



**SPECIAL NOTICE**  
**PUBLIC ATTENDANCE & PARTICIPATION AT PUBLIC MEETINGS**  
***Operations Committee Meeting***  
***Wednesday, July 10, 2024***  
***5:00 p.m.***

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Your participation is always welcome. OC San offers several ways in which to interact during meetings. You will find information as to these opportunities below.

**IN-PERSON MEETING ATTENDANCE**

You may attend the meeting in-person at the following location:

Orange County Sanitation District  
Administration Building  
10844 Ellis Avenue  
Fountain Valley, CA 92708

**ONLINE MEETING PARTICIPATION**

You may join the meeting live via Teams on your computer or similar device or web browser by using the link below:

[Click here to join the meeting](#)

We suggest testing joining a Teams meeting on your device prior to the commencement of the meeting. For recommendations, general guidance on using Teams, and instructions on joining a Teams meeting, [please click here](#).

Please mute yourself upon entry to the meeting. Please raise your hand if you wish to speak during the public comment section of the meeting. The Clerk of the Board will call upon you by using the name you joined with.

Meeting attendees are not provided the ability to make a presentation during the meeting. Please contact the Clerk of the Board at least 48 hours prior to the meeting if you wish to present any items. Additionally, camera feeds may be controlled by the meeting moderator to avoid inappropriate content.

## **HOW TO PARTICIPATE IN THE MEETING BY TELEPHONE**

To join the meeting from your phone: Dial (213) 279-1455  
When prompted, enter the Phone Conference ID: 725 879 268#

All meeting participants may be muted during the meeting to alleviate background noise. If you are muted, please use \*6 to unmute. You may also mute yourself on your device.

Please raise your hand to speak by use \*5, during the public comment section of the meeting. The Clerk of the Board will call upon you by using the last 4 digits of your phone number as identification.

**NOTE: All attendees will be disconnected from the meeting at the beginning of Closed Session. If you would like to return to the Open Session portion of the meeting, please login or dial-in to the Teams meeting again and wait in the Lobby for admittance.**

## **WATCH THE MEETING ONLINE**

The meeting will be available for online viewing at:

<https://ocsd.legistar.com/Calendar.aspx>

## **SUBMIT A COMMENT**

You may submit your comments and questions in writing for consideration in advance of the meeting by using the eComment feature available online at: <https://ocsd.legistar.com/Calendar.aspx> or sending them to [OCSanClerk@ocsan.gov](mailto:OCSanClerk@ocsan.gov) with the subject line "PUBLIC COMMENT ITEM # (insert the item number relevant to your comment)" or "PUBLIC COMMENT NON-AGENDA ITEM".

You may also submit comments and questions for consideration during the meeting by using the eComment feature available online at: <https://ocsd.legistar.com/Calendar.aspx>. The eComment feature will be available for the duration of the meeting.

All written public comments will be provided to the legislative body and may be read into the record or compiled as part of the record.

*For any questions and/or concerns, please contact the Clerk of the Board's office at 714-593-7433. Thank you for your interest in OC San!*

July 3, 2024

**NOTICE OF REGULAR MEETING**

**OPERATIONS COMMITTEE  
ORANGE COUNTY SANITATION DISTRICT**

**Wednesday, July 10, 2024 – 5:00 P.M.**

**Plant No. 1 Administration Building  
10844 Ellis Avenue  
Fountain Valley, CA 92708**

**ACCESSIBILITY FOR THE GENERAL PUBLIC**

Your participation is always welcome. Specific information as to how to participate in this meeting is detailed on the Special Notice attached to this agenda. In general, OC San offers several ways in which to interact during this meeting: you may participate in person, join the meeting live via Teams on your computer or similar device or web browser, join the meeting live via telephone, view the meeting online, and/or submit comments for consideration before or during the meeting.

The Regular Meeting of the Operations Committee of the Orange County Sanitation District will be held at the above location and in the manner indicated on Wednesday, July 10, 2024 at 5:00 p.m.

  
\_\_\_\_\_  
Clerk of the Board

- Serving:*
- Anaheim
  - Brea
  - Buena Park
  - Cypress
  - Fountain Valley
  - Fullerton
  - Garden Grove
  - Huntington Beach
  - Irvine
  - La Habra
  - La Palma
  - Los Alamitos
  - Newport Beach
  - Orange
  - Placentia
  - Santa Ana
  - Seal Beach
  - Stanton
  - Tustin
  - Villa Park
  - County of Orange
  - Costa Mesa Sanitary District
  - Midway City Sanitary District
  - Irvine Ranch Water District
  - Yorba Linda Water District

<b>OPERATIONS COMMITTEE MEETING DATE</b>	<b>BOARD MEETING DATE</b>
<b>07/10/24 *</b>	07/24/24
<b>AUGUST DARK</b>	08/28/24
09/04/24	09/25/24
10/02/24	10/23/24
11/06/24	<b>11/20/24 **</b>
12/04/24	<b>12/18/24 **</b>
<b>JANUARY DARK</b>	01/22/25
02/05/25	02/26/25
03/05/25	03/25/25
04/02/25	04/23/25
05/07/25	05/28/25
06/04/25	06/25/25

***\* Meeting will be held on the second Wednesday of the month***

***\*\* Meeting will be held on the third Wednesday of the month***

## ROLL CALL

### OPERATIONS COMMITTEE Engineering and Operations & Maintenance

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Meeting Date: July 10, 2024

Time: 5:00 p.m.

#### **COMMITTEE MEMBERS (14)**

Pat Burns (Chair)	
Bob Ooten (Vice-Chair)	
Joyce Ahn	
Debbie Baker	
Doug Chaffee	
Stephen Faessel	
Phil Hawkins	
Johnathan Ryan Hernandez	
Stephanie Klopfenstein	
Scott Minikus	
Schelly Sustarsic	
Bruce Whitaker	
Ryan Gallagher (Board Chair)	
Jon Dumitru (Board Vice-Chair)	

#### **OTHERS**

Scott Smith, General Counsel	
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#### **STAFF**

Rob Thompson, General Manager	
Lorenzo Tyner, Assistant General Manager	
Jennifer Cabral, Director of Communications	
Mike Dorman, Director of Engineering	
Laura Maravilla, Director of Human Resources	
Riaz Moinuddin, Director of Operations & Maintenance	
Wally Ritchie, Director of Finance	
Lan Wiborg, Director of Environmental Services	
Kelly Lore, Clerk of the Board	

**ORANGE COUNTY SANITATION DISTRICT**  
**BOARD OF DIRECTORS**  
Complete Roster

Effective 01/23/2024

<b>AGENCY/CITIES</b>	<b>ACTIVE DIRECTOR</b>	<b>ALTERNATE DIRECTOR</b>
Anaheim	Stephen Faessel	Carlos A. Leon
Brea	Christine Marick	Cecilia Hupp
Buena Park	Joyce Ahn	Art Brown
Cypress	Scott Minikus	Bonnie Peat
Fountain Valley	Glenn Grandis	Ted Bui
Fullerton	Bruce Whitaker	Nick Dunlap
Garden Grove	Stephanie Klopfenstein	John O'Neill
Huntington Beach	Pat Burns	Gracey Van Der Mark
Irvine	Farrah N. Khan	Kathleen Treseder
La Habra	Rose Espinoza	Jose Medrano
La Palma	Debbie Baker	Mark I. Waldman
Los Alamitos	Jordan Nefulda	Shelley Hasselbrink
Newport Beach	Brad Avery	Erik Weigand
Orange	Jon Dumitru	John Gyllenhammer
Placentia	Chad Wanke	Ward Smith
Santa Ana	Johnathan Ryan Hernandez	Benjamin Vazquez
Seal Beach	Schelly Sustarsic	Lisa Landau
Stanton	David Shawver	Carol Warren
Tustin	Ryan Gallagher	Austin Lumbard
Villa Park	Robbie Pitts	Jordan Wu

**Sanitary/Water Districts**

Costa Mesa Sanitary District	Bob Ooten	Art Perry
Midway City Sanitary District	Andrew Nguyen	Tyler Diep
Irvine Ranch Water District	John Withers	Douglas Reinhart
Yorba Linda Water District	Phil Hawkins	Tom Lindsey

**County Areas**

Board of Supervisors	Doug Chaffee	Donald P. Wagner
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**OPERATIONS COMMITTEE**  
**Regular Meeting Agenda**  
**Wednesday, July 10, 2024 - 5:00 PM**  
**Board Room**  
**Administration Building**  
**10844 Ellis Avenue**  
**Fountain Valley, CA 92708**  
**(714) 593-7433**

**ACCOMMODATIONS FOR THE DISABLED:** If you require any special disability related accommodations, please contact the Orange County Sanitation District (OC San) Clerk of the Board's office at (714) 593-7433 at least 72 hours prior to the scheduled meeting. Requests must specify the nature of the disability and the type of accommodation requested.

**AGENDA POSTING:** In accordance with the requirements of California Government Code Section 54954.2, this agenda has been posted outside the main gate of the OC San's Administration Building located at 10844 Ellis Avenue, Fountain Valley, California, and on the OC San's website at [www.ocsan.gov](http://www.ocsan.gov) not less than 72 hours prior to the meeting date and time above. All public records relating to each agenda item, including those distributed less than 72 hours prior to the meeting to a majority of the Board of Directors, are available for public inspection with the Clerk of the Board.

**AGENDA DESCRIPTION:** The agenda provides a brief general description of each item of business to be considered or discussed. The recommended action does not indicate what action will be taken. The Board of Directors may take any action which is deemed appropriate.

**MEETING RECORDING:** A recording of this meeting is available within 24 hours after adjournment of the meeting at <https://ocsd.legistar.com/Calendar.aspx> or by contacting the Clerk of the Board.

**NOTICE TO DIRECTORS:** To place items on the agenda for a Committee or Board Meeting, the item must be submitted to the Clerk of the Board: Kelly A. Lore, MMC, (714) 593-7433 / [klore@ocsan.gov](mailto:klore@ocsan.gov) at least 14 days before the meeting. For any questions on the agenda, Board members may contact staff at:

General Manager: Rob Thompson, [rthompson@ocsan.gov](mailto:rthompson@ocsan.gov) / (714) 593-7110  
Asst. General Manager: Lorenzo Tyner, [ltyner@ocsan.gov](mailto:ltyner@ocsan.gov) / (714) 593-7550  
Director of Communications: Jennifer Cabral, [jcabral@ocsan.gov](mailto:jcabral@ocsan.gov) / (714) 593-7581  
Director of Engineering: Mike Dorman, [mdorman@ocsan.gov](mailto:mdorman@ocsan.gov) / (714) 593-7014  
Director of Environmental Services: Lan Wiborg, [lwiborg@ocsan.gov](mailto:lwiborg@ocsan.gov) / (714) 593-7450  
Director of Finance: Wally Ritchie, [writchie@ocsan.gov](mailto:writchie@ocsan.gov) / (714) 593-7570  
Director of Human Resources: Laura Maravilla, [lmavilla@ocsan.gov](mailto:lmavilla@ocsan.gov) / (714) 593-7007  
Director of Operations & Maintenance: Riaz Moinuddin, [rmoinuddin@ocsan.gov](mailto:rmoinuddin@ocsan.gov) / (714) 593-7269

**CALL TO ORDER****PLEDGE OF ALLEGIANCE****ROLL CALL AND DECLARATION OF QUORUM:**

Clerk of the Board

**PUBLIC COMMENTS:**

*Your participation is always welcome. Specific information as to how to participate in a meeting is detailed in the Special Notice attached to this agenda. In general, OC San offers several ways in which to interact during meetings: you may participate in person, join the meeting live via Teams on your computer or similar device or web browser, join the meeting live via telephone, view the meeting online, and/or submit comments for consideration before or during the meeting.*

**REPORTS:**

*The Committee Chairperson and the General Manager may present verbal reports on miscellaneous matters of general interest to the Directors. These reports are for information only and require no action by the Directors.*

**CONSENT CALENDAR:**

*Consent Calendar Items are considered to be routine and will be enacted, by the Committee, after one motion, without discussion. Any items withdrawn from the Consent Calendar for separate discussion will be considered in the regular order of business.*

**1. APPROVAL OF MINUTES [2024-3677](#)****RECOMMENDATION:**

Approve minutes of the Regular meeting of the Operations Committee held June 5, 2024.

**Originator:** Kelly Lore

**Attachments:** [Agenda Report](#)  
[06-05-2024 Operations Committee Minutes](#)

**2. TRAFFIC SIGNAL INSTALLATION AT ELLIS AVENUE AND MT. LANGLEY STREET INTERSECTION, PROJECT NO. FR1-0020 [2023-3248](#)**

**RECOMMENDATION:** Recommend to the Board of Directors to:

- A. Award a Construction Contract Agreement to Asplundh Construction, LLC for Traffic Signal Installation at Ellis Avenue and Mt. Langley Street Intersection, Project No. FR1-0020, for a total amount not to exceed \$746,250; and
- B. Approve a contingency of \$74,625 (10%).



**Originator:** Mike Dorman

**Attachments:** [Agenda Report](#)  
[Construction Contract Agreement - FR1-0020](#)

**3. HVAC REPLACEMENTS AT PLANT NOS. 1 AND 2, PROJECT NO. [2024-3668](#)  
FE23-06**

**RECOMMENDATION:** Recommend to the Board of Directors to:

- A. Approve a Purchase Order Contract to ACCO Engineered Systems, Inc. for the HVAC Replacements at Plant Nos. 1 and 2, Project No. FE23-06, utilizing the Omnia Cooperative Purchasing Agreement, Contract Number #02-73, for a total amount not to exceed \$1,698,204; and
- B. Approve a contingency of \$169,820 (10%).

**Originator:** Mike Dorman

**Attachments:** [Agenda Report](#)  
[Supplemental Attachment - FE23-06](#)

**4. WARNER AVENUE VAULT COVER IMPROVEMENTS, PROJECT NO. [2023-2958](#)  
FRC-0010**

**RECOMMENDATION:** Recommend to the Board of Directors to:

- A. Receive and file Bid Tabulation and Recommendation for Warner Avenue Vault Cover Improvements, Project No. FRC-0010;
- B. Award a Construction Contract Agreement to Minako America Corporation dba Minco Construction for Warner Avenue Vault Cover Improvements, Project No. FRC-0010, for a total amount not to exceed \$977,000; and
- C. Approve a contingency of \$97,700 (10%).

**Originator:** Mike Dorman

**Attachments:** [Agenda Report](#)  
[Construction Contract Agreement - FRC-0010](#)

**5. INDUSTRIAL CLEANING SERVICES, SPECIFICATION NO. [2024-3661](#)  
S-2020-1184BD, CONTINGENCY INCREASE**

**RECOMMENDATION:** Recommend to the Board of Directors to:

Approve a contingency increase of \$216,050 (31%) to the existing Service Contract with Performance Pipeline Technologies Inc., dba Sanitation Systems, for Industrial Cleaning Services, Specification No. S-2020-1184BD, for a total contract amount not to

exceed \$694,500 and a new total contingency of \$285,500 (41%) for the period of January 1, 2024 through December 31, 2024.

**Originator:** Riaz Moinuddin

**Attachments:** [Agenda Report](#)

### **NON-CONSENT:**

**6. DIGESTER P AND R DOME TENDON REPAIR, CONTRACT NO. [2024-3410](#)  
P2-137A**

**RECOMMENDATION:** Recommend to the Board of Directors to:

- A. Receive and file Bid Tabulation and Recommendation for Digester P and R Dome Tendon Repair, Contract No. P2-137A;
- B. Award a Construction Contract Agreement to Structural Preservation Systems, LLC for Digester P and R Dome Tendon Repair, Contract No. P2-137A as part of Digesters Rehabilitation at Plant No. 2, Project No. P2-137, for a total amount not to exceed \$2,597,864; and
- C. Approve a contingency of \$259,786 (10%).

**Originator:** Mike Dorman

**Attachments:** [Agenda Report](#)  
[Construction Contract Agreement - P2-137A](#)  
[Presentation - P2-137A Digester P and R Tendon Repair](#)

**7. DIGESTER P AND R DOME TENDON REPAIR, CONTRACT NO. [2024-3411](#)  
P2-137A**

**RECOMMENDATION:**

- A. Approve a Professional Construction Services Agreement with CDM Smith Inc. to provide construction support services for Digester P and R Dome Tendon Repair, Contract No. P2-137A, as part of Digesters Rehabilitation at Plant No. 2, Project No. P2-137, for a total amount not to exceed \$209,000; and
- B. Approve a contingency of \$20,900 (10%).

**Originator:** Mike Dorman

**Attachments:** [Agenda Report](#)  
[Professional Construction Services Agreement - P2-137A](#)

8. **REDHILL RELIEF SEWER RELOCATION AT STATE ROUTE 55, PROJECT NO. FE18-13** [2024-3646](#)

RECOMMENDATION: Recommend to the Board of Directors to:

Approve a construction contingency increase of \$464,730 (21%) to the existing construction contract with SRK Engineering, Inc. for Redhill Relief Sewer Relocation at State Route 55, Project FE18-13, for a total contract amount not to exceed \$2,213,000 and a total construction contingency of \$796,680 (36%), with all costs to be reimbursed by the Orange County Transportation Authority.

**Originator:** Mike Dorman

**Attachments:** [Agenda Report](#)

9. **ORANGE COUNTY SANITATION DISTRICT NEW OCEAN MONITORING VESSEL** [2024-3689](#)

RECOMMENDATION: Recommend to the Board of Directors to:

- A. Approve an Agreement to Design and Build an Ocean Monitoring Vessel to All American Marine, Inc. (AAM) for the purchase of a 65-foot (overall length) aluminum catamaran design ocean monitoring vessel with a plug-in hybrid propulsion system for a total amount not to exceed \$9,206,149; and
- B. Approve a contingency of \$920,615 (10%).

**Originator:** Lan Wiborg

**Attachments:** [Agenda Report](#)  
[Agreement - Ocean Monitoring Vessel - DRAFT](#)  
[Presentation - New Ocean Monitoring Vessel](#)

**INFORMATION ITEMS:**

None.

**DEPARTMENT HEAD REPORTS:**

**CLOSED SESSION:**

None.

**OTHER BUSINESS AND COMMUNICATIONS OR SUPPLEMENTAL AGENDA ITEMS, IF ANY:**

**BOARD OF DIRECTORS INITIATED ITEMS FOR A FUTURE MEETING:**

At this time Directors may request staff to place an item on a future agenda.

**ADJOURNMENT:**

Adjourn the meeting until the Regular Meeting of the Operations Committee on September 4, 2024 at 5:00 p.m.



# OPERATIONS COMMITTEE

Administration Building  
10844 Ellis Avenue  
Fountain Valley, CA 92708  
(714) 593-7433

## Agenda Report

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**File #:** 2024-3677

**Agenda Date:** 7/10/2024

**Agenda Item No:** 1.

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**FROM:** Robert Thompson, General Manager  
Originator: Kelly A. Lore, Clerk of the Board

**SUBJECT:**

**APPROVAL OF MINUTES**

**GENERAL MANAGER'S RECOMMENDATION**

RECOMMENDATION:

Approve minutes of the Regular meeting of the Operations Committee held June 5, 2024.

**BACKGROUND**

In accordance with the Board of Directors Rules of Procedure, an accurate record of each meeting will be provided to the Directors for subsequent approval at the following meeting.

**RELEVANT STANDARDS**

- Resolution No. OC SAN 22-37

**ATTACHMENT**

*The following attachment(s) may be viewed on-line at the OC San website ([www.ocsan.gov](http://www.ocsan.gov)) with the complete agenda package:*

- June 5, 2024 Operations Committee meeting minutes



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**CALL TO ORDER**

A regular meeting of the Operations Committee of the Orange County Sanitation District was called to order by Committee Chairman Jon Dumitru on Wednesday, June 5, 2024 at 5:00 p.m. in the Administration Building of the Orange County Sanitation District. Director Phil Hawkins led the pledge of allegiance.

**ROLL CALL AND DECLARATION OF QUORUM:**

Assistant Clerk of the Board Jackie Castro declared a quorum present as follows:

- PRESENT:** Joyce Ahn, Debbie Baker, Doug Chaffee, Jon Dumitru, Ryan Gallagher, Stephen Faessel, Phil Hawkins, Scott Minikus, Robert Ooten, Schelly Sustarsic, Chad Wanke and Bruce Whitaker
- ABSENT:** Johnathan Ryan Hernandez and Stephanie Klopfenstein

**STAFF PRESENT:** Rob Thompson, General Manager; Lorenzo Tyner, Assistant General Manager; Mike Dorman, Director of Engineering; Riaz Moinuddin, Director of Operations and Maintenance; Wally Ritchie, Director of Finance; Lan Wiborg, Director of Environmental Services; Jackie Castro, Assistant Clerk of the Board; Jon Bradley; Jennifer Cabral; Mortimer Caparas; Raul Cuellar; Thys DeVries; Martin Dix; Justin Fenton; Al Garcia; Tina Knapp; Tom Lam; Victoria Pilko; Valerie Ratto; Perla Rodriguez; Kevin Schuler; Don Stokes; Brian Waite; and Ruth Zintzun were present in the Board Room. Charles Falzone was present telephonically.

**OTHERS PRESENT:** Brad Hogin, General Counsel, and Linda Whitaker were present in the Board Room. Daniel Gary was present telephonically.

**PUBLIC COMMENTS:**

None.

Ms. Castro announced that a PowerPoint presentation for Item No. 9 was received after publication of the agenda and was distributed to the Committee and made available to the public today.

**REPORTS:**

Chair Dumitru stated that the July Operations Committee meeting will be held one week later, on July 10, due to the Independence Day holiday.

**CONSENT CALENDAR:****1. APPROVAL OF MINUTES**[2024-3638](#)**Originator:** Kelly Lore

MOVED, SECONDED, AND DULY CARRIED TO:

Approve minutes of the Regular meeting of the Operations Committee held May 1, 2024.

**AYES:** Joyce Ahn, Debbie Baker, Doug Chaffee, Jon Dumitru, Ryan Gallagher, Stephen Faessel, Phil Hawkins, Scott Minikus, Robert Ooten, Schelly Sustarsic, Chad Wanke and Bruce Whitaker**NOES:** None**ABSENT:** Johnathan Ryan Hernandez and Stephanie Klopfenstein**ABSTENTIONS:** None**2. ENGINEERING PROGRAM CONTRACT PERFORMANCE REPORT**[2024-3415](#)**Originator:** Mike Dorman

MOVED, SECONDED, AND DULY CARRIED TO: Recommend to the Board of Directors to:

Receive and file the Engineering Program Contract Performance Report for the period ending March 31, 2024.

**AYES:** Joyce Ahn, Debbie Baker, Doug Chaffee, Jon Dumitru, Ryan Gallagher, Stephen Faessel, Phil Hawkins, Scott Minikus, Robert Ooten, Schelly Sustarsic, Chad Wanke and Bruce Whitaker**NOES:** None**ABSENT:** Johnathan Ryan Hernandez and Stephanie Klopfenstein**ABSTENTIONS:** None**3. TRICKLING FILTER C CENTER MAST ASSEMBLY REPLACEMENT  
AT PLANT NO. 2, PROJECT NO. MP2-019**[2024-3605](#)**Originator:** Riaz Moinuddin

MOVED, SECONDED, AND DULY CARRIED TO: Recommend to the Board of Directors to:

A. Approve a Sole Source General Services Contract to Jamison Engineering Contractors, Inc. for Trickling Filter C Center Mast Assembly Replacement at Plant No. 2, Project No. MP2-019, for a total amount not to exceed \$274,800 and;

B. Approve a contingency of \$27,480 (10%).

**AYES:** Joyce Ahn, Debbie Baker, Doug Chaffee, Jon Dumitru, Ryan Gallagher, Stephen Faessel, Phil Hawkins, Scott Minikus, Robert Ooten, Schelly Sustarsic, Chad Wanke and Bruce Whitaker

**NOES:** None

**ABSENT:** Johnathan Ryan Hernandez and Stephanie Klopfenstein

**ABSTENTIONS:** None

**4. TELESCOPIC BOOM LIFT REPLACEMENT**

[2024-3614](#)

**Originator:** Riaz Moinuddin

MOVED, SECONDED, AND DULY CARRIED TO:

A. Approve a purchase order to Pape Material Handling, Inc. for the purchase of one (1) Telescopic Boom Lift using the Sourcewell Cooperative Contract for an amount not to exceed \$179,433; and

B. Approve a contingency of \$8,972 (5%).

**AYES:** Joyce Ahn, Debbie Baker, Doug Chaffee, Jon Dumitru, Ryan Gallagher, Stephen Faessel, Phil Hawkins, Scott Minikus, Robert Ooten, Schelly Sustarsic, Chad Wanke and Bruce Whitaker

**NOES:** None

**ABSENT:** Johnathan Ryan Hernandez and Stephanie Klopfenstein

**ABSTENTIONS:** None

**NON-CONSENT:**

**5. DIGESTER C, D, F, AND G MECHANICAL REHABILITATION AT PLANT NO. 2, PROJECT NO. FE20-02**

[2023-2781](#)

**Originator:** Mike Dorman

MOVED, SECONDED, AND DULY CARRIED TO: Recommend to the Board of Directors to:

A. Receive and file Bid Tabulation and Recommendation for Digester C, D, F, and G Mechanical Rehabilitation at Plant No. 2, Project No. FE20-02;

B. Award a Construction Contract Agreement to J.F. Shea Construction, Inc. for Digester C, D, F, and G Mechanical Rehabilitation at Plant No. 2, Project No. FE20-02, for a total amount not to exceed \$3,694,000; and

C. Approve a contingency of \$369,400 (10%).

**AYES:** Joyce Ahn, Debbie Baker, Doug Chaffee, Jon Dumitru, Ryan Gallagher, Stephen Faessel, Phil Hawkins, Scott Minikus, Robert Ooten, Schelly Sustarsic, Chad Wanke and Bruce Whitaker

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**NOES:** None

**ABSENT:** Johnathan Ryan Hernandez and Stephanie Klopfenstein

**ABSTENTIONS:** None

**6. SUNFLOWER PUMP REPLACEMENT AT PLANT NO. 1, PROJECT [2024-3640](#)  
NO. FE19-04**

**Originator:** Mike Dorman

MOVED, SECONDED, AND DULY CARRIED TO: Recommend to the Board of Directors to:

Approve a contingency increase of \$318,480 (15%) to the construction contract with GSE Construction Company Inc. for Sunflower Pump Replacement at Plant No. 1, Project No. FE19-04, for a total construction contingency of \$530,800 (25%).

**AYES:** Joyce Ahn, Debbie Baker, Doug Chaffee, Jon Dumitru, Ryan Gallagher, Stephen Faessel, Phil Hawkins, Scott Minikus, Robert Ooten, Schelly Sustarsic, Chad Wanke and Bruce Whitaker

**NOES:** None

**ABSENT:** Johnathan Ryan Hernandez and Stephanie Klopfenstein

**ABSTENTIONS:** None

**7. OCEAN OUTFALL SYSTEM REHABILITATION, PROJECT NO. J-117 [2024-3635](#)**

**Originator:** Mike Dorman

Mr. Dorman provided a PowerPoint presentation regarding the Ocean Outfall System Rehabilitation project. The presentation included an overview of the rehab and new pump stations, the project scope, electrical control and network, the construction schedule, the additional scope to date, and the recommendation.

MOVED, SECONDED, AND DULY CARRIED TO: Recommend to the Board of Directors to:

Approve a contingency increase of \$727,933 (8.5%) to the Professional Construction Services Agreement with Brown and Caldwell for Ocean Outfall System Rehabilitation, Project No. J-117, Outfall Low Flow Pump Station, Contract No. J-117B, for a new total contingency not to exceed \$1,584,324 (18.5%).

**AYES:** Joyce Ahn, Debbie Baker, Doug Chaffee, Jon Dumitru, Ryan Gallagher, Stephen Faessel, Phil Hawkins, Scott Minikus, Robert Ooten, Schelly Sustarsic, Chad Wanke and Bruce Whitaker

**NOES:** None

**ABSENT:** Johnathan Ryan Hernandez and Stephanie Klopfenstein

**ABSTENTIONS:** None

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8. **HEADQUARTERS COMPLEX AT PLANT NO. 1, PROJECT NO. P1-128** [2024-3491](#)

**Originator:** Mike Dorman

Mr. Dorman introduced Engineering Manager Raul Cuellar who provided a PowerPoint presentation regarding the Headquarters Complex at Plant No. 1 project. The presentation included a construction update, the contract status, a summary of changes to date, the major changes, the contingency increase, and the recommendation.

MOVED, SECONDED, AND DULY CARRIED TO: Recommend to the Board of Directors to:

- A. Approve a project budget increase of \$1,500,000 for Headquarters Complex at Plant No. 1, Project No. P1-128 for a new total project budget of \$171,000,000; and
- B. Approve a contingency increase of \$1,538,175 (1.5%) to the existing construction contract with Swinerton Builders for Headquarters Complex at Plant No. 1, Project No. P1-128A, for a total contingency of \$6,665,424 (6.5%).

**AYES:** Joyce Ahn, Debbie Baker, Doug Chaffee, Jon Dumitru, Ryan Gallagher, Stephen Faessel, Phil Hawkins, Scott Minikus, Robert Ooten, Schelly Sustarsic, Chad Wanke and Bruce Whitaker

**NOES:** None

**ABSENT:** Johnathan Ryan Hernandez and Stephanie Klopfenstein

**ABSTENTIONS:** None

**INFORMATION ITEMS:**

9. **FY 2024-25 AND 2025-26 BUDGET PRESENTATION** [2024-3384](#)

**Originator:** Wally Ritchie

Director of Finance Wally Ritchie introduced the item and introduced Finance and Procurement Manager Ruth Zintzun who provided a PowerPoint presentation regarding the FY 2024-25 and FY 2025-26 Budget. The presentation included an overview of revenues, expenses, the proposed FY 2024-25 net CIP, the 20-year net CIP, and debt service. Mr. Ritchie presented the remaining slides which included an overview of cash flow, a summary of the FY 2024-25 and FY 2025-26 budget, and key meeting dates.

ITEM RECEIVED AS AN:

Information Item.

Director Bruce Whitaker left the meeting at 5:33 p.m.

**10. CRITICAL ASSET IDENTIFICATION AND PROCUREMENT RISK MITIGATION**

[2024-3637](#)

**Originator:** Mike Dorman

Mr. Dorman introduced the item and introduced Engineering Manager Justin Fenton who provided a PowerPoint presentation regarding critical asset identification and procurement risk mitigation which included an overview of the warehouse and supply chain, general approach, a summary of results, and next steps.

ITEM RECEIVED AS AN:

Information Item.

**DEPARTMENT HEAD REPORTS:**

General Manager Rob Thompson invited the Committee members to the OC San Open House on Saturday, June 8 at 9:00 a.m. at the new Headquarters Building.

**CLOSED SESSION:**

None.

**OTHER BUSINESS AND COMMUNICATIONS OR SUPPLEMENTAL AGENDA ITEMS, IF ANY:**

None.

**BOARD OF DIRECTORS INITIATED ITEMS FOR A FUTURE MEETING:**

None.

**ADJOURNMENT:**

Chair Dumitru declared the meeting adjourned at 5:44 p.m. to the next Regular Operations Committee meeting to be held on Wednesday, July 10, 2024 at 5:00 p.m.

Submitted by:

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Jackie Castro, CMC  
Assistant Clerk of the Board



# OPERATIONS COMMITTEE

Administration Building  
10844 Ellis Avenue  
Fountain Valley, CA 92708  
(714) 593-7433

## Agenda Report

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**File #:** 2023-3248

**Agenda Date:** 7/10/2024

**Agenda Item No:** 2.

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**FROM:** Robert Thompson, General Manager  
Originator: Mike Dorman, Director of Engineering

**SUBJECT:**

**TRAFFIC SIGNAL INSTALLATION AT ELLIS AVENUE AND MT. LANGLEY STREET INTERSECTION, PROJECT NO. FR1-0020**

**GENERAL MANAGER'S RECOMMENDATION**

RECOMMENDATION: Recommend to the Board of Directors to:

- A. Award a Construction Contract Agreement to Asplundh Construction, LLC for Traffic Signal Installation at Ellis Avenue and Mt. Langley Street Intersection, Project No. FR1-0020, for a total amount not to exceed \$746,250; and
- B. Approve a contingency of \$74,625 (10%).

**BACKGROUND**

Orange County Sanitation District (OC San) constructed the new Headquarters Building on the north side of Ellis Avenue, bringing a sizable influx of OC San vehicles and commuters to and from Ellis Avenue without the protection of a traffic light.

In accordance with a cooperative agreement between OC San and the City of Fountain Valley, OC San will be responsible for the design and construction of the traffic signal project at OC San's cost and the City of Fountain Valley will accept ownership and maintenance of the traffic signal.

**RELEVANT STANDARDS**

- Comply with California Public Contract Code Section 20103.8, award construction contract to lowest responsive, responsible bidder
- Protect public safety
- Maintain positive employer-employee relations
- Provide a safe and collegial workplace

**PROBLEM**

Drivers leaving the Headquarters Building face difficulty accessing Ellis Avenue due to heavy cross traffic at high speed, especially during peak hours. This is compounded by increased traffic volume leaving the facility.

## PROPOSED SOLUTION

The project will install three traffic signals at the 3-way 'T' intersection, including protected left turns, new pedestrian crosswalks, and signals for pedestrians crossing Mt. Langley Street and Ellis Avenue. This traffic signal would provide OC San staff the safety to turn onto Ellis Avenue from Mt. Langley Street. These improvements aim to make the area more accessible for staff driving onto Ellis Avenue and safe for pedestrians.

## TIMING CONCERNS

Delaying this action increases the risk of traffic accidents, particularly when exiting onto eastbound Ellis Avenue.

## RAMIFICATIONS OF NOT TAKING ACTION

If the traffic signal is not installed, the safety of staff will be compromised, particularly when exiting onto eastbound Ellis Avenue.

## PRIOR COMMITTEE/BOARD ACTIONS

June 2023 - Approved the Cooperative Agreement between Orange County Sanitation District and the City of Fountain Valley for installation of a traffic signal and authorized its execution and implementation.

## ADDITIONAL INFORMATION

OC San advertised Project No. FR1-0020 for bids on March 5, 2024, and six sealed bids were received on April 10, 2024. A summary of the bid opening follows:

Engineer's Estimate	\$ 900,000
<u>Bidder</u>	<u>Amount of Bid</u>
Asplundh Construction, LLC	\$ 746,250
DBX, Inc.	\$ 823,000
Elecnor Belco Electric, Inc.	\$ 874,888
Comet Electric, Inc.	\$ 885,500
International Line Builders, Inc.	\$ 994,982
Minako America Corporation	\$ 1,276,000

The bids were evaluated in accordance with OC San's policies and procedures. A notice was sent to all bidders on June 13, 2024, informing them of the intent of OC San staff to recommend award of the Construction Contract Agreement to Asplundh Construction, LLC.

Staff recommends awarding a Construction Contract Agreement to the lowest responsive and responsible bidder, Asplundh Construction, LLC., for a total amount not to exceed \$746,250.

**CEQA**

The project is exempt from CEQA under the Class 1 categorical exemptions set forth in California Code of Regulations section 15301. A Notice of Exemption will be filed with the OC Clerk-Recorder after the OC San's Board of Directors approval of the Construction Contract Agreement.

**FINANCIAL CONSIDERATIONS**

This request complies with the authority levels of OC San's Purchasing Ordinance. This item has been budgeted (Budget FY 2024-25 and 2025-26, Section 5, Page 3, Repairs and Maintenance) and the budget is sufficient for the recommended action.

**ATTACHMENT**

*The following attachment(s) may be viewed on-line at the OC San website ([www.ocsan.gov](http://www.ocsan.gov)) with the complete agenda package:*

- Construction Contract Agreement

GS:lb

**PART A**  
**CONTRACT AGREEMENT**

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CONTRACT AGREEMENT  
ORANGE COUNTY SANITATION DISTRICT

**PROJECT NO. FR1-0020**

**TRAFFIC SIGNAL INSTALLATION AT ELLIS AVENUE AND MT. LANGLEY STREET  
INTERSECTION**

THIS AGREEMENT is made and entered into, to be effective, this July 24, 2024, by and between Asplundh Construction LLC, hereinafter referred to as "CONTRACTOR" and the Orange County Sanitation District, hereinafter referred to as "OC SAN".

WITNESSETH

That for and in consideration of the promises and agreements hereinafter made and exchanged, OC SAN and CONTRACTOR agree as follows:

**SECTION – 1      GENERAL**

CONTRACTOR certifies and agrees that all the terms, conditions and obligations of the Contract Documents as hereinafter defined, the location of the job site, and the conditions under which the Work is to be performed have been thoroughly reviewed, and enters into this Contract based upon CONTRACTOR's investigation of all such matters and is in no way relying upon any opinions or representations of OC SAN. It is agreed that this Contract represents the entire agreement. It is further agreed that the Contract Documents are each incorporated into this Contract by reference, with the same force and effect as if the same were set forth at length herein, and that CONTRACTOR and its Subcontractors, if any, will be and are bound by any and all of said Contract Documents insofar as they relate in any part or in any way, directly or indirectly, to the Work covered by this Contract.

A. Contract Documents Order of Precedence

“Contract Documents” refers to those documents identified in the definition of “Contract Documents” in the General Conditions, “Definitions”.

1. In the event of a conflict between one Contract Document and any of the other Contract Documents, the provisions in the document highest in precedence shall be controlling. The order of precedence of the Contract Documents is as follows:
  - a. Supplemental Agreements – the last in time being the first in precedence
  - b. Addenda issued prior to the date for submittal of Bids – the last in time being the first in precedence
  - c. Contract Agreement
  - d. Permits and other regulatory requirements
  - e. Special Provisions
  - f. General Conditions (GC)
  - g. Notice Inviting Bids and Instruction to Bidders
  - h. Geotechnical Baseline Report (GBR), if attached as a Contract Document
  - i. Plans and Specifications – in these documents the order of precedence shall be:
    - i. Specifications (Divisions 01-17)
    - ii. Plans
    - iii. General Requirements (GR)
    - iv. Standard Drawings and Typical Details
  - j. CONTRACTOR's Bid
2. In the event of a conflict between terms within an individual Contract Document, the conflict shall be resolved by applying the following principles as appears applicable:
  - a. Figured dimensions on the Contract Documents shall govern. Dimensions not specified shall be as directed by the ENGINEER. Details not shown or specified

shall be the same as similar parts that are shown or specified, or as directed. Full-size details shall take precedence over scale Drawings as to shape and details of construction. Specifications shall govern as to material and workmanship.

- b. The Contract Documents calling for the higher quality material or workmanship shall prevail. Materials or Work described in words, which so applied, have a well-known technical or trade meaning shall be deemed to refer to such recognized standards. In the event of any discrepancy between any Drawings and the figures thereon, the figures shall be taken as correct.
- c. Scale Drawings, full-size details, and Specifications are intended to be fully complementary and to agree. Should any discrepancy between Contract Documents come to the CONTRACTOR's attention, or should an error occur in the efforts of others, which affect the Work, the CONTRACTOR shall notify the ENGINEER, in writing, at once. In the event any doubts or questions arise with respect to the true meaning of the Contract Documents, reference shall be made to the ENGINEER whose written decision shall be final. If the CONTRACTOR proceeds with the Work affected without written instructions from the ENGINEER, the CONTRACTOR shall be fully responsible for any resultant damage or defect.
- d. Anything mentioned in the Specifications and not indicated in the Plans, or indicated in the Plans and not mentioned in the Specifications, shall be of like effect as if indicated and mentioned in both. In case of discrepancy in the Plans or Specifications, the matter shall be immediately submitted to OC SAN's ENGINEER, without whose decision CONTRACTOR shall not adjust said discrepancy save only at CONTRACTOR's own risk and expense. The decision of the ENGINEER shall be final.

In all matters relating to the acceptability of material, machinery or plant equipment; classifications of material or Work; the proper execution, progress or sequence of the Work; and quantities interpretation of the Contract Documents, the decision of the ENGINEER shall be final and binding, and shall be a condition precedent to any payment under the Contract, unless otherwise ordered by the Board of Directors.

**B. Definitions**

Capitalized terms used in this Contract are defined in the General Conditions, "Definitions". Additional terms may be defined in the Special Provisions.

**SECTION – 2 MATERIALS AND LABOR**

CONTRACTOR shall furnish, under the conditions expressed in the Plans and Specifications, at CONTRACTOR'S own expense, all labor and materials necessary, except such as are mentioned in the Specifications to be furnished by OC SAN, to construct and complete the Project, in good workmanlike and substantial order. If CONTRACTOR fails to pay for labor or materials when due, OC SAN may settle such claims by making demand upon the Surety to this Contract. In the event of the failure or refusal of the Surety to satisfy said claims, OC SAN may settle them directly and deduct the amount of payments from the Contract Price and any amounts due to CONTRACTOR. In the event OC SAN receives a stop payment notice from any laborer or material supplier alleging non-payment by CONTRACTOR, OC SAN shall be entitled to deduct all of its costs and expenses incurred relating thereto, including but not limited to administrative and legal fees.

**SECTION – 3 PROJECT**

The Project is described as:

**PROJECT NO. FR1-0020**

**TRAFFIC SIGNAL INSTALLATION AT ELLIS AVENUE AND MT. LANGLEY STREET  
INTERSECTION**

**SECTION – 4 PLANS AND SPECIFICATIONS**

The Work to be done is shown in a set of Plans and Specifications entitled:

**PROJECT NO. FR1-0020**

**TRAFFIC SIGNAL INSTALLATION AT ELLIS AVENUE AND MT. LANGLEY STREET**

**INTERSECTION**

Said Plans and Specifications and any revision, amendments and addenda thereto are attached hereto and incorporated herein as part of this Contract and referred to by reference.

**SECTION – 5 TIME OF COMMENCEMENT AND COMPLETION**

CONTRACTOR agrees to commence the Project within 15 calendar days from the date set forth in the “Notice to Proceed” sent by OC SAN, unless otherwise specified therein and shall diligently prosecute the Work to completion within three hundred (300) calendar days from the date of the “Notice to Proceed” issued by OC SAN, excluding delays caused or authorized by OC SAN as set forth in Sections 7, 8, and 9 hereof, and applicable provisions in the General Conditions. The time for completion includes ten (10) calendar days determined by OC SAN likely to be inclement weather when CONTRACTOR will be unable to work.

**SECTION – 6 TIME IS OF THE ESSENCE**

Time is of the essence of this Contract. As required by the Contract Documents, CONTRACTOR shall prepare and obtain approval of all shop drawings, details and samples, and do all other things necessary and incidental to the prosecution of CONTRACTOR’s Work in conformance with an approved construction progress schedule. CONTRACTOR shall coordinate the Work covered by this Contract with that of all other contractors, subcontractors and of OC SAN, in a manner that will facilitate the efficient completion of the entire Work and accomplish the required milestone(s), if any, by the applicable deadline(s) in accordance with Section 5 herein. OC SAN shall have the right to assert complete control of the premises on which the Work is to be performed and shall have the right to decide the time or order in which

the various portions of the Work shall be installed or the priority of the work of subcontractors, and, in general, all matters representing the timely and orderly conduct of the Work of CONTRACTOR on the premises.

#### **SECTION – 7      EXCUSABLE DELAYS**

CONTRACTOR shall only be excused for any delay in the prosecution or completion of the Project as specifically provided in General Conditions, “Extension of Time for Delay”, and the General Requirements, “By CONTRACTOR or Others – Unknown Utilities during Contract Work”. Extensions of time and extra compensation arising from such excusable delays will be determined in accordance with the General Conditions, “Extension of Time for Delay” and “Contract Price Adjustments and Payments”, and extensions of time and extra compensation as a result of incurring undisclosed utilities will be determined in accordance with General Requirements, “By CONTRACTOR or Others – Unknown Utilities during Contract Work”. OC SAN’s decision will be conclusive on all parties to this Contract.

#### **SECTION – 8      EXTRA WORK**

The Contract Price as set forth in Section 11, includes compensation for all Work performed by CONTRACTOR, unless CONTRACTOR obtains a Change Order signed by a designated representative of OC SAN specifying the exact nature of the Extra Work and the amount of extra compensation to be paid all as more particularly set forth in Section 9 hereof and the General Conditions, “Request for Change (Changes at CONTRACTOR’s Request)”, “OWNER Initiated Changes”, and “Contract Price Adjustments and Payments”.

In the event a Change Order is issued by OC SAN pursuant to the Contract Documents, OC SAN shall extend the time fixed in Section 5 for completion of the Project by the number of days, if any, reasonably required for CONTRACTOR to perform the Extra Work, as determined by OC SAN’s ENGINEER. The decision of the ENGINEER shall be final.

## **SECTION – 9 CHANGES IN PROJECT**

OC SAN may at any time, without notice to any Surety, by Change Order, make any changes in the Work within the general scope of the Contract Document, including but not limited to changes:

1. In the Specifications (including Drawings and designs);
2. In the time, method or manner of performance of the Work;
3. In OC SAN-furnished facilities, equipment, materials, services or site; or
4. Directing acceleration in the performance of the Work.

No change of period of performance or Contract Price, or any other change in the Contract Documents, shall be binding until the Contract is modified by a fully executed Change Order.

All Change Orders shall be issued in accordance with the requirements set forth in the General Conditions, "Request for Change (Changes at CONTRACTOR's Request)" and "OWNER Initiated Changes".

## **SECTION – 10 LIQUIDATED DAMAGES FOR DELAY**

Liquidated Damages shall be payable in the amounts and upon the occurrence of such events or failure to meet such requirements or deadlines as provided in the Special Provisions, "Liquidated Damages and Incentives."

## **SECTION – 11 CONTRACT PRICE AND METHOD OF PAYMENT**

- A. OC SAN agrees to pay and the CONTRACTOR agrees to accept as full consideration for the faithful performance of this Contract, subject to any additions or deductions as provided in approved Change Orders, the sum of Seven Hundred Forty-Six Thousand Two Hundred Fifty Dollars (\$746,250) as itemized on the attached Exhibit "A".

Upon satisfaction of the conditions precedent to payment set forth in the General Requirements, Additional General Requirements, and General Conditions (including but

not limited to Sections entitled “Mobilization Payment Requirements” and “Payment Itemized Breakdown of Contract Lump Sum Prices”), there shall be paid to the CONTRACTOR an initial Net Progress Payment for mobilization. OC SAN shall issue at the commencement of the job a schedule which shows:

1. A minimum of one payment to be made to the CONTRACTOR for each successive four (4) week period as the Work progresses, and
2. The due dates for the CONTRACTOR to submit requests for payment to meet the payment schedule.

After the initial Net Progress Payment, and provided the CONTRACTOR submits the request for payment prior to the end of the day required to meet the payment schedule, the CONTRACTOR shall be paid a Net Progress Payment on the corresponding monthly payment date set forth in the schedule.

Payments shall be made on demands drawn in the manner required by law, accompanied by a certificate signed by the ENGINEER, stating that the Work for which payment is demanded has been performed in accordance with the terms of the Contract Documents, and that the amount stated in the certificate is due under the terms of the Contract. Payment applications shall also be accompanied with all documentation, records, and releases as required by the Contract; Exhibit A, Schedule of Prices; and General Conditions, “Payment for Work – General”. The Total amount of Progress Payments shall not exceed the actual value of the Work completed as certified by OC SAN’s ENGINEER. The processing of payments shall not be considered as an acceptance of any part of the Work.

- B. As used in this Section, the following defined terms shall have the following meanings:
1. **“Net Progress Payment”** means a sum equal to the Progress Payment less the Retention Amount and other qualified deductions (Liquidated Damages, stop payment notices, etc.).



2. **“Progress Payment”** means a sum equal to:
  - a. the value of the actual Work completed since the commencement of the Work as determined by OC SAN;
  - b. plus the value of material suitably stored at the worksite, treatment plant or approved storage yards subject to or under the control of OC SAN since the commencement of the Work as determined by OC SAN;
  - c. less all previous Net Progress Payments;
  - d. less all amounts of previously qualified deductions;
  - e. less all amounts previously retained as Retention Amounts.
3. **“Retention Amount”** for each Progress Payment means the percentage of each Progress Payment to be retained by OC SAN to assure satisfactory completion of the Contract. The amount to be retained from each Progress Payment shall be determined as provided in the General Conditions, “Retained Funds; Substitution of Securities.”

## **SECTION – 12 SUBSTITUTION OF SECURITIES IN LIEU OF RETENTION OF FUNDS**

Pursuant to Public Contract Code Section 22300 et seq., the CONTRACTOR may, at its sole expense, substitute securities as provided in General Conditions, “Retained Funds; Substitution of Securities.”

## **SECTION – 13 COMPLETION**

Final Completion and Final Acceptance shall occur at the time and in the manner specified in the General Conditions, “Final Acceptance and Final Completion”, “Final Payment”; and Exhibit A, Schedule of Prices.

Upon receipt of all documentation, records, and releases as required by the Contract from the CONTRACTOR, OC SAN shall proceed with the Final Acceptance as specified in General Conditions.

## **SECTION – 14 CONTRACTOR’S EMPLOYEES COMPENSATION**

### **A. Davis-Bacon Act:**

CONTRACTOR 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.

### **B. General Prevailing Rate:**

OC SAN 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 the same are on file in the Office of the ENGINEER of OC SAN. The CONTRACTOR agrees that not less than said prevailing rates shall be paid to workers employed on this public works Contract as required by Labor Code Section 1774 of the State of California. Per California Labor Code 1773.2, OC SAN will have on file copies of the prevailing rate of per diem wages at its principal office and at each job site, which shall be made available to any interested party upon request.

### **C. Forfeiture for Violation:**

CONTRACTOR shall, as a penalty to OC SAN, forfeit Two Hundred Dollars (\$200.00) for each calendar day or portion thereof for each worker paid (either by the CONTRACTOR 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.

D. 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 CONTRACTOR shall comply therewith if the prime contract involves Thirty Thousand Dollars (\$30,000.00) or more.

E. Workday:

In the performance of this Contract, not more than eight (8) hours shall constitute a day's work, and the CONTRACTOR shall not require more than eight (8) hours of labor in a day from any person employed by him hereunder except as provided in paragraph (B) above. CONTRACTOR 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 OC SAN as a penalty, the sum of Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by CONTRACTOR 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 calendar day and forty (40) hours in any one week in violation of said Article. CONTRACTOR shall keep an accurate record showing the name and actual hours worked each calendar day and each calendar week by each worker employed by CONTRACTOR in connection with the Project.

F. Registration; Record of Wages; Inspection:

CONTRACTOR 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 by the California Department of Industrial Relations. CONTRACTOR shall maintain accurate payroll records 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.

CONTRACTOR shall comply with the job site notices posting requirements established by the Labor Commissioner per Title 8, California Code of Regulations Section 16461(e).

## **SECTION – 15 SURETY BONDS**

CONTRACTOR shall, before entering upon the performance of this Contract, furnish Bonds approved by OC SAN's General Counsel – one in the amount of one hundred percent (100%) of the Contract amount, to guarantee the faithful performance of the Work, and the other in the amount of one hundred percent (100%) of the Contract amount to guarantee payment of all claims for labor and materials furnished. As changes to the Contract occur via approved Change Orders, the CONTRACTOR shall assure that the amounts of the Bonds are adjusted to maintain 100% of the Contract Price. This Contract shall not become effective until such Bonds are supplied to and approved by OC SAN. Bonds must be issued by a Surety authorized by the State Insurance Commissioner to do business in California. The Performance Bond shall remain in full force and effect through the warranty period, as specified in Section 19 below. All Bonds required to be submitted relating to this Contract must comply with California Code of Civil Procedure Section 995.630. Each Bond shall be executed in the name of the Surety insurer under penalty of perjury, or the fact of execution of each Bond shall be duly acknowledged before an officer authorized to take and certify acknowledgments, and either one of the following conditions shall be satisfied:

- A. A copy of the transcript or record of the unrevoked appointment, power of attorney, by-laws, or other instrument, duly certified by the proper authority and attested by the seal of the insurer entitling or authorizing the person who executed the Bond to do so for and on behalf of the insurer, is on file in the Office of the County Clerk of the County of Orange; or
- B. A copy of a valid power of attorney is attached to the Bond.

## **SECTION – 16    INSURANCE**

CONTRACTOR shall purchase and maintain, for the duration of the Contract, insurance against claims for injuries to persons, or damages to property which may arise from or in connection with the performance of the Work hereunder, and the results of that Work by CONTRACTOR, its agents, representatives, employees, or Subcontractors, in amounts equal to the requirements set forth below. CONTRACTOR shall not commence Work under this Contract until all insurance required under this Section is obtained in a form acceptable to OC SAN, nor shall CONTRACTOR allow any Subcontractor to commence Work on a subcontract until all insurance required of the Subcontractor has been obtained. CONTRACTOR shall maintain all of the foregoing insurance coverages in force through the point at which the Work under this Contract is fully completed and accepted by OC SAN pursuant to the provisions of the General Conditions, “Final Acceptance and Final Completion”. Furthermore, CONTRACTOR shall maintain all of the foregoing insurance coverages in full force and effect throughout the warranty period, commencing on the date of Final Acceptance. The requirement for carrying the foregoing insurance shall not derogate from the provisions for indemnification of OC SAN by CONTRACTOR under Section 17 of this Contract. Notwithstanding nor diminishing the obligations of CONTRACTOR with respect to the foregoing, CONTRACTOR shall subscribe for and maintain in full force and effect during the life of this Contract, inclusive of all changes to the Contract Documents made in accordance with the provisions of the General Conditions, “Request for Change (Changes at CONTRACTOR’s Request)” and/or “OWNER Initiated Changes”, the following insurance in amounts not less than the amounts specified. OC SAN reserves the right to amend the required limits of insurance commensurate with the CONTRACTOR’s risk at any time during the course of the Project. No vehicles may enter OC SAN premises/worksite without possessing the required insurance coverage.

CONTRACTOR's insurance shall also comply with all insurance requirements prescribed by agencies from whom permits shall be obtained for the Work and any other third parties from whom third party agreements are necessary to perform the Work (collectively, the "Third Parties"). The Special Provisions may list such requirements and sample forms and requirements from such Third Parties may be included in an attachment to the General Requirements. CONTRACTOR bears the responsibility to discover and comply with all requirements of Third Parties, including meeting specific insurance requirements, that are necessary for the complete performance of the Work. To the extent there is a conflict between the Third Parties' insurance requirements and those set forth by OC SAN herein, the requirement(s) providing the more protective coverage for both OC SAN and the Third Parties shall control and be purchased and maintained by CONTRACTOR.

If CONTRACTOR maintains higher limits than the minimums shown in this Section, OC SAN requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR.

Where permitted by law, CONTRACTOR hereby waives all rights of recovery by subrogation because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or any other reason against OC SAN, its or their officers, agents, or employees, and any other contractor or subcontractor performing Work or rendering services on behalf of OC SAN in connection with the planning, development and construction of the Project. In all its insurance coverages (except for Professional Liability/Errors and Omissions coverages, if applicable) related to the Work, CONTRACTOR shall include clauses providing that each insurer shall waive all of its rights of recovery by subrogation against OC SAN, its or their officers, agents, or employees, or any other contractor or subcontractor performing Work or rendering services at the Project. Where permitted by law, CONTRACTOR shall require similar written express waivers and insurance clauses from each of its Subcontractors of every tier. A

waiver of subrogation shall be effective as to any individual or entity, even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium, directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

A. Limits of Insurance

1. General Liability: Two Million Dollars (\$2,000,000) per occurrence and a general aggregate limit of Four Million Dollars (\$4,000,000) for bodily injury, personal injury and property damage. If aggregate limits apply separately to this contract (as evidenced by submission of ISO form CG 25 03 or CG 25 04), then the aggregate limit may be equivalent to the per occurrence limit. Coverage shall include each of the following:
  - a. Premises-Operations.
  - b. Products and Completed Operations, with limits of at least Two Million Dollars (\$2,000,000) per occurrence and a general aggregate limit of Four Million Dollars (\$4,000,000) which shall be in effect at all times during the warranty period set forth in the Warranty section herein, and as set forth in the General Conditions, "Warranty (CONTRACTOR's Guarantee)", plus any additional extension or continuation of time to said warranty period that may be required or authorized by said provisions. If aggregate limits apply separately to this contract (as evidenced by submission of ISO form CG 25 03 or CG 25 04), then the aggregate limit may be equivalent to the per occurrence limit.
  - c. Broad Form Property Damage, expressly including damage arising out of explosion, collapse, or underground damage.
  - d. Contractual Liability, expressly including the indemnity provisions assumed under this Contract.

- e. Separation of Insured Clause, providing that coverage applies separately to each insured, except with respect to the limits of liability.
  - f. Independent CONTRACTOR's Liability.  
To the extent first dollar coverage, including defense of any claim, is not available to OC SAN or any other additional insured because of any SIR, deductible, or any other form of self insurance, CONTRACTOR is obligated to assume responsibility of insurer until the deductible, SIR or other condition of insurer assuming its defense and/or indemnity has been satisfied.  
CONTRACTOR shall be responsible to pay any deductible or SIR.
  - g. If a crane will be used, the general liability insurance will be endorsed to add Riggers Liability coverage or its equivalent to cover the usage of the crane and exposures with regard to the crane operators, riggers and others involved in using the crane.
  - h. If divers will be used, the general liability insurance will be endorsed to cover marine liability or its equivalent to cover the usage of divers.
2. Automobile Liability: The CONTRACTOR 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 limit of liability coverage: combined single limit of One Million Dollars (\$1,000,000) for bodily injury, personal injury, and property damage.
3. Umbrella Excess Liability: The minimum limits of general liability and automobile liability insurance required, as set forth above, shall be provided for either in a single policy of primary insurance or a combination of policies of primary and umbrella excess coverage. 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.

4. Drone Liability Insurance: If a drone will be used, drone liability insurance must be maintained by CONTRACTOR in the amount of One Million Dollars (\$1,000,000) in a form acceptable to OC SAN.
5. Workers' Compensation/Employer's Liability: CONTRACTOR shall provide such workers' compensation insurance as required by the Labor Code of the State of California, including employer's liability with a minimum limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. If an exposure to Jones Act liability may exist, the insurance required herein shall include coverage with regard to Jones Act claims.

B. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by OC SAN. At the option of OC SAN, either: the Insurer shall reduce or eliminate such deductibles or self-insured retentions as respects OC SAN, its Directors, officers, agents, consultants, and employees; or CONTRACTOR shall provide a financial guarantee satisfactory to OC SAN guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

C. Other Insurance Provisions

1. Each such policy of general liability insurance and automobile liability insurance shall be endorsed to contain, the following provisions:
  - a. OC SAN, its directors, officers, agents, consultants, and employees, and all public agencies from whom permits will be obtained, and their directors, officers, agents, and employees are hereby declared to be additional insureds under the terms of this policy, but only with respect to the operations of

CONTRACTOR at or from any of the sites of OC SAN in connection with this Contract, or acts and omissions of the additional insured in connection with its general supervision or inspection of said operations related to this Contract.

- b. Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by OC SAN shall be excess only and not contributing with insurance provided under this policy.

2. Cancellation and Policy Change Notice.

The CONTRACTOR 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, the CONTRACTOR is required to notify OC SAN in writing of any change in the terms of insurance, including reduction in coverage or increase in deductible/SIR, within two (2) working days of receipt of such notice or knowledge of same.

Said notices shall be mailed to OC SAN at:

ORANGE COUNTY SANITATION DISTRICT  
18480 Bandilier Circle  
Fountain Valley, CA 92708  
Attention: Contracts, Purchasing & Materials Management Division

3. Coverage shall not extend to any indemnity coverage for the active negligence of any additional insured in any case where an agreement to indemnify the additional insured would be invalid under California Civil Code Section 2782(b).
4. If required by a public agency from whom permit(s) will be obtained, each policy of general liability insurance and automobile liability insurance shall be endorsed to specify by name the public agency and its legislative members, officers, agents, consultants, and employees, to be additional insureds.

D. Acceptability of Insurers

Insurers must have an “A-“, or better, Policyholder’s Rating, and a Financial Rating of at least Class VIII, or better, in accordance with the most current A.M. Best Rating Guide. OC SAN recognizes that State Compensation Insurance Fund has withdrawn from participation in the A.M. Best Rating Guide process. Nevertheless, OC SAN will accept State Compensation Insurance Fund for the required policy of worker’s compensation insurance, subject to OC SAN’s option, at any time during the term of this Contract, to require a change in insurer upon twenty (20) days written notice. Further, OC SAN will require CONTRACTOR to substitute any insurer whose rating drops below the levels herein specified. Said substitution shall occur within twenty (20) days of written notice to CONTRACTOR by OC SAN or its agent.

E. Verification of Coverage

CONTRACTOR shall furnish OC SAN with original certificates and mandatory endorsements affecting coverage. Said policies and endorsements shall conform to the requirements herein stated. All certificates and endorsements are to be received and approved by OC SAN before Work commences. OC SAN reserves the right to require complete, certified copies of all required insurance policies, including endorsements, affecting the coverage required by these Specifications at any time.

F. Subcontractors

CONTRACTOR shall be responsible to establish insurance requirements for any Subcontractors hired by CONTRACTOR. The insurance shall be in amounts and types reasonably sufficient to deal with the risk of loss involving the Subcontractor’s operations and work. OC SAN and any public agency issuing permits for the Project must be named as “Additional Insured” on any general liability or automobile liability policy obtained by a Subcontractor. The CONTRACTOR must obtain copies and maintain current versions of

all Subcontractors' policies, certificate of liability and mandatory endorsements effecting coverage. Upon request, CONTRACTOR must furnish OC SAN with the above referenced required documents.

G. Required Forms and Endorsements

1. Required ACORD Form

- a. Certificate of Liability ACORD Form 25 or other equivalent certificate of insurance form

2. Required Insurance Services Office, Inc. Endorsements (when alternative forms are shown, they are listed in order of preference)

In the event any of the following forms are cancelled by Insurance Services Office, Inc. (ISO), or are updated, the ISO replacement form or equivalent must be supplied.

- a. Commercial General Liability Form CG 00 01
- b. Additional Insured Including Products-Completed Operations Form CG 20 10 **and** Form CG 20 37  
All other additional insured endorsements must be submitted for approval by OC SAN, and OC SAN may reject alternatives that provide different or less coverage to OC SAN.
- c. Waiver of Transfer of Rights of Recovery Against Others to Us/  
Waiver of Subrogation Form CG 24 04

3. Required State Compensation Insurance Fund Endorsements

- a. Waiver of Subrogation Submit workers' compensation waiver of subrogation endorsement provided by carrier for OC SAN approval.
- b. Cancellation Notice No endorsement is required. However, CONTRACTOR is responsible for notifying OC SAN of any pending or actual insurance policy cancellation, as described in Article C.2., Cancellation and Policy Change Notice, above.

4. Additional Required Endorsements

a. Notice of Policy Termination

Manuscript Endorsement

**SECTION – 17 RISK AND INDEMNIFICATION**

All Work covered by this Contract done at the site of construction or in preparing or delivering materials to the site shall be at the risk of CONTRACTOR alone. CONTRACTOR shall save, indemnify, defend, and keep OC SAN and others harmless as more specifically set forth in General Conditions, “General Indemnification”.

**SECTION – 18 TERMINATION**

This Contract may be terminated in whole or in part in writing by OC SAN in the event of substantial failure by the CONTRACTOR to fulfill its obligations under this Agreement, or it may be terminated by OC SAN for its convenience provided that such termination is effectuated in a manner and upon such conditions set forth more particularly in General Conditions, “Termination for Default” and/or “Termination for Convenience”, provided that no termination may be effected unless proper notice is provided to CONTRACTOR at the time and in the manner provided in said General Conditions. If termination for default or convenience is effected by OC SAN, an equitable adjustment in the price provided for in this Contract shall be made at the time and in the manner provided in the General Conditions, “Termination for Default” and “Termination for Convenience”.

**SECTION – 19 WARRANTY**

The CONTRACTOR agrees to perform all Work under this Contract in accordance with the Contract Documents, including OC SAN’s designs, Drawings and Specifications.

The CONTRACTOR guarantees for a period of at least one (1) year from the date of Final Acceptance of the Work, pursuant to the General Conditions, “Final Acceptance and Final Completion” that the completed Work is free from all defects due to faulty materials, equipment or workmanship and that it shall promptly make whatever adjustments or corrections which may

be necessary to cure any defects, including repairs of any damage to other parts of the system resulting from such defects. OC SAN shall promptly give notice to the CONTRACTOR of observed defects. In the event that the CONTRACTOR fails to make adjustments, repairs, corrections or other work made necessary by such defects, OC SAN may do so and charge the CONTRACTOR the cost incurred. The CONTRACTOR's warranty shall continue as to any corrected deficiency until the later of (1) the remainder of the original one-year warranty period; or (2) one year after acceptance by OC SAN of the corrected Work. The Performance Bond and the Payment Bond shall remain in full force and effect through the guarantee period.

The CONTRACTOR's obligations under this clause are in addition to the CONTRACTOR's other express or implied assurances under this Contract, including but not limited to specific manufacturer or other extended warranties specified in the Plans and Specifications, or state law and in no way diminish any other rights that OC SAN may have against the CONTRACTOR for faulty materials, equipment or Work.

#### **SECTION – 20            ASSIGNMENT**

No assignment by the CONTRACTOR of this Contract or any part hereof, or of funds to be received hereunder, will be recognized by OC SAN unless such assignment has had prior written approval and consent of OC SAN and the Surety.

#### **SECTION – 21            RESOLUTION OF DISPUTES**

OC SAN and the CONTRACTOR shall comply with the provisions of California Public Contract Code Section 20104 et. seq., regarding resolution of construction claims for any Claims which arise between the CONTRACTOR and OC SAN, as well as all applicable dispute and Claims provisions as set forth in the General Conditions and as otherwise required by law.

#### **SECTION – 22            SAFETY & HEALTH**

CONTRACTOR shall comply with all applicable safety and health requirements mandated by federal, state, city and/or public agency codes, permits, ordinances, regulations, and laws, as

well as these Contract Documents, including but not limited to the General Requirements, Section entitled "Safety" and Exhibit B Contractor Safety Standards. OC SAN reserves the right to stop Work for violations of safety and health standards until the hazardous conditions are corrected. The right to stop Work includes the right to remove a contractor or its employees from the worksite.

**SECTION – 23 NOTICES**

Any notice required or permitted under this Contract shall be served by personal delivery or by certified mail, return receipt requested, at the address set forth below. Unless specified elsewhere in the Contract Documents or otherwise required by law, any notice may alternatively be given by electronic telecommunication to the email address set forth below. Any party whose address changes shall notify the other party in writing.

TO OC SAN:                   Orange County Sanitation District  
18480 Bandilier Circle  
Fountain Valley, California 92708-7011  
Attn: Clerk of the Board  
[ocsanclerk@ocsan.gov](mailto:ocsanclerk@ocsan.gov)

Copy to:                     Orange County Sanitation District  
18480 Bandilier Circle  
Fountain Valley, California 92708-7011  
Attn: Construction Manager  
[rcuellar@ocsan.gov](mailto:rcuellar@ocsan.gov)

Scott C. Smith  
Best Best & Krieger LLP  
18101 Von Karman Avenue, Suite 1000  
Irvine, California 92612  
[scott.smith@bbklaw.com](mailto:scott.smith@bbklaw.com)

TO CONTRACTOR:           Adam Lederman, Division Manager  
Asplundh Construction LLC  
7431 Walnut Ave.  
Buena Park, CA 90621  
[alederman@asplundh.com](mailto:alederman@asplundh.com)

IN WITNESS WHEREOF, the parties hereto have executed this Contract Agreement as the date first hereinabove written.

CONTRACTOR: Asplundh Construction LLC  
7431 Walnut Ave.  
Buena Park, CA 90621

By \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Printed Name

Its \_\_\_\_\_

CONTRACTOR's State License No. 1028802 (Expiration Date – 7/31/2025)

OC SAN: Orange County Sanitation District

By \_\_\_\_\_ Date \_\_\_\_\_

Ryan P. Gallagher  
Board Chairman

By \_\_\_\_\_ Date \_\_\_\_\_

Kelly A. Lore  
Clerk of the Board

By \_\_\_\_\_ Date \_\_\_\_\_

Ruth Zintzun  
Finance & Procurement Manager



**EXHIBIT A**  
**SCHEDULE OF PRICES**

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**EXHIBIT A**  
**SCHEDULE OF PRICES**

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# EXHIBIT A

## SCHEDULE OF PRICES

### EXA-1 BASIS OF COMPENSATION

CONTRACTOR will be paid the Contract Price according to the Schedule of Prices, and all other applicable terms and conditions of the Contract Documents.

### EXA-2 PROGRESS PAYMENTS

Progress payments will be made in accordance with all applicable terms and conditions of the Contract Documents, including, but not limited to:

1. Contract Agreement – Section 11 – “Contract Price and Method of Payment;”
2. General Conditions – “Payment – General”;
3. General Conditions – “Payment – Applications for Payment”;
4. General Conditions – “Payment – Mobilization Payment Requirements;”
5. General Conditions – “Payment – Itemized Breakdown of Contract Lump Sum Prices”;
6. General Conditions – “Contract Price Adjustments and Payments”;
7. General Conditions – “Suspension of Payments”;
8. General Conditions – “OC SAN’s Right to Withhold Certain Amounts and Make Application Thereof”; and
9. General Conditions – “Final Payment.”

### EXA-3 RETENTION AND ESCROW ACCOUNTS

#### A. Retention:

OC SAN shall retain a percentage of each progress payment to assure satisfactory completion of the Work. The amount to be retained from each progress payment shall be determined as provided in General Conditions – “Retained Funds; Substitution of Securities”. In all contracts between CONTRACTOR and its Subcontractors and/or Suppliers, the retention may not exceed the percentage specified in the Contract Documents.

B. Substitution of Securities:

CONTRACTOR may, at its sole expense, substitute securities as provided in General Conditions – “Retained Funds; Substitution of Securities.” Payment of Escrow Agent:

In lieu of substitution of securities as provided above, the CONTRACTOR may request and OC SAN shall make payment of retention earned directly to the escrow agent at the expense of the CONTRACTOR. At the expense of the CONTRACTOR, the CONTRACTOR may direct the investment of the payments into securities consistent with Government Code §16430 and the CONTRACTOR shall receive the interest earned on the investments upon the same terms provided for in this article for securities deposited by the CONTRACTOR. Upon satisfactory completion of the Contract, the CONTRACTOR shall receive from the escrow agent all securities, interest and payments received by the escrow agent from OC SAN, pursuant to the terms of this article. The CONTRACTOR shall pay to each Subcontractor, not later than twenty (20) calendar days after receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each Subcontractor, on the amount of retention withheld to ensure the performance of the Subcontractor. The escrow agreement used by the escrow agent pursuant to this article shall be substantially similar to the form set forth in §22300 of the California Public Contract Code.

C. Release of Retention:

Upon Final Acceptance of the Work, the CONTRACTOR shall submit an invoice for release of retention in accordance with the terms of the Contract.

D. Additional Deductibles:

In addition to the retentions described above, OC SAN may deduct from each progress payment any or all of the following:

1. Liquidated Damages that have occurred as of the date of the application for progress payment;
2. Deductions from previous progress payments already paid, due to OC SAN's discovery of deficiencies in the Work or non-compliance with the Specifications or any other requirement of the Contract;
3. Sums expended by OC SAN in performing any of the CONTRACTOR'S obligations under the Contract that the CONTRACTOR has failed to perform, and;
4. Other sums that OC SAN is entitled to recover from the CONTRACTOR under the terms of the Contract, including without limitation insurance deductibles and assessments.

The failure of OC SAN to deduct any of the above-identified sums from a progress payment shall not constitute a waiver of OC SAN's right to such sums or to deduct them from a later progress payment.

#### **EXA-4 STOP PAYMENT NOTICE**

In addition to other amounts properly withheld under this article or under other provisions of the Contract, OC SAN shall retain from progress payments otherwise due the CONTRACTOR an amount equal to one hundred twenty-five percent (125%) of the amount claimed under any stop payment notice under Civil Code §9350 et. seq. or other lien filed against the CONTRACTOR for labor, materials, supplies, equipment, and any other thing of value claimed to have been furnished to and/or incorporated into the Work; or for any other alleged contribution thereto. In addition to the foregoing and in accordance with Civil Code §9358 OC SAN may also satisfy its duty to withhold funds for stop payment notices by refusing to release funds held in escrow pursuant to public receipt of a release of stop payment notice executed by a stop payment notice claimant, a stop payment notice release bond, an order of a court of competent jurisdiction, or other evidence satisfactory to OC SAN that the CONTRACTOR has resolved such claim by settlement.

#### **EXA-5 PAYMENT TO SUBCONTRACTORS**

##### Requirements

1. The CONTRACTOR shall pay all Subcontractors for and on account of Work performed by such Subcontractors, not later than seven (7) days after receipt of each progress payment as required by the California Business and Professions Code §7108.5. Such payments to Subcontractors shall be based on the measurements and estimates made pursuant to article progress payments provided herein.
2. Except as specifically provided by law, the CONTRACTOR shall pay all Subcontractors any and all retention due and owing for and on account of Work performed by such Subcontractors not later than seven (7) days after CONTRACTOR'S receipt of said retention proceeds from OC SAN as required by the California Public Contract Code §7107.

#### **EXA-6 PAYMENT OF TAXES**

Unless otherwise specifically provided in this Contract, the Contract Price includes full compensation to the CONTRACTOR for all taxes. The CONTRACTOR shall pay all federal, state, and local taxes, and duties applicable to and assessable against any Work, including but not limited to retail sales and use, transportation, export, import, business, and special taxes. The CONTRACTOR shall ascertain and pay the taxes when due. The CONTRACTOR will maintain auditable records, subject to OC SAN reviews, confirming that tax payments are current at all times.

## **EXA-7 FINAL PAYMENT**

After Final Acceptance of the Work, as more particularly set forth in the General Conditions, "Final Acceptance and Final Completion", and after Resolution of the Board authorizing final payment and satisfaction of the requirements as more particularly set forth in General Conditions – "Final Payment", a final payment will be made as follows:

1. Prior to Final Acceptance, the CONTRACTOR shall prepare and submit an application for Final Payment to OC SAN, including:
  - a. The proposed total amount due the CONTRACTOR, segregated by items on the payment schedule, amendments, Change Orders, and other bases for payment;
  - b. Deductions for prior progress payments;
  - c. Amounts retained;
  - d. A conditional waiver and release on final payment for each Subcontractor (per Civil Code Section 8136);
  - e. A conditional waiver and release on final payment on behalf of the CONTRACTOR (per Civil Code Section 8136);
  - f. List of Claims the CONTRACTOR intends to file at that time or a statement that no Claims will be filed,
  - g. List of pending unsettled claims, stating claimed amounts, and copies of any and all complaints and/or demands for arbitration received by the CONTRACTOR; and
  - h. For each and every claim that resulted in litigation or arbitration which the CONTRACTOR has settled, a conformed copy of the Request for Dismissal with prejudice or other satisfactory evidence the arbitration is resolved.
2. The application for Final Payment shall include complete and legally effective releases or waivers of liens and stop payment notices satisfactory to OC SAN, arising out of or filed in connection with the Work. Prior progress payments shall be subject to correction in OC SAN's review of the application for Final Payment. Claims filed with the application for Final Payment must be otherwise timely under the Contract and applicable law.
3. Within a reasonable time, OC SAN will review the CONTRACTOR'S application for Final Payment. Any recommended changes or corrections will then be forwarded to the CONTRACTOR. Within ten (10) calendar days after receipt of recommended changes from OC SAN, the CONTRACTOR will make the changes, or list Claims that will be filed as

a result of the changes, and shall submit the revised application for Final Payment. Upon acceptance by OC SAN, the revised application for Final Payment will become the approved application for Final Payment.

4. If no Claims have been filed with the initial or any revised application for Final Payment, and no Claims remain unsettled within thirty-five (35) calendar days after Final Acceptance of the Work by OC SAN, and agreements are reached on all issues regarding the application for Final Payment, OC SAN, in exchange for an executed release, satisfactory in form and substance to OC SAN, will pay the entire sum found due on the approved application for Final Payment, including the amount, if any, allowed on settled Claims.
5. The release from the CONTRACTOR shall be from any and all Claims arising under the Contract, except for Claims that with the concurrence of OC SAN are specifically reserved, and shall release and waive all unreserved Claims against OC SAN and its officers, directors, employees and authorized representatives. The release shall be accompanied by a certification by the CONTRACTOR that:
  - a. It has resolved all Subcontractors, Suppliers and other Claims that are related to the settled Claims included in the Final Payment;
  - b. It has no reason to believe that any party has a valid claim against the CONTRACTOR or OC SAN which has not been communicated in writing by the CONTRACTOR to OC SAN as of the date of the certificate;
  - c. All warranties are in full force and effect, and;
  - d. The releases and the warranties shall survive Final Payment.
6. If any claims remain open, OC SAN may make Final Payment subject to resolution of those claims. OC SAN may withhold from the Final Payment an amount not to exceed one hundred fifty percent (150%) of the sum of the amounts of the open claims, and one hundred twenty-five percent (125%) of the amounts of open stop payment notices referred to in article entitled stop payment notices herein.
7. The CONTRACTOR shall provide an unconditional waiver and release on final payment from each Subcontractor and Supplier providing Work under the Contract (per Civil Code Section 8138) and an unconditional waiver and release on final payment on behalf of the CONTRACTOR (per Civil Code Section 8138) within thirty (30) days of receipt of Final Payment.

## **EXA-8 DISCOVERY OF DEFICIENCIES BEFORE AND AFTER FINAL PAYMENT**

Notwithstanding OC SAN's acceptance of the application for Final Payment and irrespective of whether it is before or after Final Payment has been made, OC SAN shall not be precluded from subsequently showing that:

1. The true and correct amount payable for the Work is different from that previously accepted;
2. The previously accepted Work did not in fact conform to the Contract requirements, or;
3. A previous payment or portion thereof for Work was improperly made.

OC SAN also shall not be stopped from demanding and recovering damages from the CONTRACTOR, as appropriate, under any of the foregoing circumstances as permitted under the Contract or applicable law.



**ATTACHMENT 1 – CERTIFICATION FOR REQUEST FOR PAYMENT**

I hereby certify under penalty of perjury as follows:

That the claim for payment is in all respects true, correct; that the services mentioned herein were actually rendered and/or supplies delivered to OC SAN in accordance with the Contract.

I understand that it is a violation of both the federal and California False Claims Acts to knowingly present or cause to be presented to OC SAN a false claim for payment or approval.

A claim includes a demand or request for money. It is also a violation of the False Claims Acts to knowingly make use of a false record or statement to get a false claim paid. The term "knowingly" includes either actual knowledge of the information, deliberate ignorance of the truth or falsity of the information, or reckless disregard for the truth or falsity of the information. Proof of specific intent to defraud is not necessary under the False Claims Acts. I understand that the penalties under the Federal False Claims Act and State of California False Claims Act are non-exclusive, and are in addition to any other remedies which OC SAN may have either under contract or law.

I hereby further certify, to the best of my knowledge and belief, that:

1. The amounts requested are only for performance in accordance with the Specifications, terms, and conditions of the Contract;
2. Payments to Subcontractors and Suppliers have been made from previous payments received under the Contract, and timely payments will be made from the proceeds of the payment covered by this certification;
3. This request for progress payments does not include any amounts which the prime CONTRACTOR intends to withhold or retain from a Subcontractor or Supplier in accordance with the terms and conditions of the subcontract; and
4. This certification is not to be construed as Final Acceptance of a Subcontractor's performance.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## **ATTACHMENT 2 – SCHEDULE OF PRICES**

See next pages from the Bid Submittal Forms (Asplundh Construction LLC)

BF-14 Schedule of Prices, Pages 1-2

**BF-14 SCHEDULE OF PRICES**

**INSTRUCTIONS**

**A. General**

For Unit Prices, it is understood that the following quantities are approximate only and are solely for the purpose of estimating the comparison of Bids, and that the actual value of Work will be computed based upon the actual quantities in the completed Work, whether they be more or less than those shown. CONTRACTOR's compensation for the Work under the Contract Documents will be computed based upon the lump sum amount of the Contract at time of award, plus any additional or deleted costs approved by OC SAN via approved Change Orders, pursuant to the Contract Documents.

Bidder shall separately price and accurately reflect costs associated with each line item, leaving no blanks. Any and all modifications to the Bid must be initialed by an authorized representative of the Bidder in accordance with the Instructions to Bidders, Preparation of Bid.

Bidders are reminded of Instruction to Bidders, Discrepancy in Bid Items, which, in summary, provides that the total price for each item shall be based on the Unit Price listed for each item multiplied by the quantity; and the correct Total Price for each item shall be totaled to determine the Total Amount of Bid.

All applicable costs including overhead and profit shall be reflected in the respective unit costs and the TOTAL AMOUNT OF BID. The Bid price shall include all costs to complete the Work, including profit, overhead, etc., unless otherwise specified in the Contract Documents. All applicable sales taxes, state and/or federal, and any other special taxes, patent rights or royalties shall be included in the prices quoted in this Bid.

**B. Basis of Award**

AWARD OF THE CONTRACT WILL BE MADE ON THE BASIS OF THE LOWEST RESPONSIVE AND RESPONSIBLE BID.

**Note 1:** Base Bid. Includes all costs necessary to furnish all labor, materials, equipment and services for the construction of the Project per the Contract Documents.

Bid Submitted By: Asplundh Construction LLC  
 (Name of Firm)

**SCHEDULE OF PRICES**

**BASE BID ITEMS** (Refer to Note 1 in the Instructions):

Item No.	Description	Unit of Measurement	Approx Qty		Unit Price	Total Price
1.	<b>Mobilization:</b> As described in Division 01, Section 01155 and in conformance with the Contract Documents for the lump sum price of...	Lump Sum	1			= \$ 36,000
2.	<b>Traffic Signal:</b> Furnish all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in signalizing the intersection of Ellis Avenue and Mt. Langley Street, including (but not limited to) utility location, clearing and grubbing, furnishing all materials except those specifically listed in the Special Provisions, installation of conduit, pullboxes, foundations, poles, vehicular and pedestrian indications, inductive loop vehicle detection, video detection, CCTV camera, pedestrian pushbuttons, wiring, communication system, signing, striping, coordination with Southern California Edison for energization, installation of controller cabinet and service pedestal, signal turn-on and testing, removal and installation of block wall and sidewalk, proper disposal of removed material, landscape restoration, and temporary traffic control, as specified in the Contract Documents for the lump sum price of...	Lump Sum	1			= \$ 643,750.00
3.	<b>Final Grind and Cap Asphalt Concrete Pavement:</b> As described in Division 01, Section 01155 and in conformance with the Contract Documents for the square foot unit price and price of...	Square Feet	10,000	x	\$6.65	= \$ 66,500.00

**TOTAL AMOUNT OF BID (BASIS OF AWARD)**

**\$ 746,250.00**



# OPERATIONS COMMITTEE

Administration Building  
10844 Ellis Avenue  
Fountain Valley, CA 92708  
(714) 593-7433

## Agenda Report

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**File #:** 2024-3668

**Agenda Date:** 7/10/2024

**Agenda Item No:** 3.

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**FROM:** Robert Thompson, General Manager  
Originator: Mike Dorman, Director of Engineering

**SUBJECT:**

**HVAC REPLACEMENTS AT PLANT NOS. 1 AND 2, PROJECT NO. FE23-06**

**GENERAL MANAGER'S RECOMMENDATION**

RECOMMENDATION: Recommend to the Board of Directors to:

- A. Approve a Purchase Order Contract to ACCO Engineered Systems, Inc. for the HVAC Replacements at Plant Nos. 1 and 2, Project No. FE23-06, utilizing the Omnia Cooperative Purchasing Agreement, Contract Number #02-73, for a total amount not to exceed \$1,698,204; and
- B. Approve a contingency of \$169,820 (10%).

**BACKGROUND**

The electrical rooms at Orange County Sanitation District (OC San) Plant No. 1 Steve Anderson Lift Station, Plant No. 1 City Water Pump Station, Plant No. 2 Gas Compressor electrical building, Plant No. 2 East and West RAS Pump Stations, and Plant No. 1 Primary Clarifiers use HVAC units to clean, cool, and dry air to protect the electrical equipment and keep them from overheating.

**RELEVANT STANDARDS**

- Comply with California Public Contract Code Section 20103.8, award construction contract to lowest responsive, responsible bidder
- 24/7/365 treatment plant reliability

**PROBLEM**

The HVAC outdoor air coils and metallic components are showing extreme wear and are experiencing failure. The maintenance staff has repaired the units several times; however, the units are at a point where further repair or maintenance will not offer acceptable reliability. In addition, the HVAC equipment on the buildings have passed their useful life expectancy and can no longer be maintained reliably.

**PROPOSED SOLUTION**

Approve a Purchase Order Contract for HVAC Replacements at Plant Nos. 1 and 2, Project No. FE23-06. This project will replace in kind the 15 HVAC units at the various buildings.

**TIMING CONCERNS**

This purchase order contract designs, replaces, and commissions new HVAC equipment in the most timely and efficient manner. Delaying this action means OC San will be vulnerable to the potential shutdown of electrical equipment within the buildings due to overheating or contamination.

**RAMIFICATIONS OF NOT TAKING ACTION**

Not replacing these units will increase the risk of overheating and the eventual shutdown or failure of critical electrical equipment in the buildings, which would cause Treatment Plant disruptions.

**PRIOR COMMITTEE/BOARD ACTIONS**

N/A

**ADDITIONAL INFORMATION**

OC San is utilizing a cooperative agreement through Omnia Partners, formerly U.S. Communities, which is the largest cooperative purchasing organization for public sector procurement. This agreement was awarded using a competitive bid process similar to OC San’s and has been vetted by OC San’s Purchasing Division. The collective buying power of the unified purchasing cooperatives typically deliver value and savings for public agencies nationwide.

ACCO Engineered Systems, Inc. was selected to propose on this cooperative agreement because they can provide equipment that meets the needs of OC San expeditiously. The total amount of bid under this cooperative agreement is \$1,698,204.

Staff evaluated the proposal in accordance with OC San policies and procedures and based on these results, recommends approving a Purchase Order Contract to ACCO Engineered Systems, Inc. to replace the following equipment:

Location	HVAC Quantity and Size
SALS Building Roof and Electrical Room	Two (2) 8-ton Fan Units Two (2) 8-ton Condenser Units
City Water Pump Station	Two (2) 3-ton HVAC units
Gas Compressor Electrical Building	One (1) 4-ton HVAC unit
East and West RAS Pump Stations	Two (2) 8.5-ton Packaged HVAC units Two (2) 5-ton Heat Pumps
Plant 1 Rectangular Primary Clarifiers	Two (2) 10-ton Air Handler Units Two (2) 10-ton Condenser Units

**CEQA**

The project is exempt from CEQA under the Class 1 categorical exemptions set forth in California Code of Regulations Section 15301. A Notice of Exemption will be filed with the OC Clerk-Recorder after OC San Board of Directors approval.

**FINANCIAL CONSIDERATIONS**

This request complies with the authority levels of OC San's Purchasing Ordinance. This item has been budgeted (Budget FY 2024-25 and 2025-26, Section 8, Page 49, Small Construction Projects Program, Project No. M-FE) and the budget is sufficient for the recommended action.

**ATTACHMENT**

*The following attachment(s) may be viewed on-line at the OC San website ([www.ocsan.gov](http://www.ocsan.gov)) with the complete agenda package:*

- Supplemental Attachment - FE23-06 Photos

SS:lb

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**LEGISTAR NO. 2024-3668**  
**SUPPLEMENTAL ATTACHMENT**  
**HVAC REPLACEMENTS AT PLANT NOS. 1 AND 2, PROJECT NO. FE23-06**

**Figure 1:**

The Steve Anderson Lift Station (SALS) rooftop condensers are corroded and are at the end of their service life.



**Figure 2:**

The P1 City Water Pump Station wall mounted units are corroded and are at the end of their service life.





**Figure 3:**

The P2 Gas Compressor roof top unit is corroded and are at the end of their service life.



**Figure 4:**

The West and East RAS facility rooftop units at P2 are corroded and are at the end of their service life.



**Figure 5:**

The rectangular primary clarifier roof top units are corroded and are at the end of their service life.





# OPERATIONS COMMITTEE

Administration Building  
10844 Ellis Avenue  
Fountain Valley, CA 92708  
(714) 593-7433

## Agenda Report

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**File #:** 2023-2958

**Agenda Date:** 7/10/2024

**Agenda Item No:** 4.

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**FROM:** Robert Thompson, General Manager  
Originator: Mike Dorman, Director of Engineering

**SUBJECT:**

**WARNER AVENUE VAULT COVER IMPROVEMENTS, PROJECT NO. FRC-0010**

**GENERAL MANAGER'S RECOMMENDATION**

RECOMMENDATION: Recommend to the Board of Directors to:

- A. Receive and file Bid Tabulation and Recommendation for Warner Avenue Vault Cover Improvements, Project No. FRC-0010;
- B. Award a Construction Contract Agreement to Minako America Corporation dba Minco Construction for Warner Avenue Vault Cover Improvements, Project No. FRC-0010, for a total amount not to exceed \$977,000; and
- C. Approve a contingency of \$97,700 (10%).

**BACKGROUND**

In 2004, Warner Avenue Relief Sewer, Project No. 11-22, built five shallow vaults on Warner Avenue in Huntington Beach. The purpose was to transition a single 21-inch gravity sewer to three parallel 18-inch gravity sewers to avoid utility conflicts. However, the vault covers that were constructed caused noise issues for surrounding residents. In 2014, Repair to Manhole Structures of Warner Avenue Relief Sewer, Project No. FR12-003, replaced the covers with new pre-cast concrete covers that had composite manhole access points to eliminate noise issues. Two of the vault covers were placed below the street grade and covered with asphalt, while three were placed at street grade. Unfortunately, the vaults placed at street grade continued to vibrate under vehicle loading. To mitigate noise and vibration, three small projects were created, but the minor mitigation measures have not worked for two vaults.

**RELEVANT STANDARDS**

- Comply with California Public Contract Code Section 20103.8, award construction contract to lowest responsive, responsible bidder
- Operate and maintain facilities to minimize impacts on surrounding communities, including odor, noise, and lighting

**PROBLEM**

Two vaults continue to have noise and vibration nuisances for nearby residents.

**PROPOSED SOLUTION**

Award a construction contract agreement for Warner Avenue Vault Cover Improvements, Project No. FRC-0010. This project will replace the existing concrete vault covers with thinner pre-cast concrete vault covers. New paving will be placed on top of the new vault covers to bury the vault lids under the pavement, reducing direct contact with moving vehicles. This fix has worked for other nearby Warner Avenue vault covers.

**TIMING CONCERNS**

To address nearby residents' continued noise and vibration concerns, it is important to begin construction as soon as possible and complete the project in a timely manner.

**RAMIFICATIONS OF NOT TAKING ACTION**

If no action is taken, nearby residents will continue to experience noise and vibration nuisances caused between vault covers and moving vehicles.

**PRIOR COMMITTEE/BOARD ACTIONS**

N/A

**ADDITIONAL INFORMATION**

OC San advertised Project No. FRC-0010 for bids on February 1, 2024, and four sealed bids were received on March 26, 2024. A summary of the bid opening follows:

Engineer's Estimate	\$ 559,000
<u>Bidder</u>	<u>Amount of Bid</u>
Orange Corrosion Services Inc. (OC&C)	\$ 367,729.50
HZS Engineering Inc. (HZS)	\$ 727,000.00
Minako America Corporation (Minco)	\$ 977,000.00
Mladen Buntich Construction Company Inc.	\$ 1,048,000.00

The bids were evaluated in accordance with the OC San's policies and procedures. The two lowest bidders were determined to be non-responsive. Orange Corrosion Services Inc. did not meet the experience requirements due to their failure to submit completed projects with a public owner; it was determined that experience working with public owners as written in the Invitation for Bids (IFB) was not waivable. HZS Engineering Inc. also did not meet the experience requirements due to their failure to submit completed projects of similar nature, scope, and costs as required by the IFB. General Counsel was consulted on the un-responsiveness of the two lowest bidders and concurred with the evaluation team's determination.

A notice was sent to all bidders on June 18, 2024, informing them of the intent of OC San staff to recommend award of the Construction Contract Agreement to Minako America Corporation.

Staff recommends awarding a Construction Contract Agreement to the lowest responsive and responsible bidder, Minako America Corporation, for a total amount not to exceed \$977,000.

## **CEQA**

The project is exempt from CEQA under the Class 1 categorical exemptions set forth in California Code of Regulations section 15301. A Notice of Exemption will be filed with the OC Clerk-Recorder and State Clearing House after the OC San Board of Directors approval of the Construction Contract Agreement.

## **FINANCIAL CONSIDERATIONS**

This request complies with the authority levels of OC San's Purchasing Ordinance. This item has been budgeted (Budget FY 2024-25 and 2025-26, Section 5, Page 3, Repairs and Maintenance) and the budget is sufficient for the recommended action.

## **ATTACHMENT**

*The following attachment(s) may be viewed on-line at the OC San website ([www.ocsan.gov](http://www.ocsan.gov)) with the complete agenda package:*

- Construction Contract Agreement

KD:lb

**PART A**  
**CONTRACT AGREEMENT**

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CONTRACT AGREEMENT  
ORANGE COUNTY SANITATION DISTRICT

**PROJECT NO. FRC-0010**  
**WARNER AVENUE VAULT COVER IMPROVEMENTS**

THIS AGREEMENT is made and entered into, to be effective, this July 24, 2024, by and between Minako America Corporation dba Minco Construction, hereinafter referred to as “CONTRACTOR” and the Orange County Sanitation District, hereinafter referred to as “OC SAN”.

WITNESSETH

That for and in consideration of the promises and agreements hereinafter made and exchanged, OC SAN and CONTRACTOR agree as follows:

**SECTION – 1     GENERAL**

CONTRACTOR certifies and agrees that all the terms, conditions and obligations of the Contract Documents as hereinafter defined, the location of the job site, and the conditions under which the Work is to be performed have been thoroughly reviewed, and enters into this Contract based upon CONTRACTOR’s investigation of all such matters and is in no way relying upon any opinions or representations of OC SAN. It is agreed that this Contract represents the entire agreement. It is further agreed that the Contract Documents are each incorporated into this Contract by reference, with the same force and effect as if the same were set forth at length herein, and that CONTRACTOR and its Subcontractors, if any, will be and are bound by any and all of said Contract Documents insofar as they relate in any part or in any way, directly or indirectly, to the Work covered by this Contract.



A. Contract Documents Order of Precedence

“Contract Documents” refers to those documents identified in the definition of “Contract Documents” in the General Conditions, “Definitions”.

1. In the event of a conflict between one Contract Document and any of the other Contract Documents, the provisions in the document highest in precedence shall be controlling. The order of precedence of the Contract Documents is as follows:
  - a. Supplemental Agreements – the last in time being the first in precedence
  - b. Addenda issued prior to the date for submittal of Bids – the last in time being the first in precedence
  - c. Contract Agreement
  - d. Permits and other regulatory requirements
  - e. Special Provisions
  - f. General Conditions (GC)
  - g. Notice Inviting Bids and Instruction to Bidders
  - h. Geotechnical Baseline Report (GBR), if attached as a Contract Document
  - i. Plans and Specifications – in these documents the order of precedence shall be:
    - i. Specifications (Divisions 01-17)
    - ii. Plans
    - iii. General Requirements (GR)
    - iv. Standard Drawings and Typical Details
  - j. CONTRACTOR's Bid
2. In the event of a conflict between terms within an individual Contract Document, the conflict shall be resolved by applying the following principles as appears applicable:
  - a. Figured dimensions on the Contract Documents shall govern. Dimensions not specified shall be as directed by the ENGINEER. Details not shown or specified

shall be the same as similar parts that are shown or specified, or as directed.

Full-size details shall take precedence over scale Drawings as to shape and details of construction. Specifications shall govern as to material and workmanship.

- b. The Contract Documents calling for the higher quality material or workmanship shall prevail. Materials or Work described in words, which so applied, have a well-known technical or trade meaning shall be deemed to refer to such recognized standards. In the event of any discrepancy between any Drawings and the figures thereon, the figures shall be taken as correct.
- c. Scale Drawings, full-size details, and Specifications are intended to be fully complementary and to agree. Should any discrepancy between Contract Documents come to the CONTRACTOR's attention, or should an error occur in the efforts of others, which affect the Work, the CONTRACTOR shall notify the ENGINEER, in writing, at once. In the event any doubts or questions arise with respect to the true meaning of the Contract Documents, reference shall be made to the ENGINEER whose written decision shall be final. If the CONTRACTOR proceeds with the Work affected without written instructions from the ENGINEER, the CONTRACTOR shall be fully responsible for any resultant damage or defect.
- d. Anything mentioned in the Specifications and not indicated in the Plans, or indicated in the Plans and not mentioned in the Specifications, shall be of like effect as if indicated and mentioned in both. In case of discrepancy in the Plans or Specifications, the matter shall be immediately submitted to OC SAN's ENGINEER, without whose decision CONTRACTOR shall not adjust said discrepancy save only at CONTRACTOR's own risk and expense. The decision of the ENGINEER shall be final.

In all matters relating to the acceptability of material, machinery or plant equipment; classifications of material or Work; the proper execution, progress or sequence of the Work; and quantities interpretation of the Contract Documents, the decision of the ENGINEER shall be final and binding, and shall be a condition precedent to any payment under the Contract, unless otherwise ordered by the Board of Directors.

**B. Definitions**

Capitalized terms used in this Contract are defined in the General Conditions, "Definitions". Additional terms may be defined in the Special Provisions.

**SECTION – 2 MATERIALS AND LABOR**

CONTRACTOR shall furnish, under the conditions expressed in the Plans and Specifications, at CONTRACTOR'S own expense, all labor and materials necessary, except such as are mentioned in the Specifications to be furnished by OC SAN, to construct and complete the Project, in good workmanlike and substantial order. If CONTRACTOR fails to pay for labor or materials when due, OC SAN may settle such claims by making demand upon the Surety to this Contract. In the event of the failure or refusal of the Surety to satisfy said claims, OC SAN may settle them directly and deduct the amount of payments from the Contract Price and any amounts due to CONTRACTOR. In the event OC SAN receives a stop payment notice from any laborer or material supplier alleging non-payment by CONTRACTOR, OC SAN shall be entitled to deduct all of its costs and expenses incurred relating thereto, including but not limited to administrative and legal fees.

**SECTION – 3 PROJECT**

The Project is described as:

**PROJECT NO. FRC-0010**

**WARNER AVENUE VAULT COVER IMPROVEMENTS**

#### **SECTION – 4 PLANS AND SPECIFICATIONS**

The Work to be done is shown in a set of Plans and Specifications entitled:

#### **PROJECT NO. FRC-0010**

#### **WARNER AVENUE VAULT COVER IMPROVEMENTS**

Said Plans and Specifications and any revision, amendments and addenda thereto are attached hereto and incorporated herein as part of this Contract and referred to by reference.

#### **SECTION – 5 TIME OF COMMENCEMENT AND COMPLETION**

CONTRACTOR agrees to commence the Project within 15 calendar days from the date set forth in the “Notice to Proceed” sent by OC SAN, unless otherwise specified therein and shall diligently prosecute the Work to completion within three hundred (300) calendar days from the date of the “Notice to Proceed” issued by OC SAN, excluding delays caused or authorized by OC SAN as set forth in Sections 7, 8, and 9 hereof, and applicable provisions in the General Conditions. The time for completion includes ten (10) calendar days determined by OC SAN likely to be inclement weather when CONTRACTOR will be unable to work.

#### **SECTION – 6 TIME IS OF THE ESSENCE**

Time is of the essence of this Contract. As required by the Contract Documents, CONTRACTOR shall prepare and obtain approval of all shop drawings, details and samples, and do all other things necessary and incidental to the prosecution of CONTRACTOR’s Work in conformance with an approved construction progress schedule. CONTRACTOR shall coordinate the Work covered by this Contract with that of all other contractors, subcontractors and of OC SAN, in a manner that will facilitate the efficient completion of the entire Work and accomplish the required milestone(s), if any, by the applicable deadline(s) in accordance with Section 5 herein. OC SAN shall have the right to assert complete control of the premises on which the Work is to be performed and shall have the right to decide the time or order in which

the various portions of the Work shall be installed or the priority of the work of subcontractors, and, in general, all matters representing the timely and orderly conduct of the Work of CONTRACTOR on the premises.

#### **SECTION – 7      EXCUSABLE DELAYS**

CONTRACTOR shall only be excused for any delay in the prosecution or completion of the Project as specifically provided in General Conditions, “Extension of Time for Delay”, and the General Requirements, “By CONTRACTOR or Others – Unknown Utilities during Contract Work”. Extensions of time and extra compensation arising from such excusable delays will be determined in accordance with the General Conditions, “Extension of Time for Delay” and “Contract Price Adjustments and Payments”, and extensions of time and extra compensation as a result of incurring undisclosed utilities will be determined in accordance with General Requirements, “By CONTRACTOR or Others – Unknown Utilities during Contract Work”. OC SAN’s decision will be conclusive on all parties to this Contract.

#### **SECTION – 8      EXTRA WORK**

The Contract Price as set forth in Section 11, includes compensation for all Work performed by CONTRACTOR, unless CONTRACTOR obtains a Change Order signed by a designated representative of OC SAN specifying the exact nature of the Extra Work and the amount of extra compensation to be paid all as more particularly set forth in Section 9 hereof and the General Conditions, “Request for Change (Changes at CONTRACTOR’s Request)”, “OWNER Initiated Changes”, and “Contract Price Adjustments and Payments”.

In the event a Change Order is issued by OC SAN pursuant to the Contract Documents, OC SAN shall extend the time fixed in Section 5 for completion of the Project by the number of days, if any, reasonably required for CONTRACTOR to perform the Extra Work, as determined by OC SAN’s ENGINEER. The decision of the ENGINEER shall be final.

## **SECTION – 9 CHANGES IN PROJECT**

OC SAN may at any time, without notice to any Surety, by Change Order, make any changes in the Work within the general scope of the Contract Document, including but not limited to changes:

1. In the Specifications (including Drawings and designs);
2. In the time, method or manner of performance of the Work;
3. In OC SAN-furnished facilities, equipment, materials, services or site; or
4. Directing acceleration in the performance of the Work.

No change of period of performance or Contract Price, or any other change in the Contract Documents, shall be binding until the Contract is modified by a fully executed Change Order.

All Change Orders shall be issued in accordance with the requirements set forth in the General Conditions, “Request for Change (Changes at CONTRACTOR’s Request)” and “OWNER Initiated Changes”.

## **SECTION – 10 LIQUIDATED DAMAGES FOR DELAY**

Liquidated Damages shall be payable in the amounts and upon the occurrence of such events or failure to meet such requirements or deadlines as provided in the Special Provisions, “Liquidated Damages and Incentives.”

## **SECTION – 11 CONTRACT PRICE AND METHOD OF PAYMENT**

A. OC SAN agrees to pay and the CONTRACTOR agrees to accept as full consideration for the faithful performance of this Contract, subject to any additions or deductions as provided in approved Change Orders, the sum of Nine Hundred Seventy-Seven Thousand Dollars (\$977,000) as itemized on the attached Exhibit “A”.

Upon satisfaction of the conditions precedent to payment set forth in the General Requirements, Additional General Requirements, and General Conditions (including but

not limited to Sections entitled “Mobilization Payment Requirements” and “Payment Itemized Breakdown of Contract Lump Sum Prices”), there shall be paid to the CONTRACTOR an initial Net Progress Payment for mobilization. OC SAN shall issue at the commencement of the job a schedule which shows:

1. A minimum of one payment to be made to the CONTRACTOR for each successive four (4) week period as the Work progresses, and
2. The due dates for the CONTRACTOR to submit requests for payment to meet the payment schedule.

After the initial Net Progress Payment, and provided the CONTRACTOR submits the request for payment prior to the end of the day required to meet the payment schedule, the CONTRACTOR shall be paid a Net Progress Payment on the corresponding monthly payment date set forth in the schedule.

Payments shall be made on demands drawn in the manner required by law, accompanied by a certificate signed by the ENGINEER, stating that the Work for which payment is demanded has been performed in accordance with the terms of the Contract Documents, and that the amount stated in the certificate is due under the terms of the Contract.

Payment applications shall also be accompanied with all documentation, records, and releases as required by the Contract; Exhibit A, Schedule of Prices; and General Conditions, “Payment for Work – General”. The Total amount of Progress Payments shall not exceed the actual value of the Work completed as certified by OC SAN’s ENGINEER. The processing of payments shall not be considered as an acceptance of any part of the Work.

- B. As used in this Section, the following defined terms shall have the following meanings:
1. **“Net Progress Payment”** means a sum equal to the Progress Payment less the Retention Amount and other qualified deductions (Liquidated Damages, stop payment notices, etc.).
  2. **“Progress Payment”** means a sum equal to:
    - a. the value of the actual Work completed since the commencement of the Work as determined by OC SAN;
    - b. plus the value of material suitably stored at the worksite, treatment plant or approved storage yards subject to or under the control of OC SAN since the commencement of the Work as determined by OC SAN;
    - c. less all previous Net Progress Payments;
    - d. less all amounts of previously qualified deductions;
    - e. less all amounts previously retained as Retention Amounts.
  3. **“Retention Amount”** for each Progress Payment means the percentage of each Progress Payment to be retained by OC SAN to assure satisfactory completion of the Contract. The amount to be retained from each Progress Payment shall be determined as provided in the General Conditions, “Retained Funds; Substitution of Securities.”

## **SECTION – 12 SUBSTITUTION OF SECURITIES IN LIEU OF RETENTION OF FUNDS**

Pursuant to Public Contract Code Section 22300 et seq., the CONTRACTOR may, at its sole expense, substitute securities as provided in General Conditions, “Retained Funds; Substitution of Securities.”



## **SECTION – 13    COMPLETION**

Final Completion and Final Acceptance shall occur at the time and in the manner specified in the General Conditions, “Final Acceptance and Final Completion”, “Final Payment”; and Exhibit A, Schedule of Prices.

Upon receipt of all documentation, records, and releases as required by the Contract from the CONTRACTOR, OC SAN shall proceed with the Final Acceptance as specified in General Conditions.

## **SECTION – 14    CONTRACTOR’S EMPLOYEES COMPENSATION**

### **A.    Davis-Bacon Act:**

CONTRACTOR 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.

### **B.    General Prevailing Rate:**

OC SAN 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 the same are on file in the Office of the ENGINEER of OC SAN. The CONTRACTOR agrees that not less than said prevailing rates shall be paid to workers employed on this

public works Contract as required by Labor Code Section 1774 of the State of California.

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

C. Forfeiture for Violation:

CONTRACTOR shall, as a penalty to OC SAN, forfeit Two Hundred Dollars (\$200.00) for each calendar day or portion thereof for each worker paid (either by the CONTRACTOR 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.

D. 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 CONTRACTOR shall comply therewith if the prime contract involves Thirty Thousand Dollars (\$30,000.00) or more.

E. Workday:

In the performance of this Contract, not more than eight (8) hours shall constitute a day's work, and the CONTRACTOR shall not require more than eight (8) hours of labor in a day from any person employed by him hereunder except as provided in paragraph (B) above. CONTRACTOR 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 OC SAN as a penalty, the sum of Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by CONTRACTOR 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 calendar day and

forty (40) hours in any one week in violation of said Article. CONTRACTOR shall keep an accurate record showing the name and actual hours worked each calendar day and each calendar week by each worker employed by CONTRACTOR in connection with the Project.

F. Registration; Record of Wages; Inspection:

CONTRACTOR 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 by the California Department of Industrial Relations. CONTRACTOR shall maintain accurate payroll records 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.

CONTRACTOR shall comply with the job site notices posting requirements established by the Labor Commissioner per Title 8, California Code of Regulations Section 16461(e).

**SECTION – 15 SURETY BONDS**

CONTRACTOR shall, before entering upon the performance of this Contract, furnish Bonds approved by OC SAN's General Counsel – one in the amount of one hundred percent (100%) of the Contract amount, to guarantee the faithful performance of the Work, and the other in the amount of one hundred percent (100%) of the Contract amount to guarantee payment of all claims for labor and materials furnished. As changes to the Contract occur via approved Change Orders, the CONTRACTOR shall assure that the amounts of the Bonds are adjusted to maintain 100% of the Contract Price. This Contract shall not become effective until such Bonds are supplied to and approved by OC SAN. Bonds must be issued by a Surety authorized by the State Insurance Commissioner to do business in California. The Performance Bond shall remain in full force and effect through the warranty period, as specified in Section 19 below.

All Bonds required to be submitted relating to this Contract must comply with California Code of Civil Procedure Section 995.630. Each Bond shall be executed in the name of the Surety insurer under penalty of perjury, or the fact of execution of each Bond shall be duly acknowledged before an officer authorized to take and certify acknowledgments, and either one of the following conditions shall be satisfied:

- A. A copy of the transcript or record of the unrevoked appointment, power of attorney, by-laws, or other instrument, duly certified by the proper authority and attested by the seal of the insurer entitling or authorizing the person who executed the Bond to do so for and on behalf of the insurer, is on file in the Office of the County Clerk of the County of Orange; or
- B. A copy of a valid power of attorney is attached to the Bond.

**SECTION – 16 INSURANCE**

CONTRACTOR shall purchase and maintain, for the duration of the Contract, insurance against claims for injuries to persons, or damages to property which may arise from or in connection with the performance of the Work hereunder, and the results of that Work by CONTRACTOR, its agents, representatives, employees, or Subcontractors, in amounts equal to the requirements set forth below. CONTRACTOR shall not commence Work under this Contract until all insurance required under this Section is obtained in a form acceptable to OC SAN, nor shall CONTRACTOR allow any Subcontractor to commence Work on a subcontract until all insurance required of the Subcontractor has been obtained. CONTRACTOR shall maintain all of the foregoing insurance coverages in force through the point at which the Work under this Contract is fully completed and accepted by OC SAN pursuant to the provisions of the General Conditions, "Final Acceptance and Final Completion". Furthermore, CONTRACTOR shall maintain all of the foregoing insurance coverages in full force and effect throughout the warranty period, commencing on the date of Final Acceptance. The requirement for carrying the

foregoing insurance shall not derogate from the provisions for indemnification of OC SAN by CONTRACTOR under Section 17 of this Contract. Notwithstanding nor diminishing the obligations of CONTRACTOR with respect to the foregoing, CONTRACTOR shall subscribe for and maintain in full force and effect during the life of this Contract, inclusive of all changes to the Contract Documents made in accordance with the provisions of the General Conditions, "Request for Change (Changes at CONTRACTOR's Request)" and/or "OWNER Initiated Changes", the following insurance in amounts not less than the amounts specified. OC SAN reserves the right to amend the required limits of insurance commensurate with the CONTRACTOR's risk at any time during the course of the Project. No vehicles may enter OC SAN premises/worksite without possessing the required insurance coverage. CONTRACTOR's insurance shall also comply with all insurance requirements prescribed by agencies from whom permits shall be obtained for the Work and any other third parties from whom third party agreements are necessary to perform the Work (collectively, the "Third Parties"). The Special Provisions may list such requirements and sample forms and requirements from such Third Parties may be included in an attachment to the General Requirements. CONTRACTOR bears the responsibility to discover and comply with all requirements of Third Parties, including meeting specific insurance requirements, that are necessary for the complete performance of the Work. To the extent there is a conflict between the Third Parties' insurance requirements and those set forth by OC SAN herein, the requirement(s) providing the more protective coverage for both OC SAN and the Third Parties shall control and be purchased and maintained by CONTRACTOR.

If CONTRACTOR maintains higher limits than the minimums shown in this Section, OC SAN requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR.

Where permitted by law, CONTRACTOR hereby waives all rights of recovery by subrogation because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or any other reason against OC SAN, its or their officers, agents, or employees, and any other contractor or subcontractor performing Work or rendering services on behalf of OC SAN in connection with the planning, development and construction of the Project. In all its insurance coverages (except for Professional Liability/Errors and Omissions coverages, if applicable) related to the Work, CONTRACTOR shall include clauses providing that each insurer shall waive all of its rights of recovery by subrogation against OC SAN, its or their officers, agents, or employees, or any other contractor or subcontractor performing Work or rendering services at the Project. Where permitted by law, CONTRACTOR shall require similar written express waivers and insurance clauses from each of its Subcontractors of every tier. A waiver of subrogation shall be effective as to any individual or entity, even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium, directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

A. Limits of Insurance

1. General Liability: Two Million Dollars (\$2,000,000) per occurrence and a general aggregate limit of Four Million Dollars (\$4,000,000) for bodily injury, personal injury and property damage. If aggregate limits apply separately to this contract (as evidenced by submission of ISO form CG 25 03 or CG 25 04), then the aggregate limit may be equivalent to the per occurrence limit. Coverage shall include each of the following:
  - a. Premises-Operations.

- b. Products and Completed Operations, with limits of at least Two Million Dollars (\$2,000,000) per occurrence and a general aggregate limit of Four Million Dollars (\$4,000,000) which shall be in effect at all times during the warranty period set forth in the Warranty section herein, and as set forth in the General Conditions, "Warranty (CONTRACTOR's Guarantee)", plus any additional extension or continuation of time to said warranty period that may be required or authorized by said provisions. If aggregate limits apply separately to this contract (as evidenced by submission of ISO form CG 25 03 or CG 25 04), then the aggregate limit may be equivalent to the per occurrence limit.
- c. Broad Form Property Damage, expressly including damage arising out of explosion, collapse, or underground damage.
- d. Contractual Liability, expressly including the indemnity provisions assumed under this Contract.
- e. Separation of Insured Clause, providing that coverage applies separately to each insured, except with respect to the limits of liability.
- f. Independent CONTRACTOR's Liability.

To the extent first dollar coverage, including defense of any claim, is not available to OC SAN or any other additional insured because of any SIR, deductible, or any other form of self insurance, CONTRACTOR is obligated to assume responsibility of insurer until the deductible, SIR or other condition of insurer assuming its defense and/or indemnity has been satisfied.

CONTRACTOR shall be responsible to pay any deductible or SIR.

- g. If a crane will be used, the general liability insurance will be endorsed to add Riggers Liability coverage or its equivalent to cover the usage of the crane and

exposures with regard to the crane operators, riggers and others involved in using the crane.

- h. If divers will be used, the general liability insurance will be endorsed to cover marine liability or its equivalent to cover the usage of divers.
- 2. Automobile Liability: The CONTRACTOR 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 limit of liability coverage: combined single limit of One Million Dollars (\$1,000,000) for bodily injury, personal injury, and property damage.
- 3. Umbrella Excess Liability: The minimum limits of general liability and automobile liability insurance required, as set forth above, shall be provided for either in a single policy of primary insurance or a combination of policies of primary and umbrella excess coverage. 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.
- 4. Drone Liability Insurance: If a drone will be used, drone liability insurance must be maintained by CONTRACTOR in the amount of One Million Dollars (\$1,000,000) in a form acceptable to OC SAN.
- 5. Workers' Compensation/Employer's Liability: CONTRACTOR shall provide such workers' compensation insurance as required by the Labor Code of the State of California, including employer's liability with a minimum limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. If an exposure to Jones Act liability may exist, the insurance required herein shall include coverage with regard to Jones Act claims.



B. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by OC SAN. At the option of OC SAN, either: the Insurer shall reduce or eliminate such deductibles or self-insured retentions as respects OC SAN, its Directors, officers, agents, consultants, and employees; or CONTRACTOR shall provide a financial guarantee satisfactory to OC SAN guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

C. Other Insurance Provisions

1. Each such policy of general liability insurance and automobile liability insurance shall be endorsed to contain, the following provisions:

- a. OC SAN, its directors, officers, agents, consultants, and employees, and all public agencies from whom permits will be obtained, and their directors, officers, agents, and employees are hereby declared to be additional insureds under the terms of this policy, but only with respect to the operations of CONTRACTOR at or from any of the sites of OC SAN in connection with this Contract, or acts and omissions of the additional insured in connection with its general supervision or inspection of said operations related to this Contract.
- b. Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by OC SAN shall be excess only and not contributing with insurance provided under this policy.

2. Cancellation and Policy Change Notice.

The CONTRACTOR 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, the CONTRACTOR is required to notify OC SAN in

writing of any change in the terms of insurance, including reduction in coverage or increase in deductible/SIR, within two (2) working days of receipt of such notice or knowledge of same.

Said notices shall be mailed to OC SAN at:

ORANGE COUNTY SANITATION DISTRICT  
18480 Bandilier Circle  
Fountain Valley, CA 92708  
Attention: Contracts, Purchasing & Materials Management Division

3. Coverage shall not extend to any indemnity coverage for the active negligence of any additional insured in any case where an agreement to indemnify the additional insured would be invalid under California Civil Code Section 2782(b).
4. If required by a public agency from whom permit(s) will be obtained, each policy of general liability insurance and automobile liability insurance shall be endorsed to specify by name the public agency and its legislative members, officers, agents, consultants, and employees, to be additional insureds.

D. Acceptability of Insurers

Insurers must have an "A-", or better, Policyholder's Rating, and a Financial Rating of at least Class VIII, or better, in accordance with the most current A.M. Best Rating Guide.

OC SAN recognizes that State Compensation Insurance Fund has withdrawn from participation in the A.M. Best Rating Guide process. Nevertheless, OC SAN will accept State Compensation Insurance Fund for the required policy of worker's compensation insurance, subject to OC SAN's option, at any time during the term of this Contract, to require a change in insurer upon twenty (20) days written notice. Further, OC SAN will require CONTRACTOR to substitute any insurer whose rating drops below the levels herein specified. Said substitution shall occur within twenty (20) days of written notice to CONTRACTOR by OC SAN or its agent.

E. Verification of Coverage

CONTRACTOR shall furnish OC SAN with original certificates and mandatory endorsements affecting coverage. Said policies and endorsements shall conform to the requirements herein stated. All certificates and endorsements are to be received and approved by OC SAN before Work commences. OC SAN reserves the right to require complete, certified copies of all required insurance policies, including endorsements, affecting the coverage required by these Specifications at any time.

F. Subcontractors

CONTRACTOR shall be responsible to establish insurance requirements for any Subcontractors hired by CONTRACTOR. The insurance shall be in amounts and types reasonably sufficient to deal with the risk of loss involving the Subcontractor's operations and work. OC SAN and any public agency issuing permits for the Project must be named as "Additional Insured" on any general liability or automobile liability policy obtained by a Subcontractor. The CONTRACTOR must obtain copies and maintain current versions of all Subcontractors' policies, certificate of liability and mandatory endorsements effecting coverage. Upon request, CONTRACTOR must furnish OC SAN with the above referenced required documents.

G. Required Forms and Endorsements

1. Required ACORD Form

- |                             |   |
|-----------------------------|---|
| a. Certificate of Liability | ACORD Form 25 or other equivalent certificate of insurance form |
|-----------------------------|---|

2. Required Insurance Services Office, Inc. Endorsements (when alternative forms are shown, they are listed in order of preference)

In the event any of the following forms are cancelled by Insurance Services Office, Inc. (ISO), or are updated, the ISO replacement form or equivalent must be supplied.

- a. Commercial General Liability Form CG 00 01
  - b. Additional Insured Including Products-Completed Operations Form CG 20 10 **and** Form CG 20 37  
All other additional insured endorsements must be submitted for approval by OC SAN, and OC SAN may reject alternatives that provide different or less coverage to OC SAN.
  - c. Waiver of Transfer of Rights of Recovery Against Others to Us/  
Waiver of Subrogation Form CG 24 04
3. Required State Compensation Insurance Fund Endorsements
- a. Waiver of Subrogation Submit workers' compensation waiver of subrogation endorsement provided by carrier for OC SAN approval.
  - b. Cancellation Notice No endorsement is required. However, CONTRACTOR is responsible for notifying OC SAN of any pending or actual insurance policy cancellation, as described in Article C.2., Cancellation and Policy Change Notice, above.
4. Additional Required Endorsements

CONTRACTOR shall name the City of Huntington Beach, its officers, elected or appointed officials, employees, agents and volunteers as additional insureds by endorsement.

**SECTION – 17 RISK AND INDEMNIFICATION**

All Work covered by this Contract done at the site of construction or in preparing or delivering materials to the site shall be at the risk of CONTRACTOR alone. CONTRACTOR shall save, indemnify, defend, and keep OC SAN and others harmless as more specifically set forth in General Conditions, "General Indemnification".

## **SECTION – 18    TERMINATION**

This Contract may be terminated in whole or in part in writing by OC SAN in the event of substantial failure by the CONTRACTOR to fulfill its obligations under this Agreement, or it may be terminated by OC SAN for its convenience provided that such termination is effectuated in a manner and upon such conditions set forth more particularly in General Conditions, “Termination for Default” and/or “Termination for Convenience”, provided that no termination may be effected unless proper notice is provided to CONTRACTOR at the time and in the manner provided in said General Conditions. If termination for default or convenience is effected by OC SAN, an equitable adjustment in the price provided for in this Contract shall be made at the time and in the manner provided in the General Conditions, “Termination for Default” and “Termination for Convenience”.

## **SECTION – 19    WARRANTY**

The CONTRACTOR agrees to perform all Work under this Contract in accordance with the Contract Documents, including OC SAN’s designs, Drawings and Specifications.

The CONTRACTOR guarantees for a period of at least one (1) year from the date of Final Acceptance of the Work, pursuant to the General Conditions, “Final Acceptance and Final Completion” that the completed Work is free from all defects due to faulty materials, equipment or workmanship and that it shall promptly make whatever adjustments or corrections which may be necessary to cure any defects, including repairs of any damage to other parts of the system resulting from such defects. OC SAN shall promptly give notice to the CONTRACTOR of observed defects. In the event that the CONTRACTOR fails to make adjustments, repairs, corrections or other work made necessary by such defects, OC SAN may do so and charge the CONTRACTOR the cost incurred. The CONTRACTOR’s warranty shall continue as to any corrected deficiency until the later of (1) the remainder of the original one-year warranty period;

or (2) one year after acceptance by OC SAN of the corrected Work. The Performance Bond and the Payment Bond shall remain in full force and effect through the guarantee period.

The CONTRACTOR's obligations under this clause are in addition to the CONTRACTOR's other express or implied assurances under this Contract, including but not limited to specific manufacturer or other extended warranties specified in the Plans and Specifications, or state law and in no way diminish any other rights that OC SAN may have against the CONTRACTOR for faulty materials, equipment or Work.

#### **SECTION – 20 ASSIGNMENT**

No assignment by the CONTRACTOR of this Contract or any part hereof, or of funds to be received hereunder, will be recognized by OC SAN unless such assignment has had prior written approval and consent of OC SAN and the Surety.

#### **SECTION – 21 RESOLUTION OF DISPUTES**

OC SAN and the CONTRACTOR shall comply with the provisions of California Public Contract Code Section 20104 et. seq., regarding resolution of construction claims for any Claims which arise between the CONTRACTOR and OC SAN, as well as all applicable dispute and Claims provisions as set forth in the General Conditions and as otherwise required by law.

#### **SECTION – 22 SAFETY & HEALTH**

CONTRACTOR shall comply with all applicable safety and health requirements mandated by federal, state, city and/or public agency codes, permits, ordinances, regulations, and laws, as well as these Contract Documents, including but not limited to the General Requirements, Section entitled "Safety" and Exhibit B Contractor Safety Standards. OC SAN reserves the right to stop Work for violations of safety and health standards until the hazardous conditions are corrected. The right to stop Work includes the right to remove a contractor or its employees from the worksite.

## SECTION – 23 NOTICES

Any notice required or permitted under this Contract shall be served by personal delivery or by certified mail, return receipt requested, at the address set forth below. Unless specified elsewhere in the Contract Documents or otherwise required by law, any notice may alternatively be given by electronic telecommunication to the email address set forth below. Any party whose address changes shall notify the other party in writing.

TO OC SAN:                   Orange County Sanitation District  
18480 Bandilier Circle  
Fountain Valley, California 92708  
Attn: Clerk of the Board  
[ocsanclerk@ocsan.gov](mailto:ocsanclerk@ocsan.gov)

Copy to:                     Orange County Sanitation District  
18480 Bandilier Circle  
Fountain Valley, California 92708  
Attn: Construction Manager  
[rcuellar@ocsan.gov](mailto:rcuellar@ocsan.gov)

Scott C. Smith  
Best Best & Krieger LLP  
18101 Von Karman Avenue  
Suite 1000  
Irvine, California 92612  
[scott.smith@bbklaw.com](mailto:scott.smith@bbklaw.com)

TO CONTRACTOR:         Refaat H. Mina  
Minako America Corporation dba Minco Construction  
522 E. Airline Way  
Gardena, CA 90248  
[Refaat.Mina@mincoconstruction.com](mailto:Refaat.Mina@mincoconstruction.com)  
[Mina@mincoconstruction.com](mailto:Mina@mincoconstruction.com)

IN WITNESS WHEREOF, the parties hereto have executed this Contract Agreement as the date first hereinabove written.

CONTRACTOR: Minako America Corporation dba Minco Construction  
522 E. Airline Way  
Gardena, CA 90248

By \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Printed Name

Its \_\_\_\_\_

CONTRACTOR's State License No. 612429 (Expiration Date – 9/30/2024)

OC SAN: Orange County Sanitation District

By \_\_\_\_\_ Date \_\_\_\_\_

Ryan P. Gallagher  
Board Chairman

By \_\_\_\_\_ Date \_\_\_\_\_

Kelly A. Lore  
Clerk of the Board

By \_\_\_\_\_ Date \_\_\_\_\_

Ruth Zintzun  
Finance & Procurement Manager



**EXHIBIT A**  
**SCHEDULE OF PRICES**

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**EXHIBIT A**  
**SCHEDULE OF PRICES**

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# EXHIBIT A

## SCHEDULE OF PRICES

### EXA-1 BASIS OF COMPENSATION

CONTRACTOR will be paid the Contract Price according to the Schedule of Prices, and all other applicable terms and conditions of the Contract Documents.

### EXA-2 PROGRESS PAYMENTS

Progress payments will be made in accordance with all applicable terms and conditions of the Contract Documents, including, but not limited to:

1. Contract Agreement – Section 11 – “Contract Price and Method of Payment;”
2. General Conditions – “Payment – General”;
3. General Conditions – “Payment – Applications for Payment”;
4. General Conditions – “Payment – Mobilization Payment Requirements;”
5. General Conditions – “Payment – Itemized Breakdown of Contract Lump Sum Prices”;
6. General Conditions – “Contract Price Adjustments and Payments”;
7. General Conditions – “Suspension of Payments”;
8. General Conditions – “OC SAN’s Right to Withhold Certain Amounts and Make Application Thereof”; and
9. General Conditions – “Final Payment.”

### EXA-3 RETENTION AND ESCROW ACCOUNTS

#### A. Retention:

OC SAN shall retain a percentage of each progress payment to assure satisfactory completion of the Work. The amount to be retained from each progress payment shall be determined as provided in General Conditions – “Retained Funds; Substitution of Securities”. In all contracts between CONTRACTOR and its Subcontractors and/or Suppliers, the retention may not exceed the percentage specified in the Contract Documents.

B. Substitution of Securities:

CONTRACTOR may, at its sole expense, substitute securities as provided in General Conditions – “Retained Funds; Substitution of Securities.” Payment of Escrow Agent:

In lieu of substitution of securities as provided above, the CONTRACTOR may request and OC SAN shall make payment of retention earned directly to the escrow agent at the expense of the CONTRACTOR. At the expense of the CONTRACTOR, the CONTRACTOR may direct the investment of the payments into securities consistent with Government Code §16430 and the CONTRACTOR shall receive the interest earned on the investments upon the same terms provided for in this article for securities deposited by the CONTRACTOR. Upon satisfactory completion of the Contract, the CONTRACTOR shall receive from the escrow agent all securities, interest and payments received by the escrow agent from OC SAN, pursuant to the terms of this article. The CONTRACTOR shall pay to each Subcontractor, not later than twenty (20) calendar days after receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each Subcontractor, on the amount of retention withheld to ensure the performance of the Subcontractor. The escrow agreement used by the escrow agent pursuant to this article shall be substantially similar to the form set forth in §22300 of the California Public Contract Code.

C. Release of Retention:

Upon Final Acceptance of the Work, the CONTRACTOR shall submit an invoice for release of retention in accordance with the terms of the Contract.

D. Additional Deductibles:

In addition to the retentions described above, OC SAN may deduct from each progress payment any or all of the following:

1. Liquidated Damages that have occurred as of the date of the application for progress payment;
2. Deductions from previous progress payments already paid, due to OC SAN's discovery of deficiencies in the Work or non-compliance with the Specifications or any other requirement of the Contract;
3. Sums expended by OC SAN in performing any of the CONTRACTOR'S obligations under the Contract that the CONTRACTOR has failed to perform, and;
4. Other sums that OC SAN is entitled to recover from the CONTRACTOR under the terms of the Contract, including without limitation insurance deductibles and assessments.

The failure of OC SAN to deduct any of the above-identified sums from a progress payment shall not constitute a waiver of OC SAN's right to such sums or to deduct them from a later progress payment.

#### **EXA-4 STOP PAYMENT NOTICE**

In addition to other amounts properly withheld under this article or under other provisions of the Contract, OC SAN shall retain from progress payments otherwise due the CONTRACTOR an amount equal to one hundred twenty-five percent (125%) of the amount claimed under any stop payment notice under Civil Code §9350 et. seq. or other lien filed against the CONTRACTOR for labor, materials, supplies, equipment, and any other thing of value claimed to have been furnished to and/or incorporated into the Work; or for any other alleged contribution thereto. In addition to the foregoing and in accordance with Civil Code §9358 OC SAN may also satisfy its duty to withhold funds for stop payment notices by refusing to release funds held in escrow pursuant to public receipt of a release of stop payment notice executed by a stop payment notice claimant, a stop payment notice release bond, an order of a court of competent jurisdiction, or other evidence satisfactory to OC SAN that the CONTRACTOR has resolved such claim by settlement.

#### **EXA-5 PAYMENT TO SUBCONTRACTORS**

Requirements

1. The CONTRACTOR shall pay all Subcontractors for and on account of Work performed by such Subcontractors, not later than seven (7) days after receipt of each progress payment as required by the California Business and Professions Code §7108.5. Such payments to Subcontractors shall be based on the measurements and estimates made pursuant to article progress payments provided herein.
2. Except as specifically provided by law, the CONTRACTOR shall pay all Subcontractors any and all retention due and owing for and on account of Work performed by such Subcontractors not later than seven (7) days after CONTRACTOR'S receipt of said retention proceeds from OC SAN as required by the California Public Contract Code §7107.

#### **EXA-6 PAYMENT OF TAXES**

Unless otherwise specifically provided in this Contract, the Contract Price includes full compensation to the CONTRACTOR for all taxes. The CONTRACTOR shall pay all federal, state, and local taxes, and duties applicable to and assessable against any Work, including but not limited to retail sales and use, transportation, export, import, business, and special taxes. The CONTRACTOR shall ascertain and pay the taxes when due. The CONTRACTOR will maintain auditable records, subject to OC SAN reviews, confirming that tax payments are current at all times.

## **EXA-7 FINAL PAYMENT**

After Final Acceptance of the Work, as more particularly set forth in the General Conditions, "Final Acceptance and Final Completion", and after Resolution of the Board authorizing final payment and satisfaction of the requirements as more particularly set forth in General Conditions – "Final Payment", a final payment will be made as follows:

1. Prior to Final Acceptance, the CONTRACTOR shall prepare and submit an application for Final Payment to OC SAN, including:
  - a. The proposed total amount due the CONTRACTOR, segregated by items on the payment schedule, amendments, Change Orders, and other bases for payment;
  - b. Deductions for prior progress payments;
  - c. Amounts retained;
  - d. A conditional waiver and release on final payment for each Subcontractor (per Civil Code Section 8136);
  - e. A conditional waiver and release on final payment on behalf of the CONTRACTOR (per Civil Code Section 8136);
  - f. List of Claims the CONTRACTOR intends to file at that time or a statement that no Claims will be filed,
  - g. List of pending unsettled claims, stating claimed amounts, and copies of any and all complaints and/or demands for arbitration received by the CONTRACTOR; and
  - h. For each and every claim that resulted in litigation or arbitration which the CONTRACTOR has settled, a conformed copy of the Request for Dismissal with prejudice or other satisfactory evidence the arbitration is resolved.
2. The application for Final Payment shall include complete and legally effective releases or waivers of liens and stop payment notices satisfactory to OC SAN, arising out of or filed in connection with the Work. Prior progress payments shall be subject to correction in OC SAN's review of the application for Final Payment. Claims filed with the application for Final Payment must be otherwise timely under the Contract and applicable law.
3. Within a reasonable time, OC SAN will review the CONTRACTOR'S application for Final Payment. Any recommended changes or corrections will then be forwarded to the CONTRACTOR. Within ten (10) calendar days after receipt of recommended changes from OC SAN, the CONTRACTOR will make the changes, or list Claims that will be filed as a result of the changes, and shall submit the revised application for Final Payment. Upon

acceptance by OC SAN, the revised application for Final Payment will become the approved application for Final Payment.

4. If no Claims have been filed with the initial or any revised application for Final Payment, and no Claims remain unsettled within thirty-five (35) calendar days after Final Acceptance of the Work by OC SAN, and agreements are reached on all issues regarding the application for Final Payment, OC SAN, in exchange for an executed release, satisfactory in form and substance to OC SAN, will pay the entire sum found due on the approved application for Final Payment, including the amount, if any, allowed on settled Claims.
5. The release from the CONTRACTOR shall be from any and all Claims arising under the Contract, except for Claims that with the concurrence of OC SAN are specifically reserved, and shall release and waive all unreserved Claims against OC SAN and its officers, directors, employees and authorized representatives. The release shall be accompanied by a certification by the CONTRACTOR that:
  - a. It has resolved all Subcontractors, Suppliers and other Claims that are related to the settled Claims included in the Final Payment;
  - b. It has no reason to believe that any party has a valid claim against the CONTRACTOR or OC SAN which has not been communicated in writing by the CONTRACTOR to OC SAN as of the date of the certificate;
  - c. All warranties are in full force and effect, and;
  - d. The releases and the warranties shall survive Final Payment.
6. If any claims remain open, OC SAN may make Final Payment subject to resolution of those claims. OC SAN may withhold from the Final Payment an amount not to exceed one hundred fifty percent (150%) of the sum of the amounts of the open claims, and one hundred twenty-five percent (125%) of the amounts of open stop payment notices referred to in article entitled stop payment notices herein.
7. The CONTRACTOR shall provide an unconditional waiver and release on final payment from each Subcontractor and Supplier providing Work under the Contract (per Civil Code Section 8138) and an unconditional waiver and release on final payment on behalf of the CONTRACTOR (per Civil Code Section 8138) within thirty (30) days of receipt of Final Payment.

#### **EXA-8 DISCOVERY OF DEFICIENCIES BEFORE AND AFTER FINAL PAYMENT**

Notwithstanding OC SAN's acceptance of the application for Final Payment and irrespective of whether it is before or after Final Payment has been made, OC SAN shall not be precluded from subsequently showing that:

1. The true and correct amount payable for the Work is different from that previously accepted;

2. The previously accepted Work did not in fact conform to the Contract requirements, or;
3. A previous payment or portion thereof for Work was improperly made.

OC SAN also shall not be stopped from demanding and recovering damages from the CONTRACTOR, as appropriate, under any of the foregoing circumstances as permitted under the Contract or applicable law.



**ATTACHMENT 1 – CERTIFICATION FOR REQUEST FOR PAYMENT**

I hereby certify under penalty of perjury as follows:

That the claim for payment is in all respects true, correct; that the services mentioned herein were actually rendered and/or supplies delivered to OC SAN in accordance with the Contract.

I understand that it is a violation of both the federal and California False Claims Acts to knowingly present or cause to be presented to OC SAN a false claim for payment or approval.

A claim includes a demand or request for money. It is also a violation of the False Claims Acts to knowingly make use of a false record or statement to get a false claim paid. The term "knowingly" includes either actual knowledge of the information, deliberate ignorance of the truth or falsity of the information, or reckless disregard for the truth or falsity of the information. Proof of specific intent to defraud is not necessary under the False Claims Acts. I understand that the penalties under the Federal False Claims Act and State of California False Claims Act are non-exclusive, and are in addition to any other remedies which OC SAN may have either under contract or law.

I hereby further certify, to the best of my knowledge and belief, that:

1. The amounts requested are only for performance in accordance with the Specifications, terms, and conditions of the Contract;
2. Payments to Subcontractors and Suppliers have been made from previous payments received under the Contract, and timely payments will be made from the proceeds of the payment covered by this certification;
3. This request for progress payments does not include any amounts which the prime CONTRACTOR intends to withhold or retain from a Subcontractor or Supplier in accordance with the terms and conditions of the subcontract; and
4. This certification is not to be construed as Final Acceptance of a Subcontractor's performance.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## **ATTACHMENT 2 – SCHEDULE OF PRICES**

See next page from the Bid Submittal Forms (Minako America Corporation dba Minco Construction)

BF-14 Schedule of Prices, Pages 1-2

**BF-14 SCHEDULE OF PRICES**

**INSTRUCTIONS**

**A. General**

For Unit Prices, it is understood that the following quantities are approximate only and are solely for the purpose of estimating the comparison of Bids, and that the actual value of Work will be computed based upon the actual quantities in the completed Work, whether they be more or less than those shown. CONTRACTOR's compensation for the Work under the Contract Documents will be computed based upon the lump sum amount of the Contract at time of award, plus any additional or deleted costs approved by OC SAN via approved Change Orders, pursuant to the Contract Documents.

Bidder shall separately price and accurately reflect costs associated with each line item, leaving no blanks. Any and all modifications to the Bid must be initialed by an authorized representative of the Bidder in accordance with the Instructions to Bidders, Preparation of Bid.

Bidders are reminded of Instruction to Bidders, Discrepancy in Bid Items, which, in summary, provides that the total price for each item shall be based on the Unit Price listed for each item multiplied by the quantity; and the correct Total Price for each item shall be totaled to determine the Total Amount of Bid.

All applicable costs including overhead and profit shall be reflected in the respective unit costs and the TOTAL AMOUNT OF BID. The Bid price shall include all costs to complete the Work, including profit, overhead, etc., unless otherwise specified in the Contract Documents. All applicable sales taxes, state and/or federal, and any other special taxes, patent rights or royalties shall be included in the prices quoted in this Bid.

**B. Basis of Award**

AWARD OF THE CONTRACT WILL BE MADE ON THE BASIS OF THE LOWEST RESPONSIVE AND RESPONSIBLE BID.

**Note 1: Base Bid.** Includes all costs necessary to furnish all labor, materials, equipment and services for the construction of the Project per the Contract Documents.

Bidders shall accurately reflect the cost to perform the Work. OC SAN may reject unbalanced Bids. Refer to Part 2 – INSTRUCTIONS TO BIDDERS.

Bid Submitted By: Minako America Corporation, dba Minco Construction  
 (Name of Firm)

**SCHEDULE OF PRICES**

BASE BID ITEMS (Refer to Note 1 in the Instructions):

Item No.	Description	Unit of Measurement	Approx Qty		Unit Price		Total Price
1.	<b>Mobilization:</b> Furnish all labor, materials, and equipment, including all fees, required for all mobilization activities as described in Division 01, Section 01155 Measurement and Payment and shall be in conformance with the Contract Documents for the lump sum price of...	Lump Sum				= \$	28,000
2.	<b>Permits:</b> Allowance for all permits, plan checks, inspection fees, and other fees and charges for City of Huntington Beach required to complete the Work as described in Division 01, Section 01155 Measurement and Payment and shall be in conformance with the Contract Documents for the allowance of...	Allowance				= \$	10,000
3.	<b>Asphalt Pavement Installation and Restriping:</b> Furnish all labor, materials, and equipment necessary for the completion of the Contract Work for asphalt pavement installation and restriping over the new vault covers as described in Division 01, Section 01155 Measurement and Payment and shall be in conformance with the Contract Documents for the unit price and total price of...	Square Feet	20,000	x	\$10.00	=	\$ 200,000.00
4.	<b>All Other Portions of the Work:</b> Furnish all labor, materials, and equipment necessary for the completion of the Contract Work including demobilization, except for the Work specified for Bid Items No. 1 through No. 3, as described in Division 01, Section 01155 Measurement and Payment and shall be in conformance with the Contract Documents, for the lump sum price of...	Lump Sum				=	\$ 739,000.00

TOTAL AMOUNT OF BID (BASIS OF AWARD) \$ 977,000.00



# OPERATIONS COMMITTEE

Administration Building  
10844 Ellis Avenue  
Fountain Valley, CA 92708  
(714) 593-7433

## Agenda Report

**File #:** 2024-3661

**Agenda Date:** 7/10/2024

**Agenda Item No:** 5.

**FROM:** Robert Thompson, General Manager  
Originator: Riaz Moinuddin, Director of Operations & Maintenance

**SUBJECT:**

**INDUSTRIAL CLEANING SERVICES, SPECIFICATION NO. S-2020-1184BD, CONTINGENCY INCREASE**

**GENERAL MANAGER'S RECOMMENDATION**

RECOMMENDATION: Recommend to the Board of Directors to:

Approve a contingency increase of \$216,050 (31%) to the existing Service Contract with Performance Pipeline Technologies Inc., dba Sanitation Systems, for Industrial Cleaning Services, Specification No. S-2020-1184BD, for a total contract amount not to exceed \$694,500 and a new total contingency of \$285,500 (41%) for the period of January 1, 2024 through December 31, 2024.

**BACKGROUND**

The purpose of this contract is to provide industrial cleaning, removing accumulated debris and grit from the Orange County Sanitation District's (OC San) treatment facilities and pump station treatment structures. These cleaning tasks are part of a planned and scheduled preventative and corrective maintenance approach that will help ensure availability of treatment plant structures.

Significant storm events and extensive construction activities have resulted in debris and grit accumulation in the treatment plant structures, wet wells, process tanks and basins. Plant process area structures have accumulated debris beyond the usual scope of the contract due to heavy storms at the beginning of this contract period as well as due to construction activity at Plant 1 Headworks resulting in substantial influx of grit and debris that must be promptly removed.

**RELEVANT STANDARDS**

- Protect OC San assets
- 24/7/365 treatment plant reliability
- Maintain a proactive asset management program

**PROBLEM**

The current not to exceed contract amount of \$694,500 plus the 10% contingency is not sufficient to cover the anticipated costs of cleanings scheduled for the remainder of the term of the contract.

**PROPOSED SOLUTION**

Increase contingency to cover the remainder of this term and the costs of unanticipated work during this period.

**TIMING CONCERNS**

Planned routine service maintenance and cleanings are required to remove debris and grit from damaging equipment and restore flow capacity of the primary effluent flow channels.

**RAMIFICATIONS OF NOT TAKING ACTION**

OC San could experience degraded treatment process performance, higher rehabilitation costs, and more frequent asset repairs.

**PRIOR COMMITTEE/BOARD ACTIONS**

November 2020 - Awarded a Service Contract to Performance Pipeline Technologies Inc. dba Sanitation Systems for Industrial Cleaning Service, Specification No. S-2020-1184BD, for a total amount not to exceed \$694,500 for the period of January 1, 2021 through December 31, 2021, with four one-year renewal options; and approved an annual contingency of \$69,450 (10%).

**ADDITIONAL INFORMATION**

N/A

**CEQA**

Industrial cleaning services is categorically exempt from CEQA under the Class 1 categorical exemptions set forth in California Code of Regulations Section 15301. Section 15301 (Class 1) exempts from CEQA “the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use,” including “(b) Existing facilities of both investor and publicly owned utilities used to provide electric power, natural gas, sewerage, or other public utility services”.

**FINANCIAL CONSIDERATIONS**

This request complies with authority levels of OC San’s Purchasing Ordinance. This item has been budgeted (Budget FY 2023-24, Section 6, Pages 92, Repairs and Maintenance) and the budget is sufficient for the recommended action.

<u>Date of Approval</u>	<u>Contract Amount</u>	<u>Contingency</u>
11/18/2020	\$694,500	\$69,450 (10%)
07/24/2024		\$216,050 (31%)

**ATTACHMENT**

*The following attachment(s) may be viewed on-line at the OC San website ([www.ocsan.gov](http://www.ocsan.gov)) with the complete agenda package:*

N/A



# OPERATIONS COMMITTEE

Administration Building  
10844 Ellis Avenue  
Fountain Valley, CA 92708  
(714) 593-7433

## Agenda Report

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**File #:** 2024-3410

**Agenda Date:** 7/10/2024

**Agenda Item No:** 6.

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**FROM:** Robert Thompson, General Manager  
Originator: Mike Dorman, Director of Engineering

**SUBJECT:**

**DIGESTER P AND R DOME TENDON REPAIR, CONTRACT NO. P2-137A**

**GENERAL MANAGER'S RECOMMENDATION**

RECOMMENDATION: Recommend to the Board of Directors to:

- A. Receive and file Bid Tabulation and Recommendation for Digester P and R Dome Tendon Repair, Contract No. P2-137A;
- B. Award a Construction Contract Agreement to Structural Preservation Systems, LLC for Digester P and R Dome Tendon Repair, Contract No. P2-137A as part of Digesters Rehabilitation at Plant No. 2, Project No. P2-137, for a total amount not to exceed \$2,597,864; and
- C. Approve a contingency of \$259,786 (10%).

**BACKGROUND**

The Orange County Sanitation District (OC San) has 18 anaerobic digesters at Plant No. 2 that were built from 1959 through 1979 and are used to convert sludge to biosolids and biogas for reuse. Anaerobic digesters are large enclosed concrete structures with pumping, mixing, heating, and gas handling systems. During the design phase of Digesters Rehabilitation at Plant No. 2, Project No. P2-137, investigations were performed on all digesters to assess the level of external concrete rehabilitation needed.

**RELEVANT STANDARDS**

- Comply with California Public Contract Code Section 20103.8, award construction contract to lowest responsive, responsible bidder
- 24/7/365 treatment plant reliability
- Protect OC San assets



**PROBLEM**

During digester concrete rehabilitation investigations, it was found that the post-tensioned tendon system to support the domes for Digesters P and R had significant corrosion, while other digesters with the same system did not show the same signs of corrosion.

**PROPOSED SOLUTION**

Award a construction contract agreement for Digester P and R Dome Tendon Repair, Contract No. P2-137A. This project will add a new post-tensioned tendon system to replace the corroded tendon system that supports the domes for Digesters P and R. This will entail the temporary removal of conflicting utilities and appurtenances on the exterior of the digesters, replacement of damaged concrete around the dome base, and installation and tensioning of new tendons.

**TIMING CONCERNS**

Delaying the project award will allow further corrosion of the tendons to occur.

**RAMIFICATIONS OF NOT TAKING ACTION**

The tendons will continue to corrode which could lead to structural failure of the digester domes.

**PRIOR COMMITTEE/BOARD ACTIONS**

N/A

**ADDITIONAL INFORMATION**

OC San advertised Project No. P2-137A for bids on March 27, 2024, and one sealed bid was received on May 15, 2024. A summary of the bid opening follows:

Engineer's Estimate	\$ 2,600,000
<u>Bidder</u>	<u>Amount of Bid</u>
Structural Preservation Systems, LLC	\$ 2,597,864

The bid was evaluated in accordance with OC San's policies and procedures. A notice was sent to the bidder on June 12, 2024, informing them of the intent of OC San staff to recommend award of the Construction Contract Agreement to Structural Preservation Systems, LLC.

Staff recommends awarding a Construction Contract Agreement to the lowest responsive and responsible bidder, Structural Preservation Systems, LLC, for a total amount not to exceed \$2,597,864.

**CEQA**

The project is exempt from CEQA under the Class 1 categorical exemptions set forth in California Code of Regulations section 15301. A Notice of Exemption was filed with the OC Clerk-Recorder for

P2-137 after the OC San's Board of Directors approval of the Professional Design Services Agreement on March 23, 2022.

### **FINANCIAL CONSIDERATIONS**

This request complies with the authority levels of OC San's Purchasing Ordinance. This item has been budgeted (Budget FY 2024-25 and 2025-26, Section 8, Page 74, Digesters Rehabilitation at Plant No. 2, Project No. P2-137) and the budget is sufficient for the recommended action.

### **ATTACHMENT**

*The following attachment(s) may be viewed on-line at the OC San website ([www.ocsan.gov](http://www.ocsan.gov)) with the complete agenda package:*

- Construction Contract Agreement
- Presentation

RL:lb

**PART A**  
**CONTRACT AGREEMENT**

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CONTRACT AGREEMENT  
ORANGE COUNTY SANITATION DISTRICT

**CONTRACT NO. P2-137A**  
**DIGESTER P AND R DOME TENDON REPAIR**

THIS AGREEMENT is made and entered into, to be effective, this July 24, 2024, by and between Structural Preservation Systems, LLC, hereinafter referred to as “CONTRACTOR” and the Orange County Sanitation District, hereinafter referred to as “OC SAN”.

WITNESSETH

That for and in consideration of the promises and agreements hereinafter made and exchanged, OC SAN and CONTRACTOR agree as follows:

**SECTION – 1     GENERAL**

CONTRACTOR certifies and agrees that all the terms, conditions and obligations of the Contract Documents as hereinafter defined, the location of the job site, and the conditions under which the Work is to be performed have been thoroughly reviewed, and enters into this Contract based upon CONTRACTOR’s investigation of all such matters and is in no way relying upon any opinions or representations of OC SAN. It is agreed that this Contract represents the entire agreement. It is further agreed that the Contract Documents are each incorporated into this Contract by reference, with the same force and effect as if the same were set forth at length herein, and that CONTRACTOR and its Subcontractors, if any, will be and are bound by any and all of said Contract Documents insofar as they relate in any part or in any way, directly or indirectly, to the Work covered by this Contract.

A. Contract Documents Order of Precedence

“Contract Documents” refers to those documents identified in the definition of “Contract Documents” in the General Conditions, “Definitions”.

1. In the event of a conflict between one Contract Document and any of the other Contract Documents, the provisions in the document highest in precedence shall be controlling. The order of precedence of the Contract Documents is as follows:
  - a. Supplemental Agreements – the last in time being the first in precedence
  - b. Addenda issued prior to the date for submittal of Bids – the last in time being the first in precedence
  - c. Contract Agreement
  - d. Permits and other regulatory requirements
  - e. Special Provisions
  - f. General Conditions (GC)
  - g. Notice Inviting Bids and Instruction to Bidders
  - h. Geotechnical Baseline Report (GBR), if attached as a Contract Document
  - i. Plans and Specifications – in these documents the order of precedence shall be:
    - i. Specifications (Divisions 01-17)
    - ii. Plans
    - iii. General Requirements (GR)
    - iv. Standard Drawings and Typical Details
  - j. CONTRACTOR's Bid
2. In the event of a conflict between terms within an individual Contract Document, the conflict shall be resolved by applying the following principles as appears applicable:
  - a. Figured dimensions on the Contract Documents shall govern. Dimensions not specified shall be as directed by the ENGINEER. Details not shown or specified shall be the same as similar parts that are shown or specified, or as

directed. Full-size details shall take precedence over scale Drawings as to shape and details of construction. Specifications shall govern as to material and workmanship.

- b. The Contract Documents calling for the higher quality material or workmanship shall prevail. Materials or Work described in words, which so applied, have a well-known technical or trade meaning shall be deemed to refer to such recognized standards. In the event of any discrepancy between any Drawings and the figures thereon, the figures shall be taken as correct.
- c. Scale Drawings, full-size details, and Specifications are intended to be fully complementary and to agree. Should any discrepancy between Contract Documents come to the CONTRACTOR's attention, or should an error occur in the efforts of others, which affect the Work, the CONTRACTOR shall notify the ENGINEER, in writing, at once. In the event any doubts or questions arise with respect to the true meaning of the Contract Documents, reference shall be made to the ENGINEER whose written decision shall be final. If the CONTRACTOR proceeds with the Work affected without written instructions from the ENGINEER, the CONTRACTOR shall be fully responsible for any resultant damage or defect.
- d. Anything mentioned in the Specifications and not indicated in the Plans, or indicated in the Plans and not mentioned in the Specifications, shall be of like effect as if indicated and mentioned in both. In case of discrepancy in the Plans or Specifications, the matter shall be immediately submitted to OC SAN's ENGINEER, without whose decision CONTRACTOR shall not adjust said discrepancy save only at CONTRACTOR's own risk and expense. The decision of the ENGINEER shall be final.

In all matters relating to the acceptability of material, machinery or plant equipment; classifications of material or Work; the proper execution, progress or sequence of the Work; and quantities interpretation of the Contract Documents, the decision of the ENGINEER shall be final and binding, and shall be a condition precedent to any payment under the Contract, unless otherwise ordered by the Board of Directors.

**B. Definitions**

Capitalized terms used in this Contract are defined in the General Conditions, "Definitions". Additional terms may be defined in the Special Provisions.

**SECTION – 2 MATERIALS AND LABOR**

CONTRACTOR shall furnish, under the conditions expressed in the Plans and Specifications, at CONTRACTOR'S own expense, all labor and materials necessary, except such as are mentioned in the Specifications to be furnished by OC SAN, to construct and complete the Project, in good workmanlike and substantial order. If CONTRACTOR fails to pay for labor or materials when due, OC SAN may settle such claims by making demand upon the Surety to this Contract. In the event of the failure or refusal of the Surety to satisfy said claims, OC SAN may settle them directly and deduct the amount of payments from the Contract Price and any amounts due to CONTRACTOR. In the event OC SAN receives a stop payment notice from any laborer or material supplier alleging non-payment by CONTRACTOR, OC SAN shall be entitled to deduct all of its costs and expenses incurred relating thereto, including but not limited to administrative and legal fees.

**SECTION – 3 PROJECT**

The Project is described as:

**CONTRACT NO. P2-137A**

**DIGESTER P AND R DOME TENDON REPAIR**



**SECTION – 4 PLANS AND SPECIFICATIONS**

The Work to be done is shown in a set of Plans and Specifications entitled:

**CONTRACT NO. P2-137A**

**DIGESTER P AND R DOME TENDON REPAIR**

Said Plans and Specifications and any revision, amendments and addenda thereto are attached hereto and incorporated herein as part of this Contract and referred to by reference.

**SECTION – 5 TIME OF COMMENCEMENT AND COMPLETION**

CONTRACTOR agrees to commence the Project within 15 calendar days from the date set forth in the “Notice to Proceed” sent by OC SAN, unless otherwise specified therein and shall diligently prosecute the Work to completion within three hundred sixty-five (365) calendar days from the date of the “Notice to Proceed” issued by OC SAN, excluding delays caused or authorized by OC SAN as set forth in Sections 7, 8, and 9 hereof, and applicable provisions in the General Conditions. The time for completion includes fifteen (15) calendar days determined by OC SAN likely to be inclement weather when CONTRACTOR will be unable to work.

In addition, CONTRACTOR shall accomplish such milestones within the periods of performance set forth in Appendix A of the Special Provisions entitled “Work Completion Schedule.”

**SECTION – 6 TIME IS OF THE ESSENCE**

Time is of the essence of this Contract. As required by the Contract Documents, CONTRACTOR shall prepare and obtain approval of all shop drawings, details and samples, and do all other things necessary and incidental to the prosecution of CONTRACTOR’s Work in conformance with an approved construction progress schedule. CONTRACTOR shall coordinate the Work covered by this Contract with that of all other contractors, subcontractors and of OC SAN, in a manner that will facilitate the efficient completion of the entire Work and accomplish the required milestone(s), if any, by the applicable deadline(s) in accordance with Section 5 herein. OC SAN shall have the right to assert complete control of the premises on

which the Work is to be performed and shall have the right to decide the time or order in which the various portions of the Work shall be installed or the priority of the work of subcontractors, and, in general, all matters representing the timely and orderly conduct of the Work of CONTRACTOR on the premises.

#### **SECTION – 7      EXCUSABLE DELAYS**

CONTRACTOR shall only be excused for any delay in the prosecution or completion of the Project as specifically provided in General Conditions, “Extension of Time for Delay”, and the General Requirements, “By CONTRACTOR or Others – Unknown Utilities during Contract Work”. Extensions of time and extra compensation arising from such excusable delays will be determined in accordance with the General Conditions, “Extension of Time for Delay” and “Contract Price Adjustments and Payments”, and extensions of time and extra compensation as a result of incurring undisclosed utilities will be determined in accordance with General Requirements, “By CONTRACTOR or Others – Unknown Utilities during Contract Work”. OC SAN’s decision will be conclusive on all parties to this Contract.

#### **SECTION – 8      EXTRA WORK**

The Contract Price as set forth in Section 11, includes compensation for all Work performed by CONTRACTOR, unless CONTRACTOR obtains a Change Order signed by a designated representative of OC SAN specifying the exact nature of the Extra Work and the amount of extra compensation to be paid all as more particularly set forth in Section 9 hereof and the General Conditions, “Request for Change (Changes at CONTRACTOR’s Request)”, “OWNER Initiated Changes”, and “Contract Price Adjustments and Payments”.

In the event a Change Order is issued by OC SAN pursuant to the Contract Documents, OC SAN shall extend the time fixed in Section 5 for completion of the Project by the number of days, if any, reasonably required for CONTRACTOR to perform the Extra Work, as determined by OC SAN’s ENGINEER. The decision of the ENGINEER shall be final.

## **SECTION – 9 CHANGES IN PROJECT**

OC SAN may at any time, without notice to any Surety, by Change Order, make any changes in the Work within the general scope of the Contract Document, including but not limited to changes:

1. In the Specifications (including Drawings and designs);
2. In the time, method or manner of performance of the Work;
3. In OC SAN-furnished facilities, equipment, materials, services or site; or
4. Directing acceleration in the performance of the Work.

No change of period of performance or Contract Price, or any other change in the Contract Documents, shall be binding until the Contract is modified by a fully executed Change Order.

All Change Orders shall be issued in accordance with the requirements set forth in the General Conditions, “Request for Change (Changes at CONTRACTOR’s Request)” and “OWNER Initiated Changes”.

## **SECTION – 10 LIQUIDATED DAMAGES FOR DELAY**

Liquidated Damages shall be payable in the amounts and upon the occurrence of such events or failure to meet such requirements or deadlines as provided in the Special Provisions, “Liquidated Damages and Incentives.”

## **SECTION – 11 CONTRACT PRICE AND METHOD OF PAYMENT**

A. OC SAN agrees to pay and the CONTRACTOR agrees to accept as full consideration for the faithful performance of this Contract, subject to any additions or deductions as provided in approved Change Orders, the sum of Two Million Five Hundred Ninety-Seven Thousand Eight Hundred Sixty-Four Dollars (\$2,597,864) as itemized on the attached Exhibit “A”.

Upon satisfaction of the conditions precedent to payment set forth in the General Requirements, Additional General Requirements, and General Conditions (including but

not limited to Sections entitled “Mobilization Payment Requirements” and “Payment Itemized Breakdown of Contract Lump Sum Prices”), there shall be paid to the CONTRACTOR an initial Net Progress Payment for mobilization. OC SAN shall issue at the commencement of the job a schedule which shows:

1. A minimum of one payment to be made to the CONTRACTOR for each successive four (4) week period as the Work progresses, and
2. The due dates for the CONTRACTOR to submit requests for payment to meet the payment schedule.

After the initial Net Progress Payment, and provided the CONTRACTOR submits the request for payment prior to the end of the day required to meet the payment schedule, the CONTRACTOR shall be paid a Net Progress Payment on the corresponding monthly payment date set forth in the schedule.

Payments shall be made on demands drawn in the manner required by law, accompanied by a certificate signed by the ENGINEER, stating that the Work for which payment is demanded has been performed in accordance with the terms of the Contract Documents, and that the amount stated in the certificate is due under the terms of the Contract.

Payment applications shall also be accompanied with all documentation, records, and releases as required by the Contract; Exhibit A, Schedule of Prices; and General Conditions, “Payment for Work – General”. The Total amount of Progress Payments shall not exceed the actual value of the Work completed as certified by OC SAN’s ENGINEER. The processing of payments shall not be considered as an acceptance of any part of the Work.

- B. As used in this Section, the following defined terms shall have the following meanings:

1. **“Net Progress Payment”** means a sum equal to the Progress Payment less the Retention Amount and other qualified deductions (Liquidated Damages, stop payment notices, etc.).
2. **“Progress Payment”** means a sum equal to:
  - a. the value of the actual Work completed since the commencement of the Work as determined by OC SAN;
  - b. plus the value of material suitably stored at the worksite, treatment plant or approved storage yards subject to or under the control of OC SAN since the commencement of the Work as determined by OC SAN;
  - c. less all previous Net Progress Payments;
  - d. less all amounts of previously qualified deductions;
  - e. less all amounts previously retained as Retention Amounts.
3. **“Retention Amount”** for each Progress Payment means the percentage of each Progress Payment to be retained by OC SAN to assure satisfactory completion of the Contract. The amount to be retained from each Progress Payment shall be determined as provided in the General Conditions, “Retained Funds; Substitution of Securities.”

## **SECTION – 12 SUBSTITUTION OF SECURITIES IN LIEU OF RETENTION OF FUNDS**

Pursuant to Public Contract Code Section 22300 et seq., the CONTRACTOR may, at its sole expense, substitute securities as provided in General Conditions, “Retained Funds; Substitution of Securities.”

## **SECTION – 13 COMPLETION**

Final Completion and Final Acceptance shall occur at the time and in the manner specified in the General Conditions, “Final Acceptance and Final Completion”, “Final Payment”; and Exhibit A, Schedule of Prices.

Upon receipt of all documentation, records, and releases as required by the Contract from the CONTRACTOR, OC SAN shall proceed with the Final Acceptance as specified in General Conditions.

#### **SECTION – 14 CONTRACTOR’S EMPLOYEES COMPENSATION**

A. Davis-Bacon Act:

CONTRACTOR 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.

B. General Prevailing Rate:

OC SAN 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 the same are on file in the Office of the ENGINEER of OC SAN. The CONTRACTOR agrees that not less than said prevailing rates shall be paid to workers employed on this public works Contract as required by Labor Code Section 1774 of the State of California. Per California Labor Code 1773.2, OC SAN will have on file copies of the prevailing rate of per diem wages at its principal office and at each job site, which shall be made available to any interested party upon request.

C. Forfeiture for Violation:

CONTRACTOR shall, as a penalty to OC SAN, forfeit Two Hundred Dollars (\$200.00) for each calendar day or portion thereof for each worker paid (either by the CONTRACTOR 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.

D. 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 CONTRACTOR shall comply therewith if the prime contract involves Thirty Thousand Dollars (\$30,000.00) or more.

E. Workday:

In the performance of this Contract, not more than eight (8) hours shall constitute a day's work, and the CONTRACTOR shall not require more than eight (8) hours of labor in a day from any person employed by him hereunder except as provided in paragraph (B) above. CONTRACTOR 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 OC SAN as a penalty, the sum of Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by CONTRACTOR 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 calendar day and forty (40) hours in any one week in violation of said Article. CONTRACTOR shall keep an accurate record showing the name and actual hours worked each calendar day and each calendar week by each worker employed by CONTRACTOR in connection with the Project.

F. Registration; Record of Wages; Inspection:

CONTRACTOR 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 by the California Department of Industrial Relations. CONTRACTOR shall maintain accurate payroll records 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.

CONTRACTOR shall comply with the job site notices posting requirements established by the Labor Commissioner per Title 8, California Code of Regulations Section 16461(e).

**SECTION – 15 SURETY BONDS**

CONTRACTOR shall, before entering upon the performance of this Contract, furnish Bonds approved by OC SAN's General Counsel – one in the amount of one hundred percent (100%) of the Contract amount, to guarantee the faithful performance of the Work, and the other in the amount of one hundred percent (100%) of the Contract amount to guarantee payment of all claims for labor and materials furnished. As changes to the Contract occur via approved Change Orders, the CONTRACTOR shall assure that the amounts of the Bonds are adjusted to maintain 100% of the Contract Price. This Contract shall not become effective until such Bonds are supplied to and approved by OC SAN. Bonds must be issued by a Surety authorized by the State Insurance Commissioner to do business in California. The Performance Bond shall remain in full force and effect through the warranty period, as specified in Section 19 below. All Bonds required to be submitted relating to this Contract must comply with California Code of Civil Procedure Section 995.630. Each Bond shall be executed in the name of the Surety insurer under penalty of perjury, or the fact of execution of each Bond shall be duly acknowledged before an officer authorized to take and certify acknowledgments, and either one of the following conditions shall be satisfied:



- A. A copy of the transcript or record of the unrevoked appointment, power of attorney, by-laws, or other instrument, duly certified by the proper authority and attested by the seal of the insurer entitling or authorizing the person who executed the Bond to do so for and on behalf of the insurer, is on file in the Office of the County Clerk of the County of Orange; or
- B. A copy of a valid power of attorney is attached to the Bond.

**SECTION – 16 INSURANCE**

CONTRACTOR shall purchase and maintain, for the duration of the Contract, insurance against claims for injuries to persons, or damages to property which may arise from or in connection with the performance of the Work hereunder, and the results of that Work by CONTRACTOR, its agents, representatives, employees, or Subcontractors, in amounts equal to the requirements set forth below. CONTRACTOR shall not commence Work under this Contract until all insurance required under this Section is obtained in a form acceptable to OC SAN, nor shall CONTRACTOR allow any Subcontractor to commence Work on a subcontract until all insurance required of the Subcontractor has been obtained. CONTRACTOR shall maintain all of the foregoing insurance coverages in force through the point at which the Work under this Contract is fully completed and accepted by OC SAN pursuant to the provisions of the General Conditions, “Final Acceptance and Final Completion”. Furthermore, CONTRACTOR shall maintain all of the foregoing insurance coverages in full force and effect throughout the warranty period, commencing on the date of Final Acceptance. The requirement for carrying the foregoing insurance shall not derogate from the provisions for indemnification of OC SAN by CONTRACTOR under Section 17 of this Contract. Notwithstanding nor diminishing the obligations of CONTRACTOR with respect to the foregoing, CONTRACTOR shall subscribe for and maintain in full force and effect during the life of this Contract, inclusive of all changes to the Contract Documents made in accordance with the provisions of the General Conditions, “Request for Change (Changes at CONTRACTOR’s Request)” and/or “OWNER Initiated

Changes”, the following insurance in amounts not less than the amounts specified. OC SAN reserves the right to amend the required limits of insurance commensurate with the CONTRACTOR’s risk at any time during the course of the Project. No vehicles may enter OC SAN premises/worksites without possessing the required insurance coverage.

CONTRACTOR’s insurance shall also comply with all insurance requirements prescribed by agencies from whom permits shall be obtained for the Work and any other third parties from whom third party agreements are necessary to perform the Work (collectively, the “Third Parties”). The Special Provisions may list such requirements and sample forms and requirements from such Third Parties may be included in an attachment to the General Requirements. CONTRACTOR bears the responsibility to discover and comply with all requirements of Third Parties, including meeting specific insurance requirements, that are necessary for the complete performance of the Work. To the extent there is a conflict between the Third Parties’ insurance requirements and those set forth by OC SAN herein, the requirement(s) providing the more protective coverage for both OC SAN and the Third Parties shall control and be purchased and maintained by CONTRACTOR.

If CONTRACTOR maintains higher limits than the minimums shown in this Section, OC SAN requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR.

Where permitted by law, CONTRACTOR hereby waives all rights of recovery by subrogation because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or any other reason against OC SAN, its or their officers, agents, or employees, and any other contractor or subcontractor performing Work or rendering services on behalf of OC SAN in connection with the planning, development and construction of the Project. In all its insurance coverages (except for Professional Liability/Errors and Omissions coverages, if applicable) related to the Work, CONTRACTOR shall include clauses providing that each

insurer shall waive all of its rights of recovery by subrogation against OC SAN, its or their officers, agents, or employees, or any other contractor or subcontractor performing Work or rendering services at the Project. Where permitted by law, CONTRACTOR shall require similar written express waivers and insurance clauses from each of its Subcontractors of every tier. A waiver of subrogation shall be effective as to any individual or entity, even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium, directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

A. Limits of Insurance

1. General Liability: Two Million Dollars (\$2,000,000) per occurrence and a general aggregate limit of Four Million Dollars (\$4,000,000) for bodily injury, personal injury and property damage. If aggregate limits apply separately to this contract (as evidenced by submission of ISO form CG 25 03 or CG 25 04), then the aggregate limit may be equivalent to the per occurrence limit. Coverage shall include each of the following:
  - a. Premises-Operations.
  - b. Products and Completed Operations, with limits of at least Two Million Dollars (\$2,000,000) per occurrence and a general aggregate limit of Four Million Dollars (\$4,000,000) which shall be in effect at all times during the warranty period set forth in the Warranty section herein, and as set forth in the General Conditions, "Warranty (CONTRACTOR's Guarantee)", plus any additional extension or continuation of time to said warranty period that may be required or authorized by said provisions. If aggregate limits apply separately to this contract (as evidenced by submission of ISO form CG 25 03 or CG 25 04), then the aggregate limit may be equivalent to the per occurrence limit.

- c. Broad Form Property Damage, expressly including damage arising out of explosion, collapse, or underground damage.
- d. Contractual Liability, expressly including the indemnity provisions assumed under this Contract.
- e. Separation of Insured Clause, providing that coverage applies separately to each insured, except with respect to the limits of liability.
- f. Independent CONTRACTOR's Liability.

To the extent first dollar coverage, including defense of any claim, is not available to OC SAN or any other additional insured because of any SIR, deductible, or any other form of self insurance, CONTRACTOR is obligated to assume responsibility of insurer until the deductible, SIR or other condition of insurer assuming its defense and/or indemnity has been satisfied.

CONTRACTOR shall be responsible to pay any deductible or SIR.

- g. If a crane will be used, the general liability insurance will be endorsed to add Riggers Liability coverage or its equivalent to cover the usage of the crane and exposures with regard to the crane operators, riggers and others involved in using the crane.
  - h. If divers will be used, the general liability insurance will be endorsed to cover marine liability or its equivalent to cover the usage of divers.
2. Automobile Liability: The CONTRACTOR 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 limit of liability coverage: combined single limit of One Million Dollars (\$1,000,000) for bodily injury, personal injury, and property damage.

3. Umbrella Excess Liability: The minimum limits of general liability and automobile liability insurance required, as set forth above, shall be provided for either in a single policy of primary insurance or a combination of policies of primary and umbrella excess coverage. 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.
4. Drone Liability Insurance: If a drone will be used, drone liability insurance must be maintained by CONTRACTOR in the amount of One Million Dollars (\$1,000,000) in a form acceptable to OC SAN.
5. Workers' Compensation/Employer's Liability: CONTRACTOR shall provide such workers' compensation insurance as required by the Labor Code of the State of California, including employer's liability with a minimum limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. If an exposure to Jones Act liability may exist, the insurance required herein shall include coverage with regard to Jones Act claims.

B. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by OC SAN. At the option of OC SAN, either: the Insurer shall reduce or eliminate such deductibles or self-insured retentions as respects OC SAN, its Directors, officers, agents, consultants, and employees; or CONTRACTOR shall provide a financial guarantee satisfactory to OC SAN guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

C. Other Insurance Provisions

1. Each such policy of general liability insurance and automobile liability insurance shall be endorsed to contain, the following provisions:

- a. OC SAN, its directors, officers, agents, consultants, and employees, and all public agencies from whom permits will be obtained, and their directors, officers, agents, and employees are hereby declared to be additional insureds under the terms of this policy, but only with respect to the operations of CONTRACTOR at or from any of the sites of OC SAN in connection with this Contract, or acts and omissions of the additional insured in connection with its general supervision or inspection of said operations related to this Contract.
  - b. Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by OC SAN shall be excess only and not contributing with insurance provided under this policy.
2. Cancellation and Policy Change Notice.

The CONTRACTOR 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, the CONTRACTOR is required to notify OC SAN in writing of any change in the terms of insurance, including reduction in coverage or increase in deductible/SIR, within two (2) working days of receipt of such notice or knowledge of same.

Said notices shall be mailed to OC SAN at:

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

3. Coverage shall not extend to any indemnity coverage for the active negligence of any additional insured in any case where an agreement to indemnify the additional insured would be invalid under California Civil Code Section 2782(b).

4. If required by a public agency from whom permit(s) will be obtained, each policy of general liability insurance and automobile liability insurance shall be endorsed to specify by name the public agency and its legislative members, officers, agents, consultants, and employees, to be additional insureds.

D. Acceptability of Insurers

Insurers must have an "A-", or better, Policyholder's Rating, and a Financial Rating of at least Class VIII, or better, in accordance with the most current A.M. Best Rating Guide. OC SAN recognizes that State Compensation Insurance Fund has withdrawn from participation in the A.M. Best Rating Guide process. Nevertheless, OC SAN will accept State Compensation Insurance Fund for the required policy of worker's compensation insurance, subject to OC SAN's option, at any time during the term of this Contract, to require a change in insurer upon twenty (20) days written notice. Further, OC SAN will require CONTRACTOR to substitute any insurer whose rating drops below the levels herein specified. Said substitution shall occur within twenty (20) days of written notice to CONTRACTOR by OC SAN or its agent.

E. Verification of Coverage

CONTRACTOR shall furnish OC SAN with original certificates and mandatory endorsements affecting coverage. Said policies and endorsements shall conform to the requirements herein stated. All certificates and endorsements are to be received and approved by OC SAN before Work commences. OC SAN reserves the right to require complete, certified copies of all required insurance policies, including endorsements, affecting the coverage required by these Specifications at any time.

F. Subcontractors

CONTRACTOR shall be responsible to establish insurance requirements for any Subcontractors hired by CONTRACTOR. The insurance shall be in amounts and types

reasonably sufficient to deal with the risk of loss involving the Subcontractor's operations and work. OC SAN and any public agency issuing permits for the Project must be named as "Additional Insured" on any general liability or automobile liability policy obtained by a Subcontractor. The CONTRACTOR must obtain copies and maintain current versions of all Subcontractors' policies, certificate of liability and mandatory endorsements effecting coverage. Upon request, CONTRACTOR must furnish OC SAN with the above referenced required documents.

G. Required Forms and Endorsements

1. Required ACORD Form

- |    |                          |   |
|----|--------------------------|---|
| a. | Certificate of Liability | ACORD Form 25 or other equivalent certificate of insurance form |
|----|--------------------------|---|

2. Required Insurance Services Office, Inc. Endorsements (when alternative forms are shown, they are listed in order of preference)

In the event any of the following forms are cancelled by Insurance Services Office, Inc. (ISO), or are updated, the ISO replacement form or equivalent must be supplied.

- |    |   |  |
|----|---|--|
| a. | Commercial General Liability  | Form CG 00 01  |
| b. | Additional Insured Including Products-Completed Operations                              | Form CG 20 10 <b>and</b><br>Form CG 20 37<br>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. |
| c. | Waiver of Transfer of Rights of Recovery Against Others to Us/<br>Waiver of Subrogation | Form CG 24 04  |

3. Required State Compensation Insurance Fund Endorsements

- |    |                       |   |
|----|-----------------------|---|
| a. | Waiver of Subrogation | Submit workers' compensation waiver of subrogation endorsement provided by carrier for OC SAN approval. |
|----|-----------------------|---|



b. Cancellation Notice

No endorsement is required. However, CONTRACTOR is responsible for notifying OC SAN of any pending or actual insurance policy cancellation, as described in Article C.2., Cancellation and Policy Change Notice, above.

4. Additional Required Endorsements

a. Notice of Policy Termination

Manuscript Endorsement

**SECTION – 17 RISK AND INDEMNIFICATION**

All Work covered by this Contract done at the site of construction or in preparing or delivering materials to the site shall be at the risk of CONTRACTOR alone. CONTRACTOR shall save, indemnify, defend, and keep OC SAN and others harmless as more specifically set forth in General Conditions, “General Indemnification”.

**SECTION – 18 TERMINATION**

This Contract may be terminated in whole or in part in writing by OC SAN in the event of substantial failure by the CONTRACTOR to fulfill its obligations under this Agreement, or it may be terminated by OC SAN for its convenience provided that such termination is effectuated in a manner and upon such conditions set forth more particularly in General Conditions, “Termination for Default” and/or “Termination for Convenience”, provided that no termination may be effected unless proper notice is provided to CONTRACTOR at the time and in the manner provided in said General Conditions. If termination for default or convenience is effected by OC SAN, an equitable adjustment in the price provided for in this Contract shall be made at the time and in the manner provided in the General Conditions, “Termination for Default” and “Termination for Convenience”.

## **SECTION – 19    WARRANTY**

The CONTRACTOR agrees to perform all Work under this Contract in accordance with the Contract Documents, including OC SAN's designs, Drawings and Specifications.

The CONTRACTOR guarantees for a period of at least one (1) year from the date of Final Acceptance of the Work, pursuant to the General Conditions, "Final Acceptance and Final Completion" that the completed Work is free from all defects due to faulty materials, equipment or workmanship and that it shall promptly make whatever adjustments or corrections which may be necessary to cure any defects, including repairs of any damage to other parts of the system resulting from such defects. OC SAN shall promptly give notice to the CONTRACTOR of observed defects. In the event that the CONTRACTOR fails to make adjustments, repairs, corrections or other work made necessary by such defects, OC SAN may do so and charge the CONTRACTOR the cost incurred. The CONTRACTOR's warranty shall continue as to any corrected deficiency until the later of (1) the remainder of the original one-year warranty period; or (2) one year after acceptance by OC SAN of the corrected Work. The Performance Bond and the Payment Bond shall remain in full force and effect through the guarantee period.

The CONTRACTOR's obligations under this clause are in addition to the CONTRACTOR's other express or implied assurances under this Contract, including but not limited to specific manufacturer or other extended warranties specified in the Plans and Specifications, or state law and in no way diminish any other rights that OC SAN may have against the CONTRACTOR for faulty materials, equipment or Work.

## **SECTION – 20    ASSIGNMENT**

No assignment by the CONTRACTOR of this Contract or any part hereof, or of funds to be received hereunder, will be recognized by OC SAN unless such assignment has had prior written approval and consent of OC SAN and the Surety.

**SECTION – 21 RESOLUTION OF DISPUTES**

OC SAN and the CONTRACTOR shall comply with the provisions of California Public Contract Code Section 20104 et. seq., regarding resolution of construction claims for any Claims which arise between the CONTRACTOR and OC SAN, as well as all applicable dispute and Claims provisions as set forth in the General Conditions and as otherwise required by law.

**SECTION – 22 SAFETY & HEALTH**

CONTRACTOR shall comply with all applicable safety and health requirements mandated by federal, state, city and/or public agency codes, permits, ordinances, regulations, and laws, as well as these Contract Documents, including but not limited to the General Requirements, Section entitled “Safety” and Exhibit B Contractor Safety Standards. OC SAN reserves the right to stop Work for violations of safety and health standards until the hazardous conditions are corrected. The right to stop Work includes the right to remove a contractor or its employees from the worksite.

**[THIS SECTION INTENTIONALLY LEFT BLANK]**

## SECTION – 23 NOTICES

Any notice required or permitted under this Contract shall be served by personal delivery or by certified mail, return receipt requested, at the address set forth below. Unless specified elsewhere in the Contract Documents or otherwise required by law, any notice may alternatively be given by electronic telecommunication to the email address set forth below. Any party whose address changes shall notify the other party in writing.

TO OC SAN:                   Orange County Sanitation District  
18480 Bandilier Circle  
Fountain Valley, California 92708-7011  
Attn: Clerk of the Board  
[ocsanclerk@ocsan.gov](mailto:ocsanclerk@ocsan.gov)

Copy to:                      Orange County Sanitation District  
18480 Bandilier Circle  
Fountain Valley, California 92708-7011  
Attn: Construction Manager  
[rcuellar@ocsan.gov](mailto:rcuellar@ocsan.gov)

                                      Scott C. Smith  
Best Best & Krieger LLP  
18101 Von Karman Avenue, Suite 1000  
Irvine, California 92612  
[scott.smith@bbklaw.com](mailto:scott.smith@bbklaw.com)

TO CONTRACTOR:           Emily Cleland, Branch Director / Assistant Secretary  
Structural Preservation Systems, LLC  
11800 Monarch Street  
Garden Grove, CA 92841  
[ecleland@structural.net](mailto:ecleland@structural.net)  
[imurphy@structural.net](mailto:imurphy@structural.net)

IN WITNESS WHEREOF, the parties hereto have executed this Contract Agreement as the date first hereinabove written.

CONTRACTOR: Structural Preservation Systems, LLC  
11800 Monarch Street  
Garden Grove, CA 92841

By \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Printed Name

Its \_\_\_\_\_

CONTRACTOR's State License No. 814569 (Expiration Date – 08/31/2025)

OC SAN: Orange County Sanitation District

By \_\_\_\_\_ Date \_\_\_\_\_

Ryan P. Gallagher  
Board Chairman

By \_\_\_\_\_ Date \_\_\_\_\_

Kelly A. Lore  
Clerk of the Board

By \_\_\_\_\_ Date \_\_\_\_\_

Ruth Zintzun  
Finance & Procurement Manager

**EXHIBIT A**  
**SCHEDULE OF PRICES**

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**EXHIBIT A**  
**SCHEDULE OF PRICES**

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# **EXHIBIT A**

## **SCHEDULE OF PRICES**

### **EXA-1 BASIS OF COMPENSATION**

CONTRACTOR will be paid the Contract Price according to the Schedule of Prices, and all other applicable terms and conditions of the Contract Documents.

### **EXA-2 PROGRESS PAYMENTS**

Progress payments will be made in accordance with all applicable terms and conditions of the Contract Documents, including, but not limited to:

1. Contract Agreement – Section 11 – “Contract Price and Method of Payment;”
2. General Conditions – “Payment – General”;
3. General Conditions – “Payment – Applications for Payment”;
4. General Conditions – “Payment – Mobilization Payment Requirements;”
5. General Conditions – “Payment – Itemized Breakdown of Contract Lump Sum Prices”;
6. General Conditions – “Contract Price Adjustments and Payments”;
7. General Conditions – “Suspension of Payments”;
8. General Conditions – “OC SAN’s Right to Withhold Certain Amounts and Make Application Thereof”; and
9. General Conditions – “Final Payment.”

### **EXA-3 RETENTION AND ESCROW ACCOUNTS**

#### **A. Retention:**

OC SAN shall retain a percentage of each progress payment to assure satisfactory completion of the Work. The amount to be retained from each progress payment shall be determined as provided in General Conditions – “Retained Funds; Substitution of Securities”. In all contracts between CONTRACTOR and its Subcontractors and/or Suppliers, the retention may not exceed the percentage specified in the Contract Documents.



B. Substitution of Securities:

CONTRACTOR may, at its sole expense, substitute securities as provided in General Conditions – “Retained Funds; Substitution of Securities.” Payment of Escrow Agent:

In lieu of substitution of securities as provided above, the CONTRACTOR may request and OC SAN shall make payment of retention earned directly to the escrow agent at the expense of the CONTRACTOR. At the expense of the CONTRACTOR, the CONTRACTOR may direct the investment of the payments into securities consistent with Government Code §16430 and the CONTRACTOR shall receive the interest earned on the investments upon the same terms provided for in this article for securities deposited by the CONTRACTOR. Upon satisfactory completion of the Contract, the CONTRACTOR shall receive from the escrow agent all securities, interest and payments received by the escrow agent from OC SAN, pursuant to the terms of this article. The CONTRACTOR shall pay to each Subcontractor, not later than twenty (20) calendar days after receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each Subcontractor, on the amount of retention withheld to ensure the performance of the Subcontractor. The escrow agreement used by the escrow agent pursuant to this article shall be substantially similar to the form set forth in §22300 of the California Public Contract Code.

C. Release of Retention:

Upon Final Acceptance of the Work, the CONTRACTOR shall submit an invoice for release of retention in accordance with the terms of the Contract.

D. Additional Deductibles:

In addition to the retentions described above, OC SAN may deduct from each progress payment any or all of the following:

1. Liquidated Damages that have occurred as of the date of the application for progress payment;
2. Deductions from previous progress payments already paid, due to OC SAN's discovery of deficiencies in the Work or non-compliance with the Specifications or any other requirement of the Contract;
3. Sums expended by OC SAN in performing any of the CONTRACTOR'S obligations under the Contract that the CONTRACTOR has failed to perform, and;
4. Other sums that OC SAN is entitled to recover from the CONTRACTOR under the terms of the Contract, including without limitation insurance deductibles and assessments.

The failure of OC SAN to deduct any of the above-identified sums from a progress payment shall not constitute a waiver of OC SAN's right to such sums or to deduct them from a later progress payment.

#### **EXA-4 STOP PAYMENT NOTICE**

In addition to other amounts properly withheld under this article or under other provisions of the Contract, OC SAN shall retain from progress payments otherwise due the CONTRACTOR an amount equal to one hundred twenty-five percent (125%) of the amount claimed under any stop payment notice under Civil Code §9350 et. seq. or other lien filed against the CONTRACTOR for labor, materials, supplies, equipment, and any other thing of value claimed to have been furnished to and/or incorporated into the Work; or for any other alleged contribution thereto. In addition to the foregoing and in accordance with Civil Code §9358 OC SAN may also satisfy its duty to withhold funds for stop payment notices by refusing to release funds held in escrow pursuant to public receipt of a release of stop payment notice executed by a stop payment notice claimant, a stop payment notice release bond, an order of a court of competent jurisdiction, or other evidence satisfactory to OC SAN that the CONTRACTOR has resolved such claim by settlement.

#### **EXA-5 PAYMENT TO SUBCONTRACTORS**

##### Requirements

1. The CONTRACTOR shall pay all Subcontractors for and on account of Work performed by such Subcontractors, not later than seven (7) days after receipt of each progress payment as required by the California Business and Professions Code §7108.5. Such payments to Subcontractors shall be based on the measurements and estimates made pursuant to article progress payments provided herein.
2. Except as specifically provided by law, the CONTRACTOR shall pay all Subcontractors any and all retention due and owing for and on account of Work performed by such Subcontractors not later than seven (7) days after CONTRACTOR'S receipt of said retention proceeds from OC SAN as required by the California Public Contract Code §7107.

#### **EXA-6 PAYMENT OF TAXES**

Unless otherwise specifically provided in this Contract, the Contract Price includes full compensation to the CONTRACTOR for all taxes. The CONTRACTOR shall pay all federal, state, and local taxes, and duties applicable to and assessable against any Work, including but not limited to retail sales and use, transportation, export, import, business, and special taxes. The CONTRACTOR shall ascertain and pay the taxes when due. The CONTRACTOR will maintain auditable records, subject to OC SAN reviews, confirming that tax payments are current at all times.

## EXA-7 FINAL PAYMENT

After Final Acceptance of the Work, as more particularly set forth in the General Conditions, "Final Acceptance and Final Completion", and after Resolution of the Board authorizing final payment and satisfaction of the requirements as more particularly set forth in General Conditions – "Final Payment", a final payment will be made as follows:

1. Prior to Final Acceptance, the CONTRACTOR shall prepare and submit an application for Final Payment to OC SAN, including:
  - a. The proposed total amount due the CONTRACTOR, segregated by items on the payment schedule, amendments, Change Orders, and other bases for payment;
  - b. Deductions for prior progress payments;
  - c. Amounts retained;
  - d. A conditional waiver and release on final payment for each Subcontractor (per Civil Code Section 8136);
  - e. A conditional waiver and release on final payment on behalf of the CONTRACTOR (per Civil Code Section 8136);
  - f. List of Claims the CONTRACTOR intends to file at that time or a statement that no Claims will be filed,
  - g. List of pending unsettled claims, stating claimed amounts, and copies of any and all complaints and/or demands for arbitration received by the CONTRACTOR; and
  - h. For each and every claim that resulted in litigation or arbitration which the CONTRACTOR has settled, a conformed copy of the Request for Dismissal with prejudice or other satisfactory evidence the arbitration is resolved.
2. The application for Final Payment shall include complete and legally effective releases or waivers of liens and stop payment notices satisfactory to OC SAN, arising out of or filed in connection with the Work. Prior progress payments shall be subject to correction in OC SAN's review of the application for Final Payment. Claims filed with the application for Final Payment must be otherwise timely under the Contract and applicable law.
3. Within a reasonable time, OC SAN will review the CONTRACTOR'S application for Final Payment. Any recommended changes or corrections will then be forwarded to the CONTRACTOR. Within ten (10) calendar days after receipt of recommended changes from OC SAN, the CONTRACTOR will make the changes, or list Claims that will be filed as a result of the changes, and shall submit the revised application for Final Payment. Upon

acceptance by OC SAN, the revised application for Final Payment will become the approved application for Final Payment.

4. If no Claims have been filed with the initial or any revised application for Final Payment, and no Claims remain unsettled within thirty-five (35) calendar days after Final Acceptance of the Work by OC SAN, and agreements are reached on all issues regarding the application for Final Payment, OC SAN, in exchange for an executed release, satisfactory in form and substance to OC SAN, will pay the entire sum found due on the approved application for Final Payment, including the amount, if any, allowed on settled Claims.
5. The release from the CONTRACTOR shall be from any and all Claims arising under the Contract, except for Claims that with the concurrence of OC SAN are specifically reserved, and shall release and waive all unreserved Claims against OC SAN and its officers, directors, employees and authorized representatives. The release shall be accompanied by a certification by the CONTRACTOR that:
  - a. It has resolved all Subcontractors, Suppliers and other Claims that are related to the settled Claims included in the Final Payment;
  - b. It has no reason to believe that any party has a valid claim against the CONTRACTOR or OC SAN which has not been communicated in writing by the CONTRACTOR to OC SAN as of the date of the certificate;
  - c. All warranties are in full force and effect, and;
  - d. The releases and the warranties shall survive Final Payment.
6. If any claims remain open, OC SAN may make Final Payment subject to resolution of those claims. OC SAN may withhold from the Final Payment an amount not to exceed one hundred fifty percent (150%) of the sum of the amounts of the open claims, and one hundred twenty-five percent (125%) of the amounts of open stop payment notices referred to in article entitled stop payment notices herein.
7. The CONTRACTOR shall provide an unconditional waiver and release on final payment from each Subcontractor and Supplier providing Work under the Contract (per Civil Code Section 8138) and an unconditional waiver and release on final payment on behalf of the CONTRACTOR (per Civil Code Section 8138) within thirty (30) days of receipt of Final Payment.

#### **EXA-8 DISCOVERY OF DEFICIENCIES BEFORE AND AFTER FINAL PAYMENT**

Notwithstanding OC SAN's acceptance of the application for Final Payment and irrespective of whether it is before or after Final Payment has been made, OC SAN shall not be precluded from subsequently showing that:

1. The true and correct amount payable for the Work is different from that previously accepted;

2. The previously accepted Work did not in fact conform to the Contract requirements, or;
3. A previous payment or portion thereof for Work was improperly made.

OC SAN also shall not be stopped from demanding and recovering damages from the CONTRACTOR, as appropriate, under any of the foregoing circumstances as permitted under the Contract or applicable law.

**ATTACHMENT 1 – CERTIFICATION FOR REQUEST FOR PAYMENT**

I hereby certify under penalty of perjury as follows:

That the claim for payment is in all respects true, correct; that the services mentioned herein were actually rendered and/or supplies delivered to OC SAN in accordance with the Contract.

I understand that it is a violation of both the federal and California False Claims Acts to knowingly present or cause to be presented to OC SAN a false claim for payment or approval.

A claim includes a demand or request for money. It is also a violation of the False Claims Acts to knowingly make use of a false record or statement to get a false claim paid. The term "knowingly" includes either actual knowledge of the information, deliberate ignorance of the truth or falsity of the information, or reckless disregard for the truth or falsity of the information. Proof of specific intent to defraud is not necessary under the False Claims Acts. I understand that the penalties under the Federal False Claims Act and State of California False Claims Act are non-exclusive, and are in addition to any other remedies which OC SAN may have either under contract or law.

I hereby further certify, to the best of my knowledge and belief, that:

1. The amounts requested are only for performance in accordance with the Specifications, terms, and conditions of the Contract;
2. Payments to Subcontractors and Suppliers have been made from previous payments received under the Contract, and timely payments will be made from the proceeds of the payment covered by this certification;
3. This request for progress payments does not include any amounts which the prime CONTRACTOR intends to withhold or retain from a Subcontractor or Supplier in accordance with the terms and conditions of the subcontract; and
4. This certification is not to be construed as Final Acceptance of a Subcontractor's performance.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## **ATTACHMENT 2 – SCHEDULE OF PRICES**

See next pages from the Bid Submittal Forms (Structural Preservation Systems, LLC)

BF-14 Schedule of Prices, Pages 1-2

Bid Submitted By: \_\_\_\_\_  
(Name of Firm)

**BF-14 SCHEDULE OF PRICES**

**INSTRUCTIONS**

**A. General**

For Unit Prices, it is understood that the following quantities are approximate only and are solely for the purpose of estimating the comparison of Bids, and that the actual value of Work will be computed based upon the actual quantities in the completed Work, whether they be more or less than those shown. CONTRACTOR's compensation for the Work under the Contract Documents will be computed based upon the lump sum amount of the Contract at time of award, plus any additional or deleted costs approved by OC SAN via approved Change Orders, pursuant to the Contract Documents.

Bidder shall separately price and accurately reflect costs associated with each line item, leaving no blanks. Any and all modifications to the Bid must be initialed by an authorized representative of the Bidder in accordance with the Instructions to Bidders, Preparation of Bid.

Bidders are reminded of Instruction to Bidders, Discrepancy in Bid Items, which, in summary, provides that the total price for each item shall be based on the Unit Price listed for each item multiplied by the quantity; and the correct Total Price for each item shall be totaled to determine the Total Amount of Bid.

All applicable costs including overhead and profit shall be reflected in the respective unit costs and the TOTAL AMOUNT OF BID. The Bid price shall include all costs to complete the Work, including profit, overhead, etc., unless otherwise specified in the Contract Documents. All applicable sales taxes, state and/or federal, and any other special taxes, patent rights or royalties shall be included in the prices quoted in this Bid.

**B. Basis of Award**

AWARD OF THE CONTRACT WILL BE MADE ON THE BASIS OF THE LOWEST RESPONSIVE AND RESPONSIBLE BID.

**Note 1:** Base Bid. Includes all costs necessary to furnish all labor, materials, equipment and services for the construction of the Project per the Contract Documents.



Bid Submitted By: \_\_\_\_\_  
(Name of Firm)

**SCHEDULE OF PRICES**

**BASE BID ITEMS** (Refer to Note 1 in the Instructions):

Item No.	Description	Unit of Measurement	Approx Qty		Unit Price		Total Price	
1.	<b>Mobilization:</b> as described in Division 01, Section 01155 Measurement and Payment and in conformance with the Contract Documents for the lump sum price of...	Lump Sum	1			= \$	100,000	
2.	<b>All Other Portions of the Work:</b> except for Bid Item 1, all other portions of the Work as described in Division 01, Section 01155 Measurement and Payment and in conformance with the Contract Documents for the lump sum price of...	Lump Sum	1			= \$	2,497,864	
<b>TOTAL AMOUNT OF BID (BASIS OF AWARD)</b>							<b>\$</b>	<b>2,597,864</b>

**70** | Orange County Sanitation District  
1954 - 2024 | 70th Anniversary

# Digester P and R Dome Tendon Repair, Contract No. P2-137A

Presented by:  
Martin Dix, Engineering Manager

Operations Committee  
July 10, 2024

*Construction Contract Award*

1

## Plant No. 2 Digesters

- 18 digesters
- Built from 1959 through 1979
- Converts sludge to biosolids and biogas for reuse
- Rehab to extend useful life until digesters are replaced
- Created separate contract for urgent tendon repairs

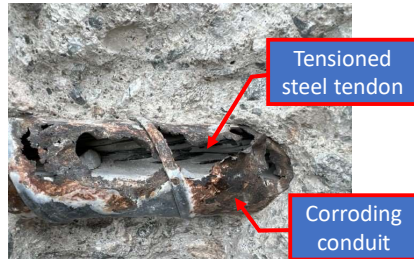
**70** | Orange County Sanitation District  
1954 - 2024 | 70th Anniversary

2

## Digester Tendon Issues

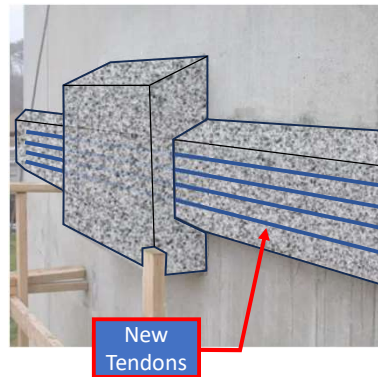
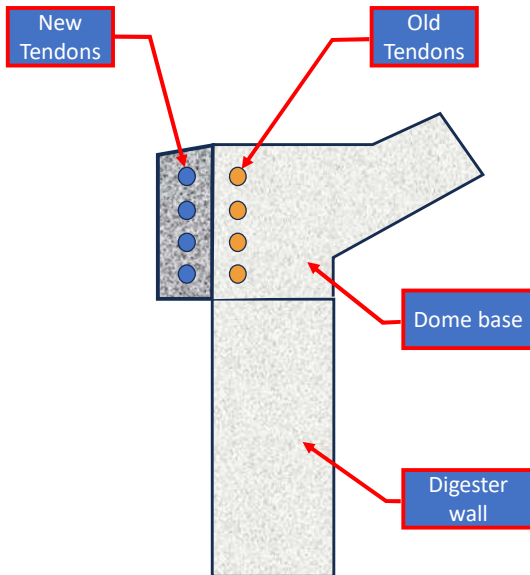


Tendons are a critical structural component and need immediate repair



3

## Digester Tendon Repairs



4

## Bid Results



Engineer's Estimate \$2,600,000

Bidder	Amount
Structural Preservation Systems, LLC	\$2,597,864

- Requires post tension specialty contractor
- 20+ downloaded plans
- 3 attended pre-bid job walk
- Post bidding survey: one response (maxed out bonding capacity)

5

5

## Recommendation

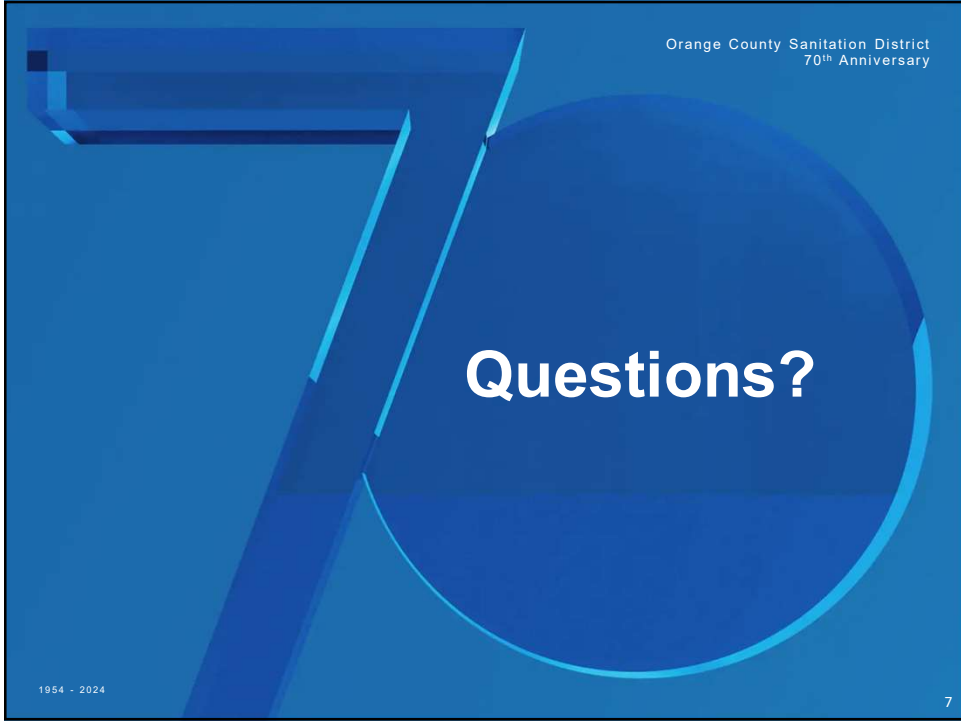


### Recommend to the Board of Directors to:

- Receive and file Bid Tabulation and Recommendation for Digester P and R Dome Tendon Repair, Contract No. P2-137A;
- Award a Construction Contract Agreement to Structural Preservation Systems, LLC for Digester P and R Dome Tendon Repair, Contract No. P2-137A as part of Digesters Rehabilitation at Plant No. 2, Project No. P2-137, for a total amount not to exceed \$2,597,864; and
- Approve a contingency of \$259,786 (10%).

6

6



7



# OPERATIONS COMMITTEE

Administration Building  
10844 Ellis Avenue  
Fountain Valley, CA 92708  
(714) 593-7433

## Agenda Report

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**File #:** 2024-3411

**Agenda Date:** 7/10/2024

**Agenda Item No:** 7.

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**FROM:** Robert Thompson, General Manager  
Originator: Mike Dorman, Director of Engineering

**SUBJECT:**

**DIGESTER P AND R DOME TENDON REPAIR, CONTRACT NO. P2-137A**

**GENERAL MANAGER'S RECOMMENDATION**

RECOMMENDATION:

- A. Approve a Professional Construction Services Agreement with CDM Smith Inc. to provide construction support services for Digester P and R Dome Tendon Repair, Contract No. P2-137A, as part of Digesters Rehabilitation at Plant No. 2, Project No. P2-137, for a total amount not to exceed \$209,000; and
- B. Approve a contingency of \$20,900 (10%).

**BACKGROUND**

CDM Smith Inc. was selected as part of a competitive, qualifications-based solicitation process to design Digesters Rehabilitation at Plant No. 2, Project No. P2-137. At the time of the solicitation, the Orange County Sanitation District (OC San) documented its intent to award a subsequent agreement to the design consultant for continuation of engineering services during construction.

During design, it was discovered that immediate dome repairs were required for Digesters P and R; therefore, a separate contract, Contract P2-137A, was created as part of Digesters Rehabilitation at Plant No. 2, Project No. P2-137. The repairs involve adding a new post-tensioned tendon system to replace the corroded tendon system that supports the domes for Digesters P and R. To complete the repairs, conflicting utilities, and appurtenances on the exterior of the digesters need to be removed, damaged concrete around the dome base needs to be replaced, and new tendons need to be installed and tensioned.

**RELEVANT STANDARDS**

- Comply with California Government Code Section 4526 to engage the best qualified firm “on the basis of demonstrated competence and qualifications” and “negotiate fair and reasonable fees”
- Ensure the public’s money is wisely spent
- Sound engineering and accounting practices, complying with local, state, and federal laws

**PROBLEM**

This project requires the design consultant to provide as-needed services during construction including submittal review, responding to the Contractor's requests for information, reviewing construction change orders, participating in meetings, attending site visits, and preparing record drawings.

**PROPOSED SOLUTION**

Approve a Professional Construction Services Agreement with the design consultant, CDM Smith Inc., to provide engineering support services during construction.

**TIMING CONCERNS**

Engineering support services will be required at the start of construction. Construction is anticipated to start in August 2024.

**RAMIFICATIONS OF NOT TAKING ACTION**

The engineering support services needed to facilitate and review construction activities would not be available by the Engineer of Record, which may negatively impact the contract execution.

**PRIOR COMMITTEE/BOARD ACTIONS**

March 2022 - Approved a Professional Design Services Agreement with CDM Smith Inc. to provide engineering services for Digesters Rehabilitation at Plant No. 2, Project No. P2-137, for an amount not to exceed \$2,700,000 and approved a contingency of \$270,000 (10%).

**ADDITIONAL INFORMATION**

CDM Smith Inc. has successfully furnished engineering services for the design of this project and their support services during construction will provide continuity through the completion of the project.

Staff negotiated with CDM Smith Inc. for these support services in accordance with OC San's adopted policies and procedures. A review of the proposed price was conducted using estimated quantities of requests for information, submittals, meetings, site visits, change order reviews, and design revisions, as well as the level of effort for preparing record drawings. Based on this review, staff determined the negotiated fee to be fair and reasonable for these services. Staff is requesting a 10 percent contingency in case unanticipated professional construction services are needed during construction.

**CEQA**

The project is exempt from CEQA under the Class 1 categorical exemptions set forth in California Code of Regulations section 15301. A Notice of Exemption was filed with the OC Clerk-Recorder for P2-137 after the OC San's Board of Directors approval of the Design Contract on March 23, 2022.

**FINANCIAL CONSIDERATIONS**

This request complies with the authority levels of OC San's Purchasing Ordinance. This item has been budgeted (Budget FY 2024-25 and 2025-26, Section 8, Page 74, Digesters Rehabilitation at Plant No. 2, Project No. P2-137) and the budget is sufficient for the recommended action.

**ATTACHMENT**

*The following attachment(s) may be viewed on-line at the OC San website ([www.ocsan.gov](http://www.ocsan.gov)) with the complete agenda package:*

- Professional Construction Services Agreement

RL:lb



## PROFESSIONAL CONSTRUCTION SERVICES AGREEMENT

This PROFESSIONAL CONSTRUCTION SERVICES AGREEMENT, (hereinafter referred to as "Agreement"), is made and entered into to be effective the 10<sup>th</sup> day of July, 2024, by and between the ORANGE COUNTY SANITATION DISTRICT, (hereinafter referred to as "OC SAN"), and CDM SMITH INC., (hereinafter referred to as "CONSULTANT").

### WITNESSETH:

WHEREAS, OC SAN desires to engage CONSULTANT to provide construction support services for **Digester P and R Dome Tendon Repair, Contract No. P2-137A** (Construction Support Services); and

WHEREAS, CONSULTANT is qualified to provide the necessary services for the Construction Support Services in connection with these requirements; and

WHEREAS, OC SAN has adopted procedures in accordance with OC SAN's current Purchasing Ordinance, Section 4.03(B), for the continuation of services and has proceeded in accordance with said procedures to perform the Construction Support Services; and

WHEREAS, at its regular meeting on July 10, 2024, the Operations Committee, by Minute Order, authorized execution of this Agreement pursuant to OC SAN's current Purchasing Ordinance.

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

#### **1. SCOPE OF WORK**

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

- A. The CONSULTANT shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all design, drawings, specifications, and other services furnished by the CONSULTANT under this Agreement, including the work performed by its subconsultants (Subconsultants). Where approval by OC SAN is indicated, it is understood to be conceptual approval only and does not relieve the CONSULTANT of responsibility for complying with all laws, codes, industry standards and liability for damages caused by errors, omissions, noncompliance with industry standards, and/or negligence on the part of the CONSULTANT or its Subconsultants.
- B. CONSULTANT is responsible for the quality of work prepared under this Agreement and shall ensure that all work is performed to the standards of best engineering practice for clarity, uniformity, and completeness.
- C. In the event that work is not performed to the satisfaction of OC SAN and does not conform to the requirements of this Agreement or any applicable industry standards, the CONSULTANT shall, without additional compensation, promptly

correct or revise any errors or deficiencies in its designs, drawings, specifications, or other services within the timeframe specified by the Project Engineer/Project Manager. OC SAN may charge to CONSULTANT all costs, expenses and damages associated with any such corrections or revisions.

- D. All CADD drawings, figures, and other work shall be produced by CONSULTANTS and Subconsultants using OC SAN standard software. Conversion of CADD work from any other non-standard CADD format to OC SAN format shall not be acceptable in lieu of this requirement.

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

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

## 2. COMPENSATION

Total compensation shall be paid to CONSULTANT for the Construction Support Services in accordance with the following provisions:

- A. Total Compensation

Total compensation shall be in an amount not to exceed Two Hundred Nine Thousand Dollars (\$209,000). Total compensation to CONSULTANT including burdened labor (salaries plus benefits), overhead, profit, direct costs, and Subconsultant(s) fees and costs shall not exceed the sum set forth in Attachment "E" - Fee Proposal.

- B. Labor

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

C. Overhead

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

D. Profit

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

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

E. Subconsultants

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

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

F. Direct Costs

OC SAN shall pay to CONSULTANT and Subconsultants the actual costs of permits and associated fees, travel and licenses for an amount not to exceed the sum set forth in Attachment "E" - Fee Proposal. OC SAN shall also pay to CONSULTANT actual costs for equipment rentals, leases or purchases with prior approval of OC SAN. Upon request, CONSULTANT shall provide to OC SAN receipts and other documentary records to support CONSULTANT's request for reimbursement of these amounts, see Attachment "D" – Allowable Direct Costs. All incidental expenses shall be included in overhead pursuant to Section 2 - COMPENSATION above.

G. Other Direct Costs

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

H. Reimbursable Direct Costs

OC SAN will reimburse 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 Internal Revenue Service (IRS). The plan includes a combination of reimbursements based upon receipts and a "per diem" component approved by IRS. The most recent schedule of the per diem rates utilized by OC SAN can be found on the U.S. General Service Administration website at <http://www.gsa.gov/portal/category/104711#>.

The 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" as deemed the most practical.

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

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

Local Travel is considered travel by the 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 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 the 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 IRS shall be utilized for travel meals reimbursements. Per diem rates shall be applied to meals that are appropriate for travel times. Receipts are not required for the approved meals.

Additional details related to the reimbursement of the allowable direct costs are provided in the Attachment "D" - Allowable Direct Costs of this Agreement.

I. Limitation of Costs

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

**3. REALLOCATION OF TOTAL COMPENSATION**

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

**4. PAYMENT**

A. Monthly Invoice: CONSULTANT shall include in its monthly invoice, a detailed breakdown of costs associated with the performance of any corrections or revisions of the work for that invoicing period. CONSULTANT shall allocate costs in the same manner as it would for payment requests as described in this Section of the Agreement. CONSULTANT shall warrant and certify the accuracy of these costs and understand that submitted costs are subject to Section 11 - AUDIT PROVISIONS.

B. CONSULTANT may submit monthly or periodic statements requesting payment for those items included in Section 2 - COMPENSATION hereof in the format as required by OC SAN. Such requests shall be based upon the amount and value of the work and services performed by CONSULTANT under this Agreement and shall be prepared by CONSULTANT and accompanied by such supporting data, including a detailed breakdown of all costs incurred and work performed during the period covered by the statement, as may be required by OC SAN.

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

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

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

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

- C. CONSULTANT may submit periodic payment requests for each 30-day period of this Agreement for the profit as set forth in Section 2 - COMPENSATION above. Said profit payment request shall be proportionate to the work actually accomplished to date on a per task basis. In the event OC SAN's Director of Engineering determines that no satisfactory progress has been made since the prior payment, or in the event of a delay in the work progress for any reason, OC SAN shall have the right to withhold any scheduled proportionate profit payment.
- D. Upon satisfactory completion by CONSULTANT of the work called for under the terms of this Agreement, and upon acceptance of such work by OC SAN, CONSULTANT will be paid the unpaid balance of any money due for such work, including any retained percentages relating to this portion of the work.
- E. Upon satisfactory completion of the work performed hereunder and prior to final payment under this Agreement for such work, or prior settlement upon termination of this Agreement, and as a condition precedent thereto, CONSULTANT shall execute and deliver to OC SAN a release of all claims against OC SAN arising under or by virtue of this Agreement other than such claims, if any, as may be specifically exempted by CONSULTANT from the operation of the release in stated amounts to be set forth therein.
- F. Pursuant to the California False Claims Act (Government Code Sections 12650-12655), any CONSULTANT that knowingly submits a false claim to OC SAN for compensation under the terms of this Agreement may be held liable for treble damages and up to a ten thousand dollars (\$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 OC SAN a false claim or request for payment or approval; b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by OC SAN; c) conspires to defraud OC SAN by getting a false claim allowed or paid by OC SAN; d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to OC SAN; or e) is a beneficiary of an inadvertent submission of a false claim to OC SAN, and fails to disclose the false claim to OC SAN within a reasonable time after discovery of the false claim.

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

- A. To the extent 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.
- B. 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.
- C. Pursuant to Labor Code Section 1776, the CONSULTANT and Subconsultants shall furnish a copy of all certified payroll records to OC SAN and/or general public upon request, provided the public request is made through OC SAN, the Division of Apprenticeship Standards or the Division of Labor Enforcement of the Department of Industrial Relations.
- D. The CONSULTANT and Subconsultants shall comply with the job site notices posting requirements established by the Labor Commissioner per Title 8, California Code of Regulation Section 16461(e).

**6. DOCUMENT OWNERSHIP – SUBSEQUENT CHANGES TO PLANS AND SPECIFICATIONS**

- A. Ownership of Documents for the Construction Support Services performed.  
All documents, including but not limited to, original plans, studies, sketches, drawings, computer printouts and disk files, and specifications prepared in connection with or related to the Scope of Work or Construction Support Services, shall be the property of OC SAN. OC SAN's ownership of these documents includes use of, reproduction or reuse of and all incidental rights, whether or not the work for which they were prepared has been performed. OC SAN ownership entitlement arises upon payment or any partial payment for work performed and includes ownership of any and all work product completed prior to that payment. This Section shall apply whether the CONSULTANT's Construction Support 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 plans or specifications, 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.

## 7. INSURANCE

### A. General

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

### B. General Liability

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. If aggregate limits apply separately to this contract (as evidenced by submission of ISO form CG 25 03 or 25 04), then the aggregate limit may be equivalent to the per occurrence limit. Said insurance shall include coverage for the following hazards: premises-operations, blanket contractual liability (for this Agreement), products liability/completed operations (including any product manufactured or assembled), broad form property damage, blanket contractual liability, independent contractors liability, personal and advertising injury, mobile equipment, owners and contractors protective liability, and cross liability and severability of interest clauses. A statement on an insurance certificate will not be accepted in lieu of the actual additional insured endorsement(s). If requested by OC SAN and applicable, XCU coverage (Explosion, Collapse and Underground) and Riggers/On Hook Liability must be included in the general liability policy and coverage must be reflected on the submitted certificate of insurance. Where permitted by law, CONSULTANT hereby waives all rights of recovery by subrogation because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or any other reason against OC SAN, its or their officers, agents, or employees, and any other consultant, contractor, or subcontractor performing work or rendering services on behalf of OC SAN in connection with the planning, development, and construction of the project. In all its insurance coverages related to the work, CONSULTANT shall include clauses providing that each insurer shall waive all of its rights of recovery



by subrogation against OC SAN, its or their officers, agents, or employees, or any other consultant, contractor, or subcontractor performing work or rendering services at the project. Where permitted by law, CONSULTANT shall require similar written express waivers and insurance clauses from each of its Subconsultants of every tier. A waiver of subrogation shall be effective as to any individual or entity, even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium, directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

C. Umbrella Excess Liability

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

D. Automobile/Vehicle Liability Insurance

The 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 limit 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 form acceptable to OC SAN.

F. Workers' 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 workers' compensation insurance shall be endorsed to provide for a waiver of subrogation in favor of OC SAN. A statement on an insurance certificate will not be accepted in lieu of the actual endorsements unless the insurance carrier is State of California Insurance Fund and the identifier "SCIF" and endorsement numbers 2570 and 2065 are referenced on the certificate of insurance. If an exposure to Jones Act liability may exist, the insurance required herein shall include coverage for Jones Act claims.

G. Errors and Omissions/Professional Liability

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

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

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

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

H. Proof of Coverage

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

- Certificate of Insurance      ACORD Form or other equivalent certificate of insurance form
  
- Additional Insurance      The combination of (ISO Forms)  
  (General Liability)      CG 20 10 and CG 20 37

All other additional insured endorsements must be submitted for approval by OC SAN, and

OC SAN may reject alternatives that provide different or less coverage to OC SAN.

- Additional Insured (Automobile Liability) Submit endorsement provided by carrier for OC SAN approval.
- Waiver of Subrogation Submit workers' compensation waiver of subrogation endorsement provided by carrier for OC SAN approval.
- Cancellation Notice No endorsement is required. However, CONSULTANT is responsible for notifying OC SAN of any pending or actual insurance policy cancellation, as described in Article I. Cancellation and Policy Change Notice, below.

I. Cancellation and Policy Change Notice

The 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, the CONSULTANT is required to notify OC SAN in writing of any change in the terms of insurance, including reduction in coverage or increase in deductible/SIR, within two (2) working days of receipt of such notice or knowledge of same.

Said notices shall be mailed to OC SAN at:

ORANGE COUNTY SANITATION DISTRICT  
18480 Bandilier Circle  
Fountain Valley, CA 92708  
Attention: Contracts, Purchasing & Materials Management Division

J. Primary Insurance

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

K. Separation of Insured

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

L. Non-Limiting (if applicable)

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

persons or property.

M. Deductibles and Self-Insured Retentions

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

N. Defense Costs

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

O. Subconsultants

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 OC SAN requires and shall be entitled to coverage for the higher limits maintained by CONSULTANT.

**8. SCOPE CHANGES**

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

**9. PROJECT TEAM AND SUBCONSULTANTS**

CONSULTANT shall provide to OC SAN, prior to execution of this Agreement, the names and full description of all Subconsultants and CONSULTANT's project team members anticipated to be used on this project by CONSULTANT. CONSULTANT shall include a description of the scope of work to be done by each Subconsultant and each CONSULTANT's project team member. CONSULTANT shall include the respective compensation amounts for CONSULTANT and each Subconsultant on a per task basis, broken down as indicated in Section 2 -COMPENSATION.

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

## **10. ENGINEERING REGISTRATION**

The CONSULTANT's personnel 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.

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

## **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 make CONSULTANT an employee of OC SAN.

## **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.

Notices shall be mailed to OC SAN at:

ORANGE COUNTY SANITATION DISTRICT  
18480 Bandilier Circle  
Fountain Valley, CA 92708-7011  
Attention: Diane Marzano, Senior Contracts Administrator  
Copy: Rich Leon, Project Manager

Notices shall be mailed to CONSULTANT at:

CDM SMITH INC.  
32 Discovery, Suite 250  
Irvine, CA 92618  
Attention: Alberto Acevedo

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

#### **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.

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 and/or CONSULTANT in accordance with Section 13 - NOTICES.

#### **15. DOCUMENTS AND STUDY MATERIALS**

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

#### **16. COMPLIANCE**

##### **A. Labor**

CONSULTANT certifies by the execution of this Agreement that it pays employees not less than the minimum wage as defined by law, and that it does not discriminate in its employment with regard to race, color, religion, sex or

national origin; that it is in compliance with all federal, state and local directives and executive orders regarding non-discrimination in employment; and that it agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

**B. Air Pollution**

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

**C. Iran Contracting Act**

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

**17. 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 agreements for that party.

**18. 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.

**19. 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 it may be entitled.

**20. PROGRESS REPORTS**

Monthly progress reports shall be submitted for review by the tenth day of the following month and must include as a minimum: 1) current activities, 2) future activities, 3) potential items that are not included in the Scope of Work, 4) concerns and possible delays, 5) percentage of completion, and 6) budget status.

**21. WARRANTY**

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

## **22. INDEMNIFICATION**

To the fullest extent permitted by law, CONSULTANT shall indemnify, defend (at CONSULTANT's sole cost and expense and with legal counsel approved by OC SAN, which approval shall not be unreasonably withheld), protect and hold harmless OC SAN and all of OC SAN's officers, directors, employees, consultants, and agents (collectively the "Indemnified Parties"), from and against any and all claims, damages, liabilities, causes of action, suits, arbitration awards, losses, judgments, fines, penalties, costs and expenses including without limitation, attorneys' fees, disbursements and court costs, and all other professional, expert or consultants fees and costs and OC SAN's general and administrative expenses (individually, a "Claim", or 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, consultants, 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 from:

- (A) the sole or 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 OC SAN for a breach by CONSULTANT of any of the provisions of this Agreement. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit CONSULTANT's indemnification obligation or other liability hereunder.

The terms of this Agreement are contractual and the result of negotiation between the parties hereto. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this Agreement.

## **23. DUTY TO DEFEND**

The duty to defend hereunder is wholly independent of and separate from the duty to indemnify and such duty to defend shall exist regardless of any ultimate liability of



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

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

**24. CONSULTANT PERFORMANCE**

The CONSULTANT's performance shall be evaluated by OC SAN. A copy of the evaluation shall be sent to the CONSULTANT for comment. The evaluation, together with the comments, shall be retained by OC SAN and may be considered in future CONSULTANT selection processes.

**25. COMPLIANCE WITH OC SAN POLICIES AND PROCEDURES**

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

**26. CLOSEOUT**

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

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

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

CONSULTANT shall be required to provide adequate resources to fully support any

administrative closeout efforts identified in this Agreement. Such support must be provided within the timeframe requested by OC SAN.

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

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

**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 OC SAN and CONSULTANT by their respective duly authorized officers as of the day and year first written above.

**CONSULTANT: CDM SMITH INC.**

By \_\_\_\_\_  
Date \_\_\_\_\_  
\_\_\_\_\_  
Printed Name & Title

**ORANGE COUNTY SANITATION DISTRICT**

By \_\_\_\_\_  
Ryan P. Gallagher Date  
Board Chairman

By \_\_\_\_\_  
Kelly A. Lore Date  
Clerk of the Board

By \_\_\_\_\_  
Ruth Zintzun Date  
Finance & Procurement Manager

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

DM:eg

**DIGESTER P & R DOME TENDON REPAIR**

**CONTRACT NO. P2-137A**

**PROFESSIONAL CONSTRUCTION SERVICES AGREEMENT**

**ATTACHMENT A – SCOPE OF WORK**

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## I. SUMMARY

Provide construction engineering support services for the construction and installation, and closeout phases of this project.

## II. PROJECT SCHEDULE

The schedule for the services specified in this Scope of Work (SOW) shall be provided per the construction contract schedule, and the following schedule constraints:

Task(s)	Period of Performance
Submittals	As described under Task 4.3 - Submittal Reviews
Request for Information	As described under Task 4.4 - Request for Information
Record Drawings	Draft Record Drawings shall be submitted to OC SAN within 60 days of receipt from OC SAN of the approved Contractor's As-Built Drawings. The final Record Drawings shall be submitted within 21 days of receipt of OC SAN's comments on the Draft Record Drawings.

## III. PROJECT IMPLEMENTATION

All Orange County Sanitation District (OC SAN) projects are divided into six phases. The CONSULTANT shall provide engineering support services for Phase 4 Construction and Installation Services, and Phase 6 Closeout.

Phase 1 – Project Development – *Completed*

Phase 2 – Preliminary Design – *Completed*

Phase 3 – Final Design – *Completed*

**Phase 4 – Construction and Installation Services**

Phase 5 – Commissioning Services – Not Included

**Phase 6 – Closeout**

### PHASE 4 – CONSTRUCTION AND INSTALLATION SERVICES

OC SAN will administer and provide field inspection for the construction contract. Construction engineering support services shall be provided by the CONSULTANT as requested by OC SAN.

The CONSULTANT shall provide the key project personnel as described in its proposal for this project. The CONSULTANT shall not reassign the key project personnel without prior approval of OC SAN. OC SAN may request reassignment of any of the CONSULTANT's or its subconsultant's personnel, based on poor performance.

For all services, the CONSULTANT shall refer to the Engineering Design Guidelines, Chapter 01 for detailed requirements.

Quality Assurance/Quality Control (QA/QC): The CONSULTANT shall administer a program of QA/QC procedures for producing quality work and shall effectively manage and control the work. Specific procedures shall include but not be limited to planning, coordination, tracking, checking, reviewing, and scheduling the work. The CONSULTANT shall subject all work products prepared by the CONSULTANT to the CONSULTANT's in-house QA/QC procedures

prior to submittal to OC SAN. QA/QC hours and costs shall be incorporated into other tasks within this SOW.

#### **Task 4.1 – Project Management**

The CONSULTANT shall be responsible for detailed management of the work, including managing its subconsultants, and shall keep OC SAN apprised of the status of the work.

The CONSULTANT shall conduct monthly project management meetings with OC SAN. These meetings shall be attended by OC SAN's Project Manager and the CONSULTANT's Project Manager at a mutually agreeable time. The purpose of the meetings shall be to review the CONSULTANT's Project Manager's progress report and the status of the SOW, budget, and any issues which may affect completion of the work. Meetings should be arranged so that the progress report can be submitted three days before each meeting.

The CONSULTANT shall prepare and submit monthly invoices to OC SAN no later than the second Wednesday of the following month. The invoices shall document the hours and billing rate for each person that works on the project for each task in the work breakdown structure (WBS). Overhead, profit, and any direct costs shall also be shown for each task. As part of the summary section of the invoice, the CONSULTANT shall also include the following information:

- Budget
- Current billing period invoicing
- Previous billing period "total invoiced to date"
- Budget amount remaining
- Current billing period "total percent invoice to date"
- Current billing period "total percent completed to date"

The monthly progress report shall be submitted with the invoice as part of the monthly request for payment. The monthly progress report shall include the following:

- Work completed in the billing period
- Work anticipated for the upcoming month
- Outstanding project issues
- Status and issues impacting project scope and budget
- Percent complete, tabulated on a per task basis
- Cost to complete, tabulated on a per task basis
- Overall project budget, tabulated on a per task basis
- Travel and site visit summary
- Log documenting work completed to date on requests for information (RFIs), submittal reviews, Master Document Index (MDI), and change order preparation
- Log identifying and determining status of project risks
- Out of scope items log

The CONSULTANT shall also provide the percent budget spent for each of OC SAN's WBS cost codes (i.e. by work package and phase). OC SAN will provide a list of cost codes by phase to the CONSULTANT.

The CONSULTANT shall also provide a summary of progress and expenditures to date.

OC SAN will provide a sample invoice structure to the CONSULTANT after the issuance of the Notice to Proceed (NTP) for this SOW.

#### **Task 4.1.1 – PMWeb Procedures**

This Agreement shall utilize PMWeb as the Project Control Management System (PCMS) for overall management of the Agreement. All PCMS related documents requiring formal signatures shall be digital, and all copies digitally distributed. The PCMS conforms to the requirements set forth in California Government Code section 16.5 regarding digital signatures; therefore, digital signatures are in full force and effect and are legally the same as a hand-written signature. At least one PCMS account shall have the authority to approve Amendments.

OC SAN shall maintain the PCMS and serve as the administrator for the duration of this Agreement. OC SAN will provide the CONSULTANT with user access for approved personnel as needed for the duration of the Agreement. OC SAN shall control access to the PCMS by assigning user profiles and login credentials. CONSULTANT shall notify OC SAN of any changes to personnel. Access modifications shall be coordinated as needed throughout the Agreement. Do not to share PCMS account passwords with anyone inside or outside of the company.

Routine maintenance of the PCMS system may be required during the Agreement. Access to the PCMS system may be restricted or unavailable at these times and will be scheduled outside of typical working hours whenever possible.

The PCMS is a web-based environment and is therefore subject to the inherent speed and connectivity problems of the Internet. The CONSULTANT is responsible for its own connectivity to the Internet. PCMS response time is dependent on the CONSULTANT's equipment, including processor speed, Internet access speed, Internet traffic, etc.

OC SAN will not be liable for any delays associated with the utilization of the PCMS including, but not limited to: slow response time, down time periods, connectivity problems, or loss of information.

The OC SAN will provide a one-time training session of up to two (2) hours to train CONSULTANT's designated staff on general system requirements, procedures, and methods.

Automated system notifications generated via PCMS (e.g., in-system notices, system generated email, or email with attachment) shall constitute a formal written notification in compliance with the Professional Construction Service Agreement (PCSA).

#### **Task 4.1.2 - PM WEB SCHEDULE OF SUBMITTALS**

OC SAN has standardized on a Schedule of Submittals to provide uniformity between projects, support a commissioning dashboard, and ensure that submittals are properly retained per the Record Retention Policy. OC SAN has developed an Excel template based on our master specifications.

OC SAN will provide a PMWeb Master Schedule of Submittals template that includes the submittals required by OC SAN's Master Specifications. The CONSULTANT shall not deviate from the Master PMWeb Schedule of Submittals, except as required by the project specifications. The CONSULTANT shall develop submittal items for specifications that are not part of OC SAN's Master Specifications.

After the CONSULTANT has developed the Schedule of Submittals, it will be provided to the Resident Engineer and the Contractor to finalize before submittals are loaded into PMWeb.



Submittals will be loaded into PMWeb based on the package (general construction, safety, and commissioning packages) and commissioning phase.

## **Task 4.2 – Initial Project Meetings**

### **4.2.1 - Construction Hand-Off Workshop**

The CONSULTANT shall participate in a two-hour construction hand-off workshop. The purpose of the workshop is for the CONSULTANT and the OC SAN design team to transfer project-specific knowledge to the OC SAN construction management and inspection staff who will be managing and monitoring construction. Agenda to be used at the meeting is below:

1. General Project Overview
  1. Summary of Work and Project Elements
  2. Work Sequence
  3. Work Restrictions
  4. Public Outreach
  5. Schedule/Milestones
2. Project Risks
  1. For example:
    1. Tricky construction
    2. Areas where extra care need to be taken
    3. Submittals that need to be completed early due to lead time
  2. Key decision log items (i.e. any key items/decisions discussed during design that cannot change and we do not want to entertain proposals from the contractor to change?)
  3. Long lead time equipment submittals (timely processing required to avoid delays)
    1. Electrical control panels
    2. Transformers
    3. Special equipment
  4. Other project risk items
3. Project Team
  1. OC SAN Engineering Team
  2. Consultant Team - involvement in Submittals & RFIs.
  3. Stakeholders- include public, organizations, businesses, agencies, O&M-personnel
4. Entitlements
  1. Permits
  2. CEQA - MMs
5. Contractor
  1. Subs
  2. Bid price issues (e.g., did they bid anything suspiciously low)
  3. Past Contractor performance at OC SAN
    1. Strengths
    2. Weaknesses
  4. LDs
  5. Status of PMWeb Submittals List and set up

The workshop will be led by OC SAN's Project Engineer and the CONSULTANT's Project Manager and Project Engineer.

#### **4.2.2 - PMWeb and Submittal Review Procedures Meeting**

The CONSULTANT shall participate in a two-hour PMWeb procedure meeting and submittal procedure meeting. The purpose of this meeting is to review the roles and logistics for review and acceptance of construction contract documents and Contractor submittals. The CONSULTANT's Project Manager and Project Engineer shall attend. This meeting will be led by the OC SAN Resident Engineer and will be more specific to this contract than the overall PMWeb training identified in Section 4.1.1.

The project will utilize PMWeb for submittal reviews, project communication, tracking, and management.

#### **4.2.3 - Preconstruction Conference**

The CONSULTANT shall participate in a two-hour preconstruction conference attended by OC SAN staff, the CONSULTANT, the Contractor, subcontractors, and vendors. This meeting will be scheduled and presided over by OC SAN. In this meeting, OC SAN's Resident Engineer will describe the CONSULTANT's role in the project as the Design Engineer and the services the CONSULTANT shall provide during construction. OC SAN will prepare meeting minutes and the CONSULTANT shall review and comment on the minutes. Only the Project Manager and Lead Project Engineer shall attend.

#### **Task 4.3 – Submittal Reviews**

OC SAN will receive all submittals from the Contractor through PMWeb. OC SAN will forward submittals requiring the CONSULTANT's review to the CONSULTANT via PMWeb. The CONSULTANT shall review the submittals for conformance with the requirements of the Contract Documents and provide review comments to OC SAN through PMWeb within ten (10) calendar days after receipt of a submittal. The CONSULTANT shall return comments to OC SAN allowing enough time for OC SAN to incorporate all comments into a combined review comment set that OC SAN will return to the Contractor. The CONSULTANT shall accommodate occasional expedited reviews for time-sensitive submittals. Submittals shall include but not be limited to shop drawings, vendor tests, certifications, and test reports. All submittals will be made available electronically (PDF) through PMWeb.

If the CONSULTANT has staff other than the assigned technical lead review submittals, the CONSULTANT's technical lead shall review all submittal comments prior to returning them to OC SAN. For all submittals reviewed by the CONSULTANT, the CONSULTANT shall assume that they are the only reviewer for that submittal review and shall not rely on supplemental OC SAN comments.

See Section V - Quantitative Assumptions in this SOW for the estimated number of submittals.

#### **Task 4.4 – Request for Information**

OC SAN will forward to the CONSULTANT certain Requests for Information (RFIs) generated by the Contractor or OC SAN. The CONSULTANT shall return written responses to OC SAN as soon as possible or within three (3) calendar days of receipt of the RFIs, clarifying the requirements of the Contract Documents. The CONSULTANT shall generate necessary sketches, figures, and modifications to the drawings for clarification. When required to avoid schedule delay or additional construction-related costs, the CONSULTANT shall expedite the review of time sensitive RFIs.

If any changes to the Contract Documents are required, the CONSULTANT shall prepare these documents and submit them as PDF files to OC SAN. The CONSULTANT shall update all AutoCAD drawings and specifications upon OC SAN acceptance of any changes resulting from RFIs and change orders.

See Section V- Quantitative Assumptions in this SOW for the estimated number of RFIs.

#### **Task 4.5 – Contract Document Modifications, Design Changes and Change Orders**

If the Contract Documents require modifications due to changed conditions, OC SAN requested changes, omissions, or design errors; the CONSULTANT shall prepare preliminary change order documents and forward them to OC SAN, as needed. OC SAN shall review the preliminary change order documents and request the CONSULTANT to incorporate any changes. OC SAN will issue the change order documents in a formal Request for Proposal (RFP) or Field Change Order (FCO) to the Contractor. The CONSULTANT shall forward design calculations and other design backup documents as necessary to OC SAN.

Any Contract Document that requires changes shall be identified with the date of change and reference (RFI number, RFP number, FCO number, etc.) shown on the document. Changes shown on the drawings shall be clearly marked and “clouded” for accurate identification of the scope of the change to the Contractor and inspection staff. The CONSULTANT shall maintain up-to-date Contract Documents. When a change is required on a Contract Drawing that has previously undergone a change, the updated drawing showing the previous change shall be used as the base document to identify new changes.

The CONSULTANT shall submit complete change documentation to OC SAN for use in RFIs, RFPs, and FCOs. This change documentation shall include drawings, schematics, details, schedules, and specifications, as required.

The CONSULTANT shall prepare cost estimates for the changes when requested by OC SAN.

The CONSULTANT shall maintain a Master Document Index (MDI) to track all changes issued on the project. The MDI shall be updated monthly and located in PMWeb.

See Section V- Quantitative Assumptions in this SOW for the estimated number of hours.

#### **Task 4.6 – Construction Progress Meetings and Site Visits**

The CONSULTANT shall attend up to five construction progress meetings in person, as requested by OC SAN’s Resident Engineer. These in-person meetings should be coordinated to align with critical field work where CONSULTANT input is required. The scope shall include the time for travel, follow-up, and review of meeting minutes. Construction progress meeting minutes will be prepared by OC SAN.

The CONSULTANT shall attend or be available by phone for one-hour weekly construction progress meetings.

The CONSULTANT shall make field visits to assist in field problem resolution and design clarification/verification to help resolve construction issues as they arise and as requested by OC SAN. The CONSULTANT shall report the nature of the field site visits, the problem resolved, and identify staff requesting the site visit in the CONSULTANT’s monthly project report. OC SAN will provide project inspection, except as required in other sections of this SOW.

See Section V- Quantitative Assumptions in this SOW for the estimated number of hours.

#### **Task 4.7 – Concrete Condition Support**

The CONSULTANT shall provide a concrete expert to help facilitate the repair of the concrete on the project.

See Section V- Quantitative Assumptions in this SOW for the estimated number of hours.

#### **Task 4.8 – Shoring Support**

The CONSULTANT shall provide shoring support to review submittals, RFIs, RFP, inspection, testing, and conformance to the conformed documents by the shoring designer of record.

#### **PHASE 5 – COMMISSIONING SERVICES (NOT USED)**

#### **PHASE 6 – CLOSEOUT**

Closeout tasks include completion of punch list work by the Contractor, final inspection, completion of Record Drawings, and electronic data. The CONSULTANT shall submit a final invoice at the completion of the project.

#### **Task 6.1 – Final Inspection and Punch Lists**

The CONSULTANT's construction coordinator, and discipline leads shall attend the final inspection job walk with the Contractor and OC SAN staff. The CONSULTANT shall make recommendations on the completion of the work including, but not limited to, completion of punch list items, site cleanup, and SWPPP.

The CONSULTANT shall assist OC SAN in developing punch lists of items required to be completed prior to final acceptance of the project by OC SAN.

#### **Task 6.2 – Record Drawings**

When requested by OC SAN, the CONSULTANT shall attend preliminary as-built meetings with OC SAN and the Contractor to inspect the Contractor's draft as-built drawings to verify that the Contractor has included all relevant information from approved change orders and RFIs. As part of the review process, the CONSULTANT shall verify that the Contractor's draft as-built drawings correctly reflect the information included in the approved shop drawings, RFIs, approved FCOs, plan clarifications, plan changes, and other deviations from the conformed Contract Documents, and that the information in the as-built drawings is complete. Based on the findings, CONSULTANT shall prepare a written report on the completeness of the field markup set. The CONSULTANT shall allow for two meetings/visits to review the Contractor's in progress as-built drawings, it is anticipated these meetings will occur when construction is 75% complete and before the draft final as-built set.

The CONSULTANT shall independently keep a CAD ready set of draft as-built drawings throughout the project. After each meeting with the Contractor, the CONSULTANT shall transpose the Contractor's information to the CONSULTANT's draft CAD ready as-built drawings. The CONSULTANT shall be responsible for marking-up any differences between the Contractor's draft as-built drawings and the CONSULTANT's set.

After final completion of the project, OC SAN will transmit to the CONSULTANT the Contractor's final as-built drawings. At that time, the CONSULTANT shall meet with OC SAN's inspectors and Resident Engineer to review the Contractor's final as-built drawings for completeness.

The CONSULTANT shall prepare Draft Record Drawings based on the final as-built drawings for all drawings in accordance with the requirements in the CAD Manual. Traffic control plans and temporary bracing of shoring will not be updated. The CONSULTANT shall submit the Draft Record Drawings to the OC SAN Resident Engineer. The Draft Record Drawings will be reviewed for content and CAD compliance by OC SAN staff. A comment log will be returned to

the CONSULTANT and, if any comments are generated, the CONSULTANT shall revise the Record Drawings and resubmit to the OC SAN Resident Engineer for review of the changes and acceptance of the Record Drawings.

When no additional comments are identified, the CONSULTANT shall prepare the Final Record Drawings and submit them to the OC SAN Project Manager. All hard copies of the Contractor's final as-built drawings shall be returned to OC SAN at this same time. All Record Drawings shall contain a stamp indicating:

**Record Drawings**

These record drawings have been prepared based on information provided by others. The Engineer has not verified the accuracy of this information and shall not be responsible for any errors or omissions which may be herein as a result.

The stamp shall be placed in the title block and may be included by x-ref. In addition, a note shall be placed over the engineer's seal stating that "This drawing was originally approved for construction by [name of engineer] on [date] and sealed by [name of engineer] a licensed professional engineer in the State of California No. [License number] ". The CONSULTANT shall submit an electronic copy of the Record Drawings to OC SAN for review and acceptance. The acceptance of the Record Drawings shall be deemed a condition precedent for completion of the services provided in Phase 6 - Closeout.

The Contractor-generated as-built drawings described in the Engineering Design Guidelines and the shop drawings will not be updated by the CONSULTANT.

The format and quantities for delivery of the submittals shall be as listed below:

<b>Contents</b>	<b>Draft Record Drawings</b>	<b>Final Record Drawings</b>
Hard Copy Sets	None	None
All related electronic files, including CAD and compiled PDFs	Transmit Electronic Files to OC SAN	Transmit Electronic Files to OC SAN

See Section V- Quantitative Assumptions in this SOW for the estimated number of hours

### **Task 6.3 – Project Management**

The CONSULTANT shall also include project management support man-hours related to closeout activities per requirements stated in Phase 4, Project Management Task.

### **IV. STAFF ASSISTANCE**

The OC SAN staff member or designee assigned to work with the CONSULTANT on the construction phase of this project is Rich Leon at (714) 460-3485, email to: rleon@ocsan.gov.

### **V. QUANTITATIVE ASSUMPTIONS**

The assumptions listed in the following table below shall be the basis for the assumed level of effort.

<b>Task</b>	<b>Description</b>	<b>Assumption</b>
4.1	Project Management	From the effective date of the NTP for the construction contract to scheduled final completion.
4.2.1	Construction Hand-off Meeting	PM + PE: Prep and attend 2-hour meeting
4.2.3	Preconstruction Conference	PM + PE: Attend 2-hour meeting
4.3	Submittals	20 – Original submittals items <sup>1</sup> 10 – Resubmittal items 5 – 3 <sup>rd</sup> and later resubmittal items
4.4	Requests for Information	25 RFIs
4.5	Contract Document Modifications, Design Changes and Change Orders	50 hours
4.6	Construction Progress Meetings Site Visits During Construction	5 On-site meetings (6 hours each including travel time and follow-up) Weekly Progress Meetings @ 1 hour each 6 Site Visits @ 1 hour each (Task 4.6)
4.7	Concrete Condition Support	2 Site Visits @ 8 hours each
6.2	Record Drawings	70 hours

<sup>1</sup>Note that each submittal set includes multiple submittal items which may be individually submitted by the contractor. The counts listed in this table are considering the individual submittal items. The level of effort should assume these all are received individually.



# OPERATIONS COMMITTEE

Administration Building  
10844 Ellis Avenue  
Fountain Valley, CA 92708  
(714) 593-7433

## Agenda Report

**File #:** 2024-3646

**Agenda Date:** 7/10/2024

**Agenda Item No:** 8.

**FROM:** Robert Thompson, General Manager  
Originator: Mike Dorman, Director of Engineering

**SUBJECT:**

**REDHILL RELIEF SEWER RELOCATION AT STATE ROUTE 55, PROJECT NO. FE18-13**

**GENERAL MANAGER'S RECOMMENDATION**

RECOMMENDATION: Recommend to the Board of Directors to:

Approve a construction contingency increase of \$464,730 (21%) to the existing construction contract with SRK Engineering, Inc. for Redhill Relief Sewer Relocation at State Route 55, Project FE18-13, for a total contract amount not to exceed \$2,213,000 and a total construction contingency of \$796,680 (36%), with all costs to be reimbursed by the Orange County Transportation Authority.

**BACKGROUND**

The Orange County Transportation Authority (OCTA) is implementing the State Route 55 (SR-55) Improvement Project to widen SR-55 between Interstate 5 and Interstate 405. The Orange County Sanitation District (OC San) owns a sewer running under SR-55 immediately south of Warner Avenue in the City of Santa Ana that is affected by this widening project.

**RELEVANT STANDARDS**

- Maintain collaborative and cooperative relationships with regulators, stakeholders, and neighboring communities
- Protect OC San assets

**PROBLEM**

OCTA's SR-55 Improvement Project will widen the freeway over an existing OC San sewer. To protect the sewer, OC San must encase the sewer in the newly widened right-of-way and move an interfering manhole outside the freeway limits. Originally, OC San was scheduled to mobilize in November 2022 but was subsequently directed by OCTA to pause mobilization due to Southern California Edison's design and construction procurement delays. OCTA recently cleared OC San's contractor to mobilize after July 2024 and agreed to reimburse them for the delay costs. The 20-month delay costs exceed the original Board-approved construction contingency requiring staff to request additional contingency funds.

## **PROPOSED SOLUTION**

Approve a contingency increase to the construction contract to cover the delay costs and use the remaining contingency for contract work.

## **TIMING CONCERNS**

The start of construction has already been delayed 20 months. Additional construction delays would further increase construction costs due to escalation and would delay OCTA's freeway widening schedule.

## **RAMIFICATIONS OF NOT TAKING ACTION**

Not increasing the construction contingency will prevent OC San from authorizing SRK Engineering, Inc. to mobilize and complete the sewer relocation.

## **PRIOR COMMITTEE/BOARD ACTIONS**

June 2022 - Awarded a construction contract to SRK Engineering, Inc. for Redhill Relief Sewer Relocation at State Route 55, Project FE18-13 for an amount not to exceed \$2,213,000 and approved a contingency of \$331,950 (15%).

September 2021 - Approved the First Amendment to Utility Agreement No. OCSD-1005, between the Orange County Sanitation District and the Orange County Transportation Authority agreeing to a funding increase for the relocation and protection of the Redhill Relief Sewer at State Route 55 in the City of Santa Ana.

March 2020 - Approved Utility Agreement No. OCSD-1005 between the Orange County Sanitation District and the Orange County Transportation Authority agreeing to specific terms, conditions, and funding obligations regarding the relocation and protection of the Redhill Relief Sewer at State Route 55 in the City of Santa Ana.

## **ADDITIONAL INFORMATION**

Utility Agreement No. OCSD-1005 cites Section 703 of the Streets and Highways Code declaring OC San's Redhill Relief Sewer relocation qualifies for full reimbursement at OCTA's expense. The agreement obligates OC San to submit a final bill to OCTA within 360 days of the completion of the relocation for the remaining balance of OC San's relocation costs. The final bill amount will remain unrealized until completion of the relocation. A final bill exceeding 125% of the agreement amount will require an amendment which is to be presented to OC San's Board at a future Board meeting.

## **CEQA**

The Caltrans/OCTA SR-55 Improvement Project includes the relocation and protection of the Redhill Relief Sewer in their Initial Study/Mitigated Negative Declaration/ Environmental Assessment. Unrelated to the Caltrans/OCTA Improvement Project is an OC San repair project, which is exempt from CEQA under the Class 1 categorical exemptions set forth in California Code of Regulations



section 15301. A Notice of Exemption was filed in June 2022 with the OC Clerk-Recorder after the OC San's Board of Directors approval of the Construction Contract.

**FINANCIAL CONSIDERATIONS**

This request complies with the authority levels of OC San's Purchasing Ordinance. This item has been budgeted (Budget FY 2024-25 and 2025-26, Section 8, Page 49, Small Construction Projects Program, Project No. M-FE) and the budget is sufficient for the recommended action.

**ATTACHMENT**

*The following attachment(s) may be viewed on-line at the OC San website ([www.ocsan.gov](http://www.ocsan.gov)) with the complete agenda package:*

N/A

RD:lb



# OPERATIONS COMMITTEE

Administration Building  
10844 Ellis Avenue  
Fountain Valley, CA 92708  
(714) 593-7433

## Agenda Report

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**File #:** 2024-3689

**Agenda Date:** 7/10/2024

**Agenda Item No:** 9.

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**FROM:** Robert Thompson, General Manager  
Originator: Lan C. Wiborg, Director of Environmental Services

**SUBJECT:**

**ORANGE COUNTY SANITATION DISTRICT NEW OCEAN MONITORING VESSEL**

**GENERAL MANAGER'S RECOMMENDATION**

RECOMMENDATION: Recommend to the Board of Directors to:

- A. Approve an Agreement to Design and Build an Ocean Monitoring Vessel to All American Marine, Inc. (AAM) for the purchase of a 65-foot (overall length) aluminum catamaran design ocean monitoring vessel with a plug-in hybrid propulsion system for a total amount not to exceed \$9,206,149; and
- B. Approve a contingency of \$920,615 (10%).

**BACKGROUND**

Orange County Sanitation District (OC San) has conducted safe and effective ocean monitoring operations on *Nerissa* for 20 years, collecting and analyzing samples of seawater, sediment, fishes, and invertebrates within a 185 square mile area to assess the effects of its outfall discharge on the receiving environment as required by OC San's NPDES ocean discharge permit (NPDES No. CA0110604).

Maintaining a functional and reliable ocean monitoring vessel is critical in fulfilling OC San's mission in protecting public health and the environment in a cost-effective manner.

**RELEVANT STANDARDS**

- Ensure the public's money is wisely spent
- Comply with environmental permit requirements
- Protect public safety
- Commitment to safety & reducing risk in all operations
- Provide a safe and collegial workplace

## **PROBLEM**

At 20 years old, OC San's ocean monitoring vessel, *Nerissa*, is nearing the end of its service life and is due for replacement. In preparation for the vessel replacement, OC San staff became aware that CARB has instituted new engine emission regulations for California Harbor Craft (CHC) Vessels. The new regulations will require all CHC vessels operating in California to have the cleanest fuel emission system starting January 1, 2026. Ocean Monitoring staff assessed the viability of 3 CARB-compliant configurations and determined that it will not be possible to replace *Nerissa*'s twin Tier 1 diesel engines without making costly and major modifications to the hull. Tier 4 diesel engines equipped with diesel particulate filters (DPF) are larger and require a large tank to store the diesel emissions fluid. This creates space issues for engine maintenance. Both the plug-in hybrid and full electric propulsion systems require an additional battery room equipped with dedicated fire suppression and air supply systems. A full electric ocean monitoring vessel is currently not a viable option due to limitations with battery technology and charging infrastructure, and a Tier 4 diesel engine equipped with DPF is not a sustainable option as CARB's regulations continue to move towards zero emissions. Therefore, Ocean Monitoring staff determined that the most desirable option is the purchase of a new ocean monitoring vessel with a plug-in hybrid propulsion system.

## **PROPOSED SOLUTION**

Staff recommends replacing *Nerissa* with an aluminum catamaran design equipped with a plug-in hybrid propulsion system. Aluminum offers numerous benefits such as corrosion-resistant properties, high durability, and light weight which translates to increased fuel efficiency and less maintenance costs. The catamaran design offers numerous benefits including increased ship stability, deck space, fuel efficiency, and staff safety. The plug-in hybrid propulsion system is currently the most established and reliable configuration and will ensure compliance with new and future CARB air emission regulations as the plug-in hybrid propulsion system can be converted to full electric in the future.

## **TIMING CONCERNS**

CARB's new air emissions regulations require that all Tier 1 CHC vessels have a clean fuel emission system by January 1, 2026. Fortunately, the new regulations allow a 12-month extension if the vessel owner has signed an Agreement with a ship builder by December 31, 2024, to upgrade to a vessel that meets the emission requirements. OC San will be seeking the 12-month extension based on AAM's proposed design and build schedule. If the Board approves the Agreement, OC San expects to take possession of the new vessel between May and December 2026. However, AAM is unable to commit to a delivery timeline until Agreement execution, and build slots are reserved on a first-come, first-served basis. Given that OC San must have a signed Agreement by December 31, 2024, to be eligible for the 12-month extension, any further delay will put OC San in violation.

## **RAMIFICATIONS OF NOT TAKING ACTION**

Without Board approval, the next opportunity for Board consideration is September as the Board Committees go into recess in August. A two-month delay in executing the Agreement will postpone the new vessel delivery date by months to years as a new vessel takes several years to design and build and AAM expressed that they are currently in negotiations with other clients and the limited build slots are on a first-come, first-served basis.

A delay will also increase the risk of *Nerissa* breaking down due to her aging auxiliary systems (e.g., electrical, hydraulic, and deck winch systems) and risk OC San being in non-compliance with CARB's CHC regulations as well as other regulatory requirements. In the absence of a reliable ocean monitoring vessel, OC San will not be able to fulfill the required compliance ocean sampling and monitoring, which could lead to enforcement action and daily penalties of up to \$25,000 for each violation in addition to other actions deemed appropriate by the EPA and the SARWQCB. CARB may also impose a \$10,000 daily fine for operating a non-compliant vessel. Currently, a qualified ocean monitoring service is not available to satisfy OC San's regulatory requirements. Based on extensive research by Ocean Monitoring staff, the few available ocean monitoring vessel services within the region are nearly impossible to schedule, limited in scope of service, highly variable in equipment condition and staff qualifications, and generally not cost effective.

### **PRIOR COMMITTEE/BOARD ACTIONS**

N/A

### **ADDITIONAL INFORMATION**

#### Vessel Designer/Builder Selection:

On August 2, 2023, OC San issued a Request for Interest and Information (RFI) to identify potential firms interested and to obtain general market information related to current market conditions and other issues that may potentially impact the procurement. Three firms responded to the RFI.

On November 16, 2023, OC San issued an RFP to procure the design and construction of an Ocean Monitoring Vessel as outlined in the scope of work (Scope of Work). The RFP was publicly advertised in the Orange County Register and an electronic notification was sent to multiple firms, including the three firms who responded to the RFI.

A mandatory virtual pre-proposal meeting was conducted on November 28, 2023, to discuss the proposal requirements, scope of work, project schedule, and evaluation process with potential proposers. Prior to receipt of proposals, an Evaluation Team was formed consisting of OC San staff: Boat Captain (Project Manager), Assistant Boat Captain, Environmental Supervisor, Environmental Protection Manager, and non-voting Senior Contracts Administrator. A pre-proposal survey was conducted and the three firms who responded to OC San's RFI confirmed that they intended to submit a proposal.

On January 31, 2024, OC San received proposals from the following 2 firms:

- All American Marine, Inc.
- Platypus Marine, Inc.

A post-proposal survey was conducted with the 3<sup>rd</sup> firm, but a response was never received.

On February 21, 2024, the Evaluation Team convened to score the proposals based on the following evaluation criteria and weighting requirements included in the RFP. OC San's proposal evaluation method is best value, with a combination of technical and cost factors.

Criterion	Weighting
Project Understanding and Approach	20%
Related Project Experience	15%
Project Team and Staff Qualifications	20%
Proposed Specifications, Deliverables, and Schedule	35%
Cost Proposal	10%
Alternative/Innovation Bonus Points	6%

Based on the Evaluation Team’s review, the highest-scoring firm was invited for an interview. Below is the summary of the scores prior to the interview.

Proposer	Project Understanding and Approach (Max. 20 Points)	Related Project Experience (Max. 15 Points)	Project Team and Staff Qualifications (Max. 20 Points)	Proposed Specs, Deliverables & Schedule (Max. 35 Points)	Cost Proposal (Max. 10 Points)	Alternative / Innovation Bonus Points (Max. 6 Points)	Total Score (Max. 106 Points)
All American Marine, Inc.	19	14	19	32	10	1	95
Platypus Marine, Inc.	13	8	17	25	6	1	70

The interview with AAM was conducted on March 6, 2024. After the interview, AAM confirmed their standing as the highest-scoring proposer based on both the written proposal and the interview. Below is the summary of the final scores.

Proposer	Project Understanding and Approach (Max. 20 Points)	Related Project Experience (Max. 15 Points)	Project Team and Staff Qualifications (Max. 20 Points)	Proposed Specs, Deliverables & Schedule (Max. 35 Points)	Cost Proposal (Max. 10 Points)	Alternative / Innovation Bonus Points (Max. 6 Points)	Total Score (Max. 106 Points)
All American Marine, Inc.	20	14	19	32	10	1	96

Proposer	Reviewer				Total Score (Max. 106 Points)
	1	2	3	4	
All American Marine, Inc.	91	91	88	90	96

AAM, the proposer with the highest score, excelled in both the proposal and the interview. Their technical proposal went beyond a general understanding of the Scope of Work and provided specific examples of how the proposed team would approach challenges on the new vessel. The following are key elements that were unique from AAM’s proposal:

- All hardware, equipment, and components that will be used in the build were specified.
- A load analysis of the proposed vessel, including AC/DC loads for the proposed equipment, was completed based on OC San’s operating profiles.
- Battery storage was based on End of Life to ensure OC San will be compliant with CARB’s 30% rule for life of batteries.
- Differences between parallel and series hybrid electric vessels were explained, including why they chose a series hybrid system for the proposed vessel.
- Project team has designed and built multiple research and hybrid vessels in-house.

On March 12, 2024, the Director of Environmental Services concurred with the Evaluation Team’s recommendation to proceed with negotiations with the highest-scoring proposer, AAM.

Negotiations:

Beginning on March 19, 2024, the Evaluation Team conducted negotiations with AAM regarding the following topics:

- Removal of bow thrusters
- Lengthen vessel by one “frame” (40 inches)
- Main cabin/lab general layout
- Storage cabinets/drawers
- Incorporating Teledyne ADCP
- Aft deck workstation cover
- Seating/wet storage
- Security cameras capturing 360-degree view around the vessel

The final negotiated cost increased due to the factors mentioned above, in addition to incorporating the CA sales tax of 7.75% to the purchase price. The table below summarizes the revised cost.

	Original	Final Negotiated
Builder’s Cost	\$8,231,160	\$9,206,149

All requested contractual exceptions were reviewed by various parties and had input from the Project team, Contracts Supervisor, Finance & Procurement Manager, Risk Management, and General Counsel.

**CEQA**

N/A

**FINANCIAL CONSIDERATIONS**

This request complies with authority levels of OC San's Purchasing Ordinance. This item has been budgeted (Budget FY 2024-25 and 2025-26, Section 8, Page 96) and the budget along with funds allocated from Budget FY 2023-24 is sufficient for the recommended action.

<u>Date of Approval</u>	<u>Contract Amount</u>	<u>Contingency</u>
07/24/2024	\$ 9,206,149	\$920,615 (10%)

**ATTACHMENT**

*The following attachment(s) may be viewed on-line at the OC San website ([www.ocsan.gov](http://www.ocsan.gov)) with the complete agenda package:*

- Agreement - Draft
- Presentation

## **AGREEMENT TO DESIGN AND BUILD AN OCEAN MONITORING VESSEL**

This AGREEMENT TO DESIGN AND BUILD AN OCEAN MONITORING VESSEL, (hereinafter referred to as "Agreement"), is effective on July 24, 2024 and is made and entered into by and between the ORANGE COUNTY SANITATION DISTRICT, (hereinafter referred to as "OC SAN"), and ALL AMERICAN MARINE, INC. (hereinafter referred to as "BUILDER"). OC SAN and BUILDER are referred to herein collectively as the "Parties" or individually as a "Party."

### **WITNESSETH:**

WHEREAS, OC SAN desires to engage BUILDER to design and build an ocean monitoring vessel ("Vessel") as described in Exhibit "A", Scope of Work and amended in Attachment "A1", BUILDER Technical Specifications, attached hereto and incorporated herein by this reference ("Services"); and

WHEREAS, BUILDER is qualified to provide the necessary services by virtue of experience, training, and expertise and has agreed to provide the necessary design and construction services; and

WHEREAS, OC SAN has adopted procedures for the selection of firms to provide professional design and construction services and has proceeded in accordance with said procedures to select BUILDER to perform the Services; and

WHEREAS, at its regular meeting on July 24, 2024, the Board of Directors, by Minute Order, accepted the recommendation of the Operations Committee to approve this Agreement.

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

#### **1. SCOPE OF WORK**

- A. BUILDER agrees to furnish the design, construction, testing, and all other necessary services to accomplish the project elements outlined in the Scope of Work ("SOW") to deliver a complete, fully functional Vessel consistent with all applicable requirements, including, but not limited to, those specified in the SOW.
- B. BUILDER shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services furnished by BUILDER under this Agreement, including the work performed by its subconsultants ("Subconsultants") and subcontractors ("Subcontractors"). Where approval by OC SAN is indicated, it is understood to be conceptual approval only and does not relieve BUILDER of responsibility for complying with all applicable laws, rules, regulations, codes, industry standards, and liability for damages caused by errors, omissions, noncompliance with industry standards, and/or negligence on the part of BUILDER or its Subconsultants or Subcontractors.
- C. BUILDER is responsible for the quality of work prepared under this Agreement and shall ensure that all work is performed to applicable industry standards for clarity,



uniformity, accuracy, and completeness, and in a reasonable, professional, and workmanlike manner. BUILDER shall timely respond to all of OC SAN's questions, comments, suggestions, corrections, and recommendations. All comments from OC SAN, or its agent, shall be incorporated into the work prior to the next submittal deadline or addressed, in writing, as to why the comments have not been incorporated. BUILDER shall ensure that each submittal is 100% accurate for the level of work submitted (i.e., correct references, terms, capitalization, or equal status, spelling, punctuation, etc.)

In the event that the Services are not performed as required by the SOW and do not conform to the requirements of this Agreement or the applicable industry standards, BUILDER shall, without additional compensation, promptly correct or revise any errors or deficiencies in its designs, drawings, specifications, or other Services within the timeframe reasonably specified by the Project Manager. In the event of BUILDER's failure to promptly correct such errors or deficiencies in a timely manner, OC SAN may charge to BUILDER all costs and expenses associated with any such corrections or revisions.

Any changes to these specifications by BUILDER are subject to review and approval of OC SAN.

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

- D. All professional services performed by BUILDER, including, but not limited to, all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by BUILDER, pursuant to this Agreement, are for the sole use of OC SAN, its agents, and employees. Any drawings or designs developed for the construction of the Vessel are for the benefit of OC SAN, but remain the sole property of Teknicraft Design, Ltd. (hereinafter referred to as "NAVAL ARCHITECT"). Upon BUILDER's receipt of payment in full hereunder, electronic copies of the drawings shall be placed in a third party escrow account, to be accessed by OC SAN in the unlikely event that both NAVAL ARCHITECT and BUILDER cease operations. Neither the documents nor their contents shall be released to any third party without the prior written consent of BUILDER. This provision does not apply to information that (a) was publicly known, or otherwise known to BUILDER, at the time that it was disclosed to BUILDER by OC SAN, or (b) subsequently becomes publicly known to BUILDER other than through disclosure by OC SAN.
- E. BUILDER shall be responsible for all construction means, methods, techniques, sequences, and procedures; and for coordinating all portions of the construction, commissioning, and delivery of the Vessel.

## 2. TERM

- A. Subject to all Scope Changes under Section 14, as well as the terms and conditions set forth in this Section 2, BUILDER shall diligently complete the Services within \_\_\_\_\_ ( ) calendar days from the effective date of the Notice to

Proceed issued by OC SAN and shall therefore deliver a complete, fully-functional Vessel no later than \_\_\_\_\_(the "Delivery Date").

- B. It is understood and agreed that the Delivery Date of the Vessel is predicated upon prompt delivery of all component parts, and with respect to the engine, gear, propeller, and equipment that have been specified by OC SAN, and it is understood and agreed that if delivery of the component parts causes delay beyond the BUILDER's control and the BUILDER's schedule of construction is consequently upset or delayed, thereby, then the Delivery Date of the Vessel shall be reasonably extended and no penalty will be incurred by the BUILDER (and the construction schedule shall be appropriately revised as agreed to by the Parties).
- C. In order to assure timely delivery of the Vessel by the BUILDER under this Agreement, it is imperative for OC SAN decision-making, where required, regarding certain elements of design, construction, and/or material selection also be made in a timely manner. Likewise, any materials or property designated in the Plans and Specifications, ("Specification Book"), contained in Attachment "A1", Sections 5510, 5515 and 5520 as being supplied by OC SAN must be provided to the BUILDER in a timely manner and in suitable condition.
- D. Within thirty (30) days of execution of this Agreement the BUILDER shall supply OC SAN a schedule ("Decision/Supply Schedule") delineating deadline dates for providing to the BUILDER any specified OC SAN-supplied materials and property to be included in or on the Vessel. The Decision/Supply Schedule shall also include deadline dates for written conveyance to the BUILDER by OC SAN of decisions required of OC SAN for designated elements of design, construction, or material selection. If the latest possible delivery date, (prior to assessment of any potential late delivery penalties), of the Vessel has been extended by reason of activation of any other section of this Agreement, then such dates included in the Decision/Supply Schedule for OC SAN shall also be extended by an equal number of days unless the BUILDER and OC SAN mutually agree otherwise.
- E. If OC SAN fails to supply designated items, materials, or decisions by the scheduled deadline dates enumerated in the Decision/Supply Schedule, the contractually-specified delivery date of the Vessel shall automatically be extended by the lesser of twenty-five (25) days or the number of days elapsed from the deadline date for each deadline failure (and the Construction Schedule shall be appropriately revised as agreed to by the Parties). If, for the same failure, OC SAN has not provided the required items, materials, or written decisions within twenty-five (25) days of the deadline date, then the BUILDER reserves the right to supply the designated item or material, with charge to OC SAN, or to make the required decision on OC SAN's behalf. If this provision is enacted, the BUILDER shall supply OC SAN with written notice of any action.
- F. If any delays in this Section are caused by failure of any suppliers of machinery, fittings, materials or equipment, or fuel, light, power, strikes, lockouts, destruction of work, Acts of God, delays from governmental agency actions, fire, explosion, tempest, weather, earthquake, accident, directly or indirectly affecting BUILDER or OC SAN and not caused directly or indirectly by BUILDER or OC SAN, or other cause beyond the control of BUILDER or OC SAN, then such failure shall not constitute default or breach of contract on the part of the BUILDER or OC SAN, and no penalties or damage shall be

payable by either Party to the other in respect thereof, and the time for either Party to complete any actions set forth in this Section shall be extended from time-to-time, and as often as such events occur by a period of time equal to the time lost (and the Construction Schedule shall be appropriately revised as agreed to by the Parties).

### **3. TIME IS OF THE ESSENCE**

Time is of the essence on this Agreement. BUILDER shall prepare and obtain approval of all shop drawings, details, and samples and do all other things necessary and incidental to the prosecution of BUILDER's work in conformance with an approved construction progress schedule.

### **4. COMPENSATION**

- A. Subject to any Scope Changes under Section 14, as compensation for the Services provided under this Agreement, OC SAN shall pay BUILDER a total amount not to exceed Nine Million Two Hundred Six Thousand One Hundred Forty-Nine Dollars (\$9,206,149) (the "Purchase Price" or "total compensation").
- B. Total compensation is inclusive of all costs for performance of the Services, including, but not limited to, design, construction, installation, commissioning, testing, labor, materials, equipment, tools, construction equipment and machinery, transportation, taxes, permit fees, and any and all other costs and fees required to be paid by BUILDER for the proper design, construction, and completion of the Vessel.
- C. Total compensation also includes all royalties and license fees for patented designs, processes, and products in connection with construction of the Vessel. BUILDER shall coordinate the assignment and/or transfer of such licenses to OC SAN as may be necessary for OC SAN to operate the Vessel.

### **5. REALLOCATION OF TOTAL COMPENSATION**

OC SAN, by its Director of Environmental Services, shall have the right to approve a reallocation of the incremental amounts constituting the total compensation, provided that the total compensation is not increased.

### **6. PAYMENT**

OC SAN shall pay to the BUILDER the Purchase Price, plus any applicable state sales tax, in United States Dollars, which shall be payable to the BUILDER via check, bank wire, or other form mutually acceptable to the Parties, in the following manner:

- i. 17.5% of the Purchase Price. Non-refundable payment due upon the execution of this Agreement for initial design, commitment to purchase equipment, materials, hybrid propulsion system deposit, and mobilization costs;
- ii. 15% of the Purchase Price. Complete erection of first hull frame;
- iii. 15% of the Purchase Price. Weldout of hull completed – evidenced by rollover of the welded hull into an upright position;

- iv. 10% of the Purchase Price. Arrival of hybrid propulsion system at BUILDER's site;
  - v. 10% of the Purchase Price. Completion of deck and attaching cabin to hull;
  - vi. 10% of the Purchase Price. Commencement of outfitting, and interior finishes – as witnessed by photographic evidence or inspections by OC SAN's appointed representative;
  - vii. 7.5% of the Purchase Price upon launch;
  - viii. 7.5% of the Purchase Price plus the value of any change orders approved by OC SAN but not yet invoiced by the BUILDER, due within thirty (30) business days after OC SAN's receipt of an invoice therefor and written certification from the BUILDER that construction of the Vessel has been completed, the Vessel has completed a satisfactory sea trial, and the Vessel has been inspected and accepted by OC SAN in Bellingham, WA (subject only to "punch list" items as set forth in Section 15.E and Warranty) ("Operational Acceptance")
  - ix. 7.5% of the Purchase Price- due promptly upon OC SAN's receipt of an invoice for the delivery of the Vessel by the BUILDER to OC SAN at the Port of Los Angeles (California), receipt of all drawings, manuals, technical documentation and regulatory documentation agreed to in the Technical Specifications, and basic training of OC SAN's crew ("Final Acceptance").
- A. OC SAN understands and acknowledges that the foregoing progress payments are not equal progress payments but, rather, are designed to correspond to the BUILDER's segmented costs for constructing the Vessel.
  - B. Washington State law requires the imposition of Washington State sales tax on any charges made in Washington State to OC SAN by the BUILDER, inclusive of the Purchase Price, listed in this Agreement except where OC SAN provides proof or documentation as to exemption from Washington State sales tax. If exempt, OC SAN agrees to provide the BUILDER with proof or documentation as to exemption along with a valid Washington State tax exemption certificate, if applicable, prior to delivery of the Vessel. If said proof, documentation, exemption certificate, or other claim as to exemption by OC SAN is later found to be invalid by Washington State, then OC SAN expressly agrees and covenants to indemnify and hold the BUILDER harmless from any and all tax liability, including penalties and interest, which may arise from OC SAN's failed exempt status in regards to said taxes.
  - C. BUILDER's invoices must include, as a minimum: 1) current billing period invoicing, 2) current billing period "total percent invoiced to date", 3) future activities, 4) previous billing period "total invoiced to date", 5) potential items that are not included in the SOW, 6) concerns and possible delays, 7) percentage of completion to date, and 8) budget status and amount remaining.
  - D. BUILDER's invoices shall be based upon the schedule in this Agreement and shall be accompanied by reasonable supporting documentation and evidence of milestone

achievement, which at a minimum, shall include a narrative of the work completed as supported by photographic evidence or inspections by OC SAN's appointed representative.

- E. If OC SAN determines that the work under this Agreement, or any specified task hereunder, is incomplete and that the amount of payment is in excess of:
- 1) The amount reasonably considered by OC SAN's Director of Environmental Services to be adequate for the protection of OC SAN; or
  - 2) The percentage of the work accomplished for each task.

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

- F. Upon satisfactory completion by BUILDER of the work called for under this Agreement, and upon Final Acceptance of the Vessel by OC SAN, the BUILDER will be paid the unpaid balance of any money due for such work pursuant to the schedule in this Agreement.
- G. Upon satisfactory completion of the work performed hereunder and in exchange for payment in full to BUILDER hereunder (or at prior settlement upon termination of this Agreement, and as a condition thereto), BUILDER 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 BUILDER from the operation of the release in stated amounts to be set forth therein.
- H. Pursuant to the California False Claims Act (California Government Code sections 12650-12655), any BUILDER 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 ten thousand dollars (\$10,000) civil penalty for each false claim submitted. This section shall also be binding on all Subconsultants and Subcontractors.

BUILDER, Subconsultant, or Subcontractor shall be deemed to have submitted a false claim when BUILDER, Subconsultant, or Subcontractor: 1) knowingly presents or causes to be presented to an officer or employee of OC SAN a false claim or request for payment or approval; 2) 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; 3) conspires to defraud OC SAN by getting a false claim allowed or paid by OC SAN; 4) 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 5) 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.

## **7. BONDS**

Before entering upon the performance of this Agreement, BUILDER shall furnish bonds approved by OC SAN's General Counsel – one in the amount of one hundred percent (100%) of the total Agreement amount, to guarantee the faithful performance of the work, and the other in the amount of one hundred percent (100%) of the total Agreement amount,

to guarantee payment of all claims for labor and materials furnished. If changes to the Agreement occur via approved change orders, BUILDER shall assure that the amounts of the bonds are adjusted to maintain 100% of the Agreement amount. This Agreement shall not become effective until such bonds are supplied to and accepted by OC SAN. Bonds must be issued by a Surety authorized by the State Insurance Commissioner to do business in California. The Performance and Payment Bonds shall remain in full force and effect for up to 24 months from the date of this Agreement to cover the construction of the Vessel and an additional 12 months to cover the basic warranty period. (If the construction of the Vessel requires more than 24 months from the date of this Agreement and OC SAN wishes the bonds to remain in place for the full duration of the warranty period, as specified in the section herein entitled "Warranty," an additional one (1) year of bonding may be purchased for 1.725% of the total contract value. The additional bonding cannot be pro-rated but must be purchased for full year terms). All bonds required to be submitted relating to this Agreement must comply with California Code of Civil Procedure section 995.630. Each bond shall be executed in the name of the surety insurer under penalty of perjury, or the fact of execution of each bond shall be duly acknowledged before an officer authorized to take and certify acknowledgments, and either one of the following conditions shall be satisfied:

1. A copy of the transcript or record of the unrevoked appointment, power of attorney, by-laws, or other instrument, duly certified by the proper authority and attested by the seal of the insurer entitling or authorizing the person who executed the bond to do so for and on behalf of the insurer, is on file in the Office of the County Clerk of the County of Orange; or
2. A copy of a valid power of attorney is attached to the bond.

## **8. INSURANCE**

### **A. General**

Insurance shall be issued and underwritten by insurance companies acceptable to OC SAN.

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

Coverage shall be in effect prior to the commencement of any work under this Agreement.

### **B. General Liability**

BUILDER 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: Five Million Dollars

(\$5,000,000) per occurrence with Ten Million Dollars (\$10,000,000) aggregate. If aggregate limits apply separately to this contract (as evidenced by submission of ISO form CG 25 03 or 25 04), then the aggregate limit may be equivalent to the per occurrence limit. Said insurance shall include coverage for the following hazards: premises-operations, blanket contractual liability (for this Agreement), products liability/completed operations (including any product manufactured or assembled), broad form property damage, blanket contractual liability, independent contractors' liability, personal and advertising injury, mobile equipment, owners and contractors protective liability, and cross liability and severability of interest clauses. A statement on an insurance certificate will not be accepted in lieu of the actual additional insured endorsement(s). If requested by OC SAN and applicable, XCU coverage (Explosion, Collapse and Underground) and Riggers/On Hook Liability must be included in the general liability policy and coverage must be reflected on the submitted certificate of insurance. Where permitted by law, BUILDER hereby waives all rights of recovery by subrogation because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or any other reason against OC SAN, its or their officers, agents, or employees, and any other consultant, contractor, or subcontractor performing work or rendering services on behalf of OC SAN in connection with the planning, development, and construction of the project. In all its insurance coverages related to the work, BUILDER shall include clauses providing that each insurer shall waive all of its rights of recovery by subrogation against OC SAN, its or their officers, agents, or employees, or any other consultant, contractor, or subcontractor performing work or rendering services at the project. Where permitted by law, BUILDER shall require similar written express waivers and insurance clauses from each of its Subconsultants of every tier. A waiver of subrogation shall be effective as to any individual or entity, even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium, directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

C. Umbrella Excess Liability

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

D. Automobile/Vehicle Liability Insurance

BUILDER 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 limit 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. Workers' Compensation Insurance

BUILDER shall provide such workers' compensation insurance as required by United States Longshore and Harbor Workers Compensation Act ("USLH") 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 USLH insurance shall be endorsed to provide for a waiver of subrogation in favor of OC SAN. A statement on an insurance certificate will not be accepted in lieu of the actual endorsements unless the insurance carrier is State of California Insurance Fund and the identifier "SCIF" and endorsement numbers 2570 and 2065 are referenced on the certificate of insurance. If an exposure to Jones Act liability may exist, the insurance required herein shall include coverage for Jones Act claims.

F. Hull Builders Risk

BUILDER shall maintain a Hull Builders Risk policy appropriate for the project in an amount equal to or greater than the completed value of the Vessel.

G. Errors and Omissions/Professional Liability

BUILDER shall require any and all Naval Architects used for services related to this Agreement, whether Teknicraft Design, Ltd., or other provider, to provide and maintain through BUILDER, 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 Five Million NZD (5,000,000 NZD) 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.

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

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

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



H. Proof of Coverage

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

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

I. Cancellation and Policy Change Notice

BUILDER 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, BUILDER is required to notify OC SAN in writing of any change in the terms of insurance, including reduction in coverage or increase in deductible/SIR, within two (2) working days of receipt of such notice or knowledge of same.

Said notices shall be mailed to OC SAN at:

ORANGE COUNTY SANITATION DISTRICT  
18480 Bandilier Circle  
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 BUILDER.

K. Separation of Insured

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

L. Non-Limiting (if applicable)

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

M. Deductibles and Self-Insured Retentions

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

N. Defense Costs

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

O. Subconsultants and Subcontractors

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

P. Limits Are Minimums

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

**9. LICENSES, PERMITS, ORDINANCES, AND REGULATIONS**

BUILDER represents and warrants to OC SAN that it has obtained all licenses, permits, qualifications, and approvals of whatever nature that are legally required to provide the Services. 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 this Agreement will be paid by BUILDER.

## **10. COMPLIANCE**

### **A. Labor**

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

### **B. Environmental Compliance**

BUILDER shall, at its own cost and expense, comply with all Federal, State, and local environmental laws, regulations, and policies which apply to BUILDER, its Subconsultants, Subcontractors, and the Services, including, but not limited to, all applicable Federal, State, and local air pollution control laws and regulations.

### **C. Iran Contracting Act**

BUILDER, its Subconsultants, and Subcontractors shall comply with the Iran Contracting Act of 2010 (California Public Contract Code sections 2200-2208).

## **11. PROJECT TEAM, SUBCONSULTANTS, AND SUBCONTRACTORS**

- A. BUILDER shall provide to OC SAN, prior to execution of this Agreement, the names and full description of Major Suppliers and BUILDER's project team members anticipated to perform any work under this Agreement ("Key Personnel"). Major Suppliers shall be defined as any of the BUILDER's third-party vendors or suppliers that individually provide \$100,000 or more of the BUILDER's cost of materials, supplies, or services required to construct and deliver the Vessel. BUILDER shall include a description of the scope of work to be performed by each Major Supplier and each of BUILDER's key project team members.
- B. Key Personnel shall be available for the term of the Agreement. No person or entity designated as key under this Agreement shall be removed or replaced without prior written consent of OC SAN. If OC SAN requests BUILDER to remove a person or entity designated as key under this Agreement from the project, BUILDER agrees to do so immediately regardless of the reason, or the lack of reason, for OC SAN's request. BUILDER shall assign only competent personnel to perform Services under this Agreement.

## **12. ENGINEERING REGISTRATION**

BUILDER's personnel and Subconsultants are comprised of staff of qualified and competent engineers, specialists and draftsmen in each department. The firm itself is not a registered engineer but represents and agrees that whenever, in the performance of this Agreement, the services of an engineer are required, such services hereunder will be performed under the direct supervision of a qualified engineer, naval architect or other professionally qualified personnel.

### **13. INSPECTIONS**

- A. OC SAN and its representatives shall have the right, at any time during BUILDER's normal business hours, to inspect the Vessel, all materials, components, fittings, machinery, and equipment intended for incorporation in or installation on the Vessel, and to review the progress being made in the construction of the Vessel.
- B. OC SAN's failure to reject workmanship or BUILDER-furnished materials, components, fittings, machinery, and equipment incorporated or installed upon, or intended for incorporation in or installation on the Vessel shall not affect BUILDER's warranty obligations herein.

### **14. SCOPE CHANGES**

In the event of a change in the SOW or other terms in the Agreement, as requested by OC SAN that is acceptable to BUILDER, the Parties hereto shall execute an Amendment to this Agreement setting forth with particularity all terms of the new agreement, including, but not limited to, any change to the Purchase Price. This Amendment shall be made in accordance with the procedures and policies for an Engineering Change Proposal (ECP) as set forth in the RFP response document section 1.1.7. BUILDER hereby agrees to use any and all procedures, programs, and systems required by OC SAN to process and execute such Amendment(s), including, but not limited to, computer programs and systems.

A. The Purchase Price is a fixed price based on the attached plans and specifications. The Purchase Price shall only vary in the event (1) OC SAN and the BUILDER agree in a writing signed by authorized representatives of both Parties, hereto, to a change in the model of equipment, or to such other variations made by OC SAN in accordance with this Section; (2) if an increase in the cost of materials occurs after the execution of this Agreement and is beyond BUILDER's control as described in Section 2.F. of this Agreement, the actual increase cost of the materials shall be borne by OC SAN and added to the Purchase Price, subject to BUILDER providing written notice and verification of the cost increase by means of supplying OC SAN with copies of pertinent invoices as comparative to the cost of item included at the time of entering this Agreement; or (3) if materials have been identified, either as selected by OC SAN or the BUILDER, as coming from a source outside of the U.S.A., whereby the landed cost of the items to the BUILDER may vary from the cost initially set in the BUILDER's Material List by reason of currency exchange fluctuation, then such exchange differential shall be borne by OC SAN and adjusted to the Purchase Price. The BUILDER will make a reasonable effort to avoid increases in the cost of materials by attempting to obtain materials at such times and locations, and from such suppliers to avoid increases.

B. If OC SAN requests modifications to the plans and specifications to the Vessel based on information or input from a third party individual or entity other than the BUILDER or NAVAL ARCHITECT, the Parties must secure the written consent and authorization of the third party and the NAVAL ARCHITECT to the modified plans and specifications, before BUILDER will make the modifications. The BUILDER, NAVAL ARCHITECT, and OC SAN shall cooperate to investigate whether modifications to the plans and specifications can be made which produce material cost savings, but which will not adversely affect the structural integrity or safety of

the Vessel, nor violate any applicable rules or regulations of the United States Coast Guard or standard naval engineering and architectural practices. The BUILDER, upon the written direction of OC SAN, shall implement such modifications only after OC SAN executes a defense, hold harmless and indemnification agreement in BUILDER's favor, if requested by BUILDER. Any cost savings achieved in making such modifications shall be deducted from the Purchase Price. BUILDER is under no obligation to construct the modifications hereunder, unless, and until, the requirements of the United States Coast Guard and standard naval engineering and architectural practices have been fulfilled.

C. OC SAN understands and acknowledges that BUILDER has allocated 250 hours for BUILDER and OC SAN (or OC SAN's representative) to discuss design and construction issues as part of the Purchase Price. Excluding discussions on design or construction issues initiated by the BUILDER, and also excluding discussions which result from delays, defaults, or deviations from the Agreement by the BUILDER, OC SAN agrees to pay BUILDER a fully burdened labor rate of \$100.00 per hour for each additional hour that exceeds the time allocated herein, subject to pre-notification to OC SAN by BUILDER. Such time will be tracked and billed in increments of quarter hours.

D. OC SAN may require BUILDER to make any reasonable alterations or additions within the BUILDER's capability to be made to the Vessel during the course of construction of the Vessel. There may also be additional equipment and/or installation(s), change(s) and/or upgrade(s) to the Vessel requested by OC SAN after execution hereof or thereafter required by change in regulation, change in regulatory interpretation, clarification or supplementation. Any such alterations or additions shall be made only upon a document signed by both OC SAN and BUILDER which shall specify at least the work to be done. The rates for any such alterations will be determined by using a fully burdened labor rate of \$100.00 per man-hour and a 20% mark-up on material/production costs. If OC SAN and BUILDER do not agree on the price for such alterations or additions, then such alterations shall be done on a time and materials, including variable production costs, basis using accurately kept records of the work and the labor and/or materials/variable production costs incorporated into or accessory to the work. The rates will be determined by using a labor rate of \$100.00 per man-hour and a 20% mark-up on material/production costs. However, BUILDER will not be responsible for any changes that affect the design, if OC SAN chooses to proceed with changes after being appropriately warned by BUILDER. Any change order that will require more build-time shall give BUILDER a right to require reasonable extensions of the Delivery Date of the Vessel, and OC SAN shall agree to same. Any such extensions shall be stated in the change order signed by both OC SAN and BUILDER.

E. Payments for any additions shall be made by OC SAN at completion of the Vessel unless the amount owing exceeds \$50,000.00 in which case payment will be made within thirty (30) business days of the date of any billing or progress billing for such alteration or addition, which billing shall only be issued after completion of the addition.

## 15. TESTS, SEA TRIALS, AND INSPECTION OF COMPLETED VESSEL

- A. BUILDER shall notify OC SAN reasonably in advance of tests, trials, and inspections for Vessel acceptance. OC SAN shall respond in writing, within five (5) business days after receipt of BUILDER's notice, to acknowledge receipt of the notice and to indicate whether OC SAN will attend.
- B. BUILDER shall perform sea trials on the Vessel in Bellingham Bay, WA to determine and confirm whether BUILDER constructed the Vessel in accordance with this Agreement and in preparation for Operational Acceptance by OC SAN.
- C. All portions of the Vessel, including structure, fittings, machinery, equipment, and systems, shall be tested to the satisfaction of the applicable regulatory authorities, the Vessel's classification society, and the requirements in this Agreement, to demonstrate satisfactory workmanship, proper working order, alignment of moving parts, and compliance with BUILDER's obligations under this Agreement. BUILDER shall provide the facilities, Vessel crew, fuel, oils, and supplies that are necessary for the required testing and sea trials.
- D. On completion of the Vessel, the BUILDER will notify OC SAN and arrange for OC SAN, or OC SAN's nominated representative, to inspect the Vessel and observe a sea trial of the Vessel with the BUILDER. The sea trial shall be conducted at a reasonable time, upon reasonable notice on BUILDER's local waters with a BUILDER supplied operational crew, and at BUILDER's sole expense. BUILDER expressly assumes any and all risk of damage or loss of any kind caused in any manner while operating the Vessel during this sea trial. OC SAN will provide a representative to ride the Vessel during the sea trial. Prior to conducting the sea trials, BUILDER shall develop, with OC SAN's agreement as to content, and provide OC SAN with a customized sea trial acceptance checklist. BUILDER will provide up to 32 hours of in-person, intensive training program in Bellingham, WA for OC SAN's captains and crewmembers during the Operational Acceptance period. Upon achieving Operational Acceptance (completion of a satisfactory sea trial, inspection and acceptance by OC SAN) and payment of the balance owed in accordance with the payment schedule in this Agreement, the BUILDER shall deliver the Vessel to OC SAN.
- E. Common with industry practice, the sea trial acceptance checklist referred to in Section 15D may have noted on it certain minor items, as agreed between the BUILDER and OC SAN, needing completion subsequent to delivery. These "punch list" items will not prevent the Vessel from achieving Operational Acceptance by OC SAN. By signing off the sea trial acceptance checklist, OC SAN is deemed to have performed Operational Acceptance of the Vessel. If OC SAN refuses, without proper cause, to accept the Vessel as part of Operational Acceptance in Bellingham, WA, then the current payment shall be due and owing, and shall be paid promptly by OC SAN. The BUILDER may recover from OC SAN a reasonable storage, wharfage or other similar fee, which shall include, but not be limited to, all labor and services costs, for the Vessel for each day (or part thereof) following OC SAN's refused delivery during which the BUILDER must care for the Vessel. The manner in which the BUILDER cares for the Vessel shall be reasonable and shall be in the BUILDER's sole discretion.

## **16. DELIVERY OF VESSEL**

BUILDER will perform the work at its facilities in Bellingham, Washington. Upon completion of the Vessel and Operational Acceptance, and provided that the payments on account of the Purchase Price of the Vessel have been duly made in accordance with the payment schedule in this Agreement, BUILDER shall tender the Vessel to the Port of Los Angeles, California, and OC SAN shall accept delivery of the Vessel, subject to any outstanding "punch list" items and any subsequent warranty work. Unless the Parties hereto otherwise agree in writing, Operational Acceptance shall be made at BUILDER's yard at 1010 Hilton Ave., Bellingham, Washington. Final delivery and OC SAN's Final Acceptance shall be made at the Port of Los Angeles, California. BUILDER shall be responsible for any damage to the Vessel during transport from Bellingham, Washington to the Port of Los Angeles, California.

## **17. RISK OF LOSS AND LIABILITY**

Until BUILDER tenders delivery of the Vessel to OC SAN, BUILDER shall bear all risk of physical damage to or destruction of the Vessel, to materials, components, fittings, machinery, and equipment that is in its possession from time to time, except to the extent such damage or destruction is caused by OC SAN's negligence. Nothing in this section shall modify or reduce BUILDER's obligation to maintain the required insurance as specified herein.

## **18. TITLE AND INTERESTS OF BUILDER**

Title to all work in progress covered by an invoice shall pass to OC SAN upon BUILDER's receipt of payment for such invoice. Upon delivery and Final Acceptance of the Vessel and OC SAN's satisfaction of OC SAN's obligations to BUILDER, all right, title, and interest of BUILDER in the Vessel shall pass to OC SAN. Risk of any loss or damage shall pass upon Final Acceptance of the Vessel by OC SAN at the Port of Los Angeles, California.

## **19. WARRANTY**

### **A. Warranty of Clear Title on Delivery**

BUILDER warrants in favor of OC SAN that, on delivery and payment of all sums due from OC SAN to BUILDER under this Agreement, the Vessel shall be free and clear of all encumbrances, including, but not limited to, liens, charges on or pledge of security interests, or rights in rem in the Vessel or any constituent part or component of the Vessel.

### **B. Post-Delivery Warranty**

1. BUILDER agrees to perform all work under this Agreement in accordance with designs, drawings, and specifications approved by OC SAN and in accordance with generally accepted industry and professional standards. BUILDER guarantees for a period one (1) year from the date of OC SAN's written acceptance of the Vessel ("Acceptance Date"), that all equipment which is manufactured, furnished, or supplied by BUILDER will be free from all defects due to faulty materials, equipment, or workmanship, and that it shall promptly make whatever adjustments or corrections which may be necessary to cure any defects, including repairs of any damage to other parts of the system resulting from such defects. OC SAN shall promptly give notice to BUILDER of observed defects. If BUILDER fails to make repairs,

adjustments, corrections, or other work made necessary by such defects, OC SAN may do so and charge BUILDER the cost incurred. BUILDER's warranty shall continue as to any corrected deficiency until the later of (1) the remainder of the original one-year warranty period, or (2) one year after acceptance by OC SAN of the corrected work. The insurance except for Hull Builders Risk, Performance Bond, and Payment Bond shall remain in full force and effect for two years from the date of its inception. An additional year of bonding may be included, at an additional cost to OC SAN, and is not included in this contracted price. BUILDER's obligations under this clause shall in no way diminish any other rights OC SAN may have against BUILDER for faulty materials, equipment, or work. There are no other warranties, express or implied, and BUILDER makes no warranty of merchantability, of fitness for a particular purpose, or otherwise. Modifications to the Vessel after delivery are not covered by BUILDER's warranty, and may void BUILDER's warranty.

2. The ABB hybrid system shall include full manufacturer's warranty commencing one (1) year from the Vessel's Final Acceptance Date.
3. Akasol (BorgWarner) warrants their battery system for one year (12 months) from installation of the batteries, standard with the cost of the system. Additional terms may be agreed upon in an extended warranty agreement between Akasol and OC SAN in a separate contract.
4. The Parties agree that notwithstanding anything herein to the contrary, the only warranties for the engine, the ABB hybrid system, and the Akasol (BorgWarner) battery system (and any other major Vessel component manufactured entirely by a third-party) shall be as set forth in the respective major component manufacturer's separate written warranty. Accordingly, the BUILDER shall pass along, for the benefit of OC SAN, all published, written manufacturer's warranty information provided directly to the BUILDER for materials, engines, fixtures and fittings incorporated into the Vessel. Where manufacturers or suppliers for materials, engines, fixtures, and fittings incorporated into the Vessel make provision in their published warranty terms for direct assignment, and upon OC SAN's request, BUILDER shall affect assignment of such warranties from the BUILDER to OC SAN.
5. OC SAN will notify the BUILDER of all defects in a prompt and timely manner, as soon as any defect is noticed, or should have been noticed.
6. BUILDER's warranty does not extend to engines, materials, appliances, and such other fixtures and fittings that are not manufactured or materially adapted by the BUILDER, and other items which are not sold by the BUILDER to OC SAN. The BUILDER will, however, negotiate any warranty issues with these suppliers at the request of OC SAN.
7. OC SAN agrees to provide reasonable evidence to the BUILDER that the items or work covered by this warranty and regarding which a warranty claim is made have been properly maintained, correctly lubricated, and prudently operated within normal conditions, and under competent supervision and within load, stress, or other capacity limits.



8. The BUILDER and OC SAN agree that OC SAN's sole and exclusive remedy against the BUILDER with respect to the liability for any alleged negligent or defective work shall be strictly limited to, at the BUILDER's sole election, repair or replacement of the alleged negligent or defective work. All warranty repairs not completed prior to delivery of the Vessel, shall be completed at a location agreeable to both the BUILDER and OC SAN. BUILDER reserves the right to perform such warranty work by its own crew, if it can be accomplished in a timely manner. Cost of the delivery of the Vessel to the agreed upon location shall be borne by OC SAN.
9. In connection with the terms of BUILDER's warranty, it is further agreed that the BUILDER will not be liable for any of the following:
  - a. Any incidental, special or consequential damages of any nature whatsoever, and/or
  - b. Any delay or loss of use of the Vessel, facility, or item, including without limitation, lost revenues, crew wages, salvage or towing expenses, delay or loss of use.

## **20. LEGAL RELATIONSHIP BETWEEN PARTIES**

- A. The legal relationship between the Parties hereto is that of an independent contractor and nothing herein shall be deemed to transform BUILDER, its staff, independent contractors, Subconsultants, or Subcontractors into employees of OC SAN. BUILDER's staff performing services under the Agreement shall at all times be employees, independent contractors, Subconsultants, and/or Subcontractors of BUILDER.
- B. OC SAN assumes no liability for BUILDER's action and performance nor assumes responsibility for taxes, funds, payments, or other commitments, expressed or implied, by or for BUILDER. BUILDER shall monitor and control its staff and pay wages, salaries, and other amounts due directly to its staff in connection with the Agreement.
- C. BUILDER shall not be entitled to any benefits accorded to those individuals listed on OC SAN's payroll as regular employees including, without limitation, worker's compensation, disability insurance, vacation, or holiday or sick pay. BUILDER shall be responsible for providing, at BUILDER's expense, disability, worker's compensation, and other insurance as well as licenses and permits usual or necessary for conducting the Services hereunder.
- D. BUILDER 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.
- E. BUILDER shall be obligated to pay any and all applicable Federal, State, and local payroll and other taxes incurred as a result of fees hereunder. BUILDER hereby indemnifies OC SAN for any claims, losses, costs, fees, liabilities, damages, or penalties suffered by OC SAN arising out of BUILDER's breach of this provision.
- F. BUILDER shall not be eligible to join or participate in any benefit plans offered to those individuals listed on OC SAN's payroll as regular employees. BUILDER shall remain ineligible for such benefits or participation in such benefit plans even if a court later decides that OC SAN misclassified BUILDER for tax purposes.

## **21. DOCUMENT OWNERSHIP – SUBSEQUENT CHANGES TO PLANS AND SPECIFICATIONS**

### **A. Ownership of Documents for the Services performed.**

All documents in all forms (electronic, paper, etc.), including, but not limited to, plans, studies, sketches, drawings, computer printouts, disk files, and specifications prepared in connection with or related to the SOW shall be the property of the NAVAL ARCHITECT. OC SAN's possession of these documents does not include transfer of the rights to reproduction or reuse of and all incidental rights, whether or not the work for which they were prepared has been performed.

## **22. OWNERSHIP OF INTELLECTUAL PROPERTY**

- A. OC SAN agrees that all designs, plans, reports, specifications, drawings, schematics, prototypes, models, inventions, and all other information and items made during the course of this Agreement and arising from the Services (hereinafter referred to as "New Developments") shall be and are assigned to NAVAL ARCHITECT as its sole and exclusive property.
- B. BUILDER agrees to promptly disclose to OC SAN any pertinent drawings, sketches, or plans that may assist with the standard operation or maintenance of the Vessel.
- C. The Parties acknowledge that the Vessel's design is owned by the NAVAL ARCHITECT and shall not be disclosed or communicated in any manner to any individual, person, corporation or other entity of any type for any reason or purpose. OC SAN covenants and agrees that it will not, and is not entitled to, take, have, reproduce or copy the plans or specifications without the express written consent of the NAVAL ARCHITECT.
- D. OC SAN acknowledges that the construction of the Vessel is pursuant to a single vessel license and that the design of the Vessel is the intellectual property of the NAVAL ARCHITECT. OC SAN warrants that all specification, schedules, plans and as built drawings provided pursuant to this Agreement shall be used solely for (1) the maintenance and repair of the Vessel; and (2) information purposes with respect to compliance with regulations and requirements of the U.S. Coast Guard and other applicable agencies.
- E. Notwithstanding the foregoing confidentiality provisions of this section, BUILDER reserves the right, as part of its portfolio of products advertised in its promotional materials and/or on its website, to display and link to Vessel details, information, and images contained within promotional materials provided on OC SAN's website. Additionally, BUILDER reserves the right to publish information about the Vessel, and the underlying activities in designing and constructing the Vessel, on websites, social media, in magazine articles, and in other forms of printed materials associated with the maritime industry.

## **23. AUDIT**

- 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 BUILDER is in compliance with all requirements under this Agreement. BUILDER shall include OC SAN's right as described above in any and all of its subcontracts and shall ensure that these rights are binding upon all Subconsultants and Subcontractors.

- B. OC SAN retains the right to examine BUILDER'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 BUILDER'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 or expiration of the Agreement.
- C. BUILDER shall maintain complete and accurate records in accordance with generally accepted industry standard practices and OC SAN's policy. BUILDER shall make available to OC SAN for review and audit, all project related accounting records and documents and any other financial data within 15 days after receipt of notice from OC SAN. Upon OC SAN's request, BUILDER shall submit exact duplicates of originals of all requested records to OC SAN. If an audit is performed, BUILDER shall ensure that a qualified employee of BUILDER will be available to assist OC SAN's auditor in obtaining all Project-related accounting records and documents and any other financial data.

#### **24. CONFIDENTIALITY AND NON-DISCLOSURE**

- A. BUILDER acknowledges that, in performing the Services hereunder, OC SAN may have to disclose to BUILDER, orally and in writing, certain confidential information that OC SAN considers proprietary and has developed at great expense and effort. Conversely, OC SAN acknowledges that, in performing the Services hereunder, BUILDER may have to disclose to OC SAN, orally and in writing, certain confidential information that BUILDER considers proprietary and has developed at great expense and effort.
- B. BUILDER and OC SAN agree to maintain in confidence and not disclose to any person, firm, or corporation, without OC SAN's or BUILDER's prior written consent, any trade secret, confidential information, knowledge, or data relating to the products, process, or operation of OC SAN or BUILDER.
- C. BUILDER and OC SAN further agrees to maintain in confidence and not to disclose to any person, firm, or corporation any data, information, technology, or material developed or obtained by BUILDER or OC SAN during the term of this Agreement.
- D. BUILDER and OC SAN agree as follows:
  - 1) To use the confidential information only for the purposes described herein; to not reproduce the confidential information; to hold in confidence and protect the confidential information from dissemination to and use by anyone not a party to this Agreement; and to not use the confidential information to benefit itself or others.
  - 2) To restrict access to the confidential information to its Subconsultant, Subcontractor, or personnel of BUILDER or OC SAN who (a) have a need to have

such access and (b) have been advised of and have agreed in writing to treat such information in accordance with the terms of this Agreement.

- 3) To return all confidential information in BUILDER's or OC SAN's possession upon expiration or termination of this Agreement or upon BUILDER's or OC SAN's request, whichever occurs first.
  - 4) To hold in confidence information and materials, if any, developed pursuant to the Services hereunder.
- E. The provisions of this section shall survive termination or expiration of this Agreement and shall continue for so long as the material remains confidential.

## 25. INDEMNIFICATION

- A. In no event shall BUILDER be liable for (and OC SAN agrees to indemnify and hold harmless BUILDER in respect of) property damage or personal injury (including death) arising out of use of the Vessel after delivery, unless caused by (and then only to the extent of) BUILDER's negligence or willful act. OC SAN shall also indemnify and hold BUILDER harmless from and against all damages incurred by BUILDER arising from OC SAN's breach of this Agreement.
- B. To the fullest extent permitted by law, BUILDER shall indemnify, defend (at BUILDER'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 BUILDER's fees and costs and OC SAN's general and administrative expenses (individually, a "Claim"; collectively, "Claims") which may arise from or are in any manner related, directly or indirectly, to any work performed, or any operations, activities, or services provided by BUILDER in carrying out its obligations under this Agreement to the extent of the negligent, recklessness, and/or willful misconduct of BUILDER, its principals, officers, agents, employees, BUILDER's suppliers, consultants, 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 BUILDER to indemnify the Indemnified Parties from any Claim arising solely from:
- 1) the active negligence or willful misconduct of the Indemnified Parties; or
  - 2) a natural disaster or other act of God, such as an earthquake; or
  - 3) the independent action of a third party who is neither one of the Indemnified Parties nor BUILDER, nor its principal, officer, agent, employee, nor BUILDER's supplier, consultant, Subconsultant, Subcontractor, nor anyone employed directly or indirectly by any of them.

Exceptions 1) through 2) above shall not apply and BUILDER 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.

- C. BUILDER's liability for indemnification hereunder is in addition to any liability BUILDER may have to OC SAN for a breach by BUILDER 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 BUILDER'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.

## **26. 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 BUILDER and shall be consistent with California 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 BUILDER. Payment to BUILDER 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 BUILDER, to any extent, then OC SAN will reimburse BUILDER for the reasonable costs of defending the Indemnified Parties against such claims.

BUILDER'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.

## **27. NOT USED**

## **28. TERMINATION**

- A. OC SAN may terminate this Agreement at any time, without cause, upon giving thirty (30) days written notice to BUILDER. In the event of such termination, BUILDER shall be entitled to compensation for work performed on a prorated basis through and including the effective date of termination.
- B. BUILDER shall be permitted to terminate this Agreement upon thirty (30) days written notice only if BUILDER is not compensated for billed amounts in accordance with the provisions of this Agreement, when the same are due.

- C. Notice of termination shall be mailed to OC SAN and/or BUILDER in accordance with the section herein entitled "NOTICES."

## **29. 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.

## **30. REMEDIES**

- A. In addition to other remedies available in law or equity, if BUILDER fails to make delivery of the goods or Services or repudiates its obligations under this Agreement, or if OC SAN rejects the goods or Services or revokes acceptance of the goods or Services, OC SAN may (a) cancel the Agreement; (b) recover whatever amount of the Agreement's compensation amount OC SAN has paid, and/or (c) "cover" by purchasing, or contracting to purchase, substitute goods or services for those due from BUILDER. In the event OC SAN elects to "cover" as described in (c), OC SAN shall be entitled to recover from BUILDER as damages the difference between the cost of the substitute goods or services and the Agreement price.
- B. If for any Claim, the court or arbitrator holds that any part of the design, article, or material incorporated in construction of the Vessel constitutes an infringement of a third party's patent or industrial design right, BUILDER shall take one or more of the following actions at no cost to OC SAN: (a) procure the right to continue the use of the design, article, or material without material interruption to OC SAN, (b) take back the infringing article or material and restore it with an equivalent non-infringing article or material, or (c) refund OC SAN an amount equal to the amount paid by OC SAN in respect of the infringing material.
- C. Damages. Under no circumstances, and notwithstanding any provision of this Agreement to the contrary, shall OC SAN have any claim for damages against the BUILDER for indirect or consequential losses of any kind in excess of \$5,000.00.

## **31. SUBCONTRACTING AND ASSIGNMENT**

BUILDER shall not delegate any duties nor assign any rights under this Agreement without the prior written consent of OC SAN. Any such attempted delegation or assignment shall be void.

## **32. NON-LIABILITY OF OC SAN OFFICERS AND EMPLOYEES**

No officer or employee of OC SAN shall be personally liable to BUILDER, or any successor-in-interest, in the event of any default or breach by OC SAN or for any amount which may become due to BUILDER or to its successor, or for breach of any obligation under the terms of this Agreement.

## **33. THIRD PARTY RIGHTS**

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than OC SAN and BUILDER.

#### **34. 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 it may be entitled.

#### **35. CLOSEOUT**

- A. When OC SAN determines that all work authorized under the Agreement is fully complete and that OC SAN requires no further work from BUILDER, or the Agreement is otherwise terminated or expires in accordance with the terms of the Agreement, OC SAN shall give BUILDER written notice that the Agreement will be closed out. BUILDER shall submit all outstanding billings, work submittals, deliverables, reports, or similarly related documents as required under the Agreement within thirty (30) days of receipt of notice of Agreement closeout.
- B. Upon receipt of BUILDER's submittals, OC SAN shall commence a closeout audit of the Agreement and will either:
  - 1) Give BUILDER a final Agreement Acceptance or
  - 2) Advise BUILDER in writing of any outstanding item or items which must be furnished, completed, or corrected at BUILDER's cost.
- C. BUILDER shall be required to provide adequate resources to fully support any administrative closeout efforts identified in the Agreement. Such support must be provided within the timeframe requested by OC SAN.
- D. Notwithstanding the final Agreement Acceptance, BUILDER will not be relieved of its obligations hereunder, nor will BUILDER be relieved of its obligations to complete any portions of the work, the non-completion of which was not disclosed to OC SAN (regardless of whether such nondisclosures were fraudulent, negligent, or otherwise), and BUILDER shall remain obligated under all those provisions of the Agreement which expressly or by their nature extend beyond and survive final Agreement Acceptance.
- E. Any failure by OC SAN to reject the work or to reject BUILDER's request for final Agreement Acceptance as set forth above shall not be deemed to be acceptance of the work by OC SAN for any purpose nor imply acceptance of, or agreement with, BUILDER's request for final Agreement Acceptance.

#### **36. WAIVER**

The waiver by either Party of any breach or violation of, or default under, any provision of this Agreement, shall not be deemed a continuing waiver by such party of any other provision or of any subsequent breach or violation of this Agreement or default thereunder. Any breach by BUILDER to which OC SAN does not object shall not operate as a waiver of OC SAN's rights to seek remedies available to it for any subsequent breach.

### **37. SEVERABILITY**

If any section, subsection, or provision of this Agreement, or any agreement or instrument contemplated hereby, or the application of such section, subsection, or provision is held invalid, the remainder of this Agreement 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.

### **38. SURVIVAL**

The provisions of this Agreement dealing with payment, warranty, indemnity, and forum for enforcement shall survive expiration or early termination of this Agreement.

### **39. 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 the County of Orange in California in the event any action is brought in connection with this Agreement or the performance thereof.

### **40. NOTICES**

- A. 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.

Notices shall be mailed to OC SAN at:

ORANGE COUNTY SANITATION DISTRICT  
18480 Bandilier Circle  
Fountain Valley, CA 92708-7018  
Attention: Diane Marzano, Senior Contracts Administrator  
Copy: Joshua Hatfield, Project Manager

Notices shall be mailed to BUILDER at:

ALL AMERICAN MARINE, INC.  
1010 Hilton Ave.  
Bellingham, WA 98225  
Attention: Ron Wille, President and COO  
Copy: Daniel Zech, Business Development Manager

- B. All communication regarding the SOW 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 BUILDER.

### **41. AGREEMENT EXECUTION AUTHORIZATION**

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



#### **42. 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.

#### **43. AGREEMENT DOCUMENTS ORDER OF PRECEDENCE**

In the event of any inconsistency or conflict between one Agreement Document and any of the other Agreement Documents, the terms or provisions in the document highest in precedence shall be controlling. The order of precedence of the Agreement Documents is as follows:

- a) Amendments – the last in time being the first in precedence
- b) Agreement
- c) BUILDER's Material List
- d) NAVAL ARCHITECT's Specification Book
- e) General Arrangement Drawings
- f) BUILDER's Cost Proposal

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

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

**BUILDER: ALL AMERICAN MARINE, INC.**

By \_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_  
Printed Name & Title

**ORANGE COUNTY SANITATION DISTRICT**

By \_\_\_\_\_ Date \_\_\_\_\_  
Ryan P. Gallagher  
Board Chairman

By \_\_\_\_\_ Date \_\_\_\_\_  
Kelly A. Lore  
Clerk of the Board

By \_\_\_\_\_ Date \_\_\_\_\_  
Ruth Zintzun  
Finance & Procurement Manager

**Attachments:**

- Attachment "A" – Scope of Work
- Attachment "A1" – BUILDER Technical Specifications
- Attachment "B" – Cost Proposal
- Attachment "C" – Not Attached
- Attachment "D" – Allowable Direct Costs
- Attachment "E" – Not Attached
- Attachment "F" – Not Used
- Attachment "G" – Not Attached
- Attachment "H" – Contractor Safety Standards
- Attachment "I" – Iran Contracting Act Verification

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**ATTACHMENT A  
SCOPE OF WORK  
DESIGN & CONSTRUCTION OF OCEAN MONITORING VESSEL**

- I. SUMMARY**
- II. BACKGROUND AND PROJECT INFORMATION**
- III. ADDITIONAL SUBMITTAL REQUIREMENTS**
- IV. PROJECT ELEMENT 1 – GENERAL VESSEL OVERVIEW**
  - A. SPECIFICATION DETAILS*
    - 1. Duties
    - 2. Characteristics
- V. PROJECT ELEMENT 2 – VESSEL DETAILS**
  - A. GENERAL*
    - 1. Dimensions and General Specifications
    - 2. Brief Description
    - 3. Materials and Workmanship
    - 4. Inspections
  - B. STRUCTURE*
    - 1. Hull
    - 2. Limbers
    - 3. Finish
  - C. INTERIORS*
    - 1. Floors and Bulkheads
    - 2. Cabinets and Counter tops
    - 3. Ventilation
    - 4. Shower
    - 5. Smoke/Carbon Monoxide Detectors
    - 6. Window
    - 7. Heating
    - 8. Fire Extinguishing
    - 9. Interior Furnishings
    - 10. Dry Lab
    - 11. Storage/Workshop
    - 12. Bunks
  - D. SUPERSTRUCTURE*
    - 1. Windows
    - 2. Hatches in Main Deck/Cockpit
    - 3. Guards
    - 4. Cabin Doors
    - 5. Engine Room Access Door
    - 6. Railings
    - 7. Swim steps
    - 8. Bait tank

9. Flybridge

*E. DECK EQUIPMENT AND FITTINGS*

1. A-Frame
2. Deck winch
3. Deck Crane
4. Anchor Winch
5. Anchor and Chain
6. Mast
7. Cleats, deck tie-down fittings and Chocks
8. Shore Connection
9. Deck Inventory

*F. MACHINERY*

1. Main Engines
2. Hybrid System
3. Marine Gears
4. Engine Mountings
5. Shafting
6. Propellers
7. Rudders
8. Generator Set
9. Cooling Water System Engines
10. Bow Thruster

*G. ENGINE ROOM MISCELLANEOUS*

1. Engine Room Air
2. Engine Room F.W. System
3. Insulation

*H. STEERING EQUIPMENT*

1. Steering System

*I. TANKS & PIPING*

1. Fuel System
2. Fuel Tanks
3. Freshwater Tank
4. Holding Tank
5. Supply Oil Tank (Oil Change System)
6. Hydraulic oil

*J. PLUMBING*

1. Bilge Pumping System
2. Saltwater Pumps
3. Fresh Water System
4. Sewage System

- K. *ELECTRICAL*
  - 1. General
  - 2. 110/220 Volt AC (generator)
  - 3. DC-AC Inverter with built-in battery charger
  - 4. DC Voltage
  - 5. Distribution Panels
  - 6. Clean Power System
  - 7. Zinc Anodes
  - 8. Batteries

- L. *LIGHTING & ELECTRICAL OUTLETS*

- M. *INSTRUMENTS AND CONTROLS*
  - 1. Controls
  - 2. Auto Pilot
  - 3. Instrumentation at Pilothouse
  - 4. Engine Room Instrumentation
  - 5. Pilothouse Lights/Alarms
  - 6. Navigation Equipment
  - 7. Pilothouse Control Console
  - 8. Windshield wipers
  - 9. Pilothouse Miscellaneous

- N. *DOMESTIC APPLIANCES*
  - 1. Galley

- O. *SAFETY EQUIPMENT*

**VI. PROJECT ELEMENT 3 – TESTS AND TRIALS**

- 1. General
- 2. Testing During Construction
- 3. Main Engine and Generator
- 4. Dock Trials
- 5. Builder’s Sea Trials
- 6. Acceptance Sea Trials

**VII. PROJECT ELEMENT 4 – TRAINING, PLANS, INSTRUCTION BOOKS & MAINTENANCE**

- A. *Training*
- B. *Working Plans*
- C. *Instruction Books, Diagrams, Documents & Maintenance Manuals*
- D. *Tank Sounding Tables and Gages*

**VIII. WARRANTY PERIOD AND INSPECTION**

**IX. OC SAN STAFF ASSISTANCE**

## **I. SUMMARY**

The selected Boat Designer/Builder (BUILDER) shall design, construct, test, and deliver an Ocean Monitoring Vessel, described herein, complete, and fully functional.

The Orange County Sanitation District (OC SAN) requires that this vessel satisfies all applicable US Coast Guard Subchapter “T” – Small Passenger Vessels (Under 100 Gross Tons) requirements. Except as noted in this Scope of Work (SOW), the vessel must be constructed to the applicable specifications and standards such as:

- University National Oceanographic Laboratory Systems - Research Vessel Safety Standards (UNOLS-RVSS)
- American Boating and Yachting Council (ABYC)
- National Marine Manufacturers Association (NMMA)
- American Welders Society Standards
- Institute for Electrical and Electronics Engineers (IEEE) 0400 and 45-2002 Standards
- US Environmental Protection Agency (EPA)
- Applicable US Occupational Safety and Health Administration (OSHA)
- NOAA Small Boat Safety and Procedures Manual
- American Bureau of Shipping (ABS)
- American Society for Testing and Materials (ASTM)
- California Air Resource Board (CARB)

Some requirements set forth in this Scope exceed those required in the Code of Federal Regulations (CFR). BUILDER shall apply best industry practice and comply with all relevant regulations and standards. OC SAN does not require the plans or vessel to be inspected by the US Coast Guard.

The BUILDER shall provide, install, and warrant all components supplied with this vessel in accordance with the supplier’s written instructions. OC SAN will provide any equipment or component for the vessel as stated within.

## **II. BACKGROUND AND PROJECT INFORMATION**

OC SAN conducts extensive testing of final effluent samples and long-term monitoring of coastal water quality, sediment quality, invertebrate and fish communities, and fish bioaccumulation and health within 185 square miles (479 square km) of ocean.

The new vessel will be used off the Southern California coast no more than 40 miles offshore. The intent is to use an existing hull design and build the superstructure to meet OC SAN's specific needs. The vessel will be in service for a minimum of 30 years.

In-house studies developed the basic criteria for the construction of a new oceanographic vessel, as noted below. The following requirements define identified

needs and general quality standards. All vessel design and construction details are not included. The final layout, design, construction, testing, and delivery are the responsibility of the BUILDER, subject to the approval of OC SAN.

The electrical load sharing and plan for hybrid propulsion shall be addressed early in the design phase as the requirements for this system are likely to affect other components of the vessel design and operation.

### **III. ADDITIONAL SUBMITTAL REQUIREMENTS**

In addition to the requirements noted elsewhere, the BUILDER shall submit the following information with the proposal:

1. One drawing showing the BUILDER's interpretation of this Scope of Work. The drawing shall show general vessel layout and profile.
2. Preliminary Specifications. A comprehensive listing of equipment, manufacturers' provided options, and any other information that will allow OC SAN to determine the quality of the equipment being supplied.
3. Proposed manufacturing schedule.
4. Photos and descriptions of similar vessels built by the BUILDER.
5. At least three client references for vessels of similar construction built in the last five years.

For the designed battery system, provide technical specifications and capacity calculation for intended applications; Battery Management System (BMS) functional description, system indicators, interfaces, and alarms; emergency shutdown arrangements; ventilation arrangements of the battery space.

### **IV. PROJECT ELEMENT 1 – GENERAL VESSEL OVERVIEW**

#### SPECIFICATION DETAILS

1. Duties:

The vessel is intended to operate with one Captain and one Mate along with 4-12 scientific crewmembers, working 8-12-hour days, 3-4 days a week. There are rare periods where the vessel remains on station overnight. At times, the vessel will transport groups of up to 20 persons for periods not exceeding a single, 8-hour day.

2. Characteristics:

A. General Configuration:

The vessel is a catamaran design with large aft work deck. The design shall maximize pilothouse visibility both forward and aft. Safety of crewmembers and equipment shall be of paramount importance. The



vessel shall be constructed utilizing a standard hull form with well-known and proven performance, sea keeping, and handling characteristics. The vessel shall have twin screws, rudders and bow thruster.

Sea conditions in the monitoring area are typically 3–4-foot swells, winds up to 10 knots, but operations do take place in seas up to 6 feet and winds up to 18 knots. Most monitoring activities require the vessel to remain on station up to one hour. The vessel is required to be as stable as possible with regard to pitch and roll.

The design should consider maximizing the aft work deck area, minimum of 300 sq ft of working space, and keeping the deck as low to the water as possible for deployment and recovery of sampling equipment while maintaining adequate space to service the engines.

The main cabin needs to include a separate laboratory and galley. The galley settee should accommodate at least six crewmembers. The laboratory space should include a 30-inch-long single basin sink, cabinets, and counter space for computers, workstations, and sample processing.

One restroom with a wash basin needs to be incorporated on the main deck. A second restroom with shower and wash basin needs to be added on either main or lower deck (if space allows). Each restroom must have an exhaust fan and a floor drain for easy cleaning.

Sleeping accommodations, work bench with vice, toolbox, storage, and possible second head shall be incorporated below deck.

BUILDER to take into consideration future full electric conversion in design.

B. Speed:

The desired cruising speed is 15 to 18 knots, at normal displacement (full fuel and water tanks, all normal equipment, and a crew of 8 aboard). The vessel must also be able to sustain a speed between 1.5 and 2 knots when sampling.

## **V. PROJECT ELEMENT 2 – VESSEL DETAILS**

THESE SPECIFICATIONS ARE PRELIMINARY AND INTENDED FOR INITIAL COST ESTIMATING. ALL ITEMS ARE SUBJECT TO CHANGE TO SUIT THE EXACT REQUIREMENTS OF THE OWNER.

A. GENERAL

1. Dimensions and General Specifications:

- Length overall.....60 feet (must not exceed 62 feet LOA)
- Beam.....19-24 feet
- Draft.....5 feet
- Air draft w/ folding mast...≤ 19 feet
- Fuel capacity.....Based on hybrid calculations.
- Fresh water capacity.....300 gallons minimum
- Black water capacity.....200 gallons minimum
- Engines (2) .....Size, quantity for hybrid vessel
- Generator.....Size, quantity for hybrid vessel

2. Brief Description:

- Type of vessel           Catamaran, Aluminum hull and superstructure.
- Construction           Aluminum, marine grade with stiffeners as required.
- Propulsion              Hybrid (parallel hybrid preferred)
- A-frame                 Hydraulically driven pivoting A-frame on work deck with safety stops forward and aft.
- Crane                    Articulating

This document describes the general specifications of the vessel; however, if US Coast Guard or other requirements differ from these specifications, then such requirements shall take precedence over this specification to ensure that the vessel complies with the specified rules.

The BUILDER may wish to propose alternative materials, equipment, or methods, which would be more economical and/or practical for them to supply and fit. In such case they should discuss alternative solutions and cost estimates with the OC SAN representative for approval prior to implementation.

Equipment marked “or equal” may be substituted for equivalent quality items, subject to approval by OC SAN representative. BUILDER shall ensure that the alternative equipment incurs no sacrifice in quality, manufacturer’s warranty, or in the vessel’s performance.

OC SAN shall have the right to make changes, alterations, and additions to the specifications, but changes will be requested in writing.

3. Materials and Workmanship:

BUILDER shall supply all materials and equipment listed in these specifications. Equipment and materials supplied by the BUILDER shall be new, and of the appropriate quality suitable for marine use and the purpose intended.

BUILDER shall ensure that they comply with the requirements of US Coast Guard and are in accordance with good shipbuilding practice.

All wood shall be sound, clear, and free from moisture, knots, or checks. It shall be well seasoned and of a kind and quality suited for the work intended.

All plywood shall be of a marine type of waterproof grade, or equal.

Aluminum shall be 5052, 5086, or 6061 alloys free from defects.

Exterior stainless steel shall be type 316.

Hardware shall be stainless steel unless otherwise specified.

The workmanship, in detail finish, and in all particulars, shall be first class quality in all respects.

All construction shall be kept as light as possible, such that it does not compromise strength, integrity, or safety.

Welding must be performed by individuals holding current US Coast Guard approved certifications.

The surfaces of all plating and structural members must be free from oxides and other contaminants before tacking or production welding begins.

Hull and superstructure will be fair and free from buckles and uneven edges.

Exterior plate unfairness will not exceed one half the thickness of the plating between frames and stiffeners.

Structural member unfairness will not exceed the thickness of the member.

Alignment of stiffener ends will be within one half the thickness of the thinner member.

All weld spatter and soot must be removed, and all construction scars must be filled.

All sharp edges and corners must be dressed to prevent hazards to personnel and equipment.

Faying surfaces shall be free from gaps, hollows, or warping.

Shims, inserts, or excess filler metal shall be of shipbuilding quality and shall not be used to correct improper fit.

Piping and components will be marked or coded with the system served and flow direction.

Valves, switches, and all other controls will be labeled with system served and function.

All lubrication fluids, hydraulic oils, and greases will be of a type that mitigates harm to the environment in the event spills occur.

Piping will be supported as required. Pipe supports will either be of a type that do not allow moisture to build up on pipe surfaces beneath clamps, or pipes will be covered in protective materials where they rest in clamps.

Pipe, cable, and other penetrations through decks, bulkheads, and superstructures, will be watertight, and shall isolate heat, vibration, and noise transmission to or through the hull structure.

Major component removals shall be accomplished without structural cutting, and with the minimum takedown possible.

All components, parts, and fittings will be arranged to maximize the ease of inspection and servicing.

Vessel must be supplied with any special tools required for maintenance.

4. Inspections:

OC SAN and/or their representative shall have full access to the vessel at the production facility during the life of the contract and during working hours.

B. STRUCTURE

1. Hull:

All construction shall be kept as light as possible, consistent with strength required to account for all items within this document.

The hull and deck shall be constructed of Marine Grade Aluminum.

All decks will be designed to eliminate standing water.

Reinforcement or backing plates shall be used in highly loaded areas such as cabin top, deck fittings and hull penetrations.

A 24VDC ultrasonic anti-fouling system will be installed and controlled from the pilothouse. The system will utilize internal transducers to retard and the growth of marine organisms by the emission of ultrasonic energy. Transducers will be placed in both hulls, on the propeller shafts, and on the rudders. This system is in addition to any anti-fouling paint coatings.

2. Limbers:

All framing members, except watertight bulkheads, shall incorporate limber holes to insure free drainage to the bilge sumps.

Limber holes shall be arranged and finished off so that bilge water cannot accumulate in isolated pockets nor leak into stiffener and /or web frame interiors.

3. Finish:

Hull and all exterior aluminum shall be unpainted.

All gunwale walking flats, and deck areas shall be media blasted or non-skid pattern applied to all exterior walking surfaces.

OC SAN shall supply digital OC SAN & CARB Unique Vessel Identifier (UVI) number for the BUILDER to supply and apply on port and starboard sides of vessel. All graphics shall be approved by OC SAN personal prior to application.

Name of vessel and hailing port shall be vinyl placed on transom, vessel name to be placed on port, and starboard bow per OC SAN instructions. Vinyl lettering shall be supplied and applied by BUILDER.

All paint shall be applied following the paint manufacturer's specifications for dry mil thickness.

Bottom (from boot stripe down) shall be-painted with non-biocide bottom paint specifically for aluminum that meets all federal, state, and local regulations.

Colors and feature stripes as specified by OC SAN.

Yellow caution lines shall be painted on deck around openings and A-frame operations.

## C. INTERIORS

All interior bulkheads and partitions within the superstructure must be acoustically insulated to reduce sound transmissions between spaces.

### 1. Floors and Bulkheads:

Interior walls, bulkheads and floors shall be constructed of a honeycomb type, sound reducing panel to suit design requirements.

Floors should be vinyl marine grade flooring. Installation as per manufacturer's recommendations.

Primary structural bulkheads shall be constructed of Marine Grade Aluminum.

Handhold/grabrails placed at pilothouse overhead, all openings and stairwells.

### 2. Cabinets and Counter tops:

Pilothouse console, galley, head and lab cabinets, counter tops and splashes shall be covered with a laminate and wood trim w/color as specified by OC SAN.

Drawers shall roll-on stainless-steel guides with 100lb capacity and have means of positive closure in a seaway.

Ability to secure equipment/electronics/printer (server cabinet)

2 computer workstations in lab with wall mounted monitors which are able to move and tilt.

1 computer station with monitor, in pilothouse, facing operator.

Fiddles on countertops

### 3. Ventilation:

Galley shall be ventilated by 110-volt AC extraction fans.

Heads shall be ventilated by 12-volt DC fans.

### 4. Shower:

Shower stall if space allows; otherwise, a handheld shower in head. Prefer below decks.

Include towel hook or rack.

5. Smoke/Carbon Monoxide Detectors:

Smoke/Carbon Monoxide detectors shall be installed throughout the vessel and wired to alarm panel in pilothouse.

6. Window:

Defogging air ducts shall be installed into the pilothouse console to provide window defogging. Heated air will be blown up the inside face of the front windows by means of a circulating fan.

Windshield wipers shall be installed on forward facing pilothouse windows.

7. Heating:

The cabin and pilothouse shall have the ability to be heated during cold weather operations and be isolated from the elements. The heating source shall not compromise the acoustic signature of the vessel when running on electric propulsion.

8. Fire Extinguishing:

Each cabin shall be provided with a fire extinguisher located for ease of access as per US Coast Guard requirements.

Engine room shall be provided with an engineered automatic/manual fire suppression system with alarm, with automatic air dampers.

9. Interior Furnishings:

Items such as carpets, tile, window coverings, wall coverings, and ceilings, of a decorative nature are to be supplied, in accordance with BUILDER's standard practice, and installed by BUILDER. Owner will specify quality and colors.

Benches and seating to double as storage where possible.

Interior decibels levels should remain under 75 decibels while under full power.

10. Dry Lab:

Ample receptacles

Server cabinet

Drawers/Cabinets for storage with positive locking devices.

11. Storage/Workshop:

Workbench fitted with 6" stainless steel flat/V-jaw vice.

Toolbox – 8 drawer or larger

Cabinets for storage with positive locking devices.

110V receptacles

12. Bunks:

Minimum 2 bunks

Cabinets for storage

110V receptacles

D. SUPERSTRUCTURE

The superstructure shall be designed and constructed of sufficient strength to account for all items within this document.

Other foundations on the cabin top must be installed to provide a secure mounting for all equipment defined herein.

All surfaces of forepeak and superstructure shall be insulated.

1. Windows:

Premium quality aluminum framed Toughened Safety glass; thickness as determined by US Coast Guard regulation.

At least one side sliding glass window on either side of main cabin and pilothouse with insect screen and locking mechanism.

Based on design, an aft facing dry lab window will be a side sliding window with insect screen and locking mechanism.

Pilothouse windows shall be clear, window in head shall be obscure, all others shall be tinted.

Pilothouse windows shall come with snap on interior shades.



2. Hatches in Main Deck/Cockpit:

The design shall incorporate, watertight, weather deck hatches made of aluminum, for access to machinery spaces and escape from below deck spaces.

Freeman Marine Equipment, Inc. hatches, or equal, shall be the selected hatches. Mounted flush with the deck.

The hatch support gutter design must include overboard drains and prevent the accumulation of significant amounts of dirt and water.

Ladders/stairways must meet US Coast Guard requirements and be fitted with non-skid tread.

Flush fitting watertight bolt-down soft patch hatches will be fabricated in the deck for removal of equipment. The soft patch hatches will be sealed and secured with 316 stainless steel bolts and nuts from the underside of the hatch.

3. Guards:

The gunwale shall be reinforced for going alongside pilings, docks, buoys, and other vessels.

The hull shall be fitted with continuous fenders on the vertical guard strake on both sides of the hull, around the transom corners in conjunction with a replaceable Ultra High Molecular Weight Polyethylene (UHMW) rubbing strip.

4. Cabin Doors:

Sliding double door or 30" or wider single door opening to the aft deck. Depending on final vessel design, possibly, forward port and starboard cabin/pilothouse doors.

All exterior doors shall have a single keyed locking mechanism.

5. Engine Room Access Doors:

Based on vessel design, engine room primary access shall be through a watertight door in front of the engine room bulkhead and secondarily from the aft deck through a watertight hatch.

6. Railings:

Any exterior railing shall be constructed of aluminum and installed around the perimeter of all accessible decks. Rails must meet all US Coast Guard regulations.

Port and starboard breakaway section for loading and unloading of crew and equipment.

3 – chains or 316 stainless steel ropes with quick releases, in place of railings, aft of A-frame.

Staircase for loading and unloading passengers/crew.

7. Swim steps:

Shall be fitted across the transom of each hull, approximately 12 inches above the loaded waterline.

The step shall be cambered for drainage, and sufficiently strong to withstand the vessel backing up gently against a dock.

Grabrails/handholds shall be installed on swim step.

Shall be a minimum of 9' apart as to not interfere with A-frame operations.

8. Bait tank/Pedestal Stand:

Pedestal stand should sit 16 inches above the deck and be able to support bait tank when filled with saltwater. Sides of pedestal stand should come up a minimum of 1" around the bait tank to prevent tank from moving. Open space underneath of stand will be accessible. Feet of pedestal shall line up with deck tie down fitting locations and be supplied with Stainless Steel .75" x 1.5" Unified National Course (UNC) bolts to secure to deck.

Bait tank will sit inside of pedestal stand. Approximate outside dimensions of bait tank shall be 72" L x 24" W x 20" D. Overall height of tank and pedestal stand will be 36".

Bait tank shall have a 3" drainpipe from bottom of tank on one end, female threads flush to inside of tank to accommodate a male threaded drain riser, and a shut off valve underneath tank. Drainpipe shall drain overboard.

A continuous filtered saltwater feed plumbed in from along bulwark on either side shall connect to bait tank.

9. Flybridge

Include cover to protect operator from the elements.

Controls and electronic equipment as described in section M.

Covers for controls and electronics to protect from the elements.

## E. DECK EQUIPMENT AND FITTINGS

Hydraulic pump(s) must be sized to support operation of two or more systems at full operational speed and load while vessel is at idle. (A-frame, winches, crane, bow thruster)

All rotating machinery shall have aluminum fabricated safety guards fitted to adequately protect crew from injury. The guards shall be lightweight and easily removable to facilitate inspection and servicing.

Primary hydraulic controls in pilothouse secondary controls at local station

### 1. A-Frame:

Shall be hydraulically operated and controlled from a local station on deck. Operate on rams sized for structure size and load capability.

Grabrails along vertical uprights.

Vertical clearance, 14' at highest point above deck. Width 8' and able to accommodate two or more blocks to be used simultaneously. Wire from blocks must reach a minimum of five feet past transom.

SWL of 5000lbs with a safety factor of 3:1.

Electric or hydraulic controlled capstan on both port and starboard uprights, both facing inboard with local fore/ aft controls.

A-frame will be load tested to 100% of rated load throughout range of articulation, and to 150% of rated load in the static condition for five minutes. A written report will be provided.

Optional: Hydraulically operated high-speed winch with 500 feet/150 meters of 3/16" stainless steel wire mounted on atop of A-frame.

2. Deck winches:

Hydraulically operated (Tow) winch with level wind and 5,000 feet/1500 meters of 3/8" galvanized wire. Mounted atop the superstructure.

Final mounting arrangements should consider safety, ease of use, durability, and serviceability.

Hydraulically operated high speed (Live Wire) winch Markey Com 7H or equal with +/- 2300 feet/700 meters of .322" electromechanical cable (Rochester cable or equal) mounted on superstructure.

Slip ring on winch end and electrical conducting connections landed in the dry lab server. Waterproof termination able to reach 1200 meters on bitter end.

Install line speed/payout metered sheaves on A-frame for winches taking into consideration bending radius and size of each cable.

Final mounting arrangements should consider safety, ease of use, durability, and serviceability.

Wire counters for both 3/8" and .322 winches to be placed in lab, control station and pilothouse. LCI-90 display or equal.

Standard requirements of line pull and speed – University National Oceanographic Laboratory Systems (UNOLS) winch and wire pull handbook.

Marine grade custom fitted covers for each.

Winches will be load tested to 100% of rated load over first 200' of line, and to 150% of rated load in the static condition for five minutes. A written report will be provided.

3. Deck Crane:

Hydraulically operated articulating and telescoping marine crane with powered winch able to extend beyond rail of either side of vessel.

The crane should be capable of lifting a 2,000-pound load from 15 feet and be capable of up to 360-degree rotation.

Marine grade custom fit cover.

Preferred top deck, port side placement.

4. Anchor Winch:

Hydraulically or electronically operated, reversible, capstan type anchor winch with local controls.

Marine grade custom fit cover

5. Anchor and Chain:

Anchor type, length of chain, and rode shall be selected and supplied by BUILDER.

An anchor roller will be fitted on the bow.

6. Mast:

A fabricated aluminum mast shall be fitted above the cabin. Mast may fold to create < 19-foot air draft.

Provisions for flags, lights and day shapes shall meet all US Coast Guard Navigation Rules and Regulations for trawling, towing, restricted in ability to maneuver (RAM), and fishing. The mast shall have:

- Radar antenna (or mounted on cabin roof)
- Radio antenna(s)
- Navigation light(s) including anchor, trawling, towing, RAM, and fishing.
- Two flag halyards
- Wind monitor

A ladder or suitable equivalent shall be included in the mast design to allow access to the upper mast for equipment installations and repairs.

7. Cleats, Deck tie-down fittings and Chocks:

Cleats shall be of the type and size appropriate for mooring lines. Four minimum per side

Final cleat arrangement of all cleats and deck fittings shall be approved by OC SAN prior to installation.

Chocks shall be of sufficient size for ease of line handling. Edges softened to prevent line chafe.

Deck tie-down fittings shall be installed flush with deck plating and grouped into a 24" grid pattern on both upper and lower deck. Fittings will be .75" x 1.5" Unified National Coarse (UNC) stainless steel female threaded inserts.

3/4"-UNC stainless steel threaded eye bolts will be provided for half of all sockets. Sockets and eye bolts will be rated for 500 pounds minimum safe working load in any direction.

Threaded nylon flush plugs will be provided and installed to seal all sockets when not in use.

8. Shore Connection:

50-amp, 125/250-volt shore power connections.

Supply one 50 ft. 3 wire, 125/250-volt, 50-amp shore power cable.

9. Deck Inventory:

The following items shall be supplied, installed, and/or stowing arrangements provided for:

Mooring lines, nylon braided, minimum 3/4" diameter (4 - 40 feet with an eye on one end and 2 - 30 feet with an eye on one end).

Eight PVC fenders, inflatable, of suitable size, with braided nylon lines ends whipped.

Provide storage under any exterior seating.

Flammables/paint locker – 2<sup>nd</sup> deck

Optional: Vertical, vented, hanging locker

F. MACHINERY

The entire Hybrid propulsion system shall be reviewed and agreed on in writing by their respective suppliers prior to approval by OC SAN.

All rotating machinery shall have fabricated safety guards fitted to adequately protect crew from injury. The guards shall be lightweight and easily removable to facilitate inspection and servicing.

Outlet piping led thru the hull should, as far as possible, be led to the inside of the vessel and discharged overboard into the tunnel.

1. Main Engines:

Engines will be of size suitable for diesel electric hybrid system and conform to CARB standards as set in the Final Regulation Order Commercial Harbor Craft Regulation (Reference section 8 Requirements for New and Newly Acquired Engines & section 9 Requirements for New and Newly Acquired In-Use Harbor Craft).

Shall have Non-Resettable Hour Meters (reference section 2 Installation and Use of Non-Resettable Hour Meters in Final Regulation Order Commercial Harbor Craft Regulation).

The fuel filter/strainers shall be configured to allow online change over without interruption of service and be self-venting.

Installation shall be in accordance with engine manufacturer specifications.

Shall have an exhaust system which will not vent to back deck.

Electrical connections to engines shall be flexible.

Flexible engine piping shall be double hose clamped.

2. Hybrid System:

Hybrid Electric Power Systems (HEPS) specifics will be determined by BUILDER and manufactures of electrical components and diesel engines, based on design and performance specifications.

Shall meet/or exceed current CARB air quality regulations at time of proposal.

Capable of providing a minimum of 30% of vessels power required for main propulsion and auxiliary power operation with zero tailpipe emissions when averaged over a calendar year.

Ability to meet and exceed future CARB regulations with the goal of becoming full-electric in the future.

System shall support at sea charging of the electrical system.

As part of the vessel design, the optimum battery type, weight constraints, and propulsion control system shall support a minimum of 4 hours of slow speed (e.g., 1 to 6 knots) research operations in electric propulsion mode.

3. Marine Gears:

Hydraulic reverse reduction gears with trawling valves.

4. Engine Mountings:

Main engines and/or generator set shall be installed per manufacturer's recommendations.

Engines must be mounted on vibration and sound absorbing flexible mounts approved by engine supplier.

5. Shafting:

Shafts, shaft bearings, and shaft seals shall be matched to propulsion system.

Water lubricated propeller shaft installation.

Heavy molded-in stern tubes with tube bearing, dripless stuffing box, and rubber cutlass bearings.

6. Propellers:

The propellers shall be made of a material to minimize or properly protected from galvanic corrosion right and left hand turning outboard.

Pitch of the propeller shall be designed for maximum efficiency and shall be matched to transmission gear ratio.

7. Rudders:

Shall be of a size and shape which maximizes the vessels performance.

Rudder and stock shall be made of suitable material for vessel design and performance.

Each rudder shall be fitted with a safety stop to prevent loss of rudder.

Each rudder shall include bypass valves to allow centering and securing rudders in case of steering failure.

The rudders will be aligned by measurements to be parallel with the keel. The position of the tiller arms will then be permanently marked on the inside of the transom for later reference.



8. Generator Set:

Shall be of size and type to accommodate hybrid system if needed.

Shall be mounted within sound shields on vibration isolating pads.

PTO for hydraulic pump will come off the generator or electrical side of hybrid system.

9. Cooling Water System, Engines:

Main and generator engines shall have freshwater cooling systems with heat exchangers, oil cooler, and seawater pumps.

Raw water intakes, strainers, and piping shall be configured to allow change over without interruption of service and be self-venting.

10. Bow Thruster:

The BUILDER shall provide an electrical or hydraulically powered bow thruster with controls located at all vessel control stations.

Bow thruster must be able to run simultaneously with winches.

G. ENGINE ROOM MISCELLANEOUS

1. Engine Room Air/Vents:

Air ducting will include ducts with associated sound insulation, intake boxes and two cooling fans.

Openings shall be fitted with fire dampers.

Vents must be positioned so they are protected from elements and do not interfere with personnel or cargo.

Vents must be installed as high as possible.

All vents must be fitted with positive closing devices that are normally secured in the open position.

Shall be ventilated by extraction fans fitted on rubber mountings.

Controls for fans shall be fitted in pilothouse.

2. Engine Room F.W. System:

A cold fresh water supply shall be provided with a hose, capable of reaching throughout engine room.

3. Insulation:

All exhaust piping shall include sound and high temperature insulation.

Exhaust piping trunks, and ventilation trunks must be acoustically insulated to reduce noise transmission outside the space.

Engine room insulation shall be installed prior to installing any equipment which would be mounted against or adjacent to the insulation.

Bulkheads and overhead shall be insulated to reduce decibel level on deck to 75 or less while under full power.

The hull sides in the machinery space and lazarette(s) must be insulated to reduce sound transmission into the water and into the superstructure.

H. STEERING EQUIPMENT

1. Steering System:

Hydraulic steering system to be independent of the vessels hydraulic system.

Manual helm pump with ships wheel will be fitted at helm.

Auto Pilot Control Unit, rate compass, remote control, rudder angle indicator and rudder feedback at each station.

I. TANKS & PIPING:

All tanks shall be fitted with tank level sending units with readout in pilothouse.

All metal tanks shall be isolated from their foundations with rubber mounting strips.

Tanks shall be cleaned and free of debris, filings, and waste prior to filling.

1. Fuel System:

Aluminum tanks shall have separate filling lines, and vent pipes. A crossover connection between tanks if more than one tank is used.

Each fuel line shall have a shut-off valve at the tank connection that can be shut off from outside the engine room.

Connections to engines shall be flexible unless otherwise required.

Fuel filter located outside of tank and before machinery.

Electric fuel priming and transfer pump shall supply each main engine and each generator.

2. Fuel Tanks:

Fuel tank size shall be determined, based on hybrid system and mission needs.

Tanks shall be provided with

- swashplates
- stiffeners
- fill pipes.
- ventilation pipes
- connection pipes to manifolds
- sight glass
- Drain with plug.

3. Freshwater Tank:

Tank capacity no less than 200 gallons.

Tank(s) and piping shall be made of a suitable food grade material.

Tank(s) shall be provided with

- swashplates
- stiffeners
- fill pipes.
- Drains with plugs.
- ventilation pipes
- connection pipes to water pressure system
- low level alarm
- filter

4. Holding Tank:

Type III MSD

Tank shall have

- up to 200-gallon capacity

- ventilation pipes
- float switch to indicate 75% full, plus.
- filling and discharge cam lock connections on deck
- An overboard discharge.

A sewage macerator pump shall be fitted to the tank.

5. Supply Oil Tank (Oil Change System):

Optional: lube oil tank (capacity to equal the sum of one engine's oil capacity) of ¼" 5052 aluminum shall be installed with pump and valving to add/remove oil to/from either engine.

6. Hydraulic oil

Total capacity as required for operations.

Tank to be fitted with an oil cooler.

Valves and controls per design

J. PLUMBING

Outlet piping led thru the hull should as far as possible be led to the inside of the vessel and discharge overboard into the tunnel.

All pumps shall be self-priming.

1. Bilge Pumping System:

Electric pumps fitted with automatic float switches shall be located in each bilge sump, with on/off indicator lights in pilothouse with check valves in each discharge line.

An emergency pump shall draw from each bilge sump through suction lines through a manifold in an easily accessible location and shall discharge overboard.

2. Saltwater Pumps

A saltwater wash down system (pressure activated pump) with ¾" hose bibs located on the fore deck (at anchor) and two aft (port and starboard).

A saltwater connection shall be plumbed to wet lab sink.

A second saltwater system (continuous flow) shall serve the bait tank, flow rate of 100 GPM and be electrically switched from the deck. Shall have an inline sediment filter in a convenient location between spicket and tank.

Connect pumps with a manifold system to ensure redundancy.

A separate science seawater diaphragm pump system (continuous flow) shall serve the main aft deck area and be electrically switched from the deck.

Optional: Thermosalinograph with external digital ocean temperature, Fluorometer, Serial connection to the dry lab workspace.

Dedicated fire pump

3. Fresh Water System:

120V pump with accumulator pressure tank.

For domestic hot water supply, one (capacity to be determined) combination 220 volt electric / heat exchanger water heater.

Hot and cold supply shall be plumbed to the galley, head(s) and wet lab.

Carbon water filter shall be installed inline to galley sink.

A cold-water connection shall be located in engine rooms, fore and aft deck.

4. Sewage System:

Toilet(s) shall be fitted per BUILDER's plans. They will be connected to the saltwater system and shall discharge into the holding tank.

The holding tank shall be emptied by a 1 ½" macerator pump and shall incorporate a float switch connected to an alarm light that lights when the tank reaches 75% capacity.

Holding tank shall have ability to be pumped out dockside and overboard.

Holding tank air vent shall be fitted with a holding tank filter which shall be installed in an accessible/serviceable location.

K. ELECTRICAL

1. General:

A battery management and monitoring system at the helm.

Shore power connections shall be able to charge the onboard batteries in less than 12 hours (i.e., overnight) as well as support the house loads while at the dock.

This system must also be able to be charged while at sea in a similar amount of time.

All wiring shall meet or exceed ABYC and US Coast Guard standards.

110/220-volt AC – Appliances, service outlets and primary domestic lighting, powered by batteries, generator, or inverter while underway and by shore power connection while at dockside.

All interior power receptacles shall be hospital grade.

24-volt system – Engine starting system.

12-volt system – Electronics, navigation instruments, and ship emergency lighting systems in pilothouse.

All electrical installations shall strictly conform to the manufacturer's instructions.

Cable/wire runs shall be routed through conduit, (e.g., PVC, ABS, etc.) cable trays or, where exposed, adequately secured and protected against chafe.

Sufficient space to double cables/wires shall be left in wire ways for future use.

Cables shall be clearly labeled at each end.

Conduit penetrations through watertight bulkheads shall be made watertight.

Wiring and conduits shall be kept clear of the bilge unless absolutely necessary.

All through hull fittings, engines and metal parts, tanks, zinc anodes, and electrical equipment shall be connected to an independent bonding system.

All electrical systems shall be thoroughly tested during dock trials and sea trials.

2. 110/220 Volt AC (generator):

The main AC distribution panel shall be in the engine room with a sub panel located in the pilothouse. Overload protection, and ground fault protection shall be provided.

The 110/220 system shall include a frequency meter, volt meters, and amp meters.

A load transfer switch shall be provided to prevent simultaneous connection of both shore power and generator power.

The metering listed above shall be connected to read shore power, batteries.

Generator circuits and meters shall be located at the sub panel in the pilothouse.

3. DC-AC Inverter with built-in battery charger:

Include remote control and status indicator panel. (BUILDER will survey power requirements.)

4. DC Voltage:

Each engine starting system shall be powered by a separate set of starting batteries, (base on hybrid system needs) with an automatic charger supplying both sets.

24-volt system shall be powered with one bank of deep cycle ship's service batteries.

The main 12-volt distribution panel shall be located in the pilothouse. Overload protection shall be provided on all circuits.

12-volt instrumentation shall consist of voltmeter and amp meter and shall be in the pilothouse.

5. Distribution Panels:

AC and DC distribution panels shall be arranged with photographically made signs.

Sub-panels shall be used whenever appropriate to reduce weight and complexity of wiring.

Magnetic circuit breakers shall be provided with sufficient spares for future circuit expansion with wired spares to the pilothouse for future electronics.

Each breaker shall be labeled.

6. Clean Power System:

An inverter system shall be provided which delivers uninterrupted clean 120VAC power to the lab and pilothouse to prevent power dropouts to science and

pilothouse equipment during power transfer switching from shore to generator power and in the event of the loss of either power source.

7. Zinc Anodes:

Anodes on transom shall be connected by a ground wire.

Shaft zinc collars and zinc plates shall also be provided where required.

8. Batteries:

Designer will determine all battery banks and their chemistries.

Batteries must be stored and ventilated per manufacturers specifications.

Lithium-ion batteries will follow US Coast Guard regulations & ASTM F3353-19 for safe use onboard vessels.

A house battery storage system must provide sufficient reserve power for not less than 4hrs of service.

Isolating switches shall be placed as close as practical to each battery set.

Energy Storage System (ESS) shall be selected and sized based upon capacity and performance of expected end of life performance to enable HEPS to operate at required functionality throughout its life.

A 24V house battery bank shall be installed to supply the vessel's DC systems in cases of power disruption.

Battery banks shall power the electric propulsion, scientific equipment, hydraulics and hotel loads on the vessel.

L. LIGHTING & ELECTRICAL OUTLETS

The lighting system shall be LED.

Adequate lighting and electrical outlets shall be provided throughout the vessel.

Interior lighting must be distributed to illuminate all areas including hull spaces below deck as evenly as possible.

Light switches should be in covenant locations on the bulkheads.

The pilothouse will have a combination of red and white LED lights.



LED Floodlights shall be installed providing 100 percent deck coverage.

Include a remote controlled (100,000 cp minimum) searchlight with 360° rotation.

A 12-volt DC emergency lighting system will be integrated throughout the vessel.

Lights on stairs and passages shall be switched from two positions.

Provide a weatherproof 120-volt receptacle on the outside of the aft facing bulkhead and 2<sup>nd</sup> deck control station.

Provide a weatherproof 220-receptacle in the laboratory.

Inquire for additional electrical needs.

## M. INSTRUMENTS AND CONTROLS

### 1. Controls:

One – Helm wheel backup steering station shall be located in the pilothouse.

Throttle controls in pilothouse and additional stations shall be twin dual function levers. To allow single hand control.

Additional stations will include throttle and transmission controls, rudder angle indicator, jog lever and bow thruster controls.

Additional control stations shall include covers to protect from the elements.

The control system will allow the transfer of control from an active station to any one inactive station by switch or button at the inactive station. The system will also provide a means to prevent an inactive station from being activated if the operator at the active station so chooses.

Shade cover over all outside control stations

### 2. Auto Pilot:

The control unit shall have jog controls and rudder angle indicator located in the pilothouse.

### 3. Instrumentation at Pilothouse:

Digital electronic instrumentation to include:

- RPM

- Load
- Engine/Gear Temp
- Pressures
- Engine Hours
- Fuel Use

Battery management system monitoring display.

Aluminum Corrosion Monitor

4. Engine Room Instrumentation:

Analog gauges shall be mounted in the engine room at each engine.

Transducer well for acoustic releases

5. Pilothouse Lights/Alarms:

High bilge water in each sump

High holding tank level

Low Freshwater level

Engine room fire alarm/fixed fire discharge

Smoke/ Carbon Monoxide detector alarms

AC and DC electrical panels located in the pilothouse.

Battery management and monitoring system

6. Electronic Equipment:

Instrumentation shall be NEMA 2000 compatible.

Autopilot

One - pilothouse compass

Two - VHF radios, Flybridge, pilothouse

Three - GPS Chart plotter, Primary in pilothouse,  
display in lab and flybridge.

Three - Color depth sounder, Primary in pilothouse,  
display in lab and flybridge. (Furuno TZT16F or equal)

Two - Radar, 36NM, flybridge, pilothouse

Two - Loud hailers/ Intercom system, pilothouse

Flybridge. Talk back speaker in Dry lab, bunk, workshop. Waterproof talk  
back speakers fore and aft deck

One - Night chart light (red)

One - Weather station with displays in pilothouse, lab, flybridge.

- True wind speed and direction
- Air temperature
- Barometric pressure

One - Thermistor water temperature sensor displayed in lab and pilothouse.  
One - AIS unit  
One - AM-FM radio/Bluetooth player shall be installed in the pilothouse, speakers. To have independent volume controls for each deck.  
Wireless Wan  
NetMotion or equal  
TimeZero (or equal) Navigation computer with data feed from electronics package. With wireless mouse and keyboard.  
FleetBroadBand or equal, to provide continuous internet connectivity at sea.  
Teledyne Motion reference unit or equal  
Acoustic Doppler Current Profiler (ADCP)  
Timeserver  
Dedicated CCTV with camera's in engine room(s), aft deck, upper deck, on winches, and battery compartments

7. Pilothouse Control Console:

BUILDER shall supply a layout drawing of the console and the positioning of instruments, controls, electronics, etc.

Special attention shall be given to human engineering for sightlines and ease of operation.

8. Windshield wipers:

Front windows of pilothouse shall be fitted with heavy duty 12-volt DC wipers of appropriate length arms and blades.

Motors shall be controlled with two speed switches.

9. Pilothouse Miscellaneous:

Include an adjustable height, full 360-degree swing helmsman seat with arms and footrest.

A chart table and navigation area shall be provided with space for a laptop computer station.

In the design consider the following:

1. A second full height seat.
2. A small table with additional seating (which may serve as a chart table).
3. Storage cabinet with shelves and drawer for miscellaneous equipment.
4. Desk with drawers

N. DOMESTIC APPLIANCES

The following equipment shall be purchased and installed by BUILDER.  
Exact catalog number, color and style shall be agreed upon between BUILDER and OC SAN.

Equipment shall have a structural connection to bulkheads to prevent movement.

1. Galley:

- Refrigerator/Freezer
- Range/oven
- Double Sink
- Microwave
- Space for a water cooler

O. Safety Equipment

Safety equipment locations and installation must meet or exceed US Coast Guard requirements for vessel size and number of persons onboard.

Particular attention shall be paid to mitigating the additional safety concerns around the battery bank required for the electric propulsion.

1. Fire Extinguishers
2. Fixed extinguishing system(s) in machinery spaces
3. Fitted with manual release controls outside machinery space.
4. System shall control ventilation systems.
5. Fire Hose with nozzle
6. Life Raft
7. EPIRB
8. Life jackets
9. Person overboard – Jacob’s cradle, ladder, or swim step
10. Flares – 6 rockets, 6 hand-held, 6 smoke stored in proper container.
11. Ring Life Buoys
12. First-aid kit
13. AED provided by OC SAN risk mgmt./safety.

Proper signage shall be fitted to doors, stowage areas of first aid kit, lifejackets, firefighting, and other emergency equipment.

## VI. PROJECT ELEMENT 3 – TESTS AND TRIALS

### 1. General

All workmanship and equipment shall be thoroughly tested by the BUILDER to demonstrate conformance to these Specifications and regulatory agency requirements.

The BUILDER shall develop a schedule of tests to be performed during the construction of the vessel and shall submit a copy to OC SAN prior to commencing any tests. During the construction, the BUILDER shall be responsible for giving OC SAN notice of all tests (minimum 14 working days' notice).

Construction tests shall include, but not be limited to:

- Hull & Tank Tightness Tests.
- Piping System Pressure Tests.
- Ventilation System Tests.
- Calibration of Alarms, Controls & Indicators.
- Monitoring and Alarm Circuit Performance.
- Electronics Operation Tests.
- Electric Load Bank Tests.
- Fire Detection System Tests.

The BUILDER shall prepare test memoranda for all testing activity during construction. The memoranda shall include data pertinent to the test, nameplate data for all equipment, a description of the test, and signature blanks for the shipyard and OC SAN's Representative.

The BUILDER shall supply the operating crew, all required test equipment, and furnish all fuel and lubricating oil required for all tests and trials. The BUILDER shall also bear the expenses of shipyard personnel, water, special instruments, and miscellaneous supplies for all tests and for dock and sea trials.

### 2. Testing During Construction

The BUILDER shall test all portions of the vessel and work thereon, including structure, fittings, systems, equipment, and machinery, to demonstrate satisfactory workmanship, proper working order, alignment of moving parts, tightness, and compliance with the Specifications. The BUILDER shall correct any deficiencies, at no additional cost to OC SAN, which appear during testing, and re-test until proven satisfactory.

The following test pressures (psi) are given as guidance for the shipboard system piping tests:

SYSTEM	TEST PRESSURE
Fresh Water (service)	60 psi
Bilge and Fire main	85 psi
Plumbing and Interior Deck Drains	Fill to top of fixture.
Sounding Tubes, Vents, Overflows	Fill to top of pipe/vent.
Diesel Fuel Oil	100 psi
Lube Oil	30 psi
Machinery Cooling	30 psi.
High Pressure Hydraulics	3500 psi
Low Pressure Hydraulics	225 psi

3. Main Engine and Generator

Any subsequent damage that occurs to any engine, pump, or auxiliary equipment due to improper installation by the BUILDER shall be repaired or replaced at the discretion of OC SAN at no additional cost to OC SAN.

4. Dock Trials

The BUILDER shall submit a test agenda for the dock trials and include a description and schedule of the tests to be performed. The agenda shall be submitted to OC SAN for approval at least 14 working days in advance of the start of the dock trials.

Complete dockside tests of all machinery and electrical equipment and installations shall be made. These tests shall include, but not be limited to:

- Controls for the propulsion system.
- Steering gear and controls.
- Fire extinguisher release, including engine shutdown and ventilation.
- Electrical system tests, including outlets, lights, and circuit breakers.
- Computers, navigation, networking equipment.
- Galley equipment.
- Communication systems.
- Anchor winch and load tests.
- Bow thruster.
- Deck crane operation and load test.
- Shore power system.
- Wastewater systems
- A-frame operation and load test
- Tow winch operation and load test
- Live wire winch operation and load test

All systems must be tested and proven operational prior to embarking on sea trials.

## 5. BUILDER's Sea Trials

Upon satisfactory completion of the dock trial, the vessel shall be taken on a sea trial. The BUILDER shall load the vessel to simulate the transport of 4000 pounds (cargo) on the aft work deck, full fuel, and water tanks, and eight crewmembers. The trials shall be conducted in the open ocean (or partially protected waters) to enable a complete and unrestricted test of all propulsion and steering systems and shall be conducted during full daylight hours only. As a minimum, the trial shall consist of the following tests:

- Compass compensation.
- Engine and hybrid system parameters in each operating mode and recorded by a certified technician.
- Disconnection of Energy Storage System (ESS) to simulate loss of power, ensure propulsion and steering systems are functional.
- Radar adjustment/calibration.
- Auto helm
- Three runs over a measured mile at 80% and 100% power.
- Crash stops, full ahead to full astern.
- Steering and maneuvering ahead and astern from all stations.
- Decibel level readings taken during cruise and full power runs. On aft deck, main cabin, and pilothouse
- Correction and retesting of any failures or deficiencies prior to acceptance.
- Opacity testing as required by CARB.
- Any other test deemed necessary by OC SAN to demonstrate the satisfactory operation of the vessel's systems.

All test results recorded and provided to OC SAN.

The BUILDER shall correct deficiencies appearing during the BUILDER's Sea trials, and portions rerun until all problems are solved to the satisfaction of OC SAN. When deficiencies have been corrected, the ship shall be prepared for shipment to the greater Los Angeles Harbor area. If the vessel is built in any area other than the United States West Coast, delivery shall be as deck load on a suitable ship, barge, or truck.

## 6. Acceptance Sea Trials

The BUILDER shall deliver the vessel at BUILDER's expense. Delivery of the vessel may be performed by truck, barge, or motoring the vessel on its own bottom, or a combination of these methods.

Entities responsible for delivery shall be licensed, bonded, and insured for a minimum of \$8,000,000. Individuals operating the vessel will be licensed by US Coast Guard.

If the vessel arrives on its own bottom, the BUILDER shall have the vessel lifted out of the water by a local commercial contractor for one hour minimum to allow OC SAN to inspect the bottom, running gear, and all submerged attachments.

If the vessel arrives by truck or barge, OC SAN shall inspect the bottom, running gear, and all submerged attachments before launching.

The BUILDER shall re-launch the vessel, and ensure that it is thoroughly cleaned, fueled, and readied for service. All equipment removed, or deactivated for the delivery, shall be put back into service and thoroughly tested. When the BUILDER is fully satisfied that the vessel is ready for delivery, it shall be taken on an acceptance sea trial. All tests and maneuvers performed during the BUILDER's trials shall be repeated to ensure the proper operation of all systems and that no damage occurred during shipment. BUILDER must demonstrate that all contractual obligations are completed. Upon satisfactory completion of the acceptance trials by OC SAN, OC SAN shall take delivery of the vessel. Delivery shall be Freight on Board (FOB) Destination, in the water to Newport Harbor, California, to a specific location that will be provided by OC SAN.

The BUILDER shall supply three copies of all test and verification data.

## **VII. PROJECT ELEMENT 4 – TRAINING, PLANS, INSTRUCTION BOOKS & MAINTENANCE MANUALS**

### **A. Training**

Present and explain each system and device in the vessel. Demonstrating operation of all features.

Provide training for up to six persons over two 8-hour days.

Provide written answers to questions not answered during training sessions within 48 hours.

### **B. Working Plans**

The BUILDER shall prepare and submit to OC SAN a plan schedule showing any and all detail plans and shop sketches it will use for the vessel construction, in addition to those submitted with the proposal. The plans and sketches shall be submitted to OC SAN review and comment prior to the start of any fabrication. Work undertaken prior to approval by OC SAN shall be at the BUILDER's risk. The same is true for any plan revisions. Upon delivery of the vessel, the BUILDER shall furnish to OC SAN three copies of all drawings and sketches listed on the plan schedule. These documents shall depict the vessel as built. All plans prepared on CAD shall also be delivered to OC SAN on CD or flash drive a format compatible with AutoCAD.



C. Instruction Books, Diagrams, Documents & Maintenance Manuals

Copies of all quality assurance (QA) and quality control QC sign-off documents created during the build cycle must be provided to the owner as they are generated. These must include purchase specifications, receiving reports, close-out inspections, in-shop system tests, dock trial reports, sea trial reports, and stability booklet.

The vessel must be delivered with all manuals, brochures, installation instructions, etc. supplied with all machinery and equipment installed.

Maintenance and overhaul manuals must be provided for all serviceable equipment and/or systems. Including but not limited to main engines, generators, transmissions, hybrid systems, hydraulics. All data must be provided in paper and/or electronic copy.

The BUILDER shall ensure that all Instruction Books and Maintenance Manuals are bound, indexed, numbered, and submitted with delivery of the vessel.

Diagrams of all systems, as built, including but not limited to:

- Hydraulic lines
- Electrical
- Fresh/Salt/Black/Grey water
- Fuel

D. Tank Sounding Tables and Gauges

The BUILDER shall furnish sounding tables, showing gallons for each inch of sounding depth for each tank.

A sight glass gauge for the following tanks shall be calibrated as follow:

- |                   |                               |
|-------------------|-------------------------------|
| ● Potable Water   | Gallons at 1” intervals       |
| ● Diesel Fuel Oil | Gallons at 1” intervals       |
| ● Lube Oil        | Gallons at 5-gallon intervals |
| ● Hydraulic Oil   | Gallons at 5-gallon intervals |

**VIII. WARRANTY PERIOD AND INSPECTION**

BUILDER agrees to perform all work under this Scope of Work in accordance with OC SAN’s approved designs, drawings, and specifications. BUILDER guarantees for a period of at least one year from the date of OC SAN’s written acceptance of the vessel, all equipment which is manufactured, furnished, or supplied by BUILDER (except the hull) is free from all defects due to faulty materials, equipment, or workmanship, and that it shall promptly make whatever adjustments or corrections which may be necessary to

cure any defects, including repairs of any damage to other parts of the system resulting from such defects. OC SAN shall promptly give notice to BUILDER of observed defects. If BUILDER fails to make repairs, adjustments, corrections, or other work made necessary by such defects, OC SAN may do so and charge BUILDER the cost incurred.

Hybrid system shall include full manufacturer's warranty from acceptance date. An additional 5-year supplemental extended warranty will be provided by manufacturers.

The hull warranty shall be for 10 years from the date of OC SAN's written acceptance of the vessel, or as mutually agreed to by the Parties.

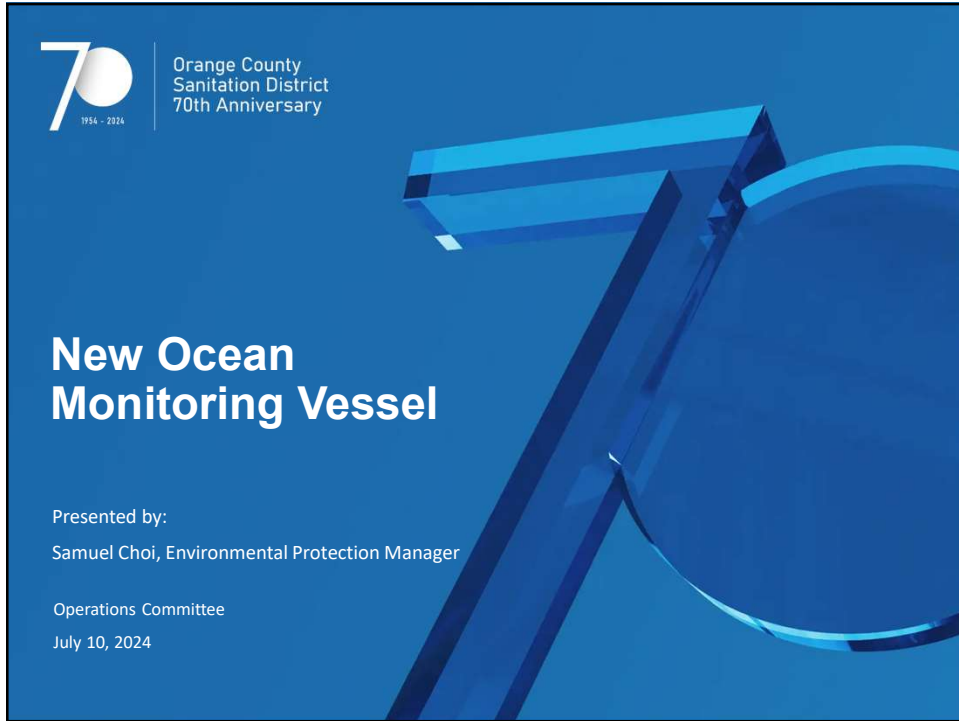
Hybrid batteries shall have a minimum warranty of eight (8) years commencing on the Acceptance Date or 100,000 miles, unless a higher-level warranty is available.

BUILDER will provide OC SAN with all manufacturers' warranty for components furnished or installed on vessel to the extent that they are transferable.

Manufacturers must have a warranty service provider located within California.

## **IX. OC SAN STAFF ASSISTANCE**

An OC SAN staff member will be assigned to work with the BUILDER on the design and construction of this project. Contact information will be provided to the successful Proposer when a Contract is awarded.



1



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Environmental Monitoring



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United States  
Environmental Protection  
Agency

Code of  
Federal  
Regulations

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CALIFORNIA  
**WATER BOARDS**  
State Water Resources Control Board

STATE WATER RESOURCES CONTROL BOARD  
REGIONAL WATER QUALITY CONTROL BOARDS

California Ocean Plan  
Santa Ana RWQCB Basin Plan

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**NPDES Permit**  
OC San Ocean Monitoring and Reporting Program

- Core Compliance Monitoring
- Regional Monitoring
- Strategic Process Studies




3

3

Ocean Monitoring Program



**OC San must demonstrate:**

- Safe to swim → Water quality monitoring 
- Healthy ecosystem → Sediment and animal community monitoring 
- Safe to eat fish → Fish health and tissue bioaccumulation monitoring 

4

4

# Ocean Monitoring Program



- 185 square miles
- 167 sampling stations
- 103 – 110 sea days per year
- Travel nearly 3,000 miles per year

## Ocean Team



## M/V Nerissa



5

5

# Ocean Monitoring Program

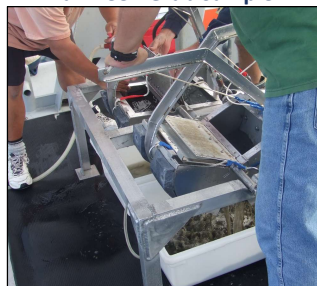


CTD Rosette



Water quality

Van Veen Grab Sampler



Sediment quality

Mooring



Oxygen and pH

6

6

# Ocean Monitoring Program



## TRBM/ADCP



Profiling ocean current

## Trawls



Benthic community

7

# Ocean Monitoring Program



## Rig Fishing



Fish health



8

## Motor Vessel (M/V) Nerissa



- ✗ Will not meet CA Air Resources Board (CARB) regulations in 2026
- ✗ Overhaul will compromise hull integrity and is not cost-effective
- ✗ Unable to support expanding regulatory requirements

9

9

## Replacement Vessel



Similar Vessel: University of Hawaii Research Vessel



- ✓ CARB-compliant
- ✓ 65 feet long
- ✓ 25 feet wide
- ✓ Aluminum
- ✓ Catamaran design
- ✓ Plug-in hybrid system
- ✓ 30 years of estimated useful life

10

10





## End Tie for Replacement Vessel



Balboa Marina



13

13

## Retiring M/V Nerissa



### CARB Restrictions:

*“Cannot sell, purchase, offer for sale, lease, rent, import, or otherwise acquire a new or in-use diesel engine intended to operate in California.”*

### Options

- Donate
- Auction
- Surrendered Vessel Program
- Salvage for parts



14

14

## Recommendation

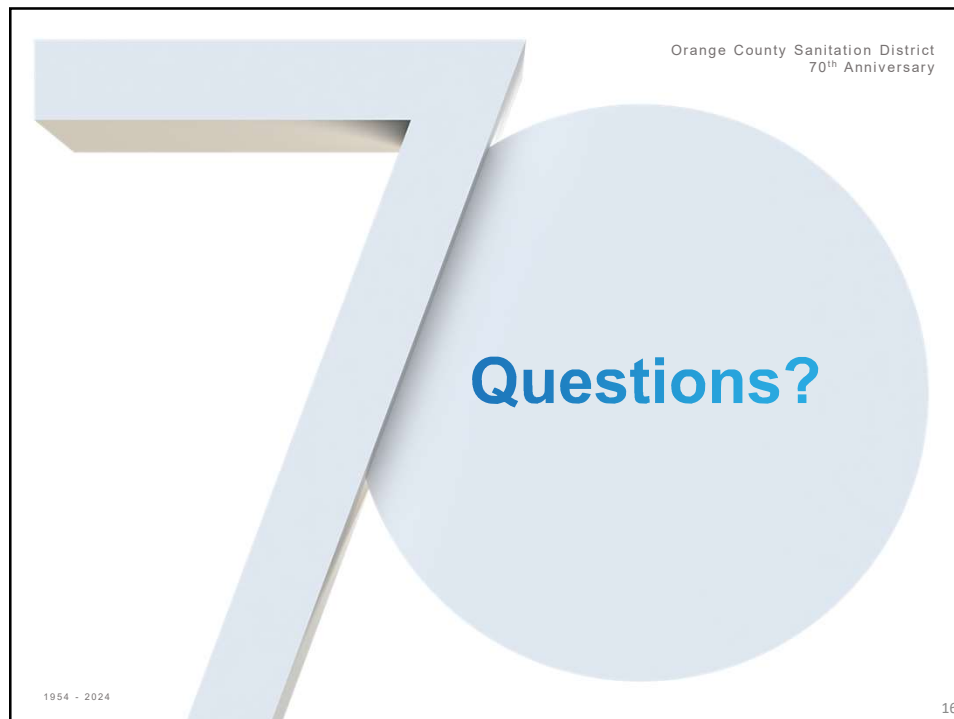


Recommend to the Board of Directors to:

1. Approve an Agreement to Design and Build an Ocean Monitoring Vessel to All American Marine, Inc. (AAM) for the purchase of a 65-foot (overall length) aluminum catamaran design ocean monitoring vessel with a plug-in hybrid propulsion system for a total amount not to exceed \$9,206,149; and
2. Approve a contingency of \$920,615 (10%).

15

15



16

## ORANGE COUNTY SANITATION DISTRICT COMMON ACRONYMS

<b>ACWA</b>	Association of California Water Agencies	<b>LOS</b>	Level Of Service	<b>RFP</b>	Request For Proposal
<b>APWA</b>	American Public Works Association	<b>MGD</b>	Million Gallons Per Day	<b>RWQCB</b>	Regional Water Quality Control Board
<b>AQMD</b>	Air Quality Management District	<b>MOU</b>	Memorandum of Understanding	<b>SARFPA</b>	Santa Ana River Flood Protection Agency
<b>ASCE</b>	American Society of Civil Engineers	<b>NACWA</b>	National Association of Clean Water Agencies	<b>SARI</b>	Santa Ana River Interceptor
<b>BOD</b>	Biochemical Oxygen Demand	<b>NEPA</b>	National Environmental Policy Act	<b>SARWQCB</b>	Santa Ana Regional Water Quality Control Board
<b>CARB</b>	California Air Resources Board	<b>NGOs</b>	Non-Governmental Organizations	<b>SAWPA</b>	Santa Ana Watershed Project Authority
<b>CASA</b>	California Association of Sanitation Agencies	<b>NPDES</b>	National Pollutant Discharge Elimination System	<b>SCADA</b>	Supervisory Control And Data Acquisition
<b>CCTV</b>	Closed Circuit Television	<b>NWRI</b>	National Water Research Institute	<b>SCAP</b>	Southern California Alliance of Publicly Owned Treatment Works
<b>CEQA</b>	California Environmental Quality Act	<b>O &amp; M</b>	Operations & Maintenance	<b>SCAQMD</b>	South Coast Air Quality Management District
<b>CIP</b>	Capital Improvement Program	<b>OCCOG</b>	Orange County Council of Governments	<b>SOCWA</b>	South Orange County Wastewater Authority
<b>CRWQCB</b>	California Regional Water Quality Control Board	<b>OCHCA</b>	Orange County Health Care Agency	<b>SRF</b>	Clean Water State Revolving Fund
<b>CWA</b>	Clean Water Act	<b>OCSD</b>	Orange County Sanitation District	<b>SSMP</b>	Sewer System Management Plan
<b>CWEA</b>	California Water Environment Association	<b>OCWD</b>	Orange County Water District	<b>SSO</b>	Sanitary Sewer Overflow
<b>EIR</b>	Environmental Impact Report	<b>OOBS</b>	Ocean Outfall Booster Station	<b>SWRCB</b>	State Water Resources Control Board
<b>EMT</b>	Executive Management Team	<b>OSHA</b>	Occupational Safety and Health Administration	<b>TDS</b>	Total Dissolved Solids
<b>EPA</b>	US Environmental Protection Agency	<b>PCSA</b>	Professional Consultant/Construction Services Agreement	<b>TMDL</b>	Total Maximum Daily Load
<b>FOG</b>	Fats, Oils, and Grease	<b>PDSA</b>	Professional Design Services Agreement	<b>TSS</b>	Total Suspended Solids
<b>gpd</b>	gallons per day	<b>PFAS</b>	Per- and Polyfluoroalkyl Substances	<b>WDR</b>	Waste Discharge Requirements
<b>GWRS</b>	Groundwater Replenishment System	<b>PFOA</b>	Perfluorooctanoic Acid	<b>WEF</b>	Water Environment Federation
<b>ICS</b>	Incident Command System	<b>PFOS</b>	Perfluorooctanesulfonic Acid	<b>WERF</b>	Water Environment & Reuse Foundation
<b>IERP</b>	Integrated Emergency Response Plan	<b>POTW</b>	Publicly Owned Treatment Works	<b>WIFIA</b>	Water Infrastructure Finance and Innovation Act
<b>JPA</b>	Joint Powers Authority	<b>ppm</b>	parts per million	<b>WIIN</b>	Water Infrastructure Improvements for the Nation Act
<b>LAFCO</b>	Local Agency Formation Commission	<b>PSA</b>	Professional Services Agreement	<b>WRDA</b>	Water Resources Development Act

## ORANGE COUNTY SANITATION DISTRICT GLOSSARY OF TERMS

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**ACTIVATED SLUDGE PROCESS** – A secondary biological wastewater treatment process where bacteria reproduce at a high rate with the introduction of excess air or oxygen and consume dissolved nutrients in the wastewater.

**BENTHOS** – The community of organisms, such as sea stars, worms, and shrimp, which live on, in, or near the seabed, also known as the benthic zone.

**BIOCHEMICAL OXYGEN DEMAND (BOD)** – The amount of oxygen used when organic matter undergoes decomposition by microorganisms. Testing for BOD is done to assess the amount of organic matter in water.

**BIOGAS** – A gas that is produced by the action of anaerobic bacteria on organic waste matter in a digester tank that can be used as a fuel.

**BIOSOLIDS** – Biosolids are nutrient rich organic and highly treated solid materials produced by the wastewater treatment process. This high-quality product can be recycled as a soil amendment on farmland or further processed as an earth-like product for commercial and home gardens to improve and maintain fertile soil and stimulate plant growth.

**CAPITAL IMPROVEMENT PROGRAM (CIP)** – Projects for repair, rehabilitation, and replacement of assets. Also includes treatment improvements, additional capacity, and projects for the support facilities.

**COLIFORM BACTERIA** – A group of bacteria found in the intestines of humans and other animals, but also occasionally found elsewhere, used as indicators of sewage pollution. E. coli are the most common bacteria in wastewater.

**COLLECTIONS SYSTEM** – In wastewater, it is the system of typically underground pipes that receive and convey sanitary wastewater or storm water.

**CERTIFICATE OF PARTICIPATION (COP)** – A type of financing where an investor purchases a share of the lease revenues of a program rather than the bond being secured by those revenues.

**CONTAMINANTS OF POTENTIAL CONCERN (CPC)** – Pharmaceuticals, hormones, and other organic wastewater contaminants.

**DILUTION TO THRESHOLD (D/T)** – The dilution at which the majority of people detect the odor becomes the D/T for that air sample.

**GREENHOUSE GASES (GHG)** – In the order of relative abundance water vapor, carbon dioxide, methane, nitrous oxide, and ozone gases that are considered the cause of global warming (“greenhouse effect”).

**GROUNDWATER REPLENISHMENT SYSTEM (GWRS)** – A joint water reclamation project that proactively responds to Southern California’s current and future water needs. This joint project between the Orange County Water District and OCSD provides 70 million gallons per day of drinking quality water to replenish the local groundwater supply.

**LEVEL OF SERVICE (LOS)** – Goals to support environmental and public expectations for performance.

**N-NITROSODIMETHYLAMINE (NDMA)** – A N-nitrosamine suspected cancer-causing agent. It has been found in the GWRS process and is eliminated using hydrogen peroxide with extra ultra-violet treatment.

**NATIONAL BIOSOLIDS PARTNERSHIP (NBP)** – An alliance of the NACWA and WEF, with advisory support from the EPA. NBP is committed to developing and advancing environmentally sound and sustainable biosolids management practices that go beyond regulatory compliance and promote public participation to enhance the credibility of local agency biosolids programs and improved communications that lead to public acceptance.

**PER- AND POLYFLUOROALKYL SUBSTANCES (PFAS)** – A large group (over 6,000) of human-made compounds that are resistant to heat, water, and oil and used for a variety of applications including firefighting foam, stain and water-resistant clothing, cosmetics, and food packaging. Two PFAS compounds, perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA) have been the focus of increasing regulatory scrutiny in drinking water and may result in adverse health effects including developmental effects to fetuses during pregnancy, cancer, liver damage, immunosuppression, thyroid effects, and other effects.

**PERFLUOROCTANOIC ACID (PFOA)** – An ingredient for several industrial applications including carpeting, upholstery, apparel, floor wax, textiles, sealants, food packaging, and cookware (Teflon).

**PERFLUOROCTANESULFONIC ACID (PFOS)** – A key ingredient in Scotchgard, a fabric protector made by 3M, and used in numerous stain repellents.

**PLUME** – A visible or measurable concentration of discharge from a stationary source or fixed facility.

**PUBLICLY OWNED TREATMENT WORKS (POTW)** – A municipal wastewater treatment plant.

**SANTA ANA RIVER INTERCEPTOR (SARI) LINE** – A regional brine line designed to convey 30 million gallons per day of non-reclaimable wastewater from the upper Santa Ana River basin to the ocean for disposal, after treatment.

**SANITARY SEWER** – Separate sewer systems specifically for the carrying of domestic and industrial wastewater.

**SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT (SCAQMD)** – Regional regulatory agency that develops plans and regulations designed to achieve public health standards by reducing emissions from business and industry.

**SECONDARY TREATMENT** – Biological wastewater treatment, particularly the activated sludge process, where bacteria and other microorganisms consume dissolved nutrients in wastewater.

**SLUDGE** – Untreated solid material created by the treatment of wastewater.

**TOTAL SUSPENDED SOLIDS (TSS)** – The amount of solids floating and in suspension in wastewater.

## **ORANGE COUNTY SANITATION DISTRICT GLOSSARY OF TERMS**

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**TRICKLING FILTER** – A biological secondary treatment process in which bacteria and other microorganisms, growing as slime on the surface of rocks or plastic media, consume nutrients in wastewater as it trickles over them.

**URBAN RUNOFF** – Water from city streets and domestic properties that carry pollutants into the storm drains, rivers, lakes, and oceans.

**WASTEWATER** – Any water that enters the sanitary sewer.

**WATERSHED** – A land area from which water drains to a particular water body. OCSD's service area is in the Santa Ana River Watershed.