

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, is made and entered into to be effective the 25th day of March, 2020, by and between the ORANGE COUNTY SANITATION DISTRICT, hereinafter referred to as "SANITATION DISTRICT", and CAROLLO ENGINEERS, INC., 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 **Ocean Outfall Condition Assessment and Scoping Study, Project No. PS18-09**, to provide professional engineering services to support the condition assessment and recommendations for rehabilitation of the marine (submerged) portion of the 120-inch diameter ocean outfall pipeline; 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 a CONSULTANT to perform this work; and,

WHEREAS, at its regular meeting on March 25, 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 services to accomplish those project elements outlined in the Scope of Work attached hereto as "Attachment A", and by this reference made a part of this AGREEMENT.

- A. The CONSULTANT shall be responsible for the professional quality, technical accuracy, and completeness and coordination of the work and services furnished by the CONSULTANT under this AGREEMENT, including the work performed by its Subconsultants. Where approval by 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.
- B. CONSULTANT is responsible for the quality of work prepared under this AGREEMENT and shall perform all work to the industry standards for clarity, uniformity, and completeness. CONSULTANT shall timely respond to all comments, suggestions, and recommendations from the SANITATION

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

- C. In the event that CONSULTANT's services and/or work product(s) is not to the satisfaction of 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 work product(s) 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. Any CADD drawings, figures, and other work produced by CONSULTANT and Subconsultants using the SANITATION DISTRICT CAD Manual. Conversion of CADD work from any other non-standard CADD format to the SANITATION DISTRICT format shall not be acceptable in lieu of this requirement.

Electronic files shall conform to the SANITATION DISTRICT specifications. Any changes to these specifications by the CONSULTANT are subject to review and require advance written approval of the SANITATION DISTRICT.

Electronic files shall be subject to an acceptance period of thirty (30) calendar days during which the SANITATION DISTRICT shall perform appropriate reviews and including CAD Manual compliance. CONSULTANT shall correct any discrepancies or errors detected and reported within the acceptance period at no additional cost to the SANITATION DISTRICT.

- E. All professional services performed by the CONSULTANT, including, but not limited to, all drafts, data, correspondence, proposals, and reports compiled or composed by the CONSULTANT, pursuant to this AGREEMENT, are for the sole use of 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. COST ESTIMATES

The CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, or over the construction contractor's methods of determining prices, or other competitive bidding or market conditions, practices or bidding strategies. CONSULTANT shall use best engineering practices along with

experience and judgement utilizing current local costs of labor, materials, equipment or services to prepare cost estimates. CONSULTANT cannot and does not guarantee that proposals, bids, actual Project construction, operation and/or lifecycle costs will not vary from cost estimates prepared by CONSULTANT.

3. 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 Two Million Seven Hundred Forty-four Thousand Dollars (\$2,744,000.00). Total compensation to CONSULTANT including burdened labor (salaries plus benefits), overhead, profit, direct costs, and Subconsultant(s) fees and costs shall not exceed the sum set forth in Attachment "E" - Fee Proposal.

B. Labor

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

C. Overhead

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

D. Profit

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

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

E. Subconsultants

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

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

F. Direct Costs

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

G. Other Direct Costs

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

H. Reimbursable Direct Costs

The SANITATION DISTRICT will reimburse the CONSULTANT for reasonable travel and business expenses as described in this section and further described in Attachment "D" - Allowable Direct Costs to this AGREEMENT. The reimbursement of the above mentioned expenses will be based on an "accountable plan" as considered by Internal Revenue Service (IRS). The plan includes a combination of reimbursements based upon receipts and a "per diem" component approved by IRS. The most recent schedule of the per diem rates utilized by the SANITATION DISTRICT can be found on the U.S. General Service Administration website at <http://www.gsa.gov/portal/category/104711#>.

The CONSULTANT shall be responsible for the most economical and practical means or management of reimbursable costs inclusive but not limited to travel, lodging and meals arrangements. The SANITATION DISTRICT shall apply the

most economic and practical method of reimbursement which may include reimbursements based upon receipts and/or “per diem” as deemed the most practical.

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

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

Local Travel is considered travel by the CONSULTANT within the SANITATION DISTRICT geographical area which includes Orange, Los Angeles, Ventura, San Bernardino, Riverside, San Diego, Imperial and Kern Counties. Automobile mileage is reimbursable if CONSULTANT is required to utilize personal vehicle for local travel.

Lodging – Overnight stays will not be approved by the SANITATION DISTRICT for local travel. However, under certain circumstances overnight stay may be allowed at the discretion of the SANITATION DISTRICT based on reasonableness of meeting schedules and the amount of time required for travel by the CONSULTANT. Such determination will be made on a case-by-case basis and at the discretion of the SANITATION DISTRICT.

Travel Meals – Per-diem rates as approved by IRS shall be utilized for travel meals reimbursements. Per diem rates shall be applied to meals that are appropriate for travel times. Receipts are not required for the approved meals.

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

I. Limitation of Costs

If, at any time, CONSULTANT estimates the cost of performing the services described in CONSULTANT’s Proposal will exceed 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 invoice and monthly progress report. 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.

4. 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.

5. PAYMENT

- A. Monthly Invoice: CONSULTANT shall include in its monthly invoice, a detailed breakdown of costs associated with the performance of any corrections or revisions of the work for that invoicing period, in a format acceptable to the SANITATION DISTRICT. 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 Section 12 Audit Provisions.
- B. CONSULTANT will submit monthly statements covering services and/or work performed for payment for those items included in Section 2 hereof no later than the second Wednesday of the following month and in the format required by the SANITATION DISTRICT. The format must include, as a minimum: 1) current billing period invoicing, 2) current billing period "total percent invoiced to date", 3) future activities, 4) previous billing period "total invoiced to date", 5) potential items that are not included in the Scope of Work, 6) concerns and possible delays, 7) percentage of completion to date, and 8) budget status and amount remaining. Such requests shall be accompanied by such supporting data as may be required by the SANITATION DISTRICT.

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.

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 project element,

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 the Project in its entirety.

- C. CONSULTANT may submit periodic payment requests for each 30-day period of this AGREEMENT for the profit as set forth in Section 2 - COMPENSATION above. Said profit payment request shall be proportionate to the work actually accomplished to date on a per-project-element basis. In the event the SANITATION DISTRICT's Director of Engineering determines that no satisfactory

progress has been made since the prior payment, or in the event of a delay in the work progress for any reason, the SANITATION DISTRICT shall have the right to withhold any scheduled proportionate profit payment.

- D. Upon satisfactory completion by CONSULTANT of the work called for under the terms of this AGREEMENT, and upon acceptance of such work by the SANITATION DISTRICT, CONSULTANT will be paid the unpaid balance of any money due for such work based on the monthly statements, including any retained percentages relating to this portion of the work.
- E. Upon satisfactory completion of the work performed hereunder and prior to final payment under this AGREEMENT for such work, or prior settlement upon termination of this AGREEMENT, and as a condition precedent thereto, CONSULTANT shall execute and deliver to 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.
- F. 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.

A CONSULTANT or Subconsultant shall be deemed to have submitted a false claim when the CONSULTANT or Subconsultant: (a) knowingly presents or causes to be presented to an officer or employee of 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.

6. PREVAILING WAGES

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

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

- A. To the extent CONSULTANT's employees and/or Subconsultants who will perform Work during the design and preconstruction phases of a construction

contract for which Prevailing Wage Determinations have been issued by the DIR and as more specifically defined under Labor Code Section 1720 et seq, CONSULTANT and Subconsultants shall comply with the registration requirements of Labor Code Section 1725.5. Pursuant to Labor Code Section 1771.4, the Work is subject to compliance monitoring and enforcement by the DIR.

- B. The CONSULTANT and Subconsultants shall maintain accurate payroll records and shall comply with all the provisions of Labor Code Section 1776, and shall submit payroll records to the Labor Commissioner pursuant to Labor Code Section 1771.4(a)(3). Penalties for non-compliance with the requirements of Section 1776 may be deducted from progress payments per Section 1776.
- C. Pursuant to Labor Code Section 1776, the CONSULTANT and Subconsultants shall furnish a copy of all certified payroll records to 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 Regulations Section 16461(e).

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, 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 study or deliverable where the subsequent changes or uses are not authorized or approved by CONSULTANT, provided that the service rendered by CONSULTANT was not a proximate cause of the damage.

The SANITATION DISTRICT shall furnish the CONSULTANT available studies, reports and other data pertinent to the CONSULTANT's services; obtain or authorize the CONSULTANT to obtain or provide additional reports and data as the SANITATION DISTRICT determines to be reasonably required; and furnish to the CONSULTANT services of others the SANITATION DISTRICT determines to be reasonably required for the performance of the CONSULTANT's services hereunder. The CONSULTANT shall be entitled to use and rely upon all such information and services provided by the SANITATION DISTRICT or others in performing the CONSULTANT's services under this AGREEMENT.

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 and shall remain in effect for two years after the completion of the Project.

B. General Liability

The CONSULTANT shall maintain during the life of this AGREEMENT, including the period of warranty, Commercial General Liability Insurance written on an occurrence basis providing the following minimum limits of liability coverage: Two Million Dollars (\$2,000,000) per occurrence with Four Million Dollars (\$4,000,000) aggregate with NO waterborne exclusions. 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. Maritime Employers Liability Insurance

If divers will be used, maritime employers liability (MEL) insurance must be maintained by CONSULTANT in the amount of One Million Dollars (\$1,000,000) in a form acceptable by the SANITATION DISTRICT and divers must be commercially certified. The CONSULTANT's diver Subconsultant will provide this coverage directly.

F. Drone Liability Insurance

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

G. 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. Such Worker's Compensation Insurance shall also have United States Longshore and Harbor Workers (USL & H) coverage. 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.

H. Errors and Omissions/Professional Liability

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

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

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

CONSULTANT shall provide to 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.

I. 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 (General Liability) (ISO Form) CG2010 11 85 or
The combination of (ISO Forms) CG 2010 10 01 and CG 2037 10 01

All other Additional Insured endorsements must be submitted for approval by the SANITATION DISTRICT, and the SANITATION DISTRICT may reject alternatives that provide different or less coverage to the SANITATION DISTRICT.
- Additional Insured (Auto Liability) Submit endorsement provided by carrier for the 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.

J. 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.

K. 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.

L. Separation of Insured

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

M. 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.

N. 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.

O. Defense Costs

Except for Errors and Omissions/Professional Liability, all 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.

P. 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.

Q. 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

CONSULTANT shall provide to SANITATION DISTRICT, prior to execution of this AGREEMENT, the names and full description of all Subconsultants and CONSULTANT's project team members anticipated to be used on this Project under this AGREEMENT by CONSULTANT. CONSULTANT shall include a description of the work and services to be done by each Subconsultant and each of CONSULTANT's Project team member. CONSULTANT shall include the respective compensation amounts for CONSULTANT and each Subconsultant, broken down as indicated in Section 2-COMPENSATION.

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

12. ENGINEERING REGISTRATION

The CONSULTANT's personnel and Subconsultants 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 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. THIRD PARTIES

This AGREEMENT is entered into by and for the SANITATION DISTRICT and the CONSULTANT, and nothing herein is intended to establish rights or interests in individuals or entities not a party hereto.

16. 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: Valerie Ratto, Project Manager

CONSULTANT:

Carollo Engineers, Inc.
3150 Bristol Street
Suite 500
Costa Mesa, CA 92626
Attention: Walid T. Karam, P.E.
Stephen G. Hough, P.E.

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.

17. 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 Section 14 - NOTICES.

18. 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.

19. COMPLIANCE

A. Labor

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

B. Air Pollution

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

20. 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.

21. 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.

22. 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.

23. 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).

24. 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.

The CONSULTANT's liability for claims, damages and/or losses not otherwise covered by the insurance policies required in Section 9 INSURANCE hereunder, shall be limited to the extent of Two (2) times the CONSULTANT's compensation as delineated in Section 3.A. Total Compensation hereunder.

25. 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 no event shall the cost to defend charged to the CONSULTANT exceed the CONSULTANT's proportionate percentage of fault. The duty to indemnify, including the duty and the cost to defend, is limited as provided in California Civil Code Section 1782.8.

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.

26. 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.

27. 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.

28. ACCESS

The SANITATION DISTRICT shall arrange for access to and make all provisions for the CONSULTANT to enter upon public and private property as required for the CONSULTANT to perform services hereunder.

29. LIABILITY LIMITATIONS

The CONSULTANT shall not be responsible for acts and decisions of third parties, including governmental agencies, other than the CONSULTANT's Subconsultants, that impact project completion and/or success.

30. 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.

CAROLLO ENGINEERS, INC.

By _____ Date _____

Printed Name & Title

ORANGE COUNTY SANITATION DISTRICT

By _____ Date _____
David John Shawver
Board Chairman

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

By _____ Date _____
Ruth Zintzun
Purchasing & Contracts Manager

- Attachments:
- Attachment "A" Scope of Work
 - Attachment "B" Labor Hour Matrix
 - Attachment "C" Not Attached
 - Attachment "D" Allowable Direct Costs
 - Attachment "E" Fee Proposal
 - Attachment "F" Not Used
 - Attachment "G" Cost Matrix
 - Attachment "H" Not Used
 - Attachment "I" Not Used
 - Attachment "J" Minor Subconsultant Hourly Rate Schedule
 - Attachment "K" OCSD Safety Standards

CMM:yp