

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, is made and entered into to be effective the 1st day of May, 2020, by and between the ORANGE COUNTY SANITATION DISTRICT, hereinafter referred to as "SANITATION DISTRICT", and CANNON CORPORATION, for purposes of this AGREEMENT hereinafter referred to as "CONSULTANT". The SANITATION DISTRICT and CONSULTANT are referred to herein collectively as the "Parties" or individually as a "Party."

WITNESSETH:

WHEREAS, the SANITATION DISTRICT desires to engage a CONSULTANT for Surveying Services for the SANITATION DISTRICT's Capital Improvement Program, Facilities Engineering, Operations, and Maintenance Projects, PSA2019-002; 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, the SANITATION DISTRICT has adopted procedures for the selection of professional services and has proceeded in accordance with said procedures to select CONSULTANT to perform this work; and,

WHEREAS, at its regular meeting on April 22, 2020 the Board of Directors, by Minute Order, accepted the recommendation of the Operations Committee to approve this AGREEMENT between the SANITATION DISTRICT 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 and technical services to accomplish those project elements outlined in the Scope of Work attached hereto as "Attachment A", and by this reference made a part of this AGREEMENT.

- A. The CONSULTANT shall be responsible for the professional quality, technical accuracy, and completeness and coordination of all tests, inspections, reports, and other services furnished by the CONSULTANT under this AGREEMENT, including the work performed by its Subconsultants and/or Subcontractors. Where approval by the SANITATION DISTRICT 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 and/or Subcontractors.
- 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.
- C. In the event that CONSULTANT's services and/or work product(s) is not to the satisfaction of the SANITATION DISTRICT 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 tests, inspections, reports or other services within the timeframe specified by the Project Manager. The SANITATION DISTRICT 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, tests, inspections, reports, and estimates compiled or composed by the CONSULTANT, pursuant to this AGREEMENT, are for the sole use of the SANITATION DISTRICT, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the SANITATION DISTRICT. 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 the SANITATION DISTRICT, or (b) subsequently becomes publicly known to the CONSULTANT other than through disclosure by the SANITATION DISTRICT.

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 One Hundred Fifty Thousand Dollars (\$150,000), over a two (2) year period. The SANITATION DISTRICT will compensate the CONSULTANT for the services provided according to the unit prices and/or hourly rates, as applicable, for the items included in Attachment "D" Fee Schedule. Each unit price and/or hourly rate represents all costs for performing the Work, including but not limited to technician labor, driving time, vehicles, equipment and materials, equipment calibration, overhead, profit, report writing, office reviews and supervision, and other miscellaneous charges.

B. Labor – Not Used

C. Overhead – Not Used

D. Profit – Not Used

E. Subconsultants – Not Used

F. Direct Costs – Not Used

G. Other Direct Costs – See Attachment "K"

H. Reimbursable Direct Costs – Not Used

3. REALLOCATION OF TOTAL COMPENSATION

The SANITATION DISTRICT, by its Director of Engineering, shall have the right to approve a reallocation of the incremental amounts constituting the Total Compensation, provided that the Total Compensation is not increased.

4. PAYMENT

- A. CONSULTANT will submit monthly or periodic 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 the SANITATION DISTRICT, 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:
- 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 the SANITATION DISTRICT'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.
- B. CONSULTANT shall warrant and certify the accuracy of these costs and provide all support documentation required by the SANITATION DISTRICT. CONSULTANT understands that submitted costs are subject to Audit Provisions stated herein below.
- C. Upon approval of such payment request by the SANITATION DISTRICT, payment shall be made to CONSULTANT as soon as practicable of one hundred percent (100%) of the invoiced amount on a unit price or hourly rate basis per task order.
- D. If the SANITATION DISTRICT determines that the work under this AGREEMENT or any specified project element hereunder, is incomplete and that the amount of payment is in excess of:
- i. The amount considered by the SANITATION DISTRICT's Director of Engineering to be adequate for the protection of the SANITATION DISTRICT; or
 - ii. The percentage of the work accomplished for each task order.
- E. The SANITATION DISTRICT may, at the discretion of the Director of Engineering, retain an amount equal to that which insures that the total amount paid to that date does not exceed the percentage of the completed work for each task order.
- F. Upon satisfactory completion by CONSULTANT of the work called for under the terms of this AGREEMENT, and upon acceptance of such work by the SANITATION DISTRICT, CONSULTANT will be paid the unpaid balance of any money due for such work, including any retained percentages relating to this portion of the work.

- G. 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 the SANITATION DISTRICT a release of all claims against the SANITATION DISTRICT arising under or by virtue of this AGREEMENT other than such claims, if any, as may be specifically exempted by CONSULTANT from the operation of the release in stated amounts to be set forth therein.
- H. Pursuant to the California False Claims Act (Government Code sections 12650-12655), any CONSULTANT that knowingly submits a false claim to the SANITATION DISTRICT for compensation under the terms of this AGREEMENT may be held liable for treble damages and up to a \$10,000 civil penalty for each false claim submitted. This section shall also be binding on all Subconsultants.
- I. A CONSULTANT, Subconsultant or Subcontractor shall be deemed to have submitted a false claim when the CONSULTANT, Subconsultant or Subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the SANITATION DISTRICT a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the SANITATION DISTRICT; (c) conspires to defraud the SANITATION DISTRICT by getting a false claim allowed or paid by the SANITATION DISTRICT; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to the SANITATION DISTRICT; or (e) is a beneficiary of an inadvertent submission of a false claim to the SANITATION DISTRICT, and fails to disclose the false claim to the SANITATION DISTRICT within a reasonable time after discovery of the false claim.
- J. **Limitation of Costs**
If, at any time, CONSULTANT estimates the cost of performing the services under this AGREEMENT will exceed seventy-five percent (75%) of the not-to-exceed amount of the AGREEMENT, including approved additional compensation, CONSULTANT shall notify the SANITATION DISTRICT immediately, and in writing. This written notice shall indicate the additional amount necessary to complete the services. Any cost incurred in excess of the approved not-to-exceed amount, without the express written consent of the SANITATION DISTRICT's authorized representative shall be at CONSULTANT's own risk. This written notice shall be provided separately from, and in addition to any notification requirements contained in the CONSULTANT's requests for payment. Failure to notify the SANITATION DISTRICT that the services cannot be completed within the authorized not-to-exceed amount is a material breach of this AGREEMENT.

5. PREVAILING WAGES

To the extent CONSULTANT and its Subconsultant(s) and/or Subcontractor(s) intends to utilize employees who will perform work during the contract, as more specifically defined under Labor Code Section 1720, CONSULTANT and its Subconsultant(s) and/or Subcontractor(s) shall be subject to prevailing wage requirements with respect to such employees.

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

- A. To the extent CONSULTANT's employees, Subconsultants and/or Subcontractors 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 SANITATION DISTRICT and/or general public upon request, provided the public request is made through SANITATION DISTRICT, the Division of Apprenticeship Standards or the Division of Labor Enforcement of the Department of Industrial Relations.
- D. The CONSULTANT and Subconsultants shall comply with the job site notices posting requirements established by the Labor Commissioner per Title 8, California Code of Regulation Section 16461(3).

7. AGREEMENT TERM

The services provided under this AGREEMENT shall be for the period of two (2) years, commencing on May 1, 2020 and continuing through April 30, 2022.

8. 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 tests, inspections, reports, original plans, studies, sketches, drawings, computer printouts, disk files, and electronic copies prepared in connection with or related to the Scope of Work or Professional Services, shall be the property of the SANITATION DISTRICT. The SANITATION DISTRICT's ownership of these documents includes use of, reproduction or reuse of and all incidental rights, whether or not the work for which they were prepared has been performed. The SANITATION DISTRICT ownership entitlement arises upon payment or any partial payment for work performed and includes ownership of any and all work product completed prior to that payment. This Section shall apply whether the CONSULTANT's Professional Services are terminated: a) by the completion of the AGREEMENT, or b) in accordance with other provisions of this AGREEMENT. Notwithstanding any other provision of this paragraph or

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

- B. CONSULTANT shall not be responsible for damage caused by subsequent changes to or uses of the tests, inspections, reports, plans or deliverables 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.

9. INSURANCE

A. General

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

B. General Liability

The CONSULTANT shall maintain during the life of this AGREEMENT, including the period of warranty, Commercial General Liability Insurance written on an occurrence basis providing the following minimum limits of liability coverage: Two Million Dollars (\$2,000,000) per occurrence with Two Million Dollars (\$2,000,000) 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 SANITATION DISTRICT and applicable, XCU coverage (Explosion, Collapse and Underground) and Riggers/On Hook Liability must be included in the General Liability policy and coverage must be reflected on the submitted Certificate of Insurance.

C. Umbrella Excess Liability

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

D. Automotive/Vehicle liability Insurance

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

E. Drone Liability Insurance

If a drone will be used, drone liability insurance must be maintained by CONSULTANT in the amount of one million dollars (\$1,000,000) in form acceptable to the SANITATION DISTRICT.

F. Worker's Compensation Insurance

The CONSULTANT shall provide such Workers' Compensation Insurance as required by the Labor Code of the State of California in the amount of the statutory limit, including Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) per occurrence. Such Worker's Compensation Insurance shall be endorsed to provide for a waiver of subrogation in favor of the SANITATION DISTRICT. A statement on an insurance certificate will not be accepted in lieu of the actual endorsements unless the insurance carrier is State of California Insurance Fund and the identifier "SCIF" and endorsement numbers 2570 and 2065 are referenced on the certificate of insurance. If an exposure to Jones Act liability may exist, the insurance required herein shall include coverage for Jones Act claims.

G. Errors and Omissions/Professional Liability

CONSULTANT shall maintain in full force and effect, throughout the term of this AGREEMENT, standard industry form professional negligence errors and omissions insurance coverage in an amount of not less than 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 the SANITATION DISTRICT a certificate of insurance in a form acceptable to the SANITATION DISTRICT 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 the SANITATION DISTRICT 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 the SANITATION DISTRICT before work commences. The SANITATION DISTRICT 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 (ISO Form) CG2010 11 85 or
 (General Liability) 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 the SANITATION
 DISTRICT, and the SANITATION DISTRICT
 may reject alternatives that provide different or
 less coverage to the SANITATION DISTRICT.

- Additional Insured Submit endorsement provided by carrier for the
 (Auto Liability) SANITATION DISTRICT 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 the SANITATION DISTRICT except for nonpayment of premium, which shall require not less than ten (10) days written notice to the SANITATION DISTRICT. Should there be changes in coverage or an increase in deductible or SIR amounts, the CONSULTANT and its insurance broker/agent shall send to the SANITATION DISTRICT a certified letter which includes a description of the changes in coverage and/or any increase in deductible or SIR amounts. The certified letter must be sent to the attention of Risk Management, and shall be received by the SANITATION DISTRICT not less than thirty (30) days prior to the effective date of the change(s) if the change would reduce coverage or increase deductibles or SIR amounts or otherwise reduce or limit the scope of insurance coverage provided to the SANITATION DISTRICT.

J. Primary Insurance

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

K. Separation of Insured

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

L. Non-Limiting (if applicable)

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

M. Deductibles and Self-Insured Retentions

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

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 SANITATION DISTRICT requires and shall be entitled to coverage for the higher limits maintained by CONSULTANT.

10. SCOPE CHANGES

In the event of a change in the Scope of Work or a change in the proposed Project, as requested by the SANITATION DISTRICT, 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.

11. PROJECT TEAM AND SUBCONSULTANTS AND SUBCONTRACTORS – Not Used

12. ENGINEERING REGISTRATION

The CONSULTANT's personnel and Subconsultants and/or Subcontractors are comprised of registered engineers and a staff of specialists and draftsmen in each department. The firm itself is not a registered engineer but represents and agrees that wherever, in the performance of this AGREEMENT, 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.

13. AUDIT PROVISIONS

A. SANITATION DISTRICT retains the reasonable right to access, review, examine, and audit, any and all books, records, documents and any other evidence of procedures and practices that the SANITATION DISTRICT determines are necessary to discover and verify that the CONSULTANT is in compliance with all requirements under this AGREEMENT. The CONSULTANT shall include the SANITATION DISTRICT's right as described above, in any and all of their subcontracts, and shall ensure that these rights are binding upon all Subconsultants.

B. SANITATION DISTRICT retains the right to examine CONSULTANT's books, records, documents and any other evidence of procedures and practices that the SANITATION DISTRICT determines are necessary to discover and verify all

direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred or to ensure CONSULTANT's compliance with all requirements under this AGREEMENT during the term of this AGREEMENT and for a period of three (3) years after its termination.

- C. CONSULTANT shall maintain complete and accurate records in accordance with generally accepted industry standard practices and the SANITATION DISTRICT's policy. The CONSULTANT shall make available to the SANITATION DISTRICT for review and audit, all project related accounting records and documents, and any other financial data within 15 days after receipt of notice from the SANITATION DISTRICT. Upon SANITATION DISTRICT's request, the CONSULTANT shall submit exact duplicates of originals of all requested records to the SANITATION DISTRICT. If an audit is performed, CONSULTANT shall ensure that a qualified employee of the CONSULTANT will be available to assist SANITATION DISTRICT's auditor in obtaining all Project related accounting records and documents, and any other financial data.

14. 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 and/or Subcontractors into employees of the SANITATION DISTRICT. 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.

15. 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, Senior Contracts Administrator
Copy: Bill Gilbert, Project Manager

CONSULTANT:

Cannon Corporation
Chad Engelskirger, Survey Manager, Survey Director
1050 Southwood Drive
San Luis Obispo, CA 93401

Copies to:
Cannon Corporation
J Braley, Survey Manager
16842 Von Karman Avenue, Suite 150
Irvine, CA 92606

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

16. TERMINATION

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

CONSULTANT shall be permitted to terminate this AGREEMENT upon thirty (30) days written notice only if CONSULTANT is not compensated for billed amounts in accordance with the provisions of this AGREEMENT, when the same are due. Notice of termination shall be mailed to the SANITATION DISTRICT at the address listed in NOTICES above.

17. DOCUMENTS AND STUDY MATERIALS

The documents and study materials for this Project shall become the property of the SANITATION DISTRICT upon the termination or completion of the work.

CONSULTANT agrees to furnish to the SANITATION DISTRICT 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 the SANITATION DISTRICT.

18. COMPLIANCE

- A. 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.

19. AGREEMENT EXECUTION AUTHORIZATION

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

20. 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.

21. 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.

22. WARRANTY

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

23. INDEMNIFICATION

To the fullest extent permitted by law, CONSULTANT shall indemnify, defend (at CONSULTANT's sole cost and expense and with legal counsel approved by the SANITATION DISTRICT, which approval shall not be unreasonably withheld), protect and hold harmless the SANITATION DISTRICT and all of SANITATION DISTRICT's officers, directors, employees, CONSULTANT's, and agents (collectively the "Indemnified Parties"), from and against any and all claims, damages, liabilities, causes of action, suits, arbitration awards, losses, judgments, fines, penalties, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional, expert or CONSULTANT's fees and costs and the SANITATION DISTRICT's general and administrative expenses; individually, a "Claim"; collectively, "Claims") which may arise 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 the SANITATION DISTRICT for a breach by CONSULTANT of any of the provisions of this AGREEMENT. Under no circumstances shall the insurance requirements and limits set forth in this AGREEMENT be construed to limit CONSULTANT's indemnification obligation or other liability hereunder. The terms of this AGREEMENT are contractual and the result of negotiation between the parties hereto. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this AGREEMENT.

24. DUTY TO DEFEND

The duty to defend hereunder is wholly independent of and separate from the duty to indemnify and such duty to defend shall exist regardless of any ultimate liability of CONSULTANT and shall be consistent with Civil Code section 2782.8. Such defense obligation shall arise immediately upon presentation of a Claim by any person if, without regard to the merit of the Claim, such Claim could potentially result in an obligation to indemnify one or more Indemnified Parties, and upon written notice of such Claim being provided to CONSULTANT. Payment to CONSULTANT by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party shall not be a condition precedent to enforcing such Indemnified Party's rights to indemnification hereunder. In the event a final judgment, arbitration, award, order, settlement, or other final resolution expressly determines that the claim did not arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT, to any extent, then the SANITATION DISTRICT will reimburse CONSULTANT for the reasonable costs of defending the Indemnified Parties against such claims.

CONSULTANT's indemnification obligation hereunder shall survive the expiration or earlier termination of this AGREEMENT until such time as action against the Indemnified Parties for such matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

25. COMPLIANCE WITH SANITATION DISTRICT POLICIES AND PROCEDURES

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

26. CLOSEOUT

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

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 the SANITATION DISTRICT (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 the SANITATION DISTRICT 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 the SANITATION DISTRICT for any purpose nor imply acceptance of, or AGREEMENT with, the CONSULTANT's request for final AGREEMENT Acceptance.

27. ENTIRE AGREEMENT

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

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

CONSULTANT: CANNON CORPORATION

By _____
Date _____

Printed Name & Title

ORANGE COUNTY SANITATION DISTRICT

By _____
David John Shawver
Board Chairman
Date _____

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

By _____
Ruth Zintzun
Purchasing & Contracts Manager
Date _____

Attachments:

- Attachment "A" Scope of Work
- Attachment "D" Fee Schedule Form
- Attachment "J" OCSD Safety Standards
- Attachment "K" Allowable Direct Costs

CMM:ms

ATTACHMENT “A”

SCOPE OF WORK

ATTACHMENT "A"

SCOPE OF WORK

SURVEYING SERVICES FOR THE SANITATION DISTRICT'S CAPITAL IMPROVEMENT PROGRAM, FACILITIES ENGINEERING, OPERATIONS, AND MAINTENANCE PROJECTS

PSA2019-002

I. PURPOSE

The selected CONSULTANT shall provide on-call surveying services as required in support of the SANITATION DISTRICT'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.

II. TYPICAL TASKS

PRELIMINARY ALIGNMENT: Provide preliminary stationing at intervals as required by the SANITATION DISTRICT Engineer.

CONSTRUCTION ALIGNMENT: Provide horizontal and vertical controls. Paint or flag centerline of sewer for collections projects when requested by the SANITATION DISTRICT Engineer.

CONTRACTOR'S STAKING: Provide one set of offset line-and-grade stakes for pipeline, manholes, structures, etc. at 25 to 50-foot intervals, or as required by the SANITATION DISTRICT Engineer along with cut sheets for contractor's use.

PIPE CASINGS/TUNNELS: Provide one set of offset stakes for each pit location and one set for horizontal and vertical control in pits, with cut sheets.

Provide line-and-grade checks inside casings.

PIPELINE HEADING CHECK: Provide line-and-grade checks daily or as required by the SANITATION DISTRICT Engineer.

STREET CENTERLINE TIES: Prior to construction, tie-out street centerline monumentation, and after construction, replace disturbed or destroyed street centerline ties.

PAVEMENT REPLACEMENT: At the locations requested by the SANITATION DISTRICT, street cross sections will be surveyed prior to construction. For pavement replacement after construction, one set of paving and curb stakes will be provided at locations designated by the SANITATION DISTRICT.

MISCELLANEOUS SURVEY: As requested by the SANITATION DISTRICT, provide boundary and topographic surveys, monument replacement, aerial photography, settlement monitoring, easement review and preparation, and other miscellaneous items. Prepare base maps and exhibits using AutoCAD, latest version, record required documents with the County.

III. REQUIREMENTS

1. CONSULTANT shall be available upon 24-hour notice. The SANITATION DISTRICT expects that the technician will arrive at the site with the correct equipment, calibrated to existing standards with documentation. The SANITATION DISTRICT 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 shall be included in the total hourly rate for field service fees.
3. CONSULTANT shall be experienced with tunnel and casing surveys.
4. Copies of all survey notes shall be furnished to the SANITATION DISTRICT within 24 hours of survey or stakeout. Cut sheets and heading checks documents shall be provided the same day.
5. Survey work shall be documented in English Standard Units and/or Metric Units, as required by the SANITATION DISTRICT.
6. CONSULTANT shall be available for occasional night work (4:30 p.m. to 7:00 a.m.) upon 24hour advance notice.
7. Survey party should consist of two or three persons per crew with a certified party chief, or equal.
8. Party chief or company representative should be available for the pre-construction meeting and other key meetings as the project progresses.
9. All supplies, such as, but not limited to, stakes, flagging, nails, spikes, ties, paint, etc. shall be included in the hourly rate.
10. All surveyors must be adequately insured for liability and property damage, and a copy of the policy must be forwarded to the SANITATION DISTRICT. Vehicles shall bear the CONSULTANT's name.

11. CONSULTANT shall be able to provide proper traffic control in accordance with the Work Area Traffic Control Handbook (WATCH) Manual, Manual on Uniform Traffic Control Devices (MUTCD) or as required by the governing agency when carrying out their functions and duties.
12. At least one member of the party shall have a cell phone or other form of communication so as to be in contact with the home office in the event the SANITATION DISTRICT requires immediate communication during normal working hours, and shall have means to be directly contacted in the field by SANITATION DISTRICT personnel via cell phone.
13. CONSULTANT must be able to recognize survey errors or omissions in the contract drawings, survey or stakeout, and alert SANITATION DISTRICT staff timely in order to mitigate production delays and costs.
14. CONSULTANT shall comply with OSHA requirements and OCSD Safety Standards.
15. 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 the SANITATION DISTRICT for review and approval at least 48 hours prior to commencement of work. Personnel will be entering under Contractor's confined-space entry permit.
16. Personal protective equipment (PPE), including lower explosive limit (LEL) personal monitors is required onsite for all personnel.
17. The SANITATION DISTRICT 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 the SANITATION DISTRICT 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.
18. 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 the SANITATION DISTRICT, 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:
 - 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 the SANITATION DISTRICT'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.

The SANITATION DISTRICT 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.

19. If any conflict of interest occurs on a project, the SANITATION DISTRICT shall be notified without delay of the conflict. The SANITATION DISTRICT will evaluate conflict of interest on a case-by-case basis and advise as to whether it may be waived in each case.

ATTACHMENT “D”

FEE PROPOSAL

**ATTACHMENT “D”
FEE SCHEDULE**

**SURVEYING SERVICES
FOR THE SANITATION DISTRICT’S CAPITAL IMPROVEMENT PROGRAM,
FACILITIES ENGINEERING, OPERATIONS, AND MAINTENANCE PROJECTS**

PSA2019-002

Service	Contract Year 1 5/1/19-4/30/20 (hourly rate)	Contract Year 2 5/1/20-4/30/21 (hourly rate)	Contract Year 3 5/1/21-4/30/22 (hourly rate)
1 Person Survey Crew	N/A (Not Safe)	N/A	N/A
2 Person Survey Crew	\$295	\$305	\$315
3 Person Survey Crew	\$370	\$380	\$390
Supervision (1 hour/8 crew hours)	\$220	\$225	\$230
Calculations, CAD Data Processing, Reports, Other Office Work	\$130	\$135	\$140
1 Person Survey Crew Overtime Rate	N/A (Not Safe)	N/A	N/A
2 Person Survey Crew Overtime Rate	\$443	\$458	\$473
3 Person Survey Crew Overtime Rate	\$555	\$570	\$585

Other	Contract Year 1 5/1/19-4/30/20	Contract Year 2 5/1/20-4/30/21	Contract Year 3 5/1/21-4/30/22
Minimum Callout Hours	4 hours	4 hours	4 hours

Cannon acknowledges that we will be available upon 24 hours' notice, though the typical notice time is 48 hours

ATTACHMENT “J”
OCSD SAFETY STANDARDS

Revision 8
September 10, 2018

ATTACHMENT “K”
ALLOWABLE DIRECT COSTS

**ATTACHMENT “K”
ALLOWABLE DIRECT COSTS**

OTHER DIRECT COSTS	OCSD may authorize other items that may be necessitated 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. These items will be reimbursed based on actual cost incurred. A one-time mark-up of 15% for additional equipment rentals, materials and outside services required for field work and investigations, may be allowed, as applicable, if justified. No additional markup is allowed by Consultant on other direct costs resulting from work performed by its Subcontractors.
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