

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, is made and entered into to be effective the 1st day of May, 2022, by and between the ORANGE COUNTY SANITATION DISTRICT, hereinafter referred to as "OC SAN", and **ATLAS TECHNICAL CONSULTANTS LLC**, for purposes of this AGREEMENT hereinafter referred to as "CONSULTANT". OC SAN and CONSULTANT are referred to herein collectively as the "Parties" or individually as a "Party."

WITNESSETH:

WHEREAS, OC SAN desires to engage a consultant for materials testing, inspection, and other geotechnical testing services in support of the OC SAN's Capital Improvement Program, Facilities Engineering, Operations, and Maintenance projects, **PSA2022-003**; and,

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

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

WHEREAS, at its regular meeting on March 23, 2022, the Board of Directors, by Minute Order, accepted the recommendation of the Operations Committee to approve this AGREEMENT between OC SAN and CONSULTANT.

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

1. SCOPE OF WORK

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

- A. The CONSULTANT shall be responsible for the professional quality, technical accuracy, and completeness and coordination of the work and services furnished by the CONSULTANT under this AGREEMENT, including the work performed by its 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 applicable laws, regulations, codes, industry standards and liability for damages caused by errors, omissions, noncompliance with industry standards, and/or negligence on the part of 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 highest industry standards for clarity, uniformity, and completeness. CONSULTANT shall timely respond to all comments, suggestions, and recommendations from OC SAN. All comments from OC SAN, or its agent, shall be incorporated into the work prior to

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

- C. In the event that CONSULTANT's services and/or work product(s) is not to the satisfaction of OC SAN and/or does not conform to the requirements of this AGREEMENT or the applicable industry standards, the CONSULTANT shall, without additional compensation, promptly correct or revise any errors or deficiencies in its work product(s) within the timeframe specified by the Project Manager. OC SAN may charge to CONSULTANT all costs, expenses and damages associated with any such corrections or revisions.
- D. All professional services performed by the CONSULTANT, including, but not limited to, all drafts, data, correspondence, proposals, and reports 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, or (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 services in accordance with the following provisions:

A. Total Compensation

Total compensation shall be in an amount not to exceed Four Hundred Thousand Dollars (\$400,000.00), over a three (3) year period.

OC SAN shall pay to CONSULTANT one total hourly rate set forth in Attachment "D" - Fee Proposal. The rate shall include all costs such as, but not necessarily limited to, technician labor, equipment, and overhead rates, report writing, office review and supervision, other miscellaneous charges. Drive time and mileage shall be included in the hourly rate and will not be allowed as additional costs.

B. Other Direct Costs

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

3. PAYMENT

- A. Invoice: CONSULTANT shall include in its invoice, a detailed breakdown of costs associated with the performance of any corrections or revisions of the work for that invoicing period, in a format acceptable to OC SAN. CONSULTANT shall include copies of the daily notes or tasks including the signature of the OC SAN's Inspector approving the day's work for that invoicing period. CONSULTANT shall warrant and certify the accuracy of these costs and provide all support documentation required by OC SAN. CONSULTANT understands that submitted costs are subject to Audit Provisions as stated under this Agreement.
- B. CONSULTANT will submit statements covering services and/or work performed for payment for those items. The format must include, as a minimum: 1) current billing period invoicing, 2) current billing period "total percent invoiced to date", and 3) budget status and amount remaining. Such requests shall be accompanied by such supporting data as may be required by OC SAN.

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

- C. 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.
- D. Pursuant to the California False Claims Act (Government Code sections 12650-12655), any CONSULTANT that knowingly submits a false claim to OC SAN for compensation under the terms of this AGREEMENT may be held liable for treble damages and up to a \$10,000 civil penalty for each false claim submitted. This section shall also be binding on all Subconsultants.

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.

4. PREVAILING WAGES

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

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 Regulations Section 16461(e).

6. DOCUMENT OWNERSHIP – CONSULTANT PERFORMANCE

- A. Ownership of Documents for the Professional Services performed.

All documents in all forms (electronic, paper, etc.), including, but not limited to, studies, sketches, drawings, computer printouts, disk files, and electronic copies prepared in connection with or related to the Scope of Work or Professional Services, shall be the property of OC SAN. OC SAN's ownership of these documents includes use of, reproduction or reuse of and all incidental rights, whether or not the work for which they were prepared has been performed. OC SAN ownership entitlement arises upon payment or any partial payment for work performed and includes ownership of any and all work product completed prior to that payment. This Section shall apply whether the CONSULTANT's Professional Services are terminated: a) by the completion of the AGREEMENT, or b) in accordance with other provisions of this AGREEMENT. Notwithstanding

any other provision of this paragraph or AGREEMENT, the CONSULTANT shall have the right to make copies of all such plans, studies, sketches, drawings, computer printouts and disk files, and specifications.

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

7. AGREEMENT TERM

The services provided under this AGREEMENT shall be for the period of three (3) years, commencing on May 1, 2022 and continuing through April 30, 2025.

8. INSURANCE

A. General

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

B. General Liability

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: Two Million Dollars (\$2,000,000) per occurrence with Four Million Dollars (\$4,000,000) aggregate. 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.

C. Umbrella Excess Liability

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

D. Automotive/Vehicle liability Insurance

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

E. Drone Liability Insurance

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

F. Worker's Compensation Insurance

The CONSULTANT shall provide such Workers' Compensation Insurance as required by the Labor Code of the State of California in the amount of the statutory limit, including Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) per occurrence. Such Worker's Compensation Insurance shall be endorsed to provide for a waiver of subrogation in favor of 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 One Million Dollars (\$1,000,000) 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 complete, certified copies of all required insurance policies, including endorsements, effecting the coverage required, at any time. The following are approved forms that must be submitted as proof of coverage:

- Certificate of Insurance ACORD Form 25 (5/2010) or equivalent.
- Additional Insurance (General Liability) (ISO Form) CG2010 11 85 or
The combination of (ISO Forms)
CG 2010 10 01 and CG 2037 10 01
All other Additional Insured endorsements must be submitted for approval by OC SAN, and OC SAN may reject alternatives that provide different or less coverage to OC SAN.
- Additional Insured (Auto Liability) Submit endorsement provided by carrier for OC SAN approval.
- Waiver of Subrogation State Compensation Insurance Fund Endorsement No. 2570 or equivalent.
- Cancellation Notice State Compensation Insurance Fund Endorsement No. 2065 or equivalent.

I. Cancellation Notice

Each insurance policy required herein shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days' prior written notice. The Cancellation Section of ACORD Form 25 (5/2010) shall state the required thirty (30) days' written notification. The policy shall not terminate, nor shall it be cancelled, nor the coverage reduced until thirty (30) days after written notice is given to OC SAN except for nonpayment of premium, which shall require not less than ten (10) days written notice to OC SAN. Should there be changes in coverage or an increase in deductible or SIR amounts, the CONSULTANT and its insurance broker/agent shall send to OC SAN a certified letter which includes a description of the changes in coverage and/or any increase in deductible or SIR amounts. The certified letter must be sent to the attention of Risk Management, and shall be received by OC SAN not less than thirty (30) days prior to the effective date of the change(s) if the change would reduce coverage or increase deductibles or SIR amounts or otherwise reduce or limit the scope of insurance coverage provided to OC SAN.

J. Primary Insurance

All liability policies shall contain a Primary and Non Contributory Clause. Any other insurance maintained by OC SAN shall be excess and not contributing with the insurance provided by CONSULTANT.

K. Separation of Insured

All liability policies shall contain a "Separation of Insureds" clause.

L. Non-Limiting (if applicable)

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

M. Deductibles and Self-Insured Retentions

Any deductible and/or self-insured retention must be declared to OC SAN on the Certificate of Insurance. All deductibles and/or self-insured retentions require 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

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.

9. SCOPE CHANGES

In the event of a change in the Scope of Work or a change in the proposed Project, 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.

10. PROJECT TEAM AND SUBCONSULTANTS

CONSULTANT shall provide to OC SAN, prior to execution of this AGREEMENT, the names and full description of all Subconsultants and CONSULTANT's project team members anticipated to be used on this Project under this AGREEMENT by CONSULTANT. CONSULTANT shall include a description of the work and services to be done by each Subconsultant and each of CONSULTANT's Project team member. CONSULTANT shall include the respective compensation amounts for CONSULTANT and each Subconsultant.

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

11. ENGINEERING REGISTRATION

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

12. AUDIT PROVISIONS.

A. OC SAN retains the reasonable right to access, review, examine, and audit, any and all books, records, documents and any other evidence of procedures and practices that OC SAN determines are necessary to discover and verify that 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.

13. LEGAL RELATIONSHIP BETWEEN PARTIES

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

14. NOTICES

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

ORANGE COUNTY SANITATION DISTRICT
10844 Ellis Avenue
Fountain Valley, CA 92708-7018
Attention: Clarice Marcin, Contracts Administration
Copy: William Gilbert and Rick Kwiecien, Project Managers

CONSULTANT:

Atlas Technical Consultants LLC
6280 Riverdale Street
San Diego, CA 92120
Attention: Ron Baudour
Copy: Dan Ferguson

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

15. TERMINATION

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

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

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

16. DOCUMENTS AND STUDY MATERIALS

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

17. COMPLIANCE

A. Labor

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

B. Air Pollution

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

18. AGREEMENT EXECUTION AUTHORIZATION

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

19. DISPUTE RESOLUTION

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

20. ATTORNEY'S FEES, COSTS AND NECESSARY DISBURSEMENTS

If any action at law or in equity or if any proceeding in the form of an Alternative Dispute Resolution (ADR) is necessary to enforce or interpret the terms of this AGREEMENT, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which he may be entitled.

21. WARRANTY

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

22. INDEMNIFICATION

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

- (A) the active negligence or willful misconduct of the Indemnified Parties; or
- (B) a natural disaster or other act of God, such as an earthquake; or
- (C) the independent action of a third party who is neither one of the Indemnified Parties nor 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. COMPLIANCE WITH OC SAN POLICIES AND PROCEDURES

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

25. CLOSEOUT

When OC SAN determines that all Work authorized under the AGREEMENT is fully complete and that OC SAN requires no further work from CONSULTANT, or the AGREEMENT is otherwise terminated or expires in accordance with the terms of the AGREEMENT, OC SAN shall give 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 the 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.

26. ENTIRE AGREEMENT

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

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

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

CONSULTANT: ATLAS TECHNICAL CONSULTANTS LLC

By _____ Date _____

Printed Name & Title

ORANGE COUNTY SANITATION DISTRICT

By _____ Date _____
John B. Withers
Board Chairman

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

By _____ Date _____
Ruth Zintzun
Purchasing & Contracts Manager

- Attachments: Attachment "A" – Scope of Work
Attachment "B" – Not Attached
Attachment "C" – Not Attached
Attachment "D" – Fee Proposal
Attachment "E" – Not Used
Attachment "F" – Not Attached
Attachment "G" – Not Attached
Attachment "H" – Not Used
Attachment "I" – Safety Declaration
Attachment "J" – Contractor Safety Standards
Attachment "K" - Allowable Direct Costs

CMM:yp

ATTACHMENT “A”

SCOPE OF WORK

ATTACHMENT "A"

SCOPE OF WORK

MATERIALS TESTING, INSPECTION, AND OTHER GEOTECHNICAL TESTING SERVICES FOR THE ORANGE COUNTY SANITATION DISTRICT'S CAPITAL IMPROVEMENT PROGRAM, FACILITIES ENGINEERING, OPERATIONS, AND MAINTENANCE PROJECTS

PSA2022-003

I. PURPOSE

The selected CONSULTANT shall provide on-call materials testing, inspection and other geotechnical testing services as required in support of OC SAN's Capital Improvement Program, Facilities Engineering, Operations, and Maintenance projects. The locations for this work include the two treatment plants and other facilities (pump stations and collections system) located throughout Orange County and offsite facilities as required for testing and observation.

II. TYPICAL TASKS

- SOILS:** Provide lab testing for maximum density, sieve analysis, gradation and soil identification. Field-test compacted soil using nuclear density meter methods. Inspect compaction efforts by contractors to achieve specification-required densities. On a less frequent basis, be prepared to conduct soil sampling to depths as required.
- CONCRETE/MASONRY:** Provide concrete, mortar and grout cylinder compressive testing, masonry prism test, and shear test on brick cores. Pick up test specimen sets from construction sites. Provide concrete and masonry construction inspection as needed.
- WELDING INSPECTION:** Provide certified welding inspection for pipelines, welded connections, or as directed by OC SAN. The inspections shall include non-destructive testing and destructive testing as needed. Some welding inspection may occur outside of California and fees will be negotiated on a case-by-case basis.
- ASPHALT:** Provide field density testing and sample collection and lab testing. Inspect compaction efforts by contractors to achieve specification-required densities.
- METALS:** Provide tensile strength lab testing. Provide field testing for welds and inspect welding operations. As needed, provide materials analysis to determine the type of steel with destructive testing as required. Provide Positive Material Identification utilizing an XRF analyzer, Niton XLT 898 or equal.

MATERIALS: Provide material testing services for determining the chemical composition of various metals including but not limited to cast iron, cast steel, ductile iron, FRP, stainless steel castings (fittings), stainless steel piping, steel pipe, aluminum, copper alloy or as directed. Service may include destructive and non-destructive testing and opinion as to the grade, type, or ASTM equivalent.

III. REQUIREMENTS

1. CONSULTANT shall be available to work the next day if scheduled by the end of the work day. OC SAN expects that the technician will arrive at the site with the correct equipment, calibrated to existing standards with documentation. OC SAN will not reimburse the CONSULTANT for the time required to obtain the correct equipment.
2. Equipment that requires calibration shall be calibrated prior to the work. Calibration costs and equipment shall be included in the total hourly rate for field service fees.
3. All test results shall be clearly summarized in a standardized report format and submitted to OC SAN for review and comment.
4. CONSULTANT shall provide a detailed daily report for each day of field testing and observation with reported hours within 24 hours. The report can be non-carbon or photo copied reproduction. CONSULTANT shall sign in and out daily with the OC SAN representative.
5. CONSULTANT shall be available for night work (4:30 p.m. to 7:00 a.m.) upon 24-hour advance notice.
6. CONSULTANT shall be available to attend a pre-construction meeting and other key meetings as the project progresses.
7. All technicians must be adequately insured for liability and property damage, and a copy of the policy must be forwarded to OC SAN. Vehicles shall bear the CONSULTANT's name.
8. At least one member in the field shall have a cell phone or other form of communication so as to be in contact with the home office in the event the OC SAN requires immediate communication during normal working hours, and shall have means to be directly contacted in the field by OC SAN personnel via cell phone.
9. CONSULTANT must be able to recognize errors or omissions in the contract documents and specifications, and alert OC SAN staff timely in order to mitigate production delays and costs.
10. CONSULTANT shall comply with OSHA requirements and OCSD Safety Standards.
11. On occasion, CONSULTANT will be required to enter confined spaces to perform work. Entrants shall be CAL-OSHA confined-space trained and certified. Certifications shall be submitted to OC SAN for review and approval at least 48

hours prior to commencement of work. Personnel will be entering under Contractor's confined-space entry permit.

12. Personal protective equipment (PPE), including lower explosive limit (LEL) personal monitors is required onsite for all personnel.
 - a. Personnel must be fall-protection trained and provide their own fall-protection PPE, when onsite.
13. OC SAN shall provide to the CONSULTANT a Task Order Number that will be used to track the work. The CONSULTANT will not begin any work without the Task Order Number. If the CONSULTANT receives direction from OC SAN to perform some type of work without a Task Order Number, the CONSULTANT shall contact the Inspection Supervisor to determine if the work is authorized and receive a Task Order Number if appropriate.
14. CONSULTANT will submit monthly statements, ***separately for each project or Task***, covering services and/or work performed no later than the second Wednesday of the following month and in the format required by OC SAN, to request payment. 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 sign in/out sheets signed by CONSULTANT and OC SAN representative), including:
 - Task Order Number and Project Number and/or Project Description included on the statement.
 - Tasks completed, identified by the Task number assigned to each Task.
 - Detailed breakdown of all costs incurred per task performed, and all back-up documentation for each Task.
 - Copy of the daily notes or tasks including the signature of OC SAN's Inspector approving the day's work.
 - Running total of services billed, services paid, services billed but not paid, and the amount of the contract remaining.

OC SAN will not approve any task performed without the appropriate back-up documentation and may result in delayed or partial payment. Failure to submit monthly statements no later than the second Wednesday of the following month may result in delayed payment.

15. If any conflict of interest occurs on a project, OC SAN shall be notified without delay of the conflict. OC SAN will evaluate conflict of interest on a case-by-case basis and advise as to whether it may be waived in each case.
16. To accommodate cases where other materials testing services are required, CONSULTANT shall, when requested by OC SAN, locate and subcontract local, qualified inspectors who can satisfy requirements for inspection and/or testing, and shall direct the work of the subcontractor(s). Billing rates for subcontractor(s) shall not exceed submitted rates for this proposal, plus a 15% overhead mark up.