

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (Agreement), to be effective on January 1, 2024, is made and entered into by and between:

ORANGE COUNTY SANITATION DISTRICT
hereinafter referred to as "OC SAN"

AND

BROWN AND CALDWELL
hereinafter referred to as "CONSULTANT"

individually referred to as the "Party" and collectively as the "Parties."

RECITALS

WHEREAS, in accordance with Ordinance No. OC SAN-61 and pursuant to a Request for Qualifications (Underlying RFQ) the Board of Directors of OC SAN, by action on December 14, 2023 approved the award of the Agreement for **CONTRACT NO. PLAN2024-02, On-Call Planning Studies** to CONSULTANT to provide services for selected projects on a task order (Task Order) basis, from January 1, 2024 to December 31, 2026; and

WHEREAS, consistent with the Underlying RFQ, CONSULTANT has been prequalified to perform services for On-Call Planning Studies; and

WHEREAS, for Task Orders estimated to cost \$100,000 or less, the Director of Engineering, with concurrence of the Purchasing Manager, may solicit a proposal from one (1) firm on the prequalified list; and

WHEREAS, CONSULTANT is qualified to provide and has agreed to provide the necessary professional engineering and related services under this Agreement; and

WHEREAS, by this Agreement, the Parties intend to set forth the general terms and conditions that will apply to any specific project for which CONSULTANT is given a Task Order by OC SAN.

NOW, THEREFORE, OC SAN and CONSULTANT mutually agree as follows:

SECTION 1. SCOPE OF AGREEMENT

OC SAN, at its sole discretion, may, from time to time during the term of this Agreement, issue a Request for Task Order Proposal ("RFTOP") setting forth the detailed requirements and scope of work to be performed on the identified project and thereafter, upon receipt of a proposal from CONSULTANT, may issue a Task Order to proceed with the work. The scope of work will be in the form attached hereto as Attachment "A" – Scope of Work.

Upon execution by OC SAN, the Task Order shall become an operative part of this Agreement. Should any conflict or inconsistency exist in the contract documents identified in this section, the conflict or inconsistency shall be resolved by applying the provisions in the highest priority document, which shall be determined in the following order of priority:

- This Agreement and any amendments thereto
- The Task Order
- The RFTOP
- Attachment "K" Hourly Labor Rate Schedule
- Attachment "A" Scope of Work

OC SAN shall furnish the CONSULTANT available studies, reports and other data pertinent to the CONSULTANT's service; obtain or authorize the CONSULTANT to obtain or provide additional reports and data as required; furnish to the CONSULTANT services of others required for the performance of the CONSULTANT's services hereunder, and the CONSULTANT shall be entitled to use and rely upon all such information and services provided by OC SAN or others in performing the CONSULTANT's services under this Agreement.

SECTION 2. TASK ORDER ISSUANCE BY OC SAN

The Task Order issued by OC SAN shall, specifically or by reference to the RFTOP and corresponding proposal, set forth the terms that will apply to the specific project for which the services will be rendered. Those terms shall include, but not be limited to, scope of work, time for performance, and compensation.

SECTION 3. TERM

This Agreement shall commence on the effective date of this Agreement and terminate on December 31, 2026 unless further extended by written agreement signed by the Parties. Any work that is required by a Task Order and is not finished by the date of termination shall be continued and completed by CONSULTANT, and the terms and conditions of this Agreement shall continue in effect for that time. OC SAN may, at its option, renew this Agreement for two (2) additional terms of one (1) year each, for a maximum contract duration of five (5) years.

SECTION 4. COMPENSATION

The total compensation payable to CONSULTANT pursuant to this Agreement shall not exceed One Million Dollars (\$1,000,000) per year in accordance with the terms described in SECTION 3 - TERM. The compensation includes, but is not limited to, fees for professional services (based on individual burdened labor rates), overhead, and profit and fees from CONSULTANT's subconsultants/subcontractors (Subconsultants/Subcontractors). The specific amount of compensation payable to CONSULTANT for services rendered on an individual project, pursuant to a Task Order, shall be established for each Task Order and shall not exceed Five Hundred Thousand Dollars (\$500,000) per individual Task Order unless authorized by OC SAN's Board of Directors. CONSULTANT agrees and acknowledges that the execution of this Agreement does not in any way guarantee that a Task Order will be issued to CONSULTANT. Moreover, execution of this Agreement shall not entitle CONSULTANT to any form of payment or compensation from OC SAN without OC SAN first having issued a written Task Order.

A. Task Order Pricing

The subsections below describe the cost elements to be used in developing the price of the Task Orders.

1) Hourly Labor Rate Schedule

The services by CONSULTANT, pursuant to each project Task Order, shall be billed to OC SAN at the hourly rate ranges for each class of employee to be used as set forth in an Attachment "K" – Hourly Labor Rate Schedule, to be provided to OC SAN prior to award of the Agreement and incorporated herein.

Hourly Labor Rates shall consist of:

- a) Burdened Salary Rate consisting of the hourly salary rate plus benefits for each employee or labor category specified in Attachment "K" paid by CONSULTANT and its Subconsultants/Subcontractors to their employees.

Direct Salary rates for CONSULTANT and its Subconsultants/Subcontractors may be adjusted annually on January 1 by mutual agreement of the Parties. Escalation of the salary rate will be in accordance with Consumer Price Index for LA-Orange County. This rate is determined by the U.S. Department of Labor Statistics, Consumer Price Index – Los Angeles/ Orange County Metropolitan Area.

Burden rates for CONSULTANT and its Subconsultants/Subcontractors shall remain fixed through the term of this Agreement, inclusive of renewals identified in SECTION 3 - TERM.

- b) Overhead Rate consisting of a verified or negotiated percentage specified in Attachment "K" and applied to the Burdened Salary Rate for CONSULTANT and its Subconsultants/Subcontractors. The Overhead Rates of CONSULTANT and its Subconsultants/Subcontractors shall remain fixed through the term of this Agreement inclusive of any renewals identified in SECTION 3 - TERM.
- c) Profit, expressed as a percentage, shall be applied to each Burdened Salary Rate and applied Overhead Rate. Profit shall be included in the Hourly Labor Rates specified in Attachment "K". Profit shall remain fixed through the term of this Agreement, inclusive of any renewals identified in SECTION 3 - TERM.

2) Direct Costs

OC SAN shall reimburse CONSULTANT and its Subconsultants/Subcontractors the actual costs of permits and associated fees, travel, licenses, and other services in an amount not to exceed the sum set forth in each approved Task Order and in accordance with Attachment "D" – Allowable Direct Costs. OC SAN shall not pay markup on such direct costs, equipment rentals, leases, purchases, and other direct costs not agreed to and specified in the Task Order proposal, which may only be reimbursed with prior written approval of OC SAN.

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. 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 may be found on the U.S. General Services Administration website at <http://www.gsa.gov/portal/category/104711#>.

CONSULTANT shall be responsible for the most economical and practical means of 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”. CONSULTANT shall return to OC SAN any excess reimbursements.

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

Local travel is considered travel by CONSULTANT within OC SAN general 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 a 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 meal 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.

All incidental expenses shall be included in the Overhead Rate pursuant to Subsection A.1) Hourly Labor Rate Schedule above.

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.

3) Other Direct Costs

Other Direct Costs are costs incurred by CONSULTANT and its Subconsultant/Subcontractor due to modifications in 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.

4) Limitation of Costs

If, at any time, CONSULTANT estimates the cost of performing the services described in CONSULTANT's Task Order Proposal will exceed seventy-five percent (75%) of the not-to-exceed amount of the Task Order, including any approved additional compensation, CONSULTANT shall notify OC SAN immediately, 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 of a Task Order is a material breach of this Agreement.

B. Additional Work:

For extra work not a part of this Agreement, written authorization from OC SAN is required prior to CONSULTANT undertaking such work.

C. Method of Payment:

CONSULTANT shall submit, for approval by OC SAN, monthly invoices based on the total services which have been satisfactorily completed and specifying a percentage of completion. CONSULTANT's billings shall be certified for payment by OC SAN only after OC SAN has determined that CONSULTANT has completed each applicable project task.

CONSULTANT shall submit separate invoices for each Task Order on a monthly basis.

CONSULTANT understands that submitted costs are subject to Section 11 – AUDIT PROVISIONS, below.

D. Task Order Completion

Upon satisfactory completion by CONSULTANT of the work called for under the terms of the Task Order and upon acceptance of such work by OC SAN, CONSULTANT will be paid the unpaid balance of any money due for such work.

Upon satisfactory completion of the work performed under each Task Order, and prior to final payment under each Task Order 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.

E. False Claims

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/Subcontractors.

CONSULTANT or its Subconsultants/Subcontractors shall be deemed to have submitted a false claim when CONSULTANT or its Subconsultants/Subcontractors: (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.

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

To the extent CONSULTANT's employees and/or its Subconsultants/Subcontractors who will perform work during the design and preconstruction phases of 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., CONSULTANT and its Subconsultants/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.

CONSULTANT and its Subconsultants/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 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.

Pursuant to Labor Code section 1776, CONSULTANT and its Subconsultants/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 DIR.

CONSULTANT and its Subconsultants/Subcontractors shall comply with the job site notices posting requirements established by the Labor Commissioner per Title 8, California Code of Regulations section 16461(e).

G. Record of Expenses:

CONSULTANT shall keep complete and accurate records of all costs and expenses incidental to services covered by this Agreement. Such records will be made available to OC SAN upon request.

H. 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 payable under the Task Order, provided that the total compensation for the Task Order is not increased.

SECTION 5. LIMITATIONS UPON SUBCONTRACTING AND ASSIGNMENT

CONSULTANT shall not contract with any other person or entity to perform the services required without the written approval of OC SAN. This Agreement may not be assigned voluntarily, or by operation of law, without the prior written approval of OC SAN. If CONSULTANT is permitted to subcontract any part of this Agreement by OC SAN, CONSULTANT shall be responsible to OC SAN for the acts and omissions of its Subconsultant/Subcontractor, as it is for persons directly employed by CONSULTANT. Nothing contained in this Agreement shall create any contractual relationship between any Subconsultant/Subcontractor and OC SAN. All persons engaged in the work will be considered employees of CONSULTANT. OC SAN will deal directly with and will make all payments to CONSULTANT.

SECTION 6. CHANGES TO SCOPE OF WORK

In the event of a change in the scope of work as requested by OC SAN or any other changes to the Task Order, the Parties shall execute an amendment to the Task Order setting forth with particularity all new terms of the Task Order, including, but not limited to, any additional compensation.

SECTION 7. DOCUMENT OWNERSHIP – CONSULTANT PERFORMANCE

- A. 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 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 services are satisfied by the completion of the Agreement or are terminated in accordance with other provisions of this Agreement. Notwithstanding any other provision of this section 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 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.
- C. Copies of Work Product

Upon completion of the work required for each Task Order, CONSULTANT shall deliver to OC SAN the number of copies specified in the specific Task Order scope of work of the final report containing CONSULTANT's findings, conclusions, recommendations, and all

supporting documentation and/or final design drawings and specifications. Each Task Order will define the requirements for the deliverables.

SECTION 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 Worker's 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 Agreement (as evidenced by submission of ISO form CG 25 03 or CG 25 04) or equivalent, then the aggregate limit may be equivalent to the per occurrence limit. Said insurance shall include coverage for the following hazards: Premises-Operations, products liability/completed operations (including any product manufactured or assembled), broad form property damage, contractual liability, independent contractors' liability, personal and advertising injury, mobile equipment, vicarious 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) must be included in the General Liability policy and coverage must be reflected on the submitted Certificate of Insurance.

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 Liability Insurance:

CONSULTANT shall maintain a policy of Automobile Liability Insurance on a comprehensive form covering all owned, non-owned, and hired automobiles, trucks, and other vehicles providing the following minimum limits of liability coverage: Combined single limit of One Million Dollars (\$1,000,000). A statement on an insurance certificate will not be accepted in lieu of the actual additional insured endorsement.

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. Worker's 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 Worker's 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 the State of California Insurance Fund and the identifier "SCIF" and applicable endorsements 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 liability/errors and omissions insurance coverage with coverage limits of not less than Two Million Dollars (\$2,000,000) 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 terms 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 or omissions of CONSULTANT during the course of performing services under the terms 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 certificates and endorsements shall conform to the requirements herein stated. All certificates and endorsements must be received and accepted by OC SAN before work commences. CONSULTANT shall provide OC SAN with copies of its insurance certificates and amendatory endorsements affecting coverage. Confidential information may be redacted from said policies, provided that verification of coverage, name of carriers and agent/broker may not be redacted. Said policies and endorsements shall conform to the requirements herein stated. 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 2010 <u>and</u> CG 2037 or equivalent

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 (Auto Liability) | Submit Endorsement provided by carrier for OC SAN's approval. |
| • Waiver of Subrogation | Submit workers' compensation waiver of subrogation endorsement provided by carrier for OC SAN's 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 material 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:

All 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 acceptance by OC SAN. At the option of OC SAN, either: a) the insurer shall reduce or eliminate such deductible or self-insured retention as respects OC SAN; or b) CONSULTANT shall provide a financial guarantee satisfactory to OC SAN guaranteeing payment of losses and related investigations, claim administration, and defense expenses. OC SAN will not invoke the option expressed in this paragraph unless it has reasonable cause to question CONSULTANT's financial strength.

N. Defense Costs:

Liability policies (except Errors and Omissions/Professional Liability) 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/Subcontractors:

CONSULTANT shall be responsible to establish insurance requirements for Subconsultants/Subcontractors hired by CONSULTANT. The insurance shall be in amounts and types reasonably sufficient to deal with the risk of loss involving the Subconsultants'/Subcontractors' 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.

Nothing in this section, however, requires CONSULTANT in the absence of litigation to reveal its Errors and Omissions/Professional Liability limits beyond that required above in Section 8.

SECTION 9. PROJECT TEAM AND SUBCONSULTANTS

CONSULTANT shall provide to OC SAN, prior to execution of a Task Order, the names and full descriptions of all Subconsultants/Subcontractors and CONSULTANT's project team members anticipated to be used in performing work under a Task Order. In its proposal, CONSULTANT shall include a description of the work and services to be performed by each Subconsultant/Subcontractor and each of CONSULTANT's project team members. CONSULTANT shall include the respective compensation amounts for CONSULTANT and each Subconsultant/Subcontractor, broken down as indicated in Section 4 – COMPENSATION, above.

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

SECTION 10. ENGINEERING REGISTRATION

CONSULTANT's personnel and its Subconsultants/Subcontractors shall be 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 when the performance of this Agreement requires the services of a registered engineer, such services hereunder will be performed under the direct supervision of registered engineers who are registered in the State of California.

SECTION 11. 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 the 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 its Subconsultants/Subcontractors.
- 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 the requirements under this Agreement during the term of this Agreement and for a period of three (3) years after expiration or earlier termination of the Agreement.

- C. CONSULTANT shall maintain complete and accurate records in accordance with Generally Accepted Accounting Principles (GAAP). CONSULTANT shall make available to OC SAN for review and audit all project-related accounting records and documents and any other financial data within fifteen (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.

SECTION 12. LEGAL RELATIONSHIP BETWEEN PARTIES

The legal relationship between the Parties is that of an independent contractor and nothing herein shall be deemed to transform CONSULTANT, its staff, independent contractors, or its Subconsultants/Subcontractors into agents or employees of OC SAN and shall obtain no rights to any benefits which accrue to OC SAN's employees. 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 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 insurance, and similar matters.

SECTION 13. 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.

Notice shall be mailed to OC SAN at:

ORANGE COUNTY SANITATION DISTRICT
10844 Ellis Avenue
Fountain Valley, CA 92708
Attention: Digna Olmos, Principal Contracts Administrator
Copy: Andrew Brown, Engineering Supervisor

Notice shall be mailed to CONSULTANT at:

BROWN AND CALDWELL
18500 Von Karman Avenue, Suite 800
Irvine, CA 92612
Attention: Mike Puccio, Program Manager

All communication regarding the Task Order, 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.

SECTION 14. 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. OC SAN may also terminate this Agreement for cause but only after providing CONSULTANT written notice of the breach and a period of ten (10) days to cure.

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 13 – NOTICES, above.

SECTION 15. COMPLIANCE

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.

CONSULTANT shall comply with all applicable laws, ordinances, codes, and regulations of Federal, State, and local government in all aspects related to this Agreement and any work completed for OC SAN.

SECTION 16. AGREEMENT EXECUTION AUTHORIZATION

Both OC SAN and CONSULTANT do 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.

SECTION 17. 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.

SECTION 18. 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 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 it may be entitled.

SECTION 19. 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).

SECTION 20. 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" and 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. 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.

SECTION 21. 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. Additionally, in no event shall the cost to defend charged to CONSULTANT exceed CONSULTANT's proportionate percentage of fault.

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.

SECTION 22. COMPLIANCE WITH OC SAN'S POLICIES AND PROCEDURES

CONSULTANT shall be required to comply with all OC SAN policies and procedures. OC SAN requires CONSULTANT and its Subconsultants/Subcontractors to follow and ensure their employees follow all applicable Federal, State, and local regulations as well as OC SAN's safety standards while working at OC SAN locations. CONSULTANT and all of its employees and Subconsultants/Subcontractors, shall adhere to all applicable Contractor Safety Standards attached hereto as Attachment "L".

SECTION 23. GOVERNING LAW

This Agreement 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 Agreement or the performance thereof.

SECTION 24. TIME OF ESSENCE

Time is of the essence in the performance of this Agreement. CONSULTANT shall not be responsible for delays caused by circumstances beyond its reasonable control, including, but not limited to (1) strikes, lockouts, work slowdowns or stoppages or accidents, and (2) acts of God.

SECTION 25. CONFLICT OF INTEREST

CONSULTANT covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the services contemplated by this Agreement. No person having such interest shall be employed by or associated with CONSULTANT.

SECTION 26. CONSULTANT'S OPINION OF COSTS

OC SAN acknowledges that construction estimates, financial analyses and feasibility projections are subject to many influences including, but not limited to, price of labor and materials, unknown or latent conditions of existing equipment or structures, and time or quality of performance by third parties. OC SAN acknowledges that such influences may not be precisely forecasted and are beyond the control of CONSULTANT and that actual costs incurred may vary substantially from the estimates prepared by CONSULTANT. CONSULTANT does not warrant or guarantee the accuracy of construction or development cost estimates.

SECTION 27. 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 hereof.

[Intentionally left blank. Signatures follow on next page.]

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 date first written above.

BROWN AND CALDWELL

By _____
Date _____

Printed Name & Title

ORANGE COUNTY SANITATION DISTRICT

By _____
Chad P. Wanke
Board Chairman
Date _____

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

By _____
Ruth Zintzun
Finance and Procurement Manager
Date _____

Attachments:

Attachment "A" Scope of Work
Attachment "B" Not Used
Attachment "C" Not Attached
Attachment "D" Allowable Direct Costs
Attachment "E" Not Used
Attachment "F" Not Used
Attachment "G" Not Attached
Attachment "H" Proposed Staff Roles
Attachment "I" Not Used
Attachment "J" Not Attached
Attachment "K" Hourly Labor Rate Schedule
Attachment "L" Contractor Safety Standards
Attachment "M" Iran Contracting Act Verification

ATTACHMENT “A”

SCOPE OF WORK

ATTACHMENT "A"

SCOPE OF WORK

**PLAN2024-02
On-Call Planning Studies**

Conduct feasibility studies, condition assessments, conceptual designs, planning studies, master planning, hydraulic modeling, and other engineering work on an as-needed basis for work related to the Orange County Sanitation District's collections system and wastewater treatment facilities.

The types of engineering disciplines and other areas of expertise that are anticipated to be involved in the Agreement may include civil, mechanical, materials (corrosion), structural, electrical, instrumentation and controls (SCADA), architecture, geotechnical, hydraulic modeling, transportation/traffic control, odor control, and land surveying.