

PROFESSIONAL CONSULTANT SERVICES AGREEMENT
General Legal Services
Specification No. CS-2024-1440BD

This PROFESSIONAL CONSULTANT SERVICES AGREEMENT (hereinafter referred to as "Agreement") is made and entered into as of the date fully executed below, by and between Orange County Sanitation District (hereinafter referred to as "OC San") and Best Best & Krieger LLP (hereinafter referred to as "Consultant"), and collectively referred to herein as the "Parties."

RECITALS

WHEREAS, OC San desires to obtain general legal services as described in Exhibit "A" attached hereto and incorporated herein by this reference ("Services"); and

WHEREAS, Consultant is qualified to provide the Services by virtue of possessing law licenses, experience, training, and expertise; and

WHEREAS, OC San desires to engage Consultant to render the Services as provided herein; and

WHEREAS, OC San selected Consultant to provide the Services in accordance with OC San's current Purchasing Ordinance; and

WHEREAS, on June 26, 2024, OC San's Board of Directors, by minute order, authorized execution of this Agreement.

NOW, THEREFORE, in consideration of the above recitals and the mutual promises and benefits specified below, the Parties agree as follows:

1. General.

1.1 This Agreement and all exhibits hereto are made by OC San and the Consultant.

1.2 The following exhibits, in order of precedence, are incorporated by reference and made part of this Agreement.

Exhibit "A" – Scope of Work

Exhibit "B" – Statement of Qualifications and Rate Schedule(s)

Exhibit "C" – Determined Insurance Requirement Form

Exhibit "D" – Contractor Safety Standards

Exhibit "E" – Human Resources Policies

1.3 In the event of any conflict or inconsistency between the provisions of this Agreement and any of the provisions of the exhibits hereto, the provisions in the Agreement shall control and thereafter the provisions in the document highest in precedence shall be controlling.

1.4 Except as expressly provided otherwise, OC San accepts no liability for any expenses, losses, or actions incurred or undertaken by Consultant as a result of work performed in anticipation of purchases of the Services by OC San.

1.5 Work Hours: The work required under the Agreement may include normal business hours, evenings, and weekends. All work or meetings with OC San staff shall be

scheduled Monday through Friday, between the hours of 8:00 a.m. and 4:30 p.m. OC San will not pay for travel time.

1.6 Days: Shall mean calendar days, unless otherwise noted.

1.7 OC San holidays (non-working days) are as follows: New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve, and Christmas Day.

1.8 The provisions of this Agreement may be amended or waived only by an amendment executed by authorized representatives of both Parties.

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

2. Scope of Work.

2.1 Consultant shall provide the Services identified in Exhibit "A" in a competent, professional, and satisfactory manner in accordance with generally accepted industry and professional standards, including fiduciary standards, ethical practices, and standards of care and competence for its trade/profession.

2.2 Modifications to Scope of Work. OC San shall have the right to modify the Scope of Work at any time. All modifications must be made by an amendment signed by both Parties.

2.3 Performance. Time is of the essence in the performance of the provisions hereof.

3. Agreement Term.

3.1 The term of this Agreement shall be for five (5) years commencing on the effective date of the Notice to Proceed.

3.2 Renewals. At its sole discretion, OC San may exercise the option to renew this Agreement for up to one (1) five-year period. This Agreement may be renewed by an OC San Purchase Order. OC San shall have no obligation to renew the Agreement nor to give a reason if it elects not to renew it.

3.3 Extensions. The term of this Agreement may be extended only by an amendment signed by both Parties.

4. Compensation.

4.1 As compensation for the Services provided under this Agreement, OC San shall compensate Consultant for the reasonable time Consultant's attorneys, paralegals, and applicable administrative support staff spend on OC San matters based on the applicable hourly rates in effect at the time the work is performed. The current hourly rates for Consultant's attorneys, paralegals, and applicable administrative support staff are listed on the Rate Schedule(s) attached hereto as Exhibit "B".

4.2 Adjustment. Consultant may adjust the hourly rates once every 12-month period during the term of the Agreement. Such adjustments shall not exceed the percentage increase in the Consumer Price Index for the Los Angeles-Orange County Metropolitan area.

- 4.3 **Costs and Disbursements.** OC San shall compensate Consultant for costs and disbursements Consultant incurs and pays on OC San's behalf, including filing fees, computerized legal research, facsimiles, long distance telephone calls, photocopying, shipping, etc. Such costs and disbursements shall be itemized in Consultant's invoices and shall be compensated at cost.
5. **Payments and Invoicing.**
- 5.1 OC San shall pay itemized invoices submitted monthly for work completed in accordance with Exhibit "A" and consistent with Exhibit "B" thirty (30) days from receipt of the invoice and after approval by OC San's Project Manager or designee. OC San shall be the determining party, in its sole discretion, as to whether the Services have been satisfactorily completed.
- 5.2 Consultant shall submit its invoices to OC San Accounts Payable by electronic mail to APStaff@OCSan.gov. In the subject line include "INVOICE" and the Purchase Order Number.
6. **Key Personnel.** Personnel, as provided in Exhibit "B," are considered "key" to the work under this Agreement and will be available for the term of the Agreement. The "key" personnel includes Scott Smith who will serve as Principal General Counsel to the OC San Board of Directors. No person designated as key under this Agreement shall be removed or replaced without prior written consent of OC San. If OC San asks Consultant to remove a person designated as key under this Agreement, Consultant agrees to do so immediately regardless of the reason, or the lack of reason, for OC San's request. Consultant shall assign only competent personnel to perform Services under this Agreement.
7. **Ownership of Documents.** All reports, records, documents, memoranda, correspondence, computations, and other materials prepared by Consultant, its employees, subconsultants, and agents in the performance of this Agreement shall be the property of OC San and shall be promptly delivered to OC San upon request of OC San's Project Manager or designee or upon the termination of this Agreement and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by OC San of its full rights of ownership of the documents and materials hereunder. Any use of such completed documents for other projects and/or use of incomplete documents without specific written authorization by the Consultant will be at OC San's sole risk and without liability to Consultant. Consultant shall ensure that all its contracts with its subconsultants/subcontractors provide for assignment to OC San of any documents or materials prepared by them.
8. **Ownership of Intellectual Property.**
- 8.1 Consultant agrees that all reports, memoranda, investigations, training materials, 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 OC San as its sole and exclusive property.
- 8.2 Consultant agrees to promptly disclose to OC San all such New Developments. Upon OC San's request, Consultant agrees to assist OC San, at OC San's expense, to obtain patents or copyrights for such New Developments, including the disclosure of all pertinent information and data with respect thereto, the execution of all applications, specifications, assignments, and all other instruments and papers which OC San shall deem necessary to apply for and to assign or convey to OC San, its successors and

assigns, the sole and exclusive right, title, and interest in such New Developments. Consultant agrees to obtain or has obtained written assurances from its employees and contract personnel of their agreement to the terms hereof regarding New Developments and confidential information.

8.3 Consultant warrants that Consultant will have good title to any New Developments and the right to assign New Developments to OC San free of any proprietary rights of any other party or any other encumbrance whatever.

8.4 The originals of all computations, drawings, designs, graphics, studies, reports, manuals, photographs, videotapes, data, computer files, and other documents prepared or caused to be prepared by Consultant or its subconsultants/subcontractors in connection with the Services hereunder shall be delivered to and shall become the exclusive property of OC San. OC San may utilize such documents, at its own risk, for OC San's applications on other projects or extensions of this project.

9. Right to Review Services, Facilities, and Records.

9.1 OC San reserves the right to review any portion of the Services performed by Consultant under this Agreement and Consultant agrees to cooperate to the fullest extent possible in such endeavor.

9.2 Consultant shall furnish to OC San such reports, statistical data, and other information pertaining to Consultant's Services as shall be reasonably required by OC San to carry out its rights and responsibilities under its agreements with its bondholders or noteholders and any other agreement relating to the development of the project(s) and in connection with the issuance of its official statements and other prospectuses with respect to the offering, sale, and issuance of its bonds and other obligations.

9.3 The right of OC San to review or approve procedures, instructions, reports, schedules, or other data that are developed by Consultant shall not relieve Consultant of any obligation set forth herein.

10. Conflict of Interest and Reporting.

10.1 Consultant shall, at all times, avoid conflicts of interest or appearance of conflicts of interest in performance of this Agreement.

10.2 Consultant affirms that, to the best of its knowledge, there exists no actual or potential conflict between Consultant's families, business, or financial interest and the Services under this Agreement and in the event of change in either its private interests or Services under this Agreement, it shall raise with OC San any question regarding possible conflict of interest which may arise as a result of such change.

11. Audit Rights. Consultant agrees that, during the term of this Agreement and for a period of three (3) years after its expiration or termination, OC San shall have access to and the right to examine any directly pertinent books, documents, and records of Consultant relating to the invoices submitted by Consultant pursuant to this Agreement.

12. Contractor Safety Standards and Human Resources Policies. OC San requires Consultant, its subconsultants, and its subcontractors to follow and ensure their employees follow all Federal, State, and local regulations as well as Contractor Safety Standards while working at OC San locations. If, during the course of the Agreement, it is discovered that Contractor Safety Standards do not comply with Federal, State, or local regulations, the Consultant is required to follow the most stringent regulatory requirement at no additional

cost to OC San. Consultant, its subconsultants, and all of their employees shall adhere to all applicable Contractor Safety Standards in Exhibit "D" and the Human Resources Policies in Exhibit "E."

13. **Insurance.** Consultant and all its subconsultants/subcontractors shall purchase and maintain, throughout the term of this Agreement and any periods of warranty or extensions, insurance in amounts equal to the requirements set forth in the signed Exhibit "C" – Determined Insurance Requirement Form. Consultant shall not commence work under this Agreement until all required insurance is obtained in a form acceptable to OC San, nor shall Consultant allow any subconsultant/subcontractor to commence service pursuant to a subcontract until all insurance required of the subconsultant/subcontractor has been obtained. Failure to obtain and maintain the required insurance coverage shall result in termination of this Agreement.

14. **Indemnification and Hold Harmless Provision.**

14.1 To the fullest extent permitted by law, Consultant shall indemnify, defend (at Consultant's sole cost and expense and with legal counsel approved by OC San, which approval shall not be unreasonably withheld), protect, and hold harmless OC San and all of OC San's officers, directors, employees, consultants, and agents (collectively the "Indemnified Parties"), from and against any and all claims, damages, liabilities, causes of action, suits, arbitration awards, losses, judgments, fines, penalties, costs, and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional, expert or Consultant's fees and costs, and OC San's general and administrative expenses; individually, a "Claim"; 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.

14.2 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.

14.3 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.

15. Duty to Defend.

- 15.1 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.
- 15.2 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.

16. Independent Contractor.

- 16.1 Consistent with California Government Code section 54957(b), it is understood and agreed that Consultant is acting as an independent contractor for OC San and that Consultant will also function as an officer in the role of General Counsel.
- 16.2 During the performance of this Agreement, Consultant and its officers, employees, and agents shall act in an independent capacity and shall not act as OC San's officers, employees, or agents. OC San assumes no liability for Consultant's action and performance nor assumes responsibility for taxes, funds, payments, or other commitments, expressed or implied, by or for Consultant.
- 16.3 Consultant shall not be considered an agent of OC San for any purpose whatsoever nor shall Consultant have the right to, and shall not, commit OC San to any agreement, contract, or undertaking. Consultant shall not use OC San's name in its promotional material or for any advertising or publicity purposes without prior expressed written consent of OC San.
- 16.4 Consultant 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. Consultant shall be responsible for providing, at Consultant's expense, disability, worker's compensation, and other insurance as well as licenses and permits usual or necessary for conducting the Services hereunder.
- 16.5 Consultant shall be obligated to pay any and all applicable Federal, State, and local payroll and other taxes incurred as a result of fees hereunder. Consultant hereby

indemnifies OC San for any claims, losses, costs, fees, liabilities, damages, or penalties suffered by OC San arising out of Consultant's breach of this provision.

16.6 Consultant 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. Consultant shall remain ineligible for such benefits or participation in such benefit plans even if a court later decides that OC San misclassified Consultant for tax purposes.

17. **Subcontracting and Assignment.** Consultant 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.

18. **No Solicitation of Employees.**

18.1 Consultant agrees that it shall not, during the term of this Agreement and for a period of one (1) year immediately following expiration or termination of this Agreement or any extension hereof, call on, solicit, or take away any of the employees whom Consultant became aware of as a result of Consultant's Services to OC San.

18.2 Consultant acknowledges that OC San's employees are critical to its business and OC San expends significant resources to hire, employ, and train employees. Should Consultant employ or otherwise engage OC San's employees during the term of this Agreement and for a period of one (1) year following expiration or termination of this Agreement, Consultant shall pay OC San fifty percent (50%) of the former employee's most recent annual salary earned at OC San to accurately reflect the reasonable value of OC San's time and costs. This payment is in addition to any other rights and remedies OC San may have at law.

19. **Confidentiality and Non-Disclosure.**

19.1 Consultant acknowledges that, in performing the Services hereunder, OC San may have to disclose to Consultant, orally and in writing, certain confidential information that OC San considers proprietary and has developed at great expense and effort.

19.2 Consultant agrees to maintain in confidence and not disclose to any person, firm, or corporation, without OC San's prior written consent, any trade secret, confidential information, knowledge, or data relating to the products, process, or operation of OC San.

19.3 Consultant further agrees to maintain in confidence and not to disclose to any person, firm, or corporation any OC San data, information, or material developed or obtained by Consultant during the term of this Agreement.

19.4 Consultant agrees as follows:

19.4.1 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.

19.4.2 To restrict access to the confidential information to its subconsultant/subcontractor or personnel of Consultant who (1) have a need to have such access and (2) have been advised of and have agreed in writing to treat such information in accordance with the terms of this Agreement.

- 19.4.3 To return all confidential information in Consultant's possession upon termination of this Agreement or upon OC San's request, whichever occurs first.
- 19.4.4 To hold in confidence information and materials, if any, developed pursuant to the Services hereunder.
- 19.4.5 The provisions of this section shall survive termination or expiration of this Agreement and shall continue for so long as the material remains confidential.
20. **Non-Liability of OC San Officers and Employees.** No officer or employee of OC San shall be personally liable to Consultant, 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 Consultant or to its successor, or for breach of any obligation under the terms of this Agreement.
21. **Third-Party Rights.** Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than OC San and Consultant.
22. **Applicable Laws and Regulations.** Consultant shall comply with all applicable Federal, State, and local laws, rules, and regulations. Consultant also agrees to indemnify and hold OC San harmless from any and all damages and liabilities assessed against OC San as a result of Consultant's noncompliance therewith. Any provision required by law to be included herein shall be deemed included as a part of this Agreement whether or not specifically included or referenced.
23. **Licenses, Permits, Ordinances, and Regulations.** Consultant 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 Consultant.
24. **Dispute Resolution.**
- 24.1 The Parties agree that any and all disputes, claims, or controversies arising out of or relating to this Agreement, including, but not limited to, disputes as to the construction or interpretation of this Agreement or any rights or obligations hereunder, shall be submitted to JAMS, or its successor, for mediation in Orange County, California. The Parties will cooperate with JAMS and with one another in selecting a mediator from the JAMS panel of neutrals and in scheduling the mediation proceedings. The Parties agree that they will participate in the mediation in good faith and that they will share equally in its costs.
- 24.2 All offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts, and attorneys and by the mediator or any JAMS employees are confidential, privileged, and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.
- 24.3 Either Party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following 45 days from the date of the mediation (the "Earliest Initiation Date.")

- 24.4 All applicable statutes of limitation and defenses based upon the passage of time shall be tolled starting from the submission of a dispute for mediation until 15 days after the Earliest Initiation Date. The Parties will take such action, if any, required to effectuate such tolling.
- 24.5 Any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, and including, without limitation, federal and state statutory claims, common law claims, and those based in contract, tort, fraud, misrepresentation, or any other legal theory shall be determined by arbitration in Orange County, California. The issues in dispute shall be submitted to arbitration pursuant to Code of Civil Procedure, Part 3, Title 9, sections 1280 et seq. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Except that discovery may be conducted in connection with the arbitration proceeding pursuant to Code of Civil Procedure section 1283.05. The Parties are not precluded from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.
- 24.6 The Parties will work together to select an agreed upon arbitrator. In the absence of agreement, each party shall select an arbitrator and those two (2) arbitrators shall select a third. The arbitrator shall decide each and every dispute in accordance with the laws of the State of California. The arbitrator's decision and award shall be subject to review for errors of fact or law in the Superior Court for the County of Orange, with a right of appeal from any judgment issued therein.
25. **Remedies.** In addition to other remedies available in law or equity, if the Consultant fails to make delivery of the Services or repudiates its obligations under this Agreement, or if OC San rejects the Services or revokes acceptance of the Services, OC San may cancel the Agreement.
26. **Termination.**
- 26.1 OC San reserves the right to terminate this Agreement for its convenience, with or without cause, in whole or in part, at any time, by written notice from OC San. Upon receipt of a termination notice, Consultant shall immediately discontinue all work under this Agreement (unless the notice directs otherwise). OC San shall thereafter, within thirty (30) days, pay Consultant for work performed (cost and fee) through the date of termination. Such notice of termination shall terminate this Agreement and release OC San from any further fee, cost, or claim hereunder by Consultant other than for work performed through the date of termination.
- 26.2 OC San reserves the right to terminate this Agreement immediately upon OC San's determination that Consultant is not complying with the Scope of Work requirements, if the level of service is inadequate, or for any other default of this Agreement.
- 26.3 OC San may also immediately terminate this Agreement for default, in whole or in part, by written notice to Consultant:
- if Consultant becomes insolvent or files a petition under the Bankruptcy Act; or
 - if Consultant sells its business; or
 - if Consultant breaches any of the terms of this Agreement.

26.4 All OC San's property in the possession or control of Consultant shall be returned by Consultant to OC San on demand or at the expiration or termination of this Agreement, whichever occurs first.

27. **Attorney's Fees.** 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 the prevailing party may be entitled.
28. **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 Consultant 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.
29. **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.
30. **Survival.** The provisions of this Agreement dealing with payment, indemnity, and forum for enforcement shall survive expiration or early termination of this Agreement.
31. **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 the event any action is brought in connection with this Agreement or the performance thereof.
32. **Notices.**
32.1 All notices under this Agreement must be in writing. Written notice shall be delivered by personal service, by electronic telecommunication, or sent by registered or certified mail, postage prepaid, return receipt requested, or by any other overnight delivery service which delivers to the noticed destination and provides proof of delivery to the sender. Rejection or other refusal to accept or the inability to deliver because of changed address for which no notice was given as provided hereunder shall be deemed to be receipt of the notice, demand, or request sent. All notices shall be effective when first received at the following addresses:

OC San: Rob Thompson
General Manager
Orange County Sanitation District
10844 Ellis Avenue
Fountain Valley, CA 92708
Rthompson@ocsan.gov

Consultant: Scott C. Smith
Partner
Best Best & Krieger LLP
18101 Von Karman Avenue, Suite 1000
Irvine, CA 92612
scott.smith@bbklaw.com

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

33. Authority to Execute. The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the Parties are formally bound.

34. Entire Agreement. This Agreement constitutes the entire agreement of the Parties and supersedes all prior written or oral communications and all contemporaneous oral agreements, understandings, and negotiations between the Parties with respect to the subject matter hereof.

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

ORANGE COUNTY SANITATION DISTRICT

Dated: _____

By: _____
Chad P. Wanke
Chair, Board of Directors

Attest:

Kelly A. Lore, MMC
Clerk of the Board

Approved as to form:

Alex Ackerman
Special Counsel, Alston & Bird

BEST BEST & KRIEGER LLP

Dated: _____

By: _____
Scott C. Smith, Partner

EXHIBIT A
SCOPE OF WORK
For
General Legal Services

**EXHIBIT A
SCOPE OF WORK
GENERAL LEGAL SERVICES
SPECIFICATION NO. CS-2024-1440BD**

EXECUTIVE SUMMARY/OVERVIEW

The Orange County Sanitation District (OC San) operates the third largest wastewater agency west of the Mississippi River. Since 1954, we have safely collected, treated, and disposed of and/or reclaimed the wastewater generated by 2.6 million people living and working in central and northwestern Orange County, California.

Each day we treat approximately 180 million gallons of wastewater, enough water to fill Anaheim stadium over two and a quarter times. About 80 percent of the wastewater comes from homes – sinks, toilets, showers, laundry, and dishwashers. The remaining come from businesses – retail stores, restaurants, manufacturers, hotels, offices, and other industries.

OC San is a special district, governed by a 25-member Board of Directors. For the Fiscal Year 2022-23, OC San's total Operating and Capital Improvement Program budget was \$476.5 million.

We employ a staff of over 600 employees in professional, administrative, technical, and trade occupations, managing the day-to-day activities of OC San, including, but not limited to, in areas of public works, contracts, environmental, air quality, real estate, and utility rates. We have a diverse workforce in various job classifications including plant operators, mechanics, electricians, engineers, scientists, accountants, construction inspectors, among many others. Our facilities include 388 miles of sewer pipes, located throughout the county, and two treatment plants (one in Fountain Valley, CA and the other in Huntington Beach, CA) where wastewater is treated in accordance with strict state and federal standards. A future Headquarters Complex building to house OC San's administrative support departments is slated for completion in early 2024.

Our employees are on duty protecting public health and the environment by ensuring the sewer system operates efficiently 24 hours a day, seven days a week, and 365 days a year. We take pride in providing quality service to our ratepayers.

1 PURPOSE

OC San is seeking proposals (Proposals) from qualified legal firms (hereinafter referred to as "Consultant(s)") to provide legal services on an as-needed basis. Proposals are solicited in accordance with the terms, conditions, and instructions set forth in the Request for Proposal (RFP).

OC San intends to receive and evaluate Proposals from Consultants and enter into a Professional Services Agreement(s) (Agreement) for the legal services to be provided by the successful firm(s). OC San expects the Consultants providing legal services to be service-oriented, actively involved in the business of OC San, creative in finding solutions to matters, proactive in assisting OC San's officials and staff mitigate risks and avoid legal pitfalls, and tenacious in defending against claims and lawsuits.

OC San reserves the right to award an Agreement to a single firm for all the legal services requested or multiple Agreements to various firms for general services and/or specified areas of law listed in section 6, Areas of Law and Requirements, below.

2 BACKGROUND

OC San currently has one firm providing legal services in all areas listed in section 6, Areas of Law and Requirements, below. Over recent years, OC San has conducted an effort to competitively solicit all current services to ensure OC San is receiving the best value and service available. OC San currently spends between \$1.3 million to \$1.8 million annually for legal services outlined in this RFP.

In 2023, OC San conducted a solicitation to procure and award contracts for Human Resources legal services. The service covered under those agreements are not included in this solicitation.

The following are some data of interest for Consultants. OC San

- Has 49 active construction contracts valued at over \$750 million
- Annually issues over 5,000 purchase orders
- Has over 100 air quality permits
- Adopted 5-year rate increases in 2023
- Has a 10-year CIP budget of \$3.1 billion

3 DESCRIPTION

Through this RFP, OC San seeks qualified legal firms with local offices to act as OC San's outside counsel to provide legal advice and defense on matters, including, but not limited to, general counsel, public works construction, environmental law, general contracts, utility rate setting, real estate and related matters, air quality law, and other legal advisory services on an as-needed basis.

OC San may continue to employ attorneys who leave a firm selected under this RFP to complete any matters that are pending at the time the attorney leaves the employment of the firm, and OC San may continue to work with such attorney in new matters. Firms selected under this RFP shall cooperate in this respect.

OC San may also hire attorneys outside this procurement when a legal matter requires specialized knowledge, experience, or capacity that the firms selected through this RFP do not possess. This RFP does not entitle any selected firm to obtain actual assignments from OC San. Whether or not a selected firm is given assignments depends on the nature of the matter, the qualifications of the selected firm(s), and the needs of OC San.

OC San seeks legal services from qualified legal firm(s) with expertise in the areas of law detailed in section 6, Areas of Law and Requirements, below. The services shall be provided under the direction of OC San's Board of Directors or the General Manager, or designee. Consultant shall be retained and compensated in accordance with the fee schedule attached to the Agreement. OC San reserves the right not to accept all terms of the fee schedule submitted by Consultant(s).

Should a conflict of interest arise on an assignment, OC San may engage an alternative firm for such assignment.

OC San makes no commitment or guarantee as to the services that may be requested or billable hours to be worked by Consultant.

4 QUALIFICATIONS

Consultant and its attorneys must possess all active licenses and registrations necessary to practice law in the State of California. Further, it is required that Consultant has the experience and abilities listed below.

- Consultants or their attorneys shall have at least 10 years' experience providing legal services for special districts, municipalities, or other local public agencies in the areas of law specified below and for which they are submitting a Proposal, and the staff availability to meet OC San's needs in a timely manner.
- Substantial knowledge and experience in the interpretation of state, federal, and local laws and codes as they relate to special districts and wastewater agencies
- Substantial experience in working with agencies and public boards with multi-million-dollar annual budgets
- Substantial expertise and experience in all aspects of contract law as it pertains to the Public Contract Code and Government Code
- Substantial knowledge of the Brown Act, Political Reform Act, and Government Code section 1090
- Demonstrated ability to speak clearly, concisely, and effectively in public
- Skillful in relating easily and effectively with all members of the Board of Directors, General Manager, OC San staff, and the public

5 GENERAL REQUIREMENTS

Consultant shall:

- Adhere to the highest standards of fiscal, ethical responsibility and accountability
- Provide quality service that meets OC San's needs. This should be achieved through the Consultant's experienced legal team, who shall demonstrate proficiency in the applicable areas of law specified in section 6, Areas of Law and Requirements, below; efficient use of workforce; material resources; and technology to deliver the requested services
- Respond to inquiries from OC San within 24 hours of the initial contact and maintain reasonable availability to respond to requests and events of an emergent nature that expose OC San to serious potential legal liability
- Be promptly available for telephone consultation and to render written opinions on given issues related to OC San business in a timely manner
- Provide written and/or oral reports in a timely manner to the Board of Directors regarding status of any legal actions in which OC San is or may be involved.

6 AREAS OF LAW AND REQUIREMENTS

a. General Counsel

- Provide general legal advice
- Provide advice on
 - wastewater business and administration
 - consulting and training services
 - Board policies and procedures
 - California Public Records Act
- Provide interpretation of and advice on the Public Contract Code and Government Code as it pertains to business matters and public construction
- Provide advice and assistance with Intergovernmental agreements, partnerships, and complex contracts, including drafting, reviewing, negotiating, and related litigation
- Represent OC San in
 - inter-agency projects and other legal matters
 - administrative, litigation, and court proceedings
- Maintain knowledge base of issues facing sewer and special districts and be prepared to offer advice and legal opinions in a timely manner
- Prepare, review, consult, and approve contracts
- Review and approve legislative documents for Board of Directors' action items
- Assess liability for Board of Directors and Elected Official issues
- Work with other assigned OC San counsel as needed
- Attend work sessions and regular Board meetings (open and closed sessions) and special Board meetings/workshops with the Board of Directors and staff when requested
- Advise on Brown Act and Board agenda items
- Report to and receive assignments from the General Manager or designee
- Monitor and/or supervise litigation activity handled by other firms
- Review citations for violations of OC San ordinances in accordance with criminal/civil law and procedures; prepare and try infractions, misdemeanors, and ordinance violations as required and requested by the General Manager
- Represent and advise the Board of Directors as the governing body and all OC San officers in all matters of law pertaining to their offices
- Represent and appear in legal proceedings for any current or former OC San Officer and/or employee for which such officer or employee is entitled by law to representation furnished by OC San
- Investigate all claims and complaints by or against OC San and prepare civil cases and act as trial counsel as required and requested by the Board of Directors or General Manager
- Oversee and manage OC San's legal affairs ensuring that OC San's policies and programs and activities of OC San's employees and agents are carried out in compliance with all applicable laws and that the best interests of OC San are otherwise protected to the fullest extent possible
- Attend, in-person or remotely, regular or special meetings of OC San and its duly appointed committees for which attendance is requested by the General Manager/Board Chair, unless excused by the General Manager/Board Chair
- Attend Board meetings and be prepared to advise the Board of Directors and staff on matters on the agenda as well as parliamentary procedure and substantive issues that may arise

- Attend in-person Executive Management meetings twice per month, unless excused by the General Manager
- Conduct regular office hours at the OC San designated office. Preferred office hours are half a day four times a month, or as negotiated
- Review agendas and conduct related consultation with OC San staff and members of the Board of Directors regarding the proper placement and/or description of business items on agendas
- Review, analyze, redact, and/or develop written responses to California Public Records Act requests (Government Code section 6250 et seq.)
- Other services as necessary

b. Public Construction

- Provide interpretation and advice on public works, including drafting, reviewing, negotiating, and litigating contracts in accordance with the Public Contract Code, Government Code, and other applicable codes
- Provide advice and guidance on competitive bid requirements in accordance with the Public Contract Code, Government Code, and other applicable codes
- Provide advice on labor compliance and reporting obligations
- Provide advice and direction on public works and construction, including:
 - liability
 - construction claims and litigation
 - bid and contractor compliance
- Provide advice and guidance as required on various construction and construction management delivery methods, such as CM, CM at Risk, CM Agency, Design-Build, Progressive Design Build, Design-Bid-Build, etc.
- Advise OC San's Board of Directors, General Manager, and designated staff on various legal and construction issues
- Demonstrate a track record for preparing documents and legal advice that will limit OC San's exposure to litigation and change orders, and then minimizing the impact of change orders and effectively handling any potential post-construction litigation
- Other public construction matters

c. Environmental Law

- California Environmental Quality Act (CEQA)
- National Environmental Policy Act
- Other applicable laws and regulations

d. Air Quality

- Rule Interpretation
- Permitting
 - Case precedent consultation
 - Rule applicability (i.e., Supercritical Water Oxidation and Sewage Sludge Incineration Rule)
 - Lowest Achievable Emissions Rate/ Best Available Control Technology
 - CEQA, specific to permit issuance
- SCAQMD/CARB/EPA Enforcement: Title V, non-Title V, and Mobile/Portable Sources
 - Notice of Violation Settlement Agreements
 - Supplemental Environmental Projects

- Variances before SCAQMD Hearing Board
 - Order of Abatement
 - Compliance Risk Analyses
 - Legal Guidance Memos
 - Auditing/self-reporting
 - Other applicable laws and regulations
- e. Utility Rate Setting**
- Taxes
 - Assessments
 - Fees
 - Proposition 218
 - Other financial advice
- f. Real Estate and Related Matters**
- Acquisition/disposal
 - Leases
 - Eminent domain
 - Easements
 - Right of Way
 - Encroachments
 - Permits
 - Other related agreements and negotiations
- g. General Contracts**
- Risk transfer provisions
 - Advice and counsel on contract term negotiation
 - Contract form and template updates
 - Other contract matters

7 DELIVERABLES

- a. Invoices**
- Consultant shall issue detailed monthly invoices to OC San, which shall include a detailed description of services, date(s) of service, billed hours, hourly rate, attorney's name, and details regarding any additional costs incurred. Consultant shall also include a summary page of the key areas reflecting the overall time and cost.
 - Invoices shall be submitted electronically in a format that can be uploaded and sorted.
- b. Reports**
- Consultant shall prepare and submit to OC San monthly and as requested reports concerning the outcome of Consultant's performance of the services rendered.
 - Consultant shall provide ongoing and as requested written status updates to the General Manager or designee on all litigated matters.
 - Reports shall be submitted electronically in a format that can be uploaded and sorted.

c. Meetings

- Consultant shall attend quarterly meetings with OC San's General Manager or designee to review current status of open tasks.
- Consultant shall attend OC San's Committee and Board meetings as requested and provide updates and/or legal advice during the meetings.

EXHIBIT B

TECHNICAL PROPOSAL AND COST PROPOSAL

For

General Legal Services



BBK
BEST BEST & KRIEGER LLP



Proposal for General Legal Services Orange County Sanitation District March 7, 2024

Best Best & Krieger LLP
Scott C. Smith
Scott.Smith@bbklaw.com



bbklaw.com



Exhibit B Rate Schedule - Introduction

BBK has provided Exhibit B Rate Schedule for the following Areas of Law:

General Counsel (General and Special Services)
Public Construction (General and Special Services)
Environmental Law
Air Quality
Utility Rate Setting
Real Estate and Related Matters
General Contracts (General and Special Services)

Proposed Roster

Please note that BBK will update this roster on an annual basis:

Area of Law	Attorney	Title
General Counsel	Scott Smith	Partner
General Counsel	Mal Richardson	Partner
General Counsel	Ryan Baron	Partner
General Counsel	Sonia Carvalho	Partner
Public Construction	Rebecca Chaparro	Partner
Public Construction	Michael Maurer	Partner
Environmental Law	Andre Monette	Partner
Environmental Law	Alisha Winterswyk	Partner
Environmental Law	Ryan Baron	Partner
Air Quality	Wendy Wang	Partner
Air Quality	Ryan Baron	Partner
Utility Rate Setting	Lutfi Kharuf	Partner
Real Estate & Related Matters	Glen Price	Partner
Real Estate & Related Matters	Nancy Park	Partner
General Contracts	Scott Smith	Partner
General Contracts	Sonia Carvalho	Partner
General Contracts	Mal Richardson	Partner

Cost of Living Adjustment

We are happy to discuss mutually agreed upon adjustments whenever necessary. In addition, on July 1, 2025, and each July 1st thereafter, all hourly rates and amounts will be increased for the change in the cost of living for the prior calendar year, as shown by the U.S. Department of Labor in its All Urban Consumers Index set forth for the Los Angeles-Long Beach-Anaheim area.

Exhibit B
Rate Schedule
(Upload file separately from Response File)
General Legal Services
Specification No. CS-2024-1440BD

General Counsel - General Services

Area of Law

Personnel Role (or equivalent)	Title	Name	Hourly Rate
Lead Director (equivalent of Partner)	Partner	On attached roster	\$360
Director (equivalent of Partner)	Partner	On attached roster	\$360
Principal			
Shareholder			
Of Counsel	Of Counsel		\$360
Senior Counsel			
Partner			
Senior Associate			
Mid-level Associate			
Associate	Associate		\$310
Law Clerk	Law Clerk		\$180
Paralegal	Paralegal		\$180
Subconsultant/Subcontractor			
Administrative Support Staff			
Other, if applicable	Municipal Analyst		\$180
Other, if applicable	Research Analyst		\$180
Other, if applicable	Litigation Analyst		\$180
Other, if applicable	PRA/ARC Team*		\$230
Other, if applicable			
Other, if applicable			

Task/Cost	Rate

*Note: PRA/ARC team consists of attorneys, paralegals, law clerks and analysts.
The Advanced Records Center (ARC) team handles PRA requests and processing as well as policy drafting if needed. Policy drafting includes reviewing, assessing and updating records-related policies to reflect current legal standards and best practices.

Area of Law

The following legal services are **excluded** from the General Counsel - General Services pricing (these services are included in the General Counsel - Special Services pricing sheet):

1. Litigation, claims and substantial exposure to litigation as defined in the Brown Act, including formal administrative or other adjudicatory hearing matters.
2. Labor relations and employment matters.
3. Non-routine real estate matters (e.g., deed or title work).
4. Land acquisition and disposal matters (including pre-condemnation).
5. Taxes, fees and charges matters (e.g., Prop. 218 and Mitigation Fee Act).
6. Public construction disputes.
7. Non-routine contract negotiation matters (including "off-template" non-BBK agreements).
8. Non-routine land use and development matters (including development agreements).
9. Environmental matters (e.g., CEQA, NEPA, endangered species).
10. Toxic substances matters.
11. Renewable energy and energy efficiency project contracts and power purchase agreements.
12. Water quality (stormwater, NPDES).
13. Water law matters.
14. Public utility matters (e.g., electric, natural gas, telecommunications, water, rail or transit that involve state or federal regulatory issues).
15. Tax and ERISA related matters, employee and retirement benefits.
16. Intergovernmental Relations and Advocacy efforts (e.g. legislative and regulatory representation) at the federal and state level.
17. Other matter mutually agreed upon between BBK and the District.

Area of Law

The following legal services are **included** in General Counsel - Special Services pricing:

1. Litigation, claims and substantial exposure to litigation as defined in the Brown Act, including formal administrative or other adjudicatory hearing matters.
2. Labor relations and employment matters.
3. Non-routine real estate matters (e.g., deed or title work).
4. Land acquisition and disposal matters (including pre-condemnation).
5. Taxes, fees and charges matters (e.g., Prop. 218 and Mitigation Fee Act).
6. Public construction disputes.
7. Non-routine contract negotiation matters (including "off-template" non-BBK agreements).
8. Non-routine land use and development matters (including development agreements).
9. Environmental matters (e.g., CEQA, NEPA, endangered species).
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13. Water law matters.
14. Public utility matters (e.g., electric, natural gas, telecommunications, water, rail or transit that involve state or federal regulatory issues).
15. Tax and ERISA related matters, employee and retirement benefits.
16. Intergovernmental Relations and Advocacy efforts (e.g. legislative and regulatory representation) at the federal and state level.
17. Other matter mutually agreed upon between BBK and the District.

Exhibit B
Rate Schedule
(Upload file separately from Response File)
General Legal Services
Specification No. CS-2024-1440BD

Public Construction

Area of Law

Personnel Role (or equivalent)	Title	Name	Hourly Rate
Lead Director (equivalent of Partner)	Partner	On attached roster	\$450
Director (equivalent of Partner)	Partner	On attached roster	\$450
Principal			
Shareholder			
Of Counsel	Of Counsel		\$450
Senior Counsel			
Partner			
Senior Associate			
Mid-level Associate			
Associate	Associate		\$350
Law Clerk	Law Clerk		\$180
Paralegal	Paralegal		\$180
Subconsultant/Subcontractor			
Administrative Support Staff			
Other, if applicable	Municipal Analyst		\$180
Other, if applicable	Research Analyst		\$180
Other, if applicable	Litigation Analyst		\$180
Other, if applicable			
Other, if applicable			
Other, if applicable			

Task/Cost	Rate

NOTE: Contract review for on-template contracts and District forms will be billed at our General Counsel rates.

Exhibit B
Rate Schedule
 (Upload file separately from Response File)
General Legal Services
Specification No. CS-2024-1440BD

General Contracts

Area of Law

Personnel Role (or equivalent)	Title	Name	Hourly Rate
Lead Director (equivalent of Partner)	Partner	On attached roster	\$450
Director (equivalent of Partner)	Partner	On attached roster	\$450
Principal			
Shareholder			
Of Counsel	Of Counsel		\$450
Senior Counsel			
Partner			
Senior Associate			
Mid-level Associate			
Associate	Associate		\$350
Law Clerk	Law Clerk		\$180
Paralegal	Paralegal		\$180
Subconsultant/Subcontractor			
Administrative Support Staff			
Other, if applicable	Municipal Analyst		\$180
Other, if applicable	Research Analyst		\$180
Other, if applicable	Litigation Analyst		\$180
Other, if applicable			
Other, if applicable			
Other, if applicable			

Task/Cost	Rate

NOTE: Contract review for on-template contracts and District forms will be billed at our General Counsel rates.