

**SERVICE CONTRACT
Grit & Screenings Removal
Specification No. S-2020-1121BD**

THIS CONTRACT is made and entered into as of the date fully executed below, by and between Orange County Sanitation District, with a principal place of business at 10844 Ellis Avenue, Fountain Valley, CA 92708-7018 (hereinafter referred to as "OCSD") and Denali Water Solutions with a principal place of business at 3031 Franklin Avenue, Riverside, CA 92507 (hereinafter referred to as "Service Provider") collectively referred to as the "Parties".

WITNESSETH

WHEREAS, OCSD desires to temporarily retain the services of Service Provider for Grit & Screenings Removal "Services" as described in Exhibit "A"; and

WHEREAS, OCSD has chosen Service Provider to conduct Services in accordance with Ordinance No. OCSD-52; and

WHEREAS, on May 27, 2020, the Board of Directors of OCSD, by minute order, authorized execution of this Contract between OCSD and Service Provider; and

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

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

1. Introduction

1.1 This Contract and all exhibits hereto (called the "Contract") is made by OCSD and Service Provider. The terms and conditions herein exclusively govern the purchase of Services as described in Exhibit "A".

1.2 Exhibits to this Contract are incorporated by reference and made a part of this Contract as though fully set forth at length herein.

Exhibit "A" Scope of Work
Exhibit "B" Bid
Exhibit "C" Acknowledgement of Insurance Requirements
Exhibit "D" OCSD Safety Standards
Exhibit "E" Human Resources Policies

1.3 In the event of any conflict or inconsistency between the provisions of this Contract and any of the provisions of the exhibits hereto, the provisions of this Contract shall in all respects govern and control.

1.4 The provisions of this Contract may be amended or waived only by a writing executed by authorized representatives of both Parties hereto.

1.5 The various headings in this Contract are inserted for convenience only and shall not affect the meaning or interpretation of this Contract or any paragraph or provision hereof.

1.6 The term "days", when used in the Contract, shall mean calendar days, unless otherwise noted as business days.

- 1.7 OCSD holidays (non-working days) are as follows: New Year's Day, Lincoln's Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve, and Christmas Day.
- 1.8 The term "hours", when used in this Contract, shall be as defined in Exhibit "A".
- 1.9 Service Provider shall provide OCSD with all required premiums and/or overtime work at no charge beyond the price provided under "Compensation" below.
- 1.10 Except as expressly provided otherwise, OCSD accepts no liability for any expenses, losses, or action incurred or undertaken by Service Provider as a result of work performed in anticipation of purchases of said services by OCSD.
2. **Compensation** Compensation to be paid by OCSD to Service Provider for the Services provided under this Contract shall be a total amount not to exceed Five Hundred Fifty-one Thousand Four Hundred Eighty-two Dollars (\$551,482.00).
3. **California Department of Industrial Relations (DIR) Registration and Record of Wages**
 - 3.1 To the extent Service Provider's employees and/or its subcontractors who will perform Work during the design and preconstruction phases of a construction contract or perform work under a maintenance contract for which Prevailing Wage Determinations have been issued by the DIR and as more specifically defined under Labor Code Section 1720 et seq, Service Provider and its subcontractors shall comply with the registration requirements of Labor Code Section 1725.5. Pursuant to Labor Code Section 1771.4, the work is subject to compliance monitoring and enforcement by the DIR.
 - 3.2 The Service Provider and its subcontractors shall maintain accurate payroll records and shall comply with all the provisions of Labor Code Section 1776, and shall submit payroll records to the Labor Commissioner pursuant to Labor Code 1771.4(a)(3). Penalties for non-compliance with the requirements of Section 1776 may be deducted from progress payments per Section 1776.
 - 3.3 Pursuant to Labor Code Section 1776, the Service Provider and its subcontractors shall furnish a copy of all certified payroll records to OCSD and/or general public upon request, provided the public request is made through OCSD, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the Department of Industrial Relations.
 - 3.4 The Service Provider and its subcontractors shall comply with the job site notices posting requirements established by the Labor Commissioner per Title 8, California Code of Regulation Section 16461(e).
4. **Payments and Invoicing**
 - 4.1 OCSD shall pay, net thirty (30) days, upon receipt and approval, by OCSD's Project Manager or designee, of itemized invoices submitted monthly for Services rendered in accordance with Exhibit "A". OCSD, at its sole discretion, shall be the determining party as to whether the Services have been satisfactorily completed.
 - 4.2 Invoices shall be emailed by the Service Provider to OCSD Accounts Payable at APStaff@OCSD.com and "INVOICE" with the Purchase Order Number and S-2020-1121BD, shall be referenced in the subject line.

5. **Audit Rights** Service Provider agrees that, during the term of this Contract and for a period of three (3) years after its termination, OCSD shall have access to and the right to examine any directly pertinent books, documents, and records of Service Provider relating to the invoices submitted by Service Provider pursuant to this Contract.
6. **Scope of Work** Subject to the terms of this Contract, Service Provider shall perform the Services identified in Exhibit "A". Service Provider shall perform said Services in accordance with generally accepted industry and professional standards.
7. **Modifications to Scope of Work** Requests for modifications to the Scope of Work hereunder can be made by OCSD at any time. All modifications must be made in writing and signed by both Parties.
8. **Contract Term** The Services provided under this Agreement shall be for the period of one (1) year commencing on July 1, 2020 and continuing through June 30, 2021.
9. **Renewals**
 - 9.1 OCSD may exercise the option to renew this Contract for up to four (4) one-year periods based upon the criteria set forth in Exhibit "A", under the terms and conditions contained herein. OCSD shall make no obligation to renew nor give reason if it elects not to renew.
 - 9.2 This Contract may be renewed by OCSD Purchase Order.
10. **Extensions** The term of this Contract may be extended only by written instrument signed by both Parties.
11. **Performance** Time is of the essence in the performance of the provisions hereof.
12. **Termination**
 - 12.1 OCSD reserves the right to terminate this Contract for its convenience, with or without cause, in whole or in part, at any time, by written notice from OCSD of intent to terminate. Upon receipt of a termination notice, Service Provider shall immediately discontinue all work under this Contract (unless the notice directs otherwise). OCSD shall thereafter, within thirty (30) days, pay Service Provider for work performed (cost and fee) to the date of termination. Service Provider expressly waives any claim to receive anticipated profits to be earned during the uncompleted portion of this Contract. Such notice of termination shall terminate this Contract and release OCSD from any further fee, cost or claim hereunder by Service Provider other than for work performed to the date of termination.
 - 12.2 OCSD reserves the right to terminate this Contract immediately upon OCSD's determination that Service Provider is not complying with the Scope of Work requirements, if the level of service is inadequate, or any other default of this Contract.
 - 12.3 OCSD may also immediately cancel for default of this Contract in whole or in part by written notice to Service Provider:
 - if Service Provider becomes insolvent or files a petition under the Bankruptcy Act; or
 - if Service Provider sells its business; or
 - if Service Provider breaches any of the terms of this Contract; or
 - if total amount of compensation exceeds the amount authorized under this Contract.

- 12.4 All OCSD property in the possession or control of Service Provider shall be returned by Service Provider to OCSD upon demand, or at the termination of this Contract, whichever occurs first.
13. **Insurance** Service Provider and all subcontractors shall purchase and maintain, throughout the life of this Contract and any periods of warranty or extensions, insurance in amounts equal to the requirements set forth in the signed Acknowledgement of Insurance Requirements (attached hereto and incorporated herein as Exhibit "D"). Service Provider shall not commence work under this Contract until all required insurance is obtained in a form acceptable to OCSD, nor shall Service Provider allow any subcontractor to commence service pursuant to a subcontract until all insurance required of the subcontractor has been obtained. Failure to maintain required insurance coverage shall result in termination of this Contract.
14. **Indemnification and Hold Harmless Provision** Service Provider shall assume all responsibility for damages to property and/or injuries to persons, including accidental death, which may arise out of or be caused by Service Provider's services under this Contract, or by its subcontractor(s) or by anyone directly or indirectly employed by Service Provider, and whether such damage or injury shall accrue or be discovered before or after the termination of the Contract. Except as to the sole active negligence of or willful misconduct of OCSD, Service Provider shall indemnify, protect, defend and hold harmless OCSD, its elected and appointed officials, officers, agents and employees, from and against any and all claims, liabilities, damages or expenses of any nature, including attorneys' fees: (a) for injury to or death of any person or damage to property or interference with the use of property, arising out of or in connection with Service Provider's performance under the Contract, and/or (b) on account of use of any copyrighted or uncopyrighted material, composition, or process, or any patented or unpatented invention, article or appliance, furnished or used under the Contract, and/or (c) on account of any goods and services provided under this Contract. This indemnification provision shall apply to any acts or omissions, willful misconduct, or negligent misconduct, whether active or passive, on the part of Service Provider or anyone employed by or working under Service Provider. To the maximum extent permitted by law, Service Provider's duty to defend shall apply whether or not such claims, allegations, lawsuits, or proceedings have merit or are meritless, or which involve claims or allegations that any of the parties to be defended were actively, passively, or concurrently negligent, or which otherwise assert that the parties to be defended are responsible, in whole or in part, for any loss, damage, or injury. Service Provider agrees to provide this defense immediately upon written notice from OCSD, and with well qualified, adequately insured, and experienced legal counsel acceptable to OCSD.
15. **OCSD Safety Standards** OCSD requires Service Provider and its subcontractor(s) to follow and ensure their employees follow all Federal, State, and local regulations as well as OCSD Safety Standards while working at OCSD locations. If during the course of the Contract it is discovered that OCSD Safety Standards do not comply with Federal, State, or local regulations, then the Service Provider is required to follow the most stringent regulatory requirement at no additional cost to OCSD. Service Provider and all of its employees and subcontractors, shall adhere to all applicable OCSD Safety Standards attached hereto in Exhibit "D" and the Human Resources Policies in Exhibit "E".
16. **Warranties** In addition to the warranties stated in Exhibit "A", the following shall apply:
- 16.1 Manufacturer's standard warranty shall apply. All manufacturer warranties shall commence on the date of acceptance by the OCSD Project Manager or designee of the work as complete.

- 16.2 Service Provider's Warranty (Guarantee): If within a one (1) year period of completion of all work as specified in Exhibit "A", OCSD informs Service Provider that any portion of the Services provided fails to meet the standards required under this Contract, Service Provider shall, within the time agreed to by OCSD and Service Provider, take all such actions as are necessary to correct or complete the noted deficiency(ies) at Service Provider's sole expense.
17. **Force Majeure** Neither party shall be liable for delays caused by accident, flood, acts of God, fire, labor trouble, war, acts of government or any other cause beyond its control, but said party shall use reasonable efforts to minimize the extent of the delay. Work affected by a Force Majeure condition may be rescheduled by mutual consent or may be eliminated from the Contract.
18. **Freight (F.O.B. Destination)** Service Provider assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
19. **Familiarity with Work** By executing this Contract, Service Provider warrants that: 1) it has investigated the work to be performed; 2) it has investigated the site of the work and is aware of all conditions there; and 3) it understands the facilities, difficulties and restrictions of the work under this Contract. Should Service Provider discover any latent or unknown conditions materially differing from those inherent in the work or as represented by OCSD, it shall immediately inform OCSD of this and shall not proceed, except at Service Provider's risk, until written instructions are received from OCSD.
20. **Regulatory Requirements** Service Provider shall perform all work under this Contract in strict conformance with applicable Federal, State, and local regulatory requirements including, but not limited to, 40 CFR 122, 123, 124, 257, 258, 260, 261, and 503, Title 13, 22, 23, 27, and California Water Codes Division 2.
21. **Environmental Compliance** Service Provider shall, at its own cost and expense, comply with all Federal, State, and local environmental laws, regulations, and policies which apply to the Service Provider, its subcontractors, and the Services, including, but not limited to, all applicable Federal, State, and local air pollution control laws and regulations.
22. **Licenses, Permits, Ordinances and Regulations** Service Provider represents and warrants to OCSD that it has obtained all licenses, permits, qualifications, and approvals of whatever nature that are legally required to engage in this work. Any and all fees required by Federal, State, County, City and/or municipal laws, codes and/or tariffs that pertain to the work performed under the terms of this Contract will be paid by Service Provider.
23. **Applicable Laws and Regulations** Service Provider shall comply with all applicable Federal, State, and local laws, rules, and regulations. Service Provider also agrees to indemnify and hold harmless from any and all damages and liabilities assessed against OCSD as a result of Service Provider's noncompliance therewith. Any permission required by law to be included herein shall be deemed included as a part of this Contract whether or not specifically referenced.
24. **Service Provider's Employees Compensation**
- 24.1 **Davis-Bacon Act** - Service Provider will pay and will require all subcontractors to pay all employees on said project a salary or wage at least equal to the prevailing rate of per diem wages as determined by the Secretary of Labor in accordance with the Davis-Bacon Act for each craft or type of worker needed to perform the Contract. The provisions of the Davis-

Bacon Act shall apply only if the Contract is in excess of two thousand dollars (\$2,000.00) and when twenty-five percent (25%) or more of the Contract is funded by Federal assistance. If the aforesaid conditions are met, a copy of the provisions of the Davis-Bacon Act to be complied with are incorporated herein as a part of this Contract and referred to by reference.

- 24.2 General Prevailing Rate – OCSD has been advised by the State of California Director of Industrial Relations of its determination of the general prevailing rate of per diem wages and the general prevailing rate for legal holiday and overtime work in the locality in which the work is to be performed for each craft or type of work needed to execute this Contract, and copies of same are on file in the Engineering Department. The Service Provider agrees that not less than said prevailing rates shall be paid to workers employed on this Contract as required by Labor Code Section 1774 of the State of California. Per California Labor Code 1773.2, OCSD will have on file copies of the prevailing rate of per diem wages at its principal office and at each project site, which shall be made available to any interested party upon request.
- 24.3 Forfeiture For Violation - Service Provider shall, as a penalty to OCSD, forfeit fifty dollars (\$50.00) for each calendar day or portion thereof for each worker paid (either by the Service Provider or any subcontractor under it) less than the prevailing rate of per diem wages as set by the Director of Industrial Relations, in accordance with Sections 1770-1780 of the California Labor Code for the work provided for in this Contract, all in accordance with Section 1775 of the Labor Code of the State of California.
- 24.4 Apprentices – Sections 1777.5, 1777.6, 1777.7 of the Labor Code of the State of California, regarding the employment of apprentices are applicable to this Contract and the Service Provider shall comply therewith if the prime contract involves thirty thousand dollars (\$30,000.00) or more or twenty (20) working days or more; or if contracts of specialty contractors not bidding for work through the general or prime Service Provider are two thousand dollars (\$2,000.00) or more or five (5) working days or more.
- 24.5 Workday – In the performance of this Contract, not more than eight (8) hours shall constitute a day's work, and the Service Provider shall not require more than eight (8) hours of labor in a day from any person employed by it hereunder. Service Provider shall conform to Article 3, Chapter 1, Part 7 (Section 1810 et seq.) of the Labor Code of the State of California and shall forfeit to OCSD as a penalty, the sum of twenty-five dollars (\$25.00) for each worker employed in the execution of this Contract by Service Provider or any subcontractor for each calendar day during which any worker is required or permitted to labor more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one (1) week in violation of said Article. Service Provider shall keep an accurate record showing the name and actual hours worked each calendar day and each calendar week by each worker employed by Service Provider in connection with the project.
- 24.6 Record of Wages; Inspection Service Provider agrees to maintain accurate payroll records showing the name, address, social security number, work classification, straight-time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by it in connection with the project and agrees to require that each of its subcontractors do the same. All payroll records shall be certified as accurate by the applicable Service Provider or subcontractor or its agent having authority over such matters. Service Provider further agrees that its payroll records and those of its subcontractors shall be available to the employee or employee's representative, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards and shall comply with all of the provisions of Labor Code Section 1776, in general. Penalties for non-compliance with the requirements of Section 1776 may be deducted from project payments per the requirements of Section 1776.

- 25. South Coast Air Quality Management District's (SCAQMD) Requirements** It is Service Provider's responsibility that all equipment furnished and installed be in accordance with the latest rules and regulations of the South Coast Air Quality Management District (SCAQMD). All Contract work practices, which may have associated emissions such as sandblasting, open field spray painting or demolition of asbestos containing components or structures, shall comply with the appropriate rules and regulations of the SCAQMD.
- 26. Governing Law** This Contract shall be governed by and interpreted under the laws of the State of California and the Parties submit to jurisdiction in the County of Orange, in the event any action is brought in connection with this Contract or the performance thereof.
- 27. Breach** The waiver of either party of any breach or violation of, or default under, any provision of this Contract, shall not be deemed a continuing waiver by such party of any other provision or of any subsequent breach or violation of this Contract or default thereunder. Any breach by Service Provider to which OCSD does not object shall not operate as a waiver of OCSD's rights to seek remedies available to it for any subsequent breach.
- 28. Remedies** In addition to other remedies available in law or equity, if the Service Provider fails to make delivery of the goods or Services or repudiates its obligations under this Contract, or if OCSD rejects the goods or Services or revokes acceptance of the goods or Services, OCSD may (1) cancel the Contract; (2) recover whatever amount of the purchase price OCSD has paid, and/or (3) "cover" by purchasing, or contracting to purchase, substitute goods or Services for those due from Service Provider. In the event OCSD elects to "cover" as described in (3), OCSD shall be entitled to recover from Service Provider as damages the difference between the cost of the substitute goods or Services and the Contract price, together with any incidental or consequential damages.
- 29. Dispute Resolution**
- 29.1 In the event of a dispute as to the construction or interpretation of this Contract, or any rights or obligations hereunder, the Parties shall first attempt, in good faith, to resolve the dispute by mediation. The Parties shall mutually select a mediator to facilitate the resolution of the dispute. If the Parties are unable to agree on a mediator, the mediation shall be conducted in accordance with the Commercial Mediation Rules of the American Arbitration Agreement, through the alternate dispute resolution procedures of Judicial Arbitration through Mediation Services of Orange County ("JAMS"), or any similar organization or entity conducting an alternate dispute resolution process.
- 29.2 In the event the Parties are unable to timely resolve the dispute through mediation, the issues in dispute shall be submitted to arbitration pursuant to California Code of Civil Procedure, Part 3, Title 9, Sections 1280 et seq. For such purpose, an agreed arbitrator shall be selected, or in the absence of agreement, each party shall select an arbitrator, and those two (2) arbitrators shall select a third. Discovery may be conducted in connection with the arbitration proceeding pursuant to California Code of Civil Procedure Section 1283.05. The arbitrator, or three (3) arbitrators acting as a board, shall take such evidence and make such investigation as deemed appropriate and shall render a written decision on the matter in question. The arbitrator shall decide each and every dispute in accordance with the laws of the State of California. The arbitrator's decision and award shall be subject to review for errors of fact or law in the Superior Court for the County of Orange, with a right of appeal from any judgment issued therein.

30. **Attorney's Fees** If any action at law or inequity or if any proceeding in the form of an Alternative Dispute Resolution (ADR) is necessary to enforce or interpret the terms of this Contract, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which he may be entitled.
31. **Survival** The provisions of this Contract dealing with Payment, Warranty, Indemnity, and Forum for Enforcement, shall survive termination or expiration of this Contract.
32. **Severability** If any section, subsection, or provision of this Contract, or any agreement or instrument contemplated hereby, or the application of such section, subsection, or provision is held invalid, the remainder of this Contract or instrument in the application of such section, subsection or provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, unless the effect of such invalidity shall be to substantially frustrate the expectations of the Parties.
33. **Damage to OCSD's Property** Any of OCSD's property damaged by Service Provider, any subcontractors or by the personnel of either will be subject to repair or replacement by Service Provider at no cost to OCSD.
34. **Disclosure** Service Provider agrees not to disclose, to any third party, data or information generated from this project without the prior written consent from OCSD.
35. **Independent Contractor** The legal relationship between the parties hereto is that of an independent contractor, and nothing herein shall be deemed to make Service Provider an OCSD employee. During the performance of this Contract, Service Provider and its officers, employees, and agents shall act in an independent capacity and shall not act as OCSD's officers, employees, or agents. Service Provider and its officers, employees, and agents shall obtain no rights to any benefits which accrue to OCSD's employees.
36. **Limitations upon Subcontracting and Assignment** Service Provider shall not delegate any duties nor assign any rights under this Contract without the prior written consent of OCSD. Any such attempted delegation or assignment shall be void.
37. **Third Party Rights** Nothing in this Contract shall be construed to give any rights or benefits to anyone other than OCSD and Service Provider.
38. **Non-Liability of OCSD Officers and Employees** No officer or employee of OCSD shall be personally liable to Service Provider, or any successor-in-interest, in the event of any default or breach by OCSD or for any amount which may become due to Service Provider or to its successor, or for breach of any obligation for the terms of this Contract.
39. **Read and Understood** By signing this Contract, Service Provider represents that he has read and understood the terms and conditions of the Contract.
40. **Authority to Execute** The persons executing this Contract on behalf of the Parties warrant that they are duly authorized to execute this Contract and that by executing this Contract, the Parties are formally bound.
41. **Entire Contract** This Contract constitutes the entire agreement of the Parties and supersedes all prior written or oral and all contemporaneous oral agreements, understandings, and negotiations between the Parties with respect to the subject matter hereof.

42. Notices All notices under this Contract must be in writing. Written notice shall be delivered by personal service or sent by registered or certified mail, postage prepaid, return receipt requested, or by any other overnight delivery service which delivers to the noticed destination and provides proof of delivery to the sender. Rejection or other refusal to accept or the inability to deliver because of changed address for which no notice was given as provided hereunder shall be deemed to be receipt of the notice, demand or request sent. All notices shall be effective when first received at the following addresses:

OCSD: Darius Ghazi, Senior Buyer
Orange County Sanitation District
10844 Ellis Avenue
Fountain Valley, CA 92708

Service Provider: Chris Marks, Manager
Denali Water Solutions
3031 Franklin Avenue
Riverside, CA 92507

Each party shall provide the other party written notice of any change in address as soon as practicable.

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

ORANGE COUNTY SANITATION DISTRICT

Dated: _____ By: _____
David John Shawver
Chair, Board of Directors

Dated: _____ By: _____
Kelly A. Lore
Clerk of the Board

Dated: _____ By: _____
Ruth Zintzun
Purchasing & Contracts Manager

DENALI WATER SOLUTIONS

Dated: _____ By: _____

Print Name and Title of Officer

IRS Employer's I.D. Number