

PROFESSIONAL SERVICES AGREEMENT

This AGREEMENT is made and entered into, to be effective this 1st day of November, 2020 by and between:

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

AND

BROWN AND CALDWELL
hereinafter referred to as "CONSULTANT"

RECITALS

WHEREAS, pursuant to a Request for Qualifications ("Underlying RFQ") the Board of Directors of the SANITATION DISTRICT in accordance with the current Ordinance, by action on September 23, 2020 approved the award of a Professional Services Agreement ("AGREEMENT") for CONTRACT NO. PLAN2020-03, On Call Planning Studies to CONSULTANT to provide services for selected projects on a Task Order basis, from November 1, 2020 to October 31, 2021; and

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

WHEREAS, the parties intend by this AGREEMENT to set forth the general terms and conditions that will apply to any specific project for which CONSULTANT is given a Task Order by the SANITATION DISTRICT.

NOW, THEREFORE, the SANITATION DISTRICT and the CONSULTANT mutually agree as follows:

SECTION 1. SCOPE OF AGREEMENT

The SANITATION DISTRICT, 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 a detailed Scope of Work, to be performed on the identified project, and thereafter, upon receipt of a Proposal from the CONSULTANT, may issue a directive Task Order to proceed with the work. The Underlying RFTOP, including the CONSULTANT's Proposal, the Task Order, and all other attachments listed below shall be incorporated by reference and become an operative part of this Agreement, upon execution by the SANITATION DISTRICT as though fully set forth at length herein:

- Executed Task Order inclusive of its Scope of Work;
- The RFTOP, inclusive of the CONSULTANT's Proposal;
- Attachment "A" Scope of Work
- Attachment "D" Allowable Direct Costs
- Attachment "K" Hourly Labor Rate Schedule
- Attachment "L" OCSD Safety Standards

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:

- The terms of this AGREEMENT and any amendments thereto;
- The provisions of any executed Task Order;
- The provisions of the RFTOP;
- Attachment “D” Allowable Direct Costs;
- Attachment “K” Hourly Labor Rate Schedule;
- Attachment “L” OCSD Safety Standards;
- Attachment “A” Scope of Work”

SECTION 2. TASK ORDER ISSUANCE BY SANITATION DISTRICT

The directive Task Order issued by the SANITATION DISTRICT, shall specifically, or by reference to the RFTOP and corresponding Proposal, set forth the specific detailed terms of this AGREEMENT that are to apply to the specific project for which the services will be rendered. Those terms, shall include, but not be limited to, scope, time for performance and compensation.

SECTION 3. TERM

This AGREEMENT shall commence on the effective date of this AGREEMENT, and terminate on October 31, 2021 unless further extended by written agreement by the SANITATION DISTRICT and CONSULTANT. Any work that is required by a Task Order and is not finished by the date of termination shall be continued and completed by the CONSULTANT, and the terms and conditions of this AGREEMENT shall continue in effect for that time. The SANITATION DISTRICT has the option to renew this AGREEMENT twice, each with a one year term, for a maximum contract duration of three (3) years total.

SECTION 4. COMPENSATION

The total compensation, payable to the CONSULTANT pursuant to this AGREEMENT, shall not exceed six hundred thousand dollars (\$600,000) per year in accordance with the term described in Section 3 - TERM. The compensation includes, but is not limited to, fees for professional services (based on individual burdened labor rates and Subconsultant fees), overhead, and profit. The specific amount of compensation payable to the CONSULTANT for services rendered on an individual project, pursuant to a directive Task Order, shall be established for each Task Order and shall not exceed three hundred thousand dollars (\$300,000) per individual Task Order unless authorized by the SANITATION DISTRICT'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 the SANITATION DISTRICT without the SANITATION DISTRICT 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 written Task Orders.

1) Hourly Labor Rate Schedule

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

Hourly Labor Rates shall consist of the:

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 to their employees.

Direct Salary rates for CONSULTANT and its Subconsultants may be adjusted annually on January 1 by mutual agreement of the Parties. Escalation of the salary rate will be in accordance with CPI of LA-Orange County Index. 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 shall remain fixed through the term of this AGREEMENT, inclusive of renewals identified in Section 3 - TERM.

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. The Overhead Rates of CONSULTANT and its Subconsultants shall remain fixed through the term of this AGREEMENT inclusive of any renewals identified in Section 3 - TERM.

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

The SANITATION DISTRICT shall reimburse CONSULTANT and Subconsultants the actual costs of permits and associated fees, travel, licenses, and other services in accordance with Attachment “D” – Allowable Direct Costs, as may be specified in each Task Order proposal. The SANITATION DISTRICT 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 may only be reimbursed by the SANITATION DISTRICT with its prior written approval.

The SANITATION DISTRICT will reimburse the CONSULTANT for reasonable travel and business expenses as described in this Section and further described in Attachment “D” – Allowable Direct Costs 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 the SANITATION DISTRICT can be found on the U.S. General Service Administration website at <http://www.gsa.gov/portal/category/104711#>.

The CONSULTANT shall be responsible for the most economical and practical means of management of reimbursable costs. The SANITATION DISTRICT 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 the SANITATION DISTRICT any excess reimbursements.

Travel and travel arrangements – Any travel involving airfare, overnight stays or multiple day attendance must be approved by the SANITATION DISTRICT in writing, at least fifteen (15) days in advance.

Local Travel is considered travel by the CONSULTANT within the SANITATION DISTRICT 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 the SANITATION DISTRICT for local travel. However, under certain circumstances overnight stay may be allowed at the discretion of the SANITATION DISTRICT based on reasonableness of meeting schedules and the amount of time required for travel by the CONSULTANT. Such determination will be made on a case-by-case basis and at the discretion of the SANITATION DISTRICT.

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 the Attachment "D" – Allowable Direct Costs of this AGREEMENT.

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 the SANITATION DISTRICT 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 incurred by CONSULTANT and its Contractor due to modifications in scope of work resulting from field investigations and field work required by Contract. 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 the SANITATION DISTRICT 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 the SANITATION DISTRICT'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 the CONSULTANT's invoice and monthly progress report. Failure to notify the SANITATION DISTRICT 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 the SANITATION DISTRICT is required prior to the CONSULTANT undertaking any extra work.

C. Method of Payment:

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

D. Task Order Completion

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 the SANITATION DISTRICT a release of all claims against the SANITATION DISTRICT 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 the SANITATION DISTRICT 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.

A CONSULTANT or Subconsultant shall be deemed to have submitted a false claim when the CONSULTANT or Subconsultant: (a) knowingly presents or causes to be presented to an officer or employee of the SANITATION DISTRICT 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 the SANITATION DISTRICT; (c) conspires to defraud the SANITATION DISTRICT by getting

a false claim allowed or paid by the SANITATION DISTRICT; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to the SANITATION DISTRICT; or (e) is a beneficiary of an inadvertent submission of a false claim to the SANITATION DISTRICT, and fails to disclose the false claim to the SANITATION DISTRICT 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 the CONSULTANT's employees and/or Subconsultants 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 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.

The 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 Section 1776 may be deducted from progress payments per Section 1776.

Pursuant to Labor Code Section 1776, the CONSULTANT and Subconsultants shall furnish a copy of all certified payroll records to the SANITATION DISTRICT and/or general public upon request, provided the public request is made through the SANITATION DISTRICT, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the DIR.

The 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).

G. Record of Expenses:

The CONSULTANT shall keep complete and accurate records of all costs and expenses incidental to services covered by this AGREEMENT. These records will be made available to the SANITATION DISTRICT upon request.

H. Reallocation of Total Compensation:

The SANITATION DISTRICT, 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

The CONSULTANT shall not contract with any other person or entity to perform the services required without the written approval of the SANITATION DISTRICT. This AGREEMENT may not be assigned voluntarily, or by operation of law, without the prior written approval of the SANITATION DISTRICT. If the CONSULTANT is permitted to subcontract any part of this

AGREEMENT by the SANITATION DISTRICT, the CONSULTANT shall be responsible to the SANITATION DISTRICT for the acts and omissions of its subcontractor, as it is for persons directly employed. Nothing contained in this AGREEMENT shall create any contractual relationship between any subcontractor and the SANITATION DISTRICT. All persons engaged in the work will be considered employees of the CONSULTANT. The SANITATION DISTRICT will deal directly with and will make all payments to the CONSULTANT.

SECTION 6. CHANGES TO SCOPE OF WORK

In the event of a change in the Scope of Work as requested by the SANITATION DISTRICT, the parties hereto 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 or Professional Services, shall be the property of the SANITATION DISTRICT. The SANITATION DISTRICT'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. The SANITATION DISTRICT 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 the 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, the 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 study or deliverable 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, the CONSULTANT shall deliver to the SANITATION DISTRICT the number of copies specified in the specific Task Order Scope of Work of the final report containing the 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.
- D. The SANITATION DISTRICT 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 the SANITATION DISTRICT or others in performing the CONSULTANT's services under this AGREEMENT.

SECTION 8. INSURANCE

A. General:

- i. Insurance shall be issued and underwritten by insurance companies acceptable to the SANITATION DISTRICT.
- ii. Insurers must have an "A-" Policyholder's Rating, or better, and Financial Rating of at least Class VI11, or better, in accordance with the most current A.M. Best's Guide Rating. However, the SANITATION DISTRICT will accept State Compensation Insurance Fund, for the required policy of Worker's Compensation Insurance subject to the SANITATION DISTRICT's option to require a change in insurer in the event the State Fund financial rating is decreased below "B". Further, the SANITATION DISTRICT 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 the SANITATION DISTRICT or its agent.
- iii. Coverage shall be in effect prior to the commencement of any work under this AGREEMENT.

B. General Liability:

The 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 unless aggregate applies separately to this project (via use of ISO CG 25 03 or 25 04), then aggregate limit = One Million Dollars \$1,000,000 (i.e., ½ the general aggregate. 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 SANITATION DISTRICT 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.

C. Umbrella Excess Liability:

The minimum limits of general liability and Automotive 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 automotive liability.

D. Automotive Vehicle Liability Insurance:

The CONSULTANT shall maintain a policy of Automotive 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) or alternatively, Five Hundred Thousand Dollars (\$500,000) per person for bodily injury and One Million Dollars (\$1,000,000) per accident for bodily injury and Five Hundred Thousand Dollars (\$500,000) per accident for property damage. 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 SANITATION DISTRICT.

F. Worker's Compensation Insurance:

The 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 the SANITATION DISTRICT. 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 "per 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.

SANITATION DISTRICT a certified letter which includes a description of the changes in coverage and/or any increase in deductible or SIR amounts. The certified letter must be sent to the attention of Risk Management, and shall be received by the SANITATION DISTRICT not less than thirty (30) days prior to the effective date of the change(s) if the change would reduce coverage or increase deductibles or SIR amounts or otherwise reduce or limit the scope of insurance coverage provided to the SANITATION DISTRICT.

J. Primary Insurance:

All liability policies shall contain a Primary and Non Contributory Clause. Any other insurance maintained by the SANITATION DISTRICT 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 the SANITATION DISTRICT on the Certificate of Insurance. All deductibles and/or self-insured retentions require approval by the SANITATION DISTRICT. At the option of the SANITATION DISTRICT, either: the insurer shall reduce or eliminate such deductible or self-insured retention as respects the SANITATION DISTRICT; or the CONSULTANT shall provide a financial guarantee satisfactory to the SANITATION DISTRICT guaranteeing payment of losses and related investigations, claim administration and defense expenses. The SANITATION DISTRICT 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:

The CONSULTANT shall be responsible to establish insurance requirements for any Subconsultant hired by the 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 the CONSULTANT maintains higher limits than any minimums shown above, then SANITATION DISTRICT 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 SANITATION DISTRICT, 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 4 - COMPENSATION.

There shall be no substitution of the listed Subconsultants and CONSULTANT's project team members without prior written approval by the SANITATION DISTRICT.

SECTION 10. ENGINEERING REGISTRATION

The 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, requires the services of a registered engineer, such services hereunder will be performed under the direct supervision of registered engineers who are registered in California.

SECTION 11. AUDIT PROVISIONS

- A. SANITATION DISTRICT 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 the SANITATION DISTRICT determines are necessary to discover and verify that the CONSULTANT is in compliance with all requirements under this AGREEMENT. The CONSULTANT shall include the SANITATION DISTRICT's right as described above, in any and all of their subcontracts, and shall ensure that these rights are binding upon all Subconsultants.
- B. SANITATION DISTRICT retains the right to examine CONSULTANT's books, records, documents and any other evidence of procedures and practices that the SANITATION DISTRICT 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 the SANITATION DISTRICT's policy. The CONSULTANT shall make available to the SANITATION DISTRICT for review and audit, all project related accounting records and documents, and any other financial data within 15 days after receipt of notice from the SANITATION DISTRICT. Upon

SANITATION DISTRICT's request, the CONSULTANT shall submit exact duplicates of originals of all requested records to the SANITATION DISTRICT. If an audit is performed, CONSULTANT shall ensure that a qualified employee of the CONSULTANT will be available to assist SANITATION DISTRICT'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 hereto is that of an independent contractor and nothing herein shall be deemed to transform CONSULTANT, its staff, independent contractors, or Subconsultants, agents or employees of the SANITATION DISTRICT and shall obtain no rights to any benefits which accrue to the SANITATION DISTRICT'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 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.

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 the SANITATION DISTRICT at:

ORANGE COUNTY SANITATION DISTRICT
10844 Ellis Avenue
Fountain Valley, CA 92708-7018
Attention: Clarice Marcin, Senior Contracts Administrator
Copy: Adam Nazaroff, Engineering Supervisor

Notice shall be mailed to CONSULTANT at:

Brown and Caldwell
18500 Von Karman Ave, Suite 1100
Irvine, CA 92612
Attention: Mike Puccio, PE

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

SECTION 14. TERMINATION

The SANITATION DISTRICT 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 the SANITATION DISTRICT at the address listed in Section 13 - NOTICES.

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.

The 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 the SANITATION DISTRICT.

SECTION 16. AGREEMENT EXECUTION AUTHORIZATION

Both the SANITATION DISTRICT 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 (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 he 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, the SANITATION DISTRICT informs CONSULTANT that any part of the services fails to meet those standards, CONSULTANT shall, within the time prescribed by the SANITATION DISTRICT, 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 the SANITATION DISTRICT, which approval shall not be unreasonably withheld), protect and hold harmless the SANITATION DISTRICT and all of the SANITATION DISTRICT's officers, directors, employees, CONSULTANT's, 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, attorney's fees, disbursements and court costs, and all other professional, expert or CONSULTANT's fees and costs and the SANITATION DISTRICT's general and administrative expenses; individually, a "Claim"; collectively, "Claims") which may arise, pertain to, or relate 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 the 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 the SANITATION DISTRICT 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.

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 the CONSULTANT, to any extent, then the SANITATION DISTRICT 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.

SECTION 22. COMPLIANCE WITH SANITATION DISTRICT POLICIES AND PROCEDURES

CONSULTANT shall be required to comply with all SANITATION DISTRICT policies and procedures including the OCS D Safety Standards, Attachment "L" as applicable, all of which may be amended from time to time.

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.

While Consultant has made reasonable efforts to incorporate into its plan for the Project any known current project impacts of the COVID-19 pandemic, CONSULTANT has not accounted for, and is not responsible for, unknown future changes due to the COVID-19 pandemic, including, without limitation, additional restrictions by government agencies or others (such as the availability of the site for access or client or consultant staff or others) to the extent they delay or otherwise impact the Project. In that event, CONSULTANT will notify the SANITATION DISTRICT and work in good faith to equitably address any unexpected impacts therefrom.

SECTION 25. CONSULTANT'S OPINION OF COSTS

The SANITATION DISTRICT 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. The SANITATION DISTRICT 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 26. CONFLICT OF INTEREST

The 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 the CONSULTANT.

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 thereof.

IN WITNESS WHEREOF, this AGREEMENT has been executed in the name of the SANITATION DISTRICT by its officers thereunto duly authorized, and by the CONSULTANT, as of the day and year first above written.

BROWN AND CALDWELL

By _____ Date

Printed Name & Title

ORANGE COUNTY SANITATION DISTRICT

By _____
David John Shawver
Chair, Board of Directors Date

By _____
Kelly Lore
Clerk of the Board Date

By _____
Ruth Zintzun
Purchasing and Contracts 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 Attached
 - 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" OCSD Safety Standards