurance, including reduction in coverage or increase in deductible/SIR, within two (2) working days of receipt of such notice or knowledge of same.

Said notices shall be mailed to OC SAN at:

ORANGE COUNTY SANITATION DISTRICT
10844 Ellis Avenue
Fountain Valley, CA 92708
Attention: Contracts, Purchasing & Materials Management Division

J. Primary Insurance

The general and automobile liability policies shall contain a "Primary and Non-Contributory" clause. Any other insurance maintained by OC SAN shall be excess and not contributing with the insurance provided by CONSULTANT.

K. Separation of Insured

The general and automobile liability policies shall contain a "Separation of Insureds" clause.

L. Non-Limiting (if applicable)

Nothing in this document shall be construed as limiting in any way, nor shall it limit the indemnification provision contained in this Agreement, or the extent to which CONSULTANT may be held responsible for payment of damages to persons or property.

M. Deductibles and Self-Insured Retentions

Any deductible and/or self-insured retention must be declared to OC SAN on the certificate of insurance. All deductibles and/or self-insured retentions require approval by OC SAN. At the option of OC SAN, either: the insurer shall reduce or eliminate such deductible or self-insured retention as respects OC SAN; or CONSULTANT shall provide a financial guarantee satisfactory to OC SAN guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

N. Defense Costs

The general and automobile liability policies shall have a provision that defense costs for all insureds and additional insureds are paid in addition to and do not deplete any policy limits.

O. Subconsultants

CONSULTANT shall be responsible to establish insurance requirements for any Subconsultant hired by CONSULTANT. The insurance shall be in amounts and types reasonably sufficient to deal with the risk of loss involving the Subconsultant's operations and work.

P. Limits Are Minimums

If CONSULTANT maintains higher limits than any minimums shown above, then OC SAN requires and shall be entitled to coverage for the higher limits maintained by CONSULTANT.

9. SCOPE CHANGES

In the event of a change in the Scope of Work or other terms in the Agreement, as requested by OC SAN, the Parties hereto shall execute an amendment to this Agreement setting forth with particularity all terms of the new Agreement, including, but not limited to, any additional CONSULTANT fees. CONSULTANT hereby agrees to use any and all procedures, programs, and systems required by OC SAN to process and execute such amendment(s), including, but not limited to, computer programs and systems.

10. PROJECT TEAM AND SUBCONSULTANTS

CONSULTANT shall provide to OC SAN, prior to execution of this Agreement, the names and full description of all Subconsultants and CONSULTANT's Project team

members anticipated to be used on this Project under this Agreement by CONSULTANT. CONSULTANT shall include a description of the work and services to be done by each Subconsultant and each of CONSULTANT's Project team member. CONSULTANT shall include the respective compensation amounts for CONSULTANT and each Subconsultant, broken down as indicated in Section 2 – COMPENSATION.

There shall be no substitution of the listed Subconsultants and CONSULTANT's Project team members without prior written approval by OC SAN.

11. ENGINEERING REGISTRATION

CONSULTANT's personnel and Subconsultants are comprised of registered engineers and a staff of specialists and draftsmen in each department. The firm itself is not a registered engineer but represents and agrees that wherever, in the performance of this Agreement, the services of a registered engineer are required, such services hereunder will be performed under the direct supervision of registered engineers who are registered in California.

12. AUDIT PROVISIONS.

- A. OC SAN retains the reasonable right to access, review, examine, and audit any and all books, records, documents, and any other evidence of procedures and practices that OC SAN determines are necessary to discover and verify that CONSULTANT is in compliance with all requirements under this Agreement. CONSULTANT shall include OC SAN's right as described above in any and all of their subcontracts and shall ensure that these rights are binding upon all Subconsultants.
- B. OC SAN retains the right to examine CONSULTANT's books, records, documents, and any other evidence of procedures and practices that OC SAN determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred, or to ensure CONSULTANT's compliance with all requirements under this Agreement during the term of this Agreement and for a period of three (3) years after its termination.
- C. CONSULTANT shall maintain complete and accurate records in accordance with generally accepted industry standard practices and OC SAN's policy. CONSULTANT shall make available to OC SAN for review and audit all Project related accounting records and documents and any other financial data within 15 days after receipt of notice from OC SAN. Upon OC SAN's request, CONSULTANT shall submit exact duplicates of originals of all requested records to OC SAN. If an audit is performed, CONSULTANT shall ensure that a qualified employee of CONSULTANT will be available to assist OC SAN's auditor in obtaining all Project-related accounting records and documents, and any other financial data.

13. LEGAL RELATIONSHIP BETWEEN PARTIES

The legal relationship between the Parties hereto is that of an independent contractor and nothing herein shall be deemed to transform CONSULTANT, its staff, independent contractors, or Subconsultants into employees of OC SAN. CONSULTANT's staff performing services under the Agreement shall at all times be employees and/or independent contractors of CONSULTANT. CONSULTANT shall monitor and control its staff and pay wages, salaries, and other amounts due directly to its staff in connection with the Agreement. CONSULTANT shall be responsible for hiring, review, and termination of its staff and shall be accountable for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation, and similar matters.

14. NOTICES

All notices hereunder and communications regarding the interpretation of the terms of this Agreement, or changes thereto, shall be effected by delivery of said notices in person or by depositing said notices in the U.S. mail, registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

ORANGE COUNTY SANITATION DISTRICT
10844 Ellis Avenue
Fountain Valley, CA 92708-7018
Attention: Digna Olmos, Principal Contracts Administrator
Copy: Richard Leon, Project Manager

CONSULTANT:

The Austin Company
6410 Oak Canyon, Suite 150
Irvine, CA 92618
Attention: Kenric B. Stone

All communication regarding the Scope of Work will be addressed to the Project Manager. Direction from other OC SAN staff must be approved in writing by OC SAN's Project Manager prior to action from CONSULTANT.

15. TERMINATION

OC SAN may terminate this Agreement at any time, without cause, upon giving thirty (30) days written notice to CONSULTANT. In the event of such termination, CONSULTANT shall be entitled to compensation for work performed on a prorated basis through and including the effective date of termination.

CONSULTANT shall be permitted to terminate this Agreement upon thirty (30) days written notice only if CONSULTANT is not compensated for billed amounts in accordance with the provisions of this Agreement, when the same are due.

Notice of termination shall be mailed to OC SAN at the address listed in Section 14 - NOTICES.

16. DOCUMENTS AND STUDY MATERIALS

The documents and study materials for this Project shall become the property of OC SAN upon the termination or completion of the work. CONSULTANT agrees to furnish to OC SAN copies of all memoranda, correspondence, electronic materials, computation, and study materials in its files pertaining to the work described in this Agreement, which is requested in writing by OC SAN.

17. COMPLIANCE

A. Labor

CONSULTANT certifies by the execution of this Agreement that it pays employees not less than the minimum wage as defined by law and that it does not discriminate in its employment with regard to race, color, religion, sex, or national origin; that it is in compliance with all federal, state, and local directives and executive orders regarding non-discrimination in employment; and that it agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

B. Air Pollution

CONSULTANT and its subconsultants and subcontractors shall comply with all applicable federal, state, and local air pollution control laws and regulations.

C. Iran Contracting Act

CONSULTANT and its subconsultants and subcontractors shall comply with the Iran Contracting Act of 2010 (Public Contract Code sections 2200-2208).

18. AGREEMENT EXECUTION AUTHORIZATION

Both OC SAN and CONSULTANT covenant that each individual executing this document by and on behalf of each Party is a person duly authorized to execute this Agreement for that Party.

19. DISPUTE RESOLUTION

In the event of a dispute arising between the Parties regarding performance or interpretation of this Agreement, the dispute shall be resolved by binding arbitration under the auspices of the Judicial Arbitration and Mediation Service ("JAMS"), or similar organization or entity conducting alternate dispute resolution services.

20. ATTORNEY'S FEES, COSTS AND NECESSARY DISBURSEMENTS

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 Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which the prevailing party may be entitled.

21. WARRANTY

CONSULTANT shall perform its services in accordance with generally accepted industry and professional standards. If, within the 12-month period following completion of its services, OC SAN informs CONSULTANT that any part of the services fails to meet those standards, CONSULTANT shall, within the time prescribed by OC SAN, take all such actions as are necessary to correct or complete the noted deficiency(ies).

22. INDEMNIFICATION

To the fullest extent permitted by law, CONSULTANT shall indemnify, defend (at CONSULTANT's sole cost and expense and with legal counsel approved by OC SAN, which approval shall not be unreasonably withheld), protect, and hold harmless OC SAN and all of OC SAN's officers, directors, employees, consultants, and agents (collectively the "Indemnified Parties"), from and against any and all claims, damages, liabilities, causes of action, suits, arbitration awards, losses, judgments, fines, penalties, costs, and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional, expert, or CONSULTANT's fees and costs, and OC SAN's general and administrative expenses; individually, a "Claim"; collectively, "Claims") which may arise from or are in any manner related, directly or indirectly, to any work performed, or any operations, activities, or services provided by CONSULTANT in carrying out its obligations under this Agreement to the extent of the negligent, recklessness and/or willful misconduct of CONSULTANT, its principals, officers, agents, employees, CONSULTANT's suppliers, CONSULTANT, Subconsultants, subcontractors, and/or anyone employed directly or indirectly by any of them, regardless of any contributing negligence or strict liability of an Indemnified Party. Notwithstanding the foregoing, nothing herein shall be construed to require CONSULTANT to indemnify the Indemnified Parties from any Claim arising solely from:

- (A) the active negligence or willful misconduct of the Indemnified Parties; or
- (B) a natural disaster or other act of God, such as an earthquake; or
- (C) the independent action of a third party who is neither one of the Indemnified Parties nor CONSULTANT, nor its principal, officer, agent, employee, nor CONSULTANT's supplier, CONSULTANT, Subconsultant, subcontractor, nor anyone employed directly or indirectly by any of them.

Exceptions (A) through (B) above shall not apply, and CONSULTANT shall, to the fullest extent permitted by law, indemnify the Indemnified Parties, from Claims arising from more than one cause if any such cause taken alone would otherwise result in the obligation to indemnify hereunder.

CONSULTANT's liability for indemnification hereunder is in addition to any liability CONSULTANT may have to OC SAN for a breach by CONSULTANT of any of the provisions of this Agreement. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit CONSULTANT's indemnification obligation or other liability hereunder. The terms of this Agreement are contractual and the result of negotiation between the Parties hereto. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code

section 1654) that ambiguities are to be construed against the drafting party shall not be employed in the interpretation of this Agreement.

23. DUTY TO DEFEND

The duty to defend hereunder is wholly independent of and separate from the duty to indemnify and such duty to defend shall exist regardless of any ultimate liability of CONSULTANT and shall be consistent with Civil Code section 2782.8. Such defense obligation shall arise immediately upon presentation of a Claim by any person if, without regard to the merit of the Claim, such Claim could potentially result in an obligation to indemnify one or more Indemnified Parties, and upon written notice of such Claim being provided to CONSULTANT. Payment to CONSULTANT by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party shall not be a condition precedent to enforcing such Indemnified Party's rights to indemnification hereunder. In the event a final judgment, arbitration, award, order, settlement, or other final resolution expressly determines that the claim did not arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, to any extent, then OC SAN will reimburse CONSULTANT for the reasonable costs of defending the Indemnified Parties against such claims.

CONSULTANT's indemnification obligation hereunder shall survive the expiration or earlier termination of this Agreement until such time as action against the Indemnified Parties for such matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

24. COMPLIANCE WITH OC SAN POLICIES AND PROCEDURES

CONSULTANT shall comply with all OC SAN policies and procedures including the Contractor Safety Standards, as applicable, all of which may be amended from time to time.

25. CLOSEOUT

When OC SAN determines that all work authorized under the Agreement is fully complete and that OC SAN requires no further work from CONSULTANT, or the Agreement is otherwise terminated or expires in accordance with the terms of the Agreement, OC SAN shall give CONSULTANT written notice that the Agreement will be closed out. CONSULTANT shall submit all outstanding billings, work submittals, deliverables, reports, or similarly related documents as required under the Agreement within thirty (30) days of receipt of notice of Agreement closeout.

Upon receipt of CONSULTANT's submittals, OC SAN shall commence a closeout audit of the Agreement and will either:

- i. Give CONSULTANT a final Agreement Acceptance: or
- ii. Advise CONSULTANT in writing of any outstanding item or items which must be furnished, completed, or corrected at CONSULTANT's cost.

CONSULTANT shall be required to provide adequate resources to fully support any administrative closeout efforts identified in the Agreement. Such support must be provided within the timeframe requested by OC SAN.

Notwithstanding the final Agreement Acceptance, CONSULTANT will not be relieved of its obligations hereunder, nor will CONSULTANT be relieved of its obligations to complete any portions of the work, the non-completion of which were not disclosed to OC SAN (regardless of whether such nondisclosures were fraudulent, negligent, or otherwise), and CONSULTANT shall remain obligated under all those provisions of the Agreement which expressly or by their nature extend beyond and survive final Agreement Acceptance.

Any failure by OC SAN to reject the work or to reject CONSULTANT's request for final Agreement Acceptance as set forth above shall not be deemed to be acceptance of the work by OC SAN for any purpose nor imply acceptance of, or agreement with, CONSULTANT's request for final Agreement Acceptance.

26. ENTIRE AGREEMENT

This Agreement constitutes the entire understanding and agreement between the Parties and supersedes all previous negotiations between them pertaining to the subject matter thereof.

IN WITNESS WHEREOF, this Agreement has been executed in the name of OC SAN and CONSULTANT by their respective duly authorized officers as of the day and year first written above.

CONSULTANT: THE AUSTIN COMPANY

By _____
Kenric B. Stone
Vice President and Project Executive
Date _____

ORANGE COUNTY SANITATION DISTRICT

By _____
Chad P. Wanke
Board Chairman
Date _____

By _____
Kelly A. Lore
Clerk of the Board
Date _____

By _____
Ruth Zintzun
Purchasing & Contracts Manager
Date _____

- Attachments:
- Attachment "A" – Scope of Work
 - Attachment "B" – Not Attached
 - Attachment "C" – Not Attached
 - Attachment "D" – Allowable Direct Costs
 - Attachment "E" – Fee Proposal
 - Attachment "F" – Not Used
 - Attachment "G" – Not Attached
 - Attachment "H" – Not Used
 - Attachment "I" – Cost Matrix and Summary
 - Attachment "J" – Not Attached
 - Attachment "K" – Minor Subconsultant Hourly Rate Schedule
 - Attachment "L" - Contractor Safety Standards
 - Attachment "M" – Iran Contracting Act Verification

DO:yp