

**PROFESSIONAL SERVICES AGREEMENT  
ELECTRICAL DISTRIBUTION SYSTEM TEST  
DATA MANAGEMENT SOFTWARE REBID  
Specification No. CS-2021-1039BD-R**

**THIS AGREEMENT** is made and entered into as of the date fully executed below, by and between Orange County Sanitation District, with a principal place of business at 10844 Ellis Avenue, Fountain Valley, CA 92708 (hereinafter referred to as "OC San") and AVO Multi-Amp Corporation dba Megger with a principal business at 4545 Davis Street, Dallas, TX 75211 (hereinafter referred to as "Consultant") collectively referred to as the "Parties".

**WITNESSETH**

**WHEREAS**, based on Consultant's expertise and experience, OC San desires to temporarily engage Consultant to provide electrical distribution system test data management software "Services" as described in Exhibit "A"; and

**WHEREAS**, Consultant submitted its Proposal, dated March 31, 2021; and

**WHEREAS**, OC San has chosen Consultant to conduct Services in accordance with Ordinance No. OCSD-52; and

**WHEREAS**, on June 23, 2021, the Board of Directors of OC San, by minute order, authorized execution of this Agreement between OC San and Consultant.

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

**1. Introduction**

1.1. This Agreement and all exhibits hereto (called the "Agreement") is made by OC San and Consultant. The terms and conditions herein exclusively govern the purchase of Services as described in Exhibit "A".

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

Exhibit "A"	Scope of Work
Exhibit "B"	Proposal submitted March 31, 2021
Exhibit "B-1"	Cost Proposal Submitted March 31, 2021
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 of this Agreement shall in all respects govern and control.

1.4. This Agreement may not be modified, changed or supplemented, nor may any obligations hereunder be waived or extensions of time for performance granted, except by written instrument signed by both Parties.

- 1.5. The various headings in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any section or provision hereof.
- 1.6. The term "workday". Workdays are defined as all days that are not Saturday, Sunday, or OC San observed holidays. Meetings with OC San staff shall be scheduled from Monday through Thursday between the hours of 8 a.m. and 4 p.m. (exception is operations staff who maintain plant Operations 24/7 and work a rotated 12-hour shift) and shall conform to OC San work schedules. OC San review periods shall not include OC San observed holidays.
- 1.7. OC San holidays (non-working days) are as follows: New Year's Day, Lincoln's Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve, and Christmas Day.
- 1.8. The term "days", when used in the Agreement, shall mean calendar days, unless otherwise noted as workdays.
- 1.9. Work Hours:
  - 1.9.1. The work required under this Agreement may include normal business hours, evenings, and weekends. OC San will not pay for travel time.
  - 1.9.2. All work with OC San staff shall be scheduled Monday through Thursday, between the hours of 7:30 a.m. and 3:30 p.m.
- 1.10. Consultant shall provide OC San with all required premiums and/or overtime work at no charge beyond the prices provided in Exhibit "B-1" and under "Compensation" below.
- 1.11. Except as expressly provided otherwise, OC San accepts no liability for any expenses, losses, or action incurred or undertaken by Consultant as a result of work performed in anticipation of purchases of said Services by OC San.
- 1.12. Goods and Services, whether stated separately or in conjunction with each other, shall mean electrical distribution system test data management software and the Services related to the provision of such as described in Exhibit "A".
- 1.13. Construction of Agreement. This Agreement is the product of joint discussions and negotiations at arms' length between the Parties, both of whom are sophisticated and knowledgeable in business matters and both of whom have relied on the advice of independent legal counsel. Any rule of law which would require interpretation of this Agreement against the party that drafted it shall have no application to this Agreement.

## **2. Miscellaneous**

- 2.1. Access to Premises. OC San shall provide Consultant with reasonable and timely access to the sites and personnel necessary for Consultant to perform its obligations under this Agreement. OC San shall allow Consultant personnel reasonable access to OC San site and facilities (telephone, parking, etc.) during normal business hours and at other reasonable times as requested by Consultant and pre-approved by OC San. The assistance or presence of OC San's personnel will not relieve Consultant of any responsibilities under this Agreement.
- 2.2. Amendments. No amendment or modification to this Agreement is valid unless it is contained in a writing signed by both Parties.

- 2.3. Approvals in Writing. All approvals or consents required or contemplated by this Agreement must be in writing to be effective.
- 2.4. Background Checks and Removal of Personnel. Prior to being allowed to perform any work on this project, all non-OC San personnel assigned to the project may be required to submit to and pass a background check by the Fountain Valley, California Police Department. In addition, OC San shall have the sole and exclusive right to require Consultant to immediately remove any individual from the project for any reason deemed to be in the best interest of OC San. Consultant shall replace any employee removed from the project within ten (10) business days of said removal.
- 2.5. Compliance with Work Rules. Consultant will ensure that, while it is on OC San premises, Consultant's personnel and its subconsultant(s) will comply with OC San's working rules and policies, including OC San's security procedures.
- 2.6. Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties and their respective successors and assigns.
- 2.7. Advertising. Consultant shall not refer to the existence of this Agreement in any press release, advertising or materials distributed to prospective customers without the prior written consent of OC San.
3. **Scope of Work** General requirements for the work of this project are listed below. A detailed list of tasks and responsibilities are included in Exhibit "A".
- 3.1. Subject to the terms of this Agreement, Consultant shall perform the Services identified in Exhibit "A". Consultant warrants that all of its Services shall be performed in a competent, professional and satisfactory manner.
- 3.2. Modifications to Equipment and Facilities. OC San shall be responsible for making OC San-approved modifications identified in an OC San-approved, site analysis report. Thereafter, Consultant will be precluded from asserting that it is unable to perform its obligations under this Agreement because of any pre-existing condition. During implementation, any changes to the system or any costs that may be incurred in order to complete the requirements of this Agreement, but were not identified in the site analysis report, will be the sole and exclusive responsibility of Consultant. In addition, if the system is unable to meet the functional, performance and reliability specifications and requirements in this Agreement after the identified upgrades and changes have been made, then Consultant will be responsible, at its own expense, for making any further upgrades or changes necessary to achieve this result.
- 3.3. User Qualifications. OC San shall use its best efforts to ensure that persons operating the system will be qualified, supervised, and trained in the use of personal computers and normal operations. Consultant will ensure that all training on the system or system components will be conducted professionally and effectively so that each operator trained by Consultant is proficient in its use.
- 3.4. Transition. Consultant will work with OC San to ensure a smooth and efficient transition from OC San's current systems to the new system and to minimize disruption to current operations, even if it necessitates working late evening, early morning, or weekend hours. Any required disruptions to OC San's operations shall be scheduled in advance and approved by OC San.

**4. Compensation**

4.1. Compensation to be paid by OC San to Consultant shall be in the following amounts:

Completion of all Milestones	\$134,400
Software	\$ 64,340
Maintenance (first year)	\$ 13,515

4.2. Compensation to be paid by OC San to Consultant for the Services provided under this Agreement shall be for a total amount not to exceed Two Hundred Twelve Thousand, Two Hundred Fifty-five Dollars (\$212,255.00).

**5. Payment**

5.1. OC San shall pay, net thirty (30) days, upon receipt and approval, by OC San's Project Manager or designee, of itemized invoices submitted for Milestones completed in accordance with Exhibit "A", at the prices identified in Exhibit "B-1".

5.2. OC San, at its sole discretion, shall be the determining party as to whether the tasks and deliverables for each Milestone have been satisfactorily completed.

**6. Invoices**

6.1. OC San shall pay within thirty (30) days of completion and receipt and approval by OC San's Project Manager or designee of an itemized invoice, in a form acceptable to OC San to enable audit of the charges thereon.

6.2. Invoices shall be emailed by Consultant to OC San at [APStaff@OCSan.gov](mailto:APStaff@OCSan.gov). Specification No. CS-2021-1039BD-R and Purchase Order number shall both be referenced in the subject line.

**7. Audit Rights** Consultant agrees that, during the term of this Agreement and for a period of three (3) years after its 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.

**8. Performance** Time is of the essence in the performance of the provisions hereof.

**9. Term**

9.1. The Services provided under this Agreement shall be completed within one hundred eighty (180) calendar days from the effective date of the Notice to Proceed as follows:

9.2. Annual Maintenance Support services shall commence upon completion of all Milestones and continue for the period of one (1) year.

9.3. Effect on Project Schedule. The time periods and requirements set forth in Exhibit "A", will not excuse Consultant from complying with the completion date set forth in this Agreement.

**10. Annual Maintenance Support**

10.1. OC San may exercise the option to renew Annual Maintenance Support services for up to four (4) additional one-year periods, under the terms and conditions contained herein and at the prices set forth below:

2 <sup>nd</sup> Year	\$14,190
3 <sup>rd</sup> Year	\$14,900
4 <sup>th</sup> Year	\$15,640
5 <sup>th</sup> Year	\$16,425

10.2. OC San shall make no obligation to renew Annual Maintenance services nor give reason if it elects not to renew.

10.3. Annual Maintenance services may be renewed by OC San Purchase Order

## **11. Termination**

11.1. 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) to the date of termination. Consultant expressly waives any claim to receive anticipated profits to be earned during the uncompleted portion of this Agreement. 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 to the date of termination.

11.2. OC San reserves the right to terminate this Agreement immediately upon OC San's determination that Consultant is not meeting the requirements, if the level of service is inadequate, or any other default of this Agreement.

11.3. OC San may also immediately cancel for default of this Agreement 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; or
- if total amount of compensation exceeds the amount authorized under this Agreement.

11.4. All OC San property in the possession or control of Consultant shall be returned by Consultant to OC San on demand, or at the termination of this Agreement, whichever occurs first. In addition, Consultant will deliver to OC San all work product currently in existence and for which payment has been made.

**12. Indemnification and Hold Harmless Provision** Consultant shall assume all responsibility for damages to property and/or injuries to persons, including accidental death, which may arise out of or be caused by Consultant's services under this Agreement, or by its subconsultant(s) or by anyone directly or indirectly employed by Consultant, and whether such damage or injury shall accrue or be discovered before or after the termination of the Agreement. Except as to the sole active negligence of or willful misconduct of OC San, Consultant shall indemnify, protect, defend and hold harmless OC San, its elected and appointed officials, officers, agents and employees, from and against any and all claims, liabilities, damages or expenses of any nature, including attorneys' fees: (a) for injury to or death of any person or damage to property or interference with the use of property, arising out of or in connection with Consultant's performance under the Agreement, and/or (b) on account of use of any copyrighted or uncopyrighted material, composition, or process, or any patented or unpatented invention, article or appliance, furnished or used under the Agreement, and/or (c) on account of any goods and services provided under this Agreement. This indemnification provision shall apply to any acts or omissions, willful misconduct, or negligent misconduct, whether active or passive, on the part of Consultant or anyone employed by or working under Consultant. To the maximum extent permitted by law, Consultant's duty to defend shall apply whether or not such claims, allegations, lawsuits, or proceedings have merit or are meritless, or which involve claims or allegations that any of the

parties to be defended were actively, passively, or concurrently negligent, or which otherwise assert that the parties to be defended are responsible, in whole or in part, for any loss, damage, or injury. Consultant agrees to provide this defense immediately upon written notice from OC San, and with well qualified, adequately insured, and experienced legal counsel acceptable to OC San. This section shall survive the expiration or early termination of the Agreement.

**13. Force Majeure** Neither party shall be liable for delays caused by accident, flood, acts of God, fire, labor trouble, war, acts of government or any other cause beyond its control, but said party shall use reasonable efforts to minimize the extent of the delay. Work affected by a Force Majeure condition may be rescheduled by mutual consent or may be eliminated from the Agreement.

**14. Insurance** Consultant and all subconsultant(s) shall purchase and maintain, throughout the life of this Agreement and any periods of warranty or extensions, insurance in amounts equal to the requirements set forth in 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 to commence service pursuant to a subcontract until all insurance required of the subconsultant has been obtained. Failure to maintain required insurance coverage shall result in termination of this Agreement.

**15. 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. 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 pursuant to this Agreement.

**16. Confidentiality and Non-Disclosure**

16.1. 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.

16.2. 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 or confidential information, knowledge or data relating to the products, process, or operation of OC San.

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

16.4. Consultant agrees as follows:

- 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.
- To restrict access to the confidential information to its subconsultants or personnel of subconsultants 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.

- To return all confidential information in Consultant's possession upon termination of this Agreement or upon OC San's request, whichever occurs first.
- To hold in confidence information and materials, if any, developed pursuant to the Services hereunder.

16.5. The provisions of this section shall survive termination or expiration of this Agreement and shall continue for so long as the material remains confidential.

**17. Ownership of Documents** All drawings, specifications, 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 the Project Manager 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 subconsultants shall provide for assignment to OC San of any documents or materials prepared by them.

**18. Ownership of Intellectual Property**

18.1. Consultant agrees that all designs, plans, reports, specifications, drawings, schematics, prototypes, models, inventions, and all other information and items made during the course of this Agreement and arising from the Services (hereinafter referred to as "New Developments") shall be and are assigned to OC San as its sole and exclusive property.

18.2. 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 with regard to New Developments and confidential information.

18.3. Consultant warrants that Consultant has 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.

18.4. 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 in connection with these Services shall be delivered to and shall become the exclusive property of OC San. OC San may utilize these documents for OC San applications on other projects or extensions of this project, at its own risk.

**19. Infringement Claims** If an infringement claim occurs, Consultant has thirty (30) days after the receipt of OC San's written notice of the claim or the date on which Consultant first becomes aware of the claim, whichever is sooner, to either: (a) procure for OC San the right to continue using the affected product, service, subsystem, component or interface and deliver or provide

the product, service, subsystem, component, or interface to OC San; or (b) repair or replace the infringing product, service, subsystem, component, or interface so that it becomes non-infringing, provided the performance of the system or any subsystems, components, or interfaces is not adversely affected by the replacement or modification. In the event Consultant is unable to comply with either subsection (a) or (b) of this paragraph within thirty (30) days, OC San may terminate this Agreement without any further obligation to Consultant. In the event of termination, in addition to any other legal remedies available to OC San, Consultant will refund OC San within ten (10) days of OC San's notice of termination, the license fees OC San paid to Consultant for the product, service, subsystem, component or interface. If the inability to comply with either subsection (a) or (b) of this paragraph causes the system to fail to meet the functional, performance and reliability specifications and requirements or to otherwise become ineffective, Consultant will refund OC San all fees paid to Consultant under this Agreement.

**20. No Solicitation of Employees or Subcontractors**

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

20.2. Consultant acknowledges that OC San's employees are critical to its business. Consultant agrees not to employ or otherwise engage OC San's employees or subcontractors during the term of this Agreement and for a period of one (1) year following termination of this Agreement. Should Consultant violate this provision, Consultant will 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.

**21. Independent Contractor Capacity**

21.1. The relationship of Consultant to OC San is that of an independent contractor and nothing herein shall be construed as creating an employment or agency relationship.

21.2. Consultant shall act independently and not as an officer or employee of OC San. OC San assumes no liability for Consultant's action and performance, nor assumes responsibility for taxes, funds, payments or other commitments, implied or expressed, by or for Consultant.

21.3. 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 expressed written consent.

21.4. 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, holiday or sick pay. Consultant shall be responsible for providing, at Consultant's expense, disability, workers' compensation or other insurance as well as licenses and permits usual or necessary for conducting the Services hereunder.

21.5. 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.



21.6. 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.

**22. Licenses and Permits** 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 engage in this work. Any and all fees required by Federal, State, County, City and/or municipal laws, codes and/or tariffs that pertain to work performed under the terms of this Agreement will be paid by Consultant.

**23. 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 Orange County, in the event any action is brought in connection with this Agreement or the performance thereof.

**24. Environmental Compliance** Consultant shall, at its own cost and expense, comply with all Federal, State, and local environmental laws, regulations, and policies which apply to the Consultant, its subconsultants, and the Services, including, but not limited to, all applicable Federal, State, and local air pollution control laws and regulations.

**25. 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 harmless from any and all damages and liabilities assessed against OC San as a result of Consultant's noncompliance therewith. Any permission required by law to be included herein shall be deemed included as a part of this Agreement whether or not specifically referenced.

**26. Consultant's Representations** In the performance of duties under this Agreement, Consultant shall adhere to the highest fiduciary standards, ethical practices and standards of care and competence for its trade/profession.

**27. Familiarity with Work** By executing this Agreement, Consultant warrants that: 1) it has investigated the work to be performed; and 2) it understands the facilities, difficulties and restrictions of the work under this Agreement. Should Consultant discover any latent or unknown conditions materially differing from those inherent in the work or as represented by OC San, it shall immediately inform OC San of this and shall not proceed, except at Consultant's risk, until written instructions are received from OC San.

**28. Dispute Resolution**

28.1. In the event of a dispute as to the construction or interpretation of this Agreement, or any rights or obligations hereunder, the Parties shall first attempt, in good faith, to resolve the dispute by mediation. The Parties shall mutually select a mediator to facilitate the resolution of the dispute. If the Parties are unable to agree on a mediator, the mediation shall be conducted in accordance with the Commercial Mediation Rules of the American Arbitration Agreement, through the alternate dispute resolution procedures of Judicial Arbitration through Mediation Services of Orange County ("JAMS"), or any similar organization or entity conducting an alternate dispute resolution process.

28.2. In the event the Parties are unable to timely resolve the dispute through mediation, the issues in dispute shall be submitted to arbitration pursuant to California Code of Civil Procedure, Part 3, Title 9, Sections 1280 et seq. For such purpose, an agreed arbitrator shall be selected, or in the absence of agreement, each party shall select an arbitrator, and those two (2) arbitrators shall select a third. Discovery may be conducted in connection with the arbitration proceeding pursuant to California Code of Civil Procedure Section 1283.05. The arbitrator, or three (3) arbitrators acting as a board, shall take such evidence

and make such investigation as deemed appropriate and shall render a written decision on the matter in question. The arbitrator shall decide each and every dispute in accordance with the laws of the State of California. The arbitrator's decision and award shall be subject to review for errors of fact or law in the Superior Court for the County of Orange, with a right of appeal from any judgment issued therein.

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

**30. Waiver** The waiver of 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.

**31. Survival** All provisions of this Agreement that by their nature would reasonably be expected to continue after the termination of this Agreement will survive the termination of this Agreement.

**32. Right to Review Services, Facilities, and Records**

32.1. 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.

32.2. 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.

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

**33. 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.

**34. Contractor Safety Standards** OC San requires Consultant and its subconsultants 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, then the Consultant is required to follow the most stringent regulatory requirement at no additional cost to OC San. Consultant and all of its employees and subconsultants, shall adhere to all applicable Contractor Safety Standards attached hereto in Exhibit "D" as well as the Human Resources Policies in Exhibit "E".

**35. Damage to OC San's Property** Any OC San property damaged by Consultant will be subject to repair or replacement by Consultant at no cost to OC San.

- 36. Freight (F.O.B. Destination)** Consultant assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Agreement.
- 37. Assignments** 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.
- 38. Changes in Control of Consultant** In the event of a change in control of Consultant, OC San shall have the option of terminating this Agreement by written notice to Consultant. Consultant shall notify OC San within ten (10) days of the occurrence of a change in control. As used in this section, "control" is defined as the possession, direct or indirect, of either:
- the ownership or ability to direct the voting of fifty-one percent (51%) or more of the equity interests, value, or voting power in Consultant; or
  - the power to direct or cause the direction of the management and policies of Consultant, whether through ownership of voting securities, by contract, or otherwise.
- 39. Third Party Rights** Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than OC San and Consultant.
- 40. 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 of the terms of this Agreement.
- 41. Conflict of Interest and Reporting**
- 41.1. Consultant shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
- 41.2. Consultant affirms that to the best of its knowledge there exists no actual or potential conflict between Consultant's families, business or financial interest or its Services under this Agreement, and in the event of change in either its private interests or Services under this Agreement, it will raise with OC San any question regarding possible conflict of interest which may arise as a result of such change.
- 42. 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.
- 43. Read and Understood** By signing this Agreement, Consultant represents that it has read and understood the terms and conditions of the Agreement.
- 44. Entire Agreement** This Agreement constitutes the entire agreement of the Parties and supersedes all prior written or oral and all contemporaneous oral agreements, understandings, and negotiations between the Parties with respect to the subject matter hereof.

**45. Notices** All notices under this Agreement must be in writing. Written notice shall be delivered by personal service or sent by registered or certified mail, postage prepaid, return receipt requested, or by any other overnight delivery service which delivers to the noticed destination and provides proof of delivery to the sender. Any facsimile notice must be followed within three (3) days by written notice. Rejection or other refusal to accept or the inability to deliver because of changed address or 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: Jackie Lagade, Principal Buyer  
Orange County Sanitation District  
10844 Ellis Avenue  
Fountain Valley, CA 92708

Consultant: Brad Perry, National Sales Manager  
AVO Multi-Amp Corporation dba Megger  
4545 Davis Street  
Dallas, TX 75211

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

**ORANGE COUNTY SANITATION DISTRICT**

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
David John Shawver  
Chair, Board of Directors

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Kelly A. Lore  
Clerk of the Board

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Ruth Zintzun  
Purchasing & Contracts Manager

**AVO MULTI-AMP CORPORATION dba MEGGER**

Dated: \_\_\_\_\_ By: \_\_\_\_\_

\_\_\_\_\_  
Print Name and Title of Officer

CMM

**Exhibit A**  
**SCOPE OF WORK**  
**For**  
**Electrical Distribution System Test Data Management Software (Rebid)**

**EXHIBIT A**  
**SCOPE OF WORK**  
**ELECTRICAL DISTRIBUTION SYSTEM TEST DATA MANAGEMENT SOFTWARE (REBID)**  
**SPECIFICATION NO. CS-2021-1039BD-R**

**EXECUTIVE SUMMARY/OVERVIEW**

The Orange County Sanitation District (OC San) operates the third largest wastewater agency west of the Mississippi River. Since 1954, OC San has 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 OC San treats approximately 185 million gallons of wastewater. About 80 percent of the wastewater comes from homes – sinks, toilets, showers, laundry, and dishwashers. The remaining comes from businesses – retail stores, restaurants, manufacturers, hotels, offices, and other industries.

A professional staff of more than 600 employees manages the day-to-day activities of OC San. OC San's facilities include 587 miles of sewer pipes, located throughout the county, and 2 treatment plants – one in Fountain Valley, CA and the other in Huntington Beach, CA – where wastewater is treated in accordance with strict Federal, State, and local standards.

**1 PURPOSE**

The Orange County Sanitation District is seeking a qualified Consultant to implement an Electrical Distribution System Test Data Management Software. The software is used for the collection and reporting of data from maintenance and inspection activities performed on equipment used in the generation, transmission, and distribution of electric power, in accordance with various regulatory requirements and process systems sustainability.

**2 SUMMARY OF DESCRIPTION OF GOODS/SERVICES TO BE PROVIDED (OVERVIEW)**

The Software shall be capable of collecting and reporting data from maintenance and inspection activities performed on equipment used in the generation, transmission, and distribution of electric power in accordance with the requirements and recommendations as specified in NFPA70B, Recommended Practice for Electrical Equipment Maintenance. The product should also be capable of integrating with existing IBM Maximo Asset Management system. The services provided by the Consultant include but are not limited to project management, implementation, installation, configuration, integration, training, and documentation.

The Consultant shall work with OC San staff and its consultant(s) in designing and implementing the integration of the software with the existing Maximo Asset Management software.

**3 PROJECT MANAGEMENT**

3.1 Consultant will provide project management Services for the duration of the project phase and is responsible to attend all scheduled project meetings, develop and submit weekly progress reports as outlined by the OC San Project Manager, and serve as the single point of contact for project communications.

- 3.2 Consultant will maintain a weekly updated project schedule (including: project milestones, estimated level of effort, and proposed resource requirements) within a format approved by the OC San Project Manager and include this item in status reports to OC San Project Manager or as otherwise directed by OC San. Service provider will follow the processes/guidelines of the Project Management Body of Knowledge (PMBOK) published by the Project Management Institute.
- 3.3 Project Management services include but are not limited to the following:
- 3.1.1 Assign a project manager dedicated directly to this project. A Project Management Professional (PMP) certification is preferred.
  - 3.1.2 Identify and provide a senior level associate familiar with the Scope of Work, to be available to OC San during the duration of the Agreement to resolve project team or implementation issues that cannot be resolved at the project manager's level of authority.
  - 3.1.3 Identify and provide all "key" project members; "key" project members will not be changed during the duration of the Agreement without written approval by the OC San Project Manager.
  - 3.1.4 Provide a formal Project Charter to be jointly developed by the Consultant and OC San project team. OC San will have the final approval on the Project Charter.
  - 3.1.5 Prepare and submit a project communications plan to the OC San Project Manager for approval, in a format consistent with PMBOK.
  - 3.1.6 Prepare and submit a change management plan to the OC San Project Manager for approval, in a format consistent with PMBOK.
  - 3.1.7 Prepare and submit a project schedule and work breakdown structure for the project and each project element to the OC San Project Manager for approval, in a format consistent with PMBOK.
  - 3.1.8 Prepare and submit weekly status reports to the OC San Project Manager for approval, in a format consistent with PMBOK.
  - 3.1.9 Prepare and submit a quality assurance plan to the OC San Project Manager for approval, in a format consistent with PMBOK.
  - 3.1.10 Project Kickoff Meeting – Within two (2) weeks of the effective date of the Notice To Proceed (NTP), Consultant shall conduct a project kick-off meeting with OC San staff to introduce key members of the Consultant 's team. The discussion topics will be established by the OC San Project Manager and may include, but not be limited to: OC San's responsibilities, Consultant's responsibilities, project schedule, communication plan, and project methodology for successful implementation.
  - 3.1.11 Progress Meetings – The Consultant shall meet with OC San as required throughout the duration of the Agreement. Weekly project management meetings with the Consultant will be required. These meetings will be conducted via conference call or WebEx.
  - 3.1.12 OC San Coordination - OC San will coordinate with Consultant during all phases of the project. Coordination will include but not be limited to the following:
    - 3.1.12.1 Assistance from OC San staff or subject matter experts as needed to develop, test, and implement the software.
    - 3.1.12.2 Other assistance as requested by Consultant and approved by the OC San Project Manager to support the project efforts.
    - 3.1.12.3 Access to OC San resources must be planned to ensure OC San staff are able to accomplish their primary task assignments within the organization. Consultant shall coordinate resource requests with

the OC San Project Manager at a minimum of two (2) weeks in advance of the actual need. Resources are identified but not limited to: OC San staff, OC San computer or network systems, OC San hardware not related to Information Technology systems.

- 3.1.12.4 On-going coordination with OC San resources are to be managed by the OC San Project Manager.

## 4 PROJECT SCOPE AND DELIVERABLES

- 4.1 MILESTONE 1 - Detail Requirements and Design** – Consultant shall conduct a detailed requirements analysis to clarify Consultant's understanding of OC San's current procedure and process workflow. This includes interviews and meetings to review, discuss and document business requirements, existing business rules, existing business practices and the business process currently in effect at OC San. Consultant will conduct meetings with applicable OC San staff and management, discuss and review the results of the interview process and update OC San's business rules, business practices and workflow as may be necessary to adequately prepare for the implementation process. Consultant will include in this process a detailed workflow analysis and prepare flowcharts and diagrams as applicable and necessary for the project. Consultant will work with OC San staff to determine the role base assignment. All final business rules, business processes and workflow documented for planned use in the project shall be prepared in written form including applicable flow charts and subject to the OC San Project Manager's approval prior to completion of the project.

Payment for Milestone No. 1 shall be **ten percent (10%)** of the not to exceed amount of the Agreement. Payment for Milestone No. 1 is contingent upon the assigned OC San Project Manager's acceptance of the final version of the submittal. Payment for Milestone No. 1 will include the following:

### **Milestone 1 Deliverables:**

- Workflow diagrams and flowcharts
- Business practices and process
- Role based assignment

- 4.2 MILESTONE 2 - System Implementation, Configuration, and Integration** – Consultant shall work with OC San staff and its consultant(s) to implement the selected software. The Software and Services provided shall include, but not be limited to the following:

- 4.2.1 Includes interfaces for many common test instruments and allows for automated testing and data acquisition, as well as imports from various file formats.
- 4.2.2 Ability to document, track and trend electrical test data of our electrical assets.
- 4.2.3 Contain a test form library that includes forms for a wide variety of equipment types from relays to batteries, transformers and more. The test forms shall provide a user interface for both data entry and reporting and ability to customize forms or create new forms. Forms shall also have the built-in capability of communicating with many different electrical test instruments, enabling automated data entry to speed up data handling and eliminate many of the errors associated with manual keyboard entry.
- 4.2.4 Ability for each technician or user to work remotely, and then sync the collected data to a central database repository.



- 4.2.5 Ability to efficiently organize Assets in the database that can be searched for by their location, serial number or asset ID number.
- 4.2.6 Ability to query and trend data over time and provide analysis tools to help in evaluating the condition of equipment or asset.
- 4.2.7 Ability to flag deteriorating equipment by automatically highlighting worsening data trends.
- 4.2.8 Ability to store electrical test data in an orderly and easily retrievable electronic format.
- 4.2.9 Ability to directly interface with existing test equipment in order to reduce manual hand-written data entry.
- 4.2.10 Include a large library of pre-configured test forms for all existing equipment and provide capability to customize the forms as needed.
- 4.2.11 Ability to automatically generate test reports.
- 4.2.12 Ability to integrate with existing IBM Maximo Asset Management System. Integration should include but is not limited to information regarding Assets, Locations, Preventive Maintenance, and Work orders.
- 4.2.13 Ability to interface with SQL Server database as the central database repository. Field databases could either be SQL Server Lite or Microsoft Access.
- 4.2.14 Support up to a minimum of 35 user accounts and multiple facilities.
- 4.2.15 Support Electrical Asset inventory of a minimum of 5000 assets.
- 4.2.16 Vendor must convert existing paper test forms used by OC San's electrical staff to electronic forms that could be used in the software system.
- 4.2.17 Vendor must provide support for installation and configuration of the product.
- 4.2.18 Vendor must provide support for integration of the product with existing systems like Maximo.
- 4.2.19 Vendor must provide end user training for 32 users and system administration training for 3 users.
- 4.2.20 Vendor must provide project management services for implementation of the software system.
- 4.2.21 Vendor must work with OC San staff and their Maximo consultant TRM (Total Resource Management) to design and implement integration of their software system with Maximo.

Payment for Milestone No. 2 shall be **forty percent (40%)** of the not to exceed amount of the Agreement. Payment for Milestone No. 2 is contingent upon the assigned OC San Project Manager's acceptance of the final version of the submittal. Payment for Milestone No. 2 will include the following:

**Milestone 2 Deliverables:**

- An Electrical Test and Management system that is integrated with the existing IBM Maximo Asset Management System that delivers all functions listed above to enhance the safe execution of maintenance and operations related work.
- Convert 25 existing paper test forms into the new system.

**4.3 MILESTONE 3 - Training** – Consultant shall develop training material and provide training to thirty-five (35) OC San Staff. All training material shall be reviewed and approved by the OC San Project Manager prior to the start of the training class. Training shall be role based and be held on OC San's property using OC San Training environment with OC San specific data. Consultant will develop all role base training and reference materials for OC San staff for review and approval prior to training sessions. The Consultant will develop and conduct training based on, but not limited to, the following roles:

- 4.3.1 System Administrator

- 4.3.2 Test form creation and modifications
- 4.3.3 Field User

Payment for Milestone No. 3 shall be **ten percent (10%)** of the not to exceed amount of the Agreement. Payment for Milestone No. 3 is contingent upon the assigned OC San Project Manager's acceptance of the final version of the submittal. Payment for Milestone No. 3 will include the following:

**Milestone 3 Deliverables:**

- Role base training manuals
- Role base training for up to thirty-five (35) OC San staff
- All training will be conducted on OC San's property using OC San standard computer and within OC San's Training environment with OC San specific data.

**4.4 MILESTONE 4 - Knowledge Transfer** – Consultant will work with OC San Staff to transfer knowledge. Consultant shall conduct periodic knowledge transfer sessions. These sessions will be performed with the OC San Project Manager and assigned IT personnel.

4.4.1 The scope of these sessions will include, but not be limited to: Review of all existing documentation.

- 4.4.1.1 Actual hands-on installation and setup of the software and tools being used for the project.
- 4.4.1.2 Setup of the data and database connections to the software and tools, a demonstration of how the software and tools work and how to maintain and upgrade the data.
- 4.4.1.3 VENDOR shall also provide a hands-on review of the installation of any custom applications, tools and steps relating to the installation or setup.

Payment for Milestone No. 4 shall be **ten percent (10%)** of the not to exceed amount of the Agreement. Payment for Milestone No. 4 is contingent upon the assigned OC San Project Manager's acceptance of the final version of the submittal. Payment for Milestone No. 4 will include the following:

**Milestone 4 Deliverable:**

- Scheduled knowledge transfer sessions throughout project term.

**4.5 MILESTONE 5 - Testing, Go-live, and Support** – Consultant shall develop a comprehensive formal testing process approved by the OC San Project Manager. Consultant shall develop a test plan for each component/module or system function establishing roles/responsibilities of team members for each test plan. Consultant shall develop and load test data into a test system and facilitate the completion of each test plan.

- 4.5.1 Testing shall be coordinated with efforts between the OC San Project Manager, OC San Technical Lead, and OC San staff.
- 4.5.2 All testing procedures shall be developed and documented by Consultant and submitted to OC San for review and approval no less than two (2) weeks before testing begins. Testing scenarios shall reflect real-world processes and situations encountered by OC San employees.
- 4.5.3 Prior to moving the software into a production environment, Consultant shall remedy all known defects and install and test the most current, commercially

available fix pack(s) from IBM and remedy all problems and deficiencies that may surface during that process.

- 4.5.4 All tests shall be performed on-site at OC San on standard computers and servers with OC San standard software and hardware.
- 4.5.5 Tests shall not be considered complete until the OC San Project Manager and assigned IT personnel are satisfied that the software and data performed properly and is compliant with OC San standards in accordance with the Scope of Work. All training shall be completed prior to go-live.
- 4.5.6 Upon successful completion of testing and written certification by Consultant that the software is complete in all respects, and all known defects have been remedied by Consultant, the software will be prepared for live operations.
- 4.5.7 Consultant shall provide dedicated remote support during go-live for not less than 15 business days. If the module is deemed not functioning, then the response time will be within 4 hours of the next business day. If defects surface during that period, OC San reserves the right to require Consultant to remain on site until the software is stable and material defects have been remedied, at no additional cost to OC San.

Payment for Milestone No. 5 shall be **twenty percent (20%)** of the not to exceed amount of the Agreement. Payment for Milestone No. 5 is contingent upon the assigned OC San Project Manager's acceptance of the final version of the submittal. Payment for Milestone No. 5 will include the following:

**Milestone 5 Deliverables:**

- Test plan
- User acceptance test
- System test
- Go-live
- Go-live support

**4.6 MILESTONE 6 - Project Documentation** – All project-related documentation shall be updated and provided to OC San prior to training.

- 4.6.1 Project documentation shall include, but not be limited to: hardware configuration, software configuration, security setup and administration, training manuals, collected data, installation procedures, and testing procedures.
- 4.6.2 All documentation shall be delivered in the form of electronic files. All project documentation deliverables shall be in their original format (e.g., Word or Excel). The final documentation deliverable shall consist of a complete set of electronic user manuals and electronic system administration manuals exclusive of IBM-MAXIMO user/system manuals procured by OC San.

Payment for Milestone No. 6 shall be **ten percent (10%)** of the not to exceed amount of the Agreement. Payment for Milestone No. 6 is contingent upon the assigned OC San Project Manager's acceptance of the final version of the submittal. Payment for Milestone No. 6 will include the following:

**Milestone 6 Deliverables:**

- System/Application configuration.
- System/Application security setup.
- System/Application workflow documentation.
- System/Application test plans and test plan results.
- Finalized version of workflow diagrams & flowcharts.

- Finalized version of standard operating procedures.
- Finalized version of training manuals.
- All other documentation generated by other project tasks (e.g., status reports, logs, and training materials).

## 5. SCHEDULE

- Consultant shall adhere to the following deadlines in creating its schedule and work breakdown structure for accomplishing the SOW. Consultant shall coordinate all meetings and presentations with the assigned OC San representative. All meetings and presentations will be held at OC San’s Plant 1 facility located in the City of Fountain Valley, CA.

ACTIVITY	DEADLINE
Notice to Proceed (NTP)	NTP = Effective Date
Kick-Off Meeting	NTP + 21 Calendar Days
Detail Requirements and Design	NTP + 42 Calendar Days
System Implementation, Configuration, and Integration	NTP + 90 Calendar Days
Project Documentation	NTP + 120 Calendar Days
Training	NTP + 135 Calendar Days
Knowledge Transfer & Testing and Go-Live	NTP + 180 Calendar Days