



**Orange County Sanitation District
OPERATIONS COMMITTEE
Regular Meeting Agenda
Wednesday, September 4, 2019 - 5:00 PM
Board Room
Administration Building
10844 Ellis Avenue
Fountain Valley, CA 92708
(714) 593-7433**

ACCOMMODATIONS FOR THE DISABLED: Meeting Rooms are wheelchair accessible. If you require any special disability related accommodations, please contact the Orange County Sanitation District Clerk of the Board's office at (714) 593-7433 at least 72 hours prior to the scheduled meeting. Requests must specify the nature of the disability and the type of accommodation requested.

AGENDA POSTING: In accordance with the requirements of California Government Code Section 54954.2, this agenda has been posted outside the main gate of the Sanitation District's Administration Building located at 10844 Ellis Avenue, Fountain Valley, California, and on the Sanitation District's website at www.ocsd.com not less than 72 hours prior to the meeting date and time above. All public records relating to each agenda item, including any public records distributed less than 72 hours prior to the meeting to all, or a majority of the Board of Directors, are available for public inspection in the office of the Clerk of the Board.

AGENDA DESCRIPTION: The agenda provides a brief general description of each item of business to be considered or discussed. The recommended action does not indicate what action will be taken. The Board of Directors may take any action which is deemed appropriate.

MEETING AUDIO: An audio recording of this meeting is available within 24 hours after adjournment of the meeting. Please contact the Clerk of the Board's office at (714) 593-7433 to request the audio file.

NOTICE TO DIRECTORS: To place items on the agenda for a Committee or Board Meeting, the item must be submitted in writing to the Clerk of the Board: Kelly A. Lore, MMC, (714) 593-7433 / klore@ocsd.com at least 14 days before the meeting.

FOR ANY QUESTIONS ON THE AGENDA, BOARD MEMBERS MAY CONTACT STAFF AT:

General Manager: Jim Herberg, jherberg@ocsd.com / (714) 593-7300
Asst. General Manager: Lorenzo Tyner, ltynes@ocsd.com / (714) 593-7550
Asst. General Manager: Rob Thompson, rthompson@ocsd.com / (714) 593-7310
Director of Human Resources: Celia Chandler, cchandler@ocsd.com / (714) 593-7202
Director of Engineering: Kathy Millea, kmillea@ocsd.com / (714) 593-7365
Director of Environmental Services: Lan Wiborg, lwiborg@ocsd.com / (714) 593-7450

CALL TO ORDER**PLEDGE OF ALLEGIANCE****DECLARATION OF QUORUM:****PUBLIC COMMENTS:**

If you wish to address the Board of Directors on any item, please complete a Speaker's Form (located at the table outside of the Board Room) and submit it to the Clerk of the Board or notify the Clerk of the Board the item number on which you wish to speak. Speakers will be recognized by the Chairperson and are requested to limit comments to three minutes.

REPORTS:

The Board Chairperson and the General Manager may present verbal reports on miscellaneous matters of general interest to the Directors. These reports are for information only and require no action by the Directors.

CONSENT CALENDAR:

Consent Calendar Items are considered to be routine and will be enacted, by the Board of Directors, after one motion, without discussion. Any items withdrawn from the Consent Calendar for separate discussion will be considered in the regular order of business.

1. APPROVAL OF MINUTES [2019-511](#)**RECOMMENDATION:**

Approve Minutes of the Special Meeting of the Operations Committee held July 10, 2019.

Originator: Kelly Lore

Attachments: [Agenda Report](#)
[07-10-19 Operations Committee Minutes](#)

2. QUARTERLY ODOR COMPLAINT REPORT [2019-507](#)**RECOMMENDATION:**

Receive and file the Fiscal Year 2018/19 Fourth Quarter Odor Complaint Report.

Originator: Rob Thompson

Attachments: [Agenda Report](#)
[FY 2018-19 4th Quarter Odor Complaint Report](#)

3. CAPITAL IMPROVEMENT PROGRAM CONTRACT PERFORMANCE REPORT [2019-519](#)

RECOMMENDATION: Recommend to the Board of Directors to:

Receive and file the Capital Improvement Program Contract Performance Report for the period ending June 30, 2019.

Originator: Kathy Millea

Attachments: [Agenda Report](#)
[OCSD CIP Quarterly Contracts Report August 2019](#)

4. SUNFLOWER AND RED HILL INTERCEPTOR REPAIR, PROJECT NO. 7-66 [2019-520](#)

RECOMMENDATION: Recommend to the Board of Directors to:

A. Approve a Professional Design Services Agreement with GHD Inc. to provide engineering services for Sunflower and Red Hill Interceptor Repair, Project No. 7-66, for an amount not to exceed \$308,712; and

B. Approve a contingency of \$30,871 (10%).

Originator: Kathy Millea

Attachments: [Agenda Report](#)
[7-66 Professional Design Services Agreement](#)

5. BLANKET PURCHASE ORDER FOR ARC FLASH SUIT & GLOVE RENTAL PROGRAM FROM CINTAS CORPORATION [2019-534](#)

RECOMMENDATION: Recommend to the Board of Directors to:

A. Approve Blanket Purchase Order with Cintas Corporation for 12 calorie per square centimeter rated daily wear uniform and 65 calorie per square centimeter rated Arc Flash Suit and Electrically Insulated Glove Lease Program per Cooperative Agreement Contract: R-BB-19002, for a total amount not to exceed \$380,185 for a three-year contract term, plus one additional three-year renewal option; and

B. Approve contingency of \$19,000 (5%).

Originator: Rob Thompson

Attachments: [Agenda Report](#)

6. ON-CALL PREVENTATIVE MAINTENANCE SERVICES FOR [2019-530](#)
ELECTRICAL EQUIPMENT (MP-278)

RECOMMENDATION: Recommend to the Board of Directors to:

- A. Approve a Contract to provide on-call electrical maintenance services, Specification No. S-2019-1006BD-R, with Hampton Tedder Technical Services for a one-year period effective November 1, 2019 through October 31, 2020, for an amount not to exceed \$1,657,950, and approve four, one-year renewal options; and
- B. Approve a contingency of \$82,898 (5%).

Originator: Rob Thompson

Attachments: [Agenda Report](#)
[Specification No. S-2019-1006BD-R](#)

NON-CONSENT:

7. RETURN ACTIVATED SLUDGE PIPING REPLACEMENT AT PLANT [2019-512](#)
NO. 2, PROJECT NO. P2-123

RECOMMENDATION: Recommend to the Board of Directors to:

- A. Approve a Professional Construction Services Agreement with Spec Services, Inc. to provide construction support services for Return Activated Sludge Piping Replacement at Plant No. 2, Project No. P2-123, for a total amount not to exceed \$252,329; and
- B. Approve a contingency of \$25,233 (10%).

Originator: Kathy Millea

Attachments: [Agenda Report](#)
[Professional Construction Services Agreement](#)

8. RETURN ACTIVATED SLUDGE PIPING REPLACEMENT AT PLANT NO. 2, PROJECT NO. P2-123 [2019-514](#)

RECOMMENDATION: Recommend to the Board of Directors to:

- A. Receive and file Bid Tabulation and Recommendation for Return Activated Sludge Piping Replacement at Plant No. 2, Project P2-123;
- B. Receive and file Orange County Sanitation District's Notice of Intent to Award dated August 8, 2019;
- C. Receive and file Award Protest from W.M. Lyles Co. dated August 13, 2019, concerning the award to Shimmick Construction Company;
- D. Receive and file response letter from Shimmick Construction Company dated August 20, 2019, regarding the bid protest of W.M. Lyles Co.;
- E. Receive and file Orange County Sanitation District's determination letter dated August 23, 2019, to W.M. Lyles Co. responding to Award Protest;
- F. Deny award protest filed by W.M. Lyles Co.;
- G. Award a Construction Contract to Shimmick Construction Company for Return Activated Sludge Piping Replacement at Plant No. 2, Project No. P2-123, for a total amount not to exceed \$6,042,111; and
- H. Approve a Construction Contract contingency of \$604,211 (10%).

Originator: Kathy Millea

Attachments: [Agenda Report](#)
[W.M. Lyles Co. Award Protest Letter](#)
[Shimmick Construction Company Response to Bid Protest Letter](#)
[Sanitation District Response to W.M. Lyles Co. Award Protest](#)
[Sanitation District Intent to Award Letter](#)
[Construction Contract](#)

9. PLANT NO. 2 EFFLUENT PUMP STATION ANNEX, VARIABLE FREQUENCY DRIVE MODERNIZATION, AND MANUFACTURER SERVICE AGREEMENT [2019-529](#)

RECOMMENDATION: Recommend to the Board of Directors to:

- A. Approve Sole Source Purchase Order to the Original Equipment Manufacturer, Siemens Industry, Inc., to modernize three Effluent Pump Station Annex (EPSA) Variable Frequency Drives (VFDs) for a fixed amount not to exceed \$368,879, plus applicable tax and shipping;
- B. Approve Sole Source Purchase Order for SIEPRO® Technical Service Agreement with Siemens Industry, Inc. to perform annual preventative maintenance, for a three-year period, for an amount not to exceed \$68,805, plus applicable tax and shipping; and
- C. Approve contingency funds of 20% for each contract, for a combined total not to exceed \$87,537.

Originator: Rob Thompson

Attachments: [Agenda Report](#)

INFORMATION ITEMS:

10. PROCESS CONTROL SYSTEMS UPGRADES STUDY, PROJECT NO. SP-196 [2019-518](#)

RECOMMENDATION:

Information Only.

Originator: Kathy Millea

Attachments: [Agenda Report](#)

DEPARTMENT HEAD REPORTS:

CLOSED SESSION:

None.

OTHER BUSINESS AND COMMUNICATIONS OR SUPPLEMENTAL AGENDA ITEMS, IF ANY:

BOARD OF DIRECTORS INITIATED ITEMS FOR A FUTURE MEETING:

At this time Board members may request staff to place an item on a future agenda.

ADJOURNMENT:

Adjourn the Board meeting until the Regular Meeting of the Operations Committee on October 2, 2019 at 5:00 p.m.



Orange County Sanitation District

Administration Building
10844 Ellis Avenue
Fountain Valley, CA 92708
(714) 593-7433

OPERATIONS COMMITTEE

Agenda Report

File #: 2019-511

Agenda Date: 9/4/2019

Agenda Item No: 1.

FROM: James D. Herberg, General Manager
Originator: Kelly A. Lore, Clerk of the Board

SUBJECT:

APPROVAL OF MINUTES

GENERAL MANAGER'S RECOMMENDATION

RECOMMENDATION:

Approve Minutes of the Special Meeting of the Operations Committee held July 10, 2019.

BACKGROUND

In accordance with the Board of Directors Rules of Procedure, an accurate record of each meeting will be provided to the Directors for subsequent approval at the following meeting.

RELEVANT STANDARDS

- Resolution No. OCSD 18-12

ATTACHMENT

The following attachment(s) are included in hard copy and may also be viewed on-line at the OCSD website (www.ocsd.com) with the complete agenda package:

- Minutes of the Special meeting held July 10, 2019

MINUTES OF THE SPECIAL OPERATIONS COMMITTEE MEETING

**Orange County Sanitation District
Wednesday, July 10, 2019, 5:00 p.m.**

A Special meeting of the Operations Committee was called to order by Committee Chair Bob Collacott on Wednesday, July 10, 2019 at 5:01 p.m. in the Administration Building. Director Jesus Silva led the Flag Salute. A quorum was declared present, as follows:

COMMITTEE MEMBERS PRESENT:

Robert Collacott, Chair
Mariellen Yarc, Vice-Chair
Brad Avery
Allan Bernstein
Doug Chaffee
Phil Hawkins
Steve Jones
Lucille Kring
Sandra Massa-Lavitt
Tim Shaw
Jesus J. Silva
Fred Smith
David Shawver, Board Chair
John Withers, Board Vice-Chair

COMMITTEE MEMBERS ABSENT:

None

STAFF PRESENT:

Jim Herberg, General Manager
Rob Thompson, Assistant General Manager
Lorenzo Tyner, Assistant General Manager
Celia Chandler, Director of Human Resources
Kathy Millea, Director of Engineering
Lan Wiborg, Director of Environmental Services
Kelly Lore, Clerk of the Board
Megan Carlson
Ron Coss
Jacob Dalgoff
Mike Dorman
Dean Fisher
Lisa Frigo
Ted Gerber
Mark Kawamoto
Annie Larkin
Cory Mayne
Tom Meregillano
Jeff Mohr
Adam Nazaroff
Valerie Ratto
Don Stokes
Eros Yong

OTHERS PRESENT:

Brad Hogin, General Counsel
Austin Mejia (Supervisor Chaffee's office)

PUBLIC COMMENTS:

None.

Clerk of the Board Kelly Lore announced that late communication was received regarding Item No. 4 and Item No. 5 which was provided in hard copy to the Directors and made available to the public.

REPORT OF GENERAL MANAGER:

General Manager Jim Herberg reminded the Committee about OCSD's upcoming 65th Anniversary Open House & Centrifuge Ribbon Cutting VIP event on Saturday, July 27 from 9:00 a.m. to 12:00 p.m.

REPORT OF COMMITTEE CHAIR:

Chair Collacott did not provide a report.

CONSENT CALENDAR:

1. APPROVAL OF MINUTES (Clerk of the Board)

MOVED, SECONDED, AND DULY CARRIED TO: Approve Minutes of the Regular meeting of the Operations Committee held on June 5, 2019.

AYES: Avery, Bernstein, Chaffee, Collacott, Hawkins, S. Jones, Kring, Massa-Lavitt, Shaw, Shawver, Silva, F. Smith, Withers, and Yarc

NOES: None

ABSTENTIONS: None

ABSENT: None

2. PLANT NO. 2 TRICKLING FILTER INFLUENT (FEED) PUMP REPAIRS (Rob Thompson)

MOVED, SECONDED, AND DULY CARRIED TO: Recommend to the Board of Directors to:

- A. Approve a Sole Source Purchase Order to Vaughan's Industrial Repair Co., Inc for the repair and reinstallation of six influent pumps at the Plant No. 2 Trickling Filter Pump Station, for a total amount not to exceed \$631,010; and
- B. Approve a contingency of \$126,202 (20%).

AYES: Avery, Bernstein, Chaffee, Collacott, Hawkins, S. Jones, Kring, Massa-Lavitt, Shaw, Shawver, Silva, F. Smith, Withers, and Yarc

NOES: None

ABSTENTIONS: None

ABSENT: None

3. **RENEWAL AGREEMENT FOR LIQUID OXYGEN PURCHASE AND ASSOCIATED VAPORIZATION SYSTEM MAINTENANCE SPECIFICATION NO. C-2018-926BD**
(Rob Thompson)

MOVED, SECONDED, AND DULY CARRIED TO: Recommend to the Board of Directors to:

- A. Approve Amendment No. 1 for a unit price increase of \$0.0535 per centum cubic feet (22.8%) to the chemical supplier agreement with Airgas USA, LLC for the purchase of liquid oxygen, Specification No. C-2018-926BD, for the period beginning August 21, 2019 through August 20, 2020 for a unit price of \$0.288 per centum cubic feet delivered, plus applicable sales tax, for a total estimated annual amount of \$496,512; and
- B. Authorize unit price adjustment of up to 15% annually using mutually acceptable price indices for subsequent agreement renewal periods.

AYES: Avery, Bernstein, Chaffee, Collacott, Hawkins, S. Jones, Kring, Massa-Lavitt, Shaw, Shawver, Silva, F. Smith, Withers, and Yarc

NOES: None

ABSTENTIONS: None

ABSENT: None

4. **HEADWORKS REHABILITATION AND EXPANSION AT PLANT NO. 1, PROJECT NO. P1-105** (Kathy Millea)

MOVED, SECONDED, AND DULY CARRIED TO: Recommend to the Board of Directors to:

- A. Consider, receive, and file the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Headworks Rehabilitation and Expansion at Plant No. 1, Project No. P1-105, prepared by Carollo and Environmental Science Associates; and
- B. Adopt Resolution No. OCSD 19-XX, entitled: "A Resolution of the Board of Directors of the Orange County Sanitation District adopting the Mitigated Negative Declaration for the Headworks Rehabilitation and Expansion at Plant No. 1, Project No. P1-105, adopting a Mitigation Monitoring and Reporting Program, and approving the Headworks Rehabilitation and Expansion at Plant No. 1, Project No. P1-105."

AYES: Avery, Bernstein, Chaffee, Collacott, Hawkins, S. Jones, Kring, Massa-Lavitt, Shaw, Shawver, Silva, F. Smith, Withers, and Yarc

NOES: None

ABSTENTIONS: None

ABSENT: None

NON-CONSENT:

5. PLANT NO. 2 TRUCKLOADING AUGER REPLACEMENT (Rob Thompson)

Assistant General Manager Rob Thompson provided a brief description of the item and the need for the procurement.

MOVED, SECONDED, AND DULY CARRIED TO: Recommend to the Board of Directors to:

- A. Approve a Sole Source Purchase Order to Putzmeister for the procurement of up to 12 replacement Putzmeister augers along with their associated mounting components including gear motor assembly for the Plant No. 2 truckloading facility, for a total amount not to exceed \$663,359;
- B. Approve payment of \$198,008 (30%) of the not-to-exceed amount at the time of order; and
- C. Approve a contingency of \$132,672 (20%).

AYES: Avery, Bernstein, Chaffee, Collacott, Hawkins, S. Jones, Kring, Massa-Lavitt, Shaw, Shawver, Silva, F. Smith, Withers, and Yarc

NOES: None

ABSTENTIONS: None

ABSENT: None

6. SLUDGE DEWATERING AND ODOR CONTROL AT PLANT NO. 2, PROJECT NO. P2-92 (Kathy Millea)

Director of Engineering Kathy Millea introduced Engineering Manager Dean Fisher who provided a PowerPoint presentation which included: project scope, objectives, and current status; lead and asbestos abatement; and contingency status

Mr. Fisher responded to questions regarding the contingency costs.

MOVED, SECONDED, AND DULY CARRIED TO: Recommend to the Board of Directors to: Approve a contingency increase of \$498,500 (1%) to the construction contract with Shimmick Construction Company, Inc. for Sludge Dewatering and Odor Control at Plant No. 2, Project No. P2-92, for a total contingency of \$2,991,000 (6%).

AYES: Avery, Bernstein, Chaffee, Collacott, Hawkins, S. Jones, Kring, Massa-Lavitt, Shaw, Shawver, Silva, F. Smith, Withers, and Yarc

NOES: None

ABSTENTIONS: None

ABSENT: None

7. **SLUDGE DEWATERING AND ODOR CONTROL AT PLANT NO. 1, PROJECT NO. P1-101** (Kathy Millea)

Ms. Millea introduced Engineering Manager Jeff Mohr who provided a PowerPoint presentation which included: project objectives, scope, and status; project challenges; consultant costs; troubleshooting; and the current contingency status. In response to a question from Board Chair Shawver, Mr. Thompson described the contingency process and the percentages requested.

MOVED, SECONDED, AND DULY CARRIED TO: Recommend to the Board of Directors to: Approve a contingency increase of \$357,000 (5%) to the Professional Consultant Services Agreement with HDR Engineering, Inc. to provide construction support services for Sludge Dewatering and Odor Control at Plant No. 1, Project No. P1-101, for a total contingency amount of \$2,499,000 (35%).

AYES: Avery, Bernstein, Chaffee, Collacott, Hawkins, S. Jones, Kring, Massa-Lavitt, Shaw, Shawver, Silva, F. Smith, Withers, and Yarc
NOES: None
ABSTENTIONS: None
ABSENT: None

8. **RETURN ACTIVATED SLUDGE PIPING REPLACEMENT AT ACTIVATED SLUDGE PLANT NO. 1, PROJECT NO. P1-129** (Kathy Millea)

Engineering Manager Jeff Mohr provided a PowerPoint presentation which included: a brief overview of the RAS piping replacement and the construction challenges necessitating the budget increase.

MOVED, SECONDED, AND DULY CARRIED TO: Recommend to the Board of Directors to:

- A. Approve a budget increase of \$1,300,000 for Return Activated Sludge Piping Replacement at Activated Sludge Plant No. 1, Project No. P1-129, for a total budget of \$10,300,000;
- B. Approve a Professional Construction Services Agreement with AECOM Technical Services, Inc. to provide construction support services for Return Activated Sludge Piping Replacement at Activated Sludge Plant No. 1, Project No. P1-129, for a total amount not to exceed \$140,000; and
- C. Approve a contingency related to the Professional Construction Services Agreement of \$14,000 (10%).

AYES: Avery, Bernstein, Chaffee, Collacott, Hawkins, S. Jones, Kring, Massa-Lavitt, Shaw, Shawver, Silva, F. Smith, Withers, and Yarc
NOES: None
ABSTENTIONS: None
ABSENT: None

INFORMATION ITEMS:

9. ORANGE COUNTY SANITATION DISTRICT ENVIRONMENTAL SERVICES LABORATORY AND OCEAN MONITORING UP-DATE (Lan Wiborg)

Each month, staff provides an informational presentation on topics of interest to the Board of Directors. This month's topic: Orange County Sanitation District Environmental Services Laboratory, Monitoring, and Compliance Division (LMC): Protecting Public Health and the Environment.

Ron Coss, Environmental Lab & Ocean Monitoring Manager, provided an informative PowerPoint presentation that reviewed the structure of the Environmental Services Department, environmental monitoring done by the Sanitation District, laboratory functions and instruments, accreditation, 2018-19 Orange County beach report card, future endeavors, projects, and partners. Mr. Coss announced an upcoming *Nerissa* Rig Fishing Cruise would be available on July 29 and July 30 and indicated that if there was interest in attending to please contact the Clerk of the Board.

10. INTERIM FOOD WASTE RECEIVING FACILITY, PROJECT NO. P2-124 (Kathy Millea)

Staff presented information regarding proposed Interim Food Waste Receiving Facility, Project No. P2-124, which included a project viability review that verified that the project is economically justifiable based on project costs and anticipated tipping fees.

Ms. Millea provided background information on this item and introduced Jacob Dalgoff, Senior Engineer, who provided a PowerPoint presentation that included information regarding the project, digester feed detail, layout, project viability, market conditions, and schedule.

Board Chair Shawver expressed interest in revisiting tonnage fees, the pay-back period, recouping capital costs, and finding an end-market.

DEPARTMENT HEAD REPORTS:

Ms. Millea provided information on the Tesla battery project, describing the equipment and noting that this is the largest battery project in the United States. The Board inquired on having a tour of this project.

CLOSED SESSION:

None.

**OTHER BUSINESS AND COMMUNICATIONS OR SUPPLEMENTAL AGENDA ITEMS,
IF ANY:**

None.

BOARD OF DIRECTORS INITIATED ITEMS FOR A FUTURE MEETING:

None.

ADJOURNMENT

Chair Collacott declared the meeting adjourned at 6:14 p.m. to the meeting to be held on Wednesday, September 4, 2019 at 5:00 p.m.

Submitted by,

Kelly A. Lore, MMC
Clerk of the Board



Orange County Sanitation District

Administration Building
10844 Ellis Avenue
Fountain Valley, CA 92708
(714) 593-7433

OPERATIONS COMMITTEE

Agenda Report

File #: 2019-507

Agenda Date: 9/4/2019

Agenda Item No: 2.

FROM: James D. Herberg, General Manager
Originator: Rob Thompson, Assistant General Manager

SUBJECT:

QUARTERLY ODOR COMPLAINT REPORT

GENERAL MANAGER'S RECOMMENDATION

RECOMMENDATION:

Receive and file the Fiscal Year 2018/19 Fourth Quarter Odor Complaint Report.

BACKGROUND

During the 4th quarter of FY 2018/19, the Orange County Sanitation District had the following attributable odor complaints: Plant No. 1 had two odor complaints, Plant No. 2 had one odor complaint, and the collections system had two odor complaints. A summary of the odor complaints with a table tracking the history is included as an attachment.

RELEVANT STANDARDS

- Zero odor incidents/events under normal operating conditions for Plant Nos. 1 and 2
- Operate and maintain facilities to minimize impacts on surrounding communities, including odor, noise, and lighting
- 12 or fewer odor complaints per year under normal operating conditions in the collections system

ATTACHMENT

The following attachment is included in hard copy and may also be viewed on-line at the OCSD website (www.ocsd.com) with the complete agenda package:

- FY 2018-19 4th Quarter Odor Complaint Report

Orange County Sanitation District

Odor Complaint Report

Fiscal Year 2018/19 – 4th Quarter

1. Plant No. 1 Treatment Facility Odor Complaint Summary

Plant No. 1 received two attributable odor complaints during the 4th quarter. The odor complaints were caused by the solids residue from a belt filter press during building demolition and using the temporarily truckloading bay during that time. Finishing the demolition as well as utilizing the permanent loading bay with the closed doors resolved the odor issue.

2. Plant No. 2 Treatment Facility Odor Complaint Summary

Plant No. 2 received one attributable odor complaint during the 4th quarter. The odor was caused by a contractor cleaning portable restrooms. The issue was shared with the contractor to prevent any future odor complaints.

3. Collections Facilities Odor Complaint Summary

The collections system received two attributable odor complaints during the 4th quarter. An odor complaint was caused by venting from a city sewer manhole connected to an Orange County Sanitation District (Sanitation District) manhole. Gas flaps were installed on the Sanitation District manhole to prevent the odor and resolve the issue. The second odor complaint was caused by a manhole that was not re-sealed after contractor work (i.e. flow measurements). The manhole was sealed to prevent future fugitive odor emission.

All Odor Complaints Tracking

	April 2019 to June 2019			1 st Qtr FY 18/19	2 nd Qtr FY 18/19	3 rd Qtr FY 18/19	4 th Qtr FY 18/19	Cumulative FY 18/19
All Public Complaints	Collections	P1	P2	Total	Total	Total	Total	Total
Attributable to Sanitation District	2	2	1	4	2	0	5	11
Not Attributable to Sanitation District	0	1	3	10*	6	9	4	29*
Total Public Complaints Received:	2	3	4	14	8	9	9	40

(*) On Sep. 30th and October 1st, the Sanitation District received 12 non-attributable complaints related to offshore activities, and we grouped them as one odor complaint.



OPERATIONS COMMITTEE

Agenda Report

File #: 2019-519

Agenda Date: 9/4/2019

Agenda Item No: 3.

FROM: James D. Herberg, General Manager
Originator: Kathy Millea, Director of Engineering

SUBJECT:

CAPITAL IMPROVEMENT PROGRAM CONTRACT PERFORMANCE REPORT

GENERAL MANAGER'S RECOMMENDATION

RECOMMENDATION: Recommend to the Board of Directors to:

Receive and file the Capital Improvement Program Contract Performance Report for the period ending June 30, 2019.

BACKGROUND

The Capital Improvement Program involves awarding and managing many construction and consulting contracts. In 2008, the Orange County Sanitation District (Sanitation District) Board of Directors began awarding contingencies along with construction and consulting contracts and amendments for consulting contracts up to the amount of the approved contingency. This practice reduces administrative costs, expedites resolution of project issues that arise, helps avoid Contractor delay claims, and facilitates efficient management of many contracts.

The Capital Improvement Program Contract Performance Report summarizes construction and consulting contract performance and activities for the quarter ending June 30, 2019. This report is updated quarterly. The tables listing active construction and design consultant contract data have been revised for clarity since the previous quarter.

RELEVANT STANDARDS

- Ensure the public's money is wisely spent

ATTACHMENT

The following attachment is included in hard copy and may also be viewed on-line at the OCSD website (www.ocsd.com) with the complete agenda package:

- Capital Improvement Program Contract Performance Report for the period ending June 30, 2019



ORANGE COUNTY SANITATION DISTRICT
Capital Improvement Program
Contract Performance Report
For the period ending June 30, 2019

DATE: August 16, 2019

TO: Orange County Sanitation District
Board of Directors

FROM: James D. Herberg, General Manager
Through: Kathy Millea, Director of Engineering

This report summarizes the status, activities, and performance of public works construction contracts and consultant agreements. This report also identifies the names and status of projects being performed under master budgets for planning studies, research, small construction projects, O&M capital projects, and information technology projects.

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ORANGE COUNTY SANITATION DISTRICT

Capital Improvement Program

Contract Performance Report

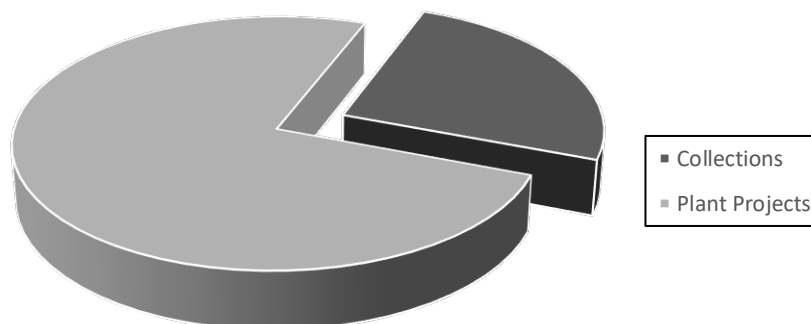
For the period ending June 30, 2019

PART 1 - CONSTRUCTION CONTRACTS

When the Sanitation District Board awards a construction contract, a contingency is also approved which allows the General Manager to approve contract change orders up to the amount of the contingency. One of the purposes of this report is to document how that contingency is managed and how much of the contingency is utilized. A project's change order rate can only be documented when the work is complete. As such, the change order performance charts in this report are based only on projects closed since the Board began approving contingencies in 2008.

As of the end of this quarter, 76 contracts have been closed with total base contract value of \$1,254,226,489, and there are 22 active contracts with a total base contract value of \$389,241,739. For reference see charts 1 and 2, and Tables 1 and 2.

Chart 1
Construction Contracts – Closed Projects
Cumulative Data through Quarter Ending June 30, 2019 QTR FY18/19



CLOSED PROJECTS - DISTRIBUTION BY CATEGORY*

Total Base Contract Value	\$ 1,254,226,489	
Collections	\$ 312,548,525	25%
Plant Projects	\$ 941,677,964	75%
Total Base # of Contracts	76	
Collections	31	
Plant Projects	45	

*Projects closed since 2 QTR FY07/08



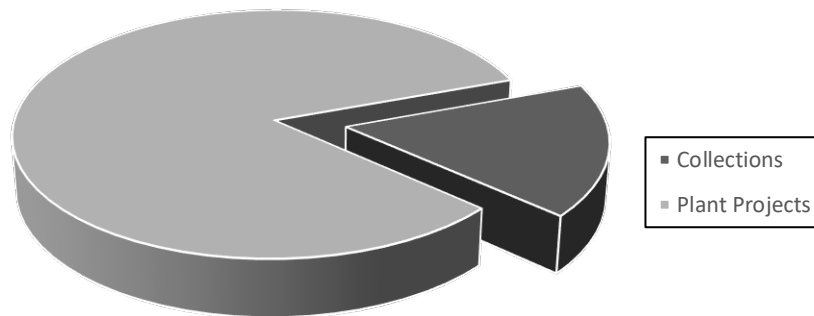
ORANGE COUNTY SANITATION DISTRICT

Capital Improvement Program

Contract Performance Report

For the period ending June 30, 2019

Chart 2
Construction Contracts – Active Projects
Cumulative Data through Quarter Ending June 30, 2019 QTR FY18/19



ACTIVE PROJECTS - DISTRIBUTION BY CATEGORY

Total Base Contract Value	\$ 389,241,739	
Collections	\$ 64,750,383	17%
Plant Projects	\$ 324,491,356	83%
Total Base # of Contracts	22	
Collections	4	
Plant Projects	18	



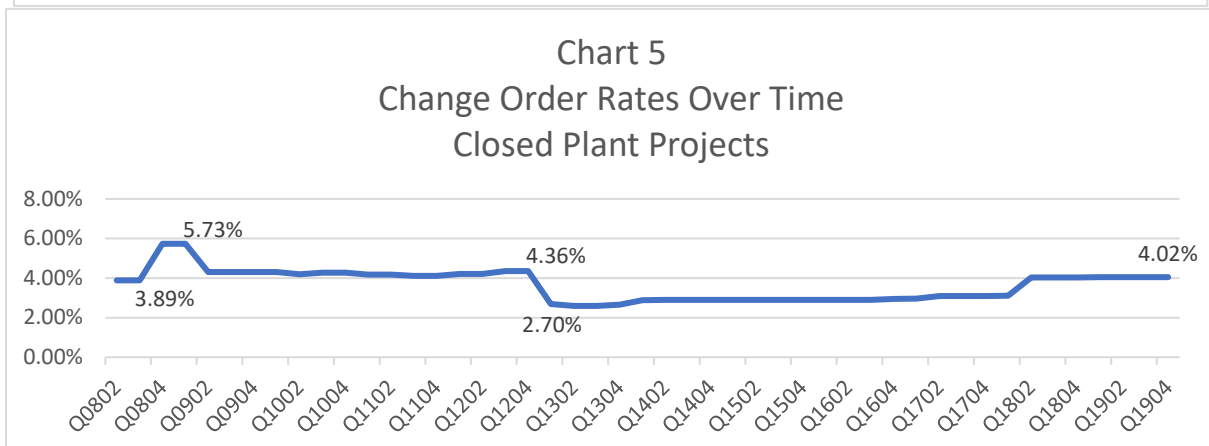
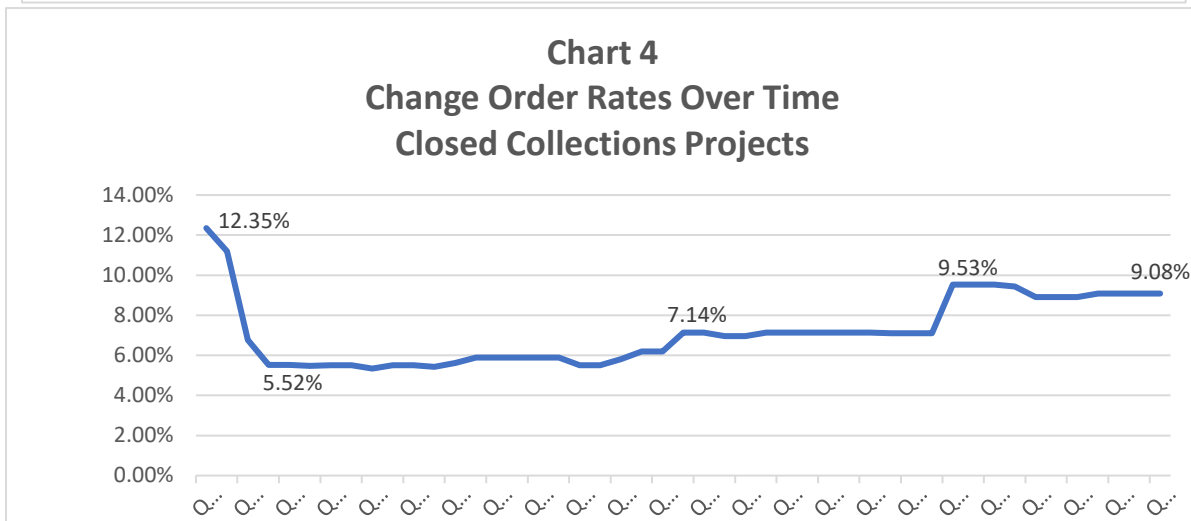
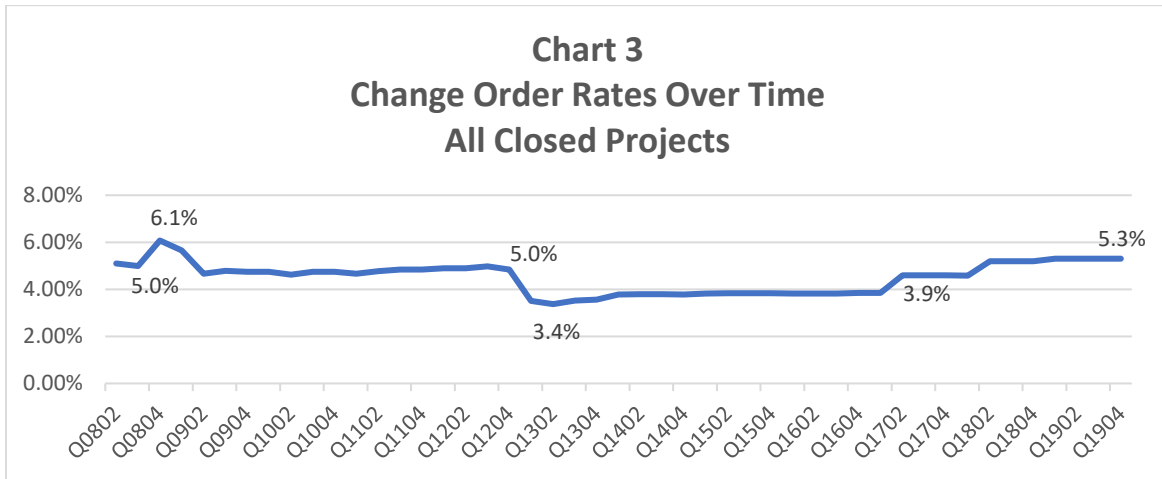
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The change order rate over time for all closed projects for the last quarter (April 1, 2019 through June 30, 2019) is 5.3%. For closed collection projects is 9.08% and for closed plant projects is 4.02%. For reference see charts 3, 4 and 5.





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Table 1 - Active Construction Contracts

Project / Contract	Contractor	Award Date	Board Award Value	Change Orders	Current Contract Value	Original Contingency	Current Contingency	Contingency Used	Contingency Remaining
2-41-8 SARI Rock Stabilizers Removal									
2-41-8 SARI Rock Stabilizers Removal	Griffith Company	09/26/2018	\$2,809,082	\$0	\$2,809,082	10.0%	10.0%	0.0%	10.0%
2-72 Newhope-Placentia Trunk Replacement									
2-72B Newhope-Placentia Trunk Replacement, Segment B	OHL USA, INC.	06/15/2018	\$58,242,000	\$0	\$58,242,000	6.5%	6.5%	0.0%	6.5%
6-17 District 6 Trunk Sewer Relief									
6-17 District 6 Trunk Sewer Relief	Charles King Company, Inc.	11/01/2016	\$3,699,301	\$409,174	\$4,108,475	10.0%	20.0%	11.1%	8.9%
J-117 Ocean Outfall System Rehabilitation									
J-117A Interplant Effluent Pipeline Rehabilitation	Shimmick Construction Co., Inc.	08/07/2017	\$12,609,012	\$635,038	\$13,244,050	8.0%	8.0%	5.0%	3.0%
J-117B Outfall Low Flow Pump Station	Shimmick Construction Co., Inc.	12/19/2018	\$90,200,000	\$0	\$90,200,000	8.0%	8.0%	0.0%	8.0%
J-126 Safety Improvements Program									
J-126AH Hot Surfaces Insulation P1/P2/Bay Bridge PS/Slater PS	Amtek Construction	01/30/2018	\$452,757	\$0	\$452,757	10.0%	10.0%	0.0%	10.0%
J-126BFG Lights, Ladder and Walkway Hazards	Amtek Construction	09/26/2017	\$557,759	\$0	\$557,759	10.0%	10.0%	0.0%	10.0%
J-126C NFPA 820 HVAC and Electrical Improvements	MMC, Inc.	03/05/2019	\$469,000	\$0	\$469,000	10.0%	10.0%	0.0%	10.0%
J-126I Exit Signs Exit Lights Electrical Disconnects Gas Detection	Helix Electric	09/26/2018	\$881,800	\$0	\$881,800	10.0%	10.0%	0.0%	10.0%
J-126JK Stairs, Hatches, Walkway Hazards, Ladders, Guardrails, Roof Fall Protection	Olsson Construction, Inc.	10/24/2018	\$3,637,601	\$0	\$3,637,601	10.0%	10.0%	0.0%	10.0%
J-126PQ Ladders, Hatches, Roof Fall Protection	Tharsos, Inc.	10/24/2018	\$786,000	\$0	\$786,000	10.0%	10.0%	0.0%	10.0%
M-FE Small Construction Projects Program									
FE14-05 Plant No. 1 Fleet Services UST Leak Remediation	Engineering/Remediation Resources Group, Inc.	01/23/2019	\$648,675	\$0	\$648,675	20.0%	20.0%	0.0%	20.0%
FE15-07 Secondary Treatment and Plant Water VFD Replacement at Plant 1	Helix Electric	03/28/2018	\$1,797,000	\$23,562	\$1,820,562	10.0%	10.0%	1.3%	8.7%
FE15-10 East Lido Force Main Rehabilitation	Charles King Company, Inc.	09/07/2017	\$1,389,000	\$0	\$1,389,000	10.0%	10.0%	0.0%	10.0%
FE17-05 Plant 1 ICS Network Extension	RP Controls	06/26/2019	\$321,889	\$0	\$321,889	10.0%	10.0%	0.0%	10.0%
MP-248 P2 Secondary Clarifier Repairs (AS Plant)									
MP-248 P2 Secondary Clarifier Repairs (AS Plant)	W. M. Lyles Company	06/26/2019	\$3,048,000	\$0	\$3,048,000	10.0%	10.0%	0.0%	10.0%
P1-101 Sludge Dewatering and Odor Control at Plant 1									
P1-101 Sludge Dewatering and Odor Control at Plant 1	WM Lyles Company	11/28/2012	\$126,908,300	\$11,780,048	\$138,688,348	3.0%	11.5%	9.3%	2.2%
P1-115 Title 24 Access Compliance and Building Rehabilitation Project									
P1-115B Rehabilitation of Fleet Services Building, Building 8 and Paving Area	ODC Engineering & Technology	09/11/2017	\$2,235,563	\$39,175	\$2,274,738	10.0%	10.0%	1.8%	8.2%
P2-110 Consolidated Demolition and Utility Improvements at Plant 2									
P2-110 Consolidated Demolition and Utility Improvements at Plant 2	Flatiron West Inc	02/09/2017	\$16,730,000	\$836,890	\$17,566,890	8.0%	8.0%	5.0%	3.0%
P2-92 Sludge Dewatering and Odor Control at Plant 2									
P2-92 Sludge Dewatering and Odor Control at Plant 2	Shimmick Construction Co., Inc.	01/12/2015	\$49,850,000	\$1,462,763	\$51,312,763	5.0%	5.0%	2.9%	2.1%
P2-92A Truck Loading Bay Odor Control at Plant 2	Kiewit Infrastructure West Co.	01/09/2017	\$3,304,000	\$329,558	\$3,633,558	10.0%	14.0%	10.0%	4.0%
P2-98 Primary Treatment Rehabilitation at Plant 2									
P2-98B B/C-Side Primary Clarifiers Interim Repair at Plant 2	Myers & Sons Construction, LLC	01/23/2019	\$8,665,000	\$0	\$8,665,000	10.0%	10.0%	0.0%	10.0%
	TOTAL		\$389,241,739	\$15,516,208	\$404,757,947				



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Table 2 - Construction Contracts Closed in Last Quarter

Project / Contract	Contractor	Date Closed	Date Awarded	Board Award Value	Change Orders	Final Contract Value	Original Contingency	Current Contingency	Contingency Used
J-126 Safety Improvements Program									
J-126E Roof Fall Protection and Skylights	Access Pacific	04/02/2019	10/26/2017	\$418,000	(\$1,024)	\$416,976	10.0%	10.0%	0%
J-126R Machine Guarding at Plant 1	Filanc	04/01/2019	10/10/2018	\$210,347	(\$25,718)	\$184,629	10.0%	10.0%	0%
M-FE Small Construction Projects Program									
FE16-10 East Basin Distribution Box Repair	Howard Ridley Co. Inc.	06/13/2019	04/26/2018	\$529,350	\$0	\$529,350	10.0%	10.0%	0%
FE16-14 Slater Pump Station Valve Replacements	PCL CONSTRUCTION, INC.	06/04/2019	08/22/2018	\$459,674	\$45,805	\$505,479	10.0%	10.0%	10%
Total				\$1,617,371	\$19,063	\$1,636,434			



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PART 2 – DESIGN CONSULTANT AGREEMENTS

The Sanitation District engages engineering consultants through Professional Design Services Agreements (PDSAs), Professional Consultant Services Agreements (PCSAs), and Master Professional Services Agreements (Master Agreements). PDSAs are used to obtain design engineering services, and PCSAs are a subsequent agreement with the design consultant to provide support services during construction.

Master Agreements are issued to a pool of pre-qualified consultants for smaller projects. On those smaller projects, the Sanitation District solicits task order proposals from three or four of the firms and awards a task order to the most qualified consultant. There are currently seven sets of Master Agreements.

- 2012 Master Design Agreements (expired)
- 2015 Master Design Agreements (expired)
- 2018 Master Design Agreements
- 2017 Master Agreements for CEQA Studies
- 2017 Master Agreements for Collection Planning Studies
- 2017 Master Agreements for Wastewater Treatment Planning Studies

The two Master Design Agreements from 2012, and 2015 have expired, meaning no new task orders can be issued under them, but previously-issued task orders remain active until completed. Task Orders are limited by Sanitation District Ordinance No. OCSD-52 \$300,000 per task order.

A status table for all Active Engineering Services Agreements (PDSAs and PCSAs) is attached under Table 3, and a status table for all Active Task Orders by Master Agreement is attached under Table 4 (Master Agreements).



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Table 3 - Active Engineering Services Agreements

Project / Contract		Consultant	Award Date	Board Award Value	Amendments	Current Contract Value	Original Contingency	Current Contingency	Contingency Used
2-41-8 SARI Rock Stabilizers Removal									
2-41-8 SARI Rock Stabilizers Removal	PCSA	Michael Baker International, Inc.	09/26/2018	\$215,129	\$0	\$215,129	10.0%	10.0%	0.0%
2-72 Newhope-Placentia Trunk Replacement									
2-72 Newhope-Placentia Trunk Replacement	PCSA	Lee & Ro	03/23/2016	\$3,253,946	\$0	\$3,253,946	10.0%	10.0%	0.0%
2-72 Newhope-Placentia Trunk Replacement	PDSA	Lee & Ro	10/22/2014	\$8,468,232	\$434,974	\$8,903,206	10.0%	10.0%	5.1%
3-62 Westminster Blvd Force Main Replacement									
3-62 Westminster Blvd Force Main Replacement	PDSA	Stantec Consulting Services, Inc.	07/22/2015	\$6,917,175	(\$1,339,457)	\$5,577,718	10.0%	10.0%	0.0%
3-64 Rehabilitation of Western Regional Sewers									
3-64 Rehabilitation of Western Regional Sewers	PDSA	AECOM Technical Services, Inc.	01/27/2016	\$17,639,250	\$721,258	\$18,360,508	10.0%	10.0%	4.1%
5-60 Newport Force Main Rehabilitation									
5-60 Newport Force Main Rehabilitation	PCSA	Brown and Caldwell	04/29/2014	\$2,231,925	\$839,714	\$3,071,639	8.0%	38.7%	37.6%
5-67 Bay Bridge Pump Station Replacement									
5-67 Bay Bridge Pump Station Replacement	PDSA	Arcadis US Inc.	10/25/2017	\$7,137,000	\$295,168	\$7,432,168	10.0%	10.0%	4.1%
6-17 District 6 Trunk Sewer Relief									
6-17 District 6 Trunk Sewer Relief	PCSA	RMC Water & Environment	10/10/2016	\$290,000	\$0	\$290,000	15.0%	15.0%	0.0%
J-117 Ocean Outfall System Rehabilitation									
J-117A Interplant Effluent Pipeline Rehabilitation	PCSA	Brown and Caldwell	05/24/2018	\$1,121,666	\$0	\$1,121,666	10.0%	10.0%	0.0%
J-117B Outfall Low Flow Pump Station	PCSA	Brown and Caldwell	12/19/2018	\$8,563,913	\$0	\$8,563,913	10.0%	10.0%	0.0%
J-124 Digester Gas Facilities Rehabilitation									
J-124 Digester Gas Facilities Rehabilitation	PDSA	Brown and Caldwell	11/15/2017	\$11,770,000	\$50,000	\$11,820,000	10.0%	10.0%	0.4%
J-126 Safety Improvements Program									
J-126 Safety Improvements Program**	PDSA	Arcadis	08/29/2016	\$1,540,000	\$1,500,000	\$3,040,000	10.0%	5.1%	0.0%
J-128 Project Management Information System									
J-128 Project Management Information System	Other	PMWeb, Inc.	05/24/2017	\$1,022,500	\$74,525	\$1,097,025	20.0%	20.0%	7.3%
M-FE Small Construction Projects Program									
FE16-11 Lane Channel Crossing	PSA	HDR Engineering, Inc.	06/28/2017	\$131,939	\$0	\$131,939	10.0%	10.0%	0.0%
M-RESEAF Research Program									
RE17-02 Biogas Scrubber Evaluation	PSA	Carollo Engineers, Inc.	04/21/2017	\$656,783	\$0	\$656,783	0.0%	0.0%	0.0%
M-STUDIE Planning Studies Program									
PS15-02 Edinger Pump Station Rehabilitation Study	PSA	Lockwood, Andrews & Newman, Inc.	12/20/2017	\$505,042	\$0	\$505,042	10.0%	10.0%	0.0%
PS15-06 Seismic Evaluation of Structures at Plant Nos. 1 and 2	PSA	Geosyntec Consultants, Inc.	06/28/2017	\$2,578,028	\$85,358	\$2,663,386	10.0%	10.0%	3.3%
PS15-08 Collections Capacity Evaluation Study	PSA	RMC Water & Environment	08/24/2016	\$2,802,675	\$19,372	\$2,822,047	10.0%	10.0%	0.7%
PS16-01 Stormwater Master Plan	PSA	Michael Baker International, Inc.	07/26/2017	\$715,300	\$54,839	\$770,139	10.0%	10.0%	7.7%
PS17-03 Active Fault Location Study at Plant No. 2	PSA	Lettis Consultants International, Inc.	03/06/2019	\$868,286	\$0	\$868,286	10.0%	10.0%	0.0%
PS17-08 CEQA - Facilities Master Plan	PSA	Dudek	02/27/2019	\$812,709	\$0	\$812,709	10.0%	10.0%	0.0%
P1-101 Sludge Dewatering and Odor Control at Plant 1									
P1-101 Sludge Dewatering and Odor Control at Plant 1	PCSA	HDR Engineering, Inc.	06/28/2012	\$7,140,000	\$2,141,866	\$9,281,866	8.0%	35.0%	30.0%
P1-105 Headworks Rehabilitation at Plant 1									
P1-105 Headworks Rehabilitation at Plant 1	PDSA	Carollo Engineers, Inc.	05/27/2015	\$17,528,957	\$7,659,692	\$25,188,649	10.0%	51.0%	43.7%
P1-128 Headquarters Complex									
P1-128 Headquarters Complex	PDSA	HDR Engineering, Inc.	06/22/2016	\$11,785,709	(\$878,554)	\$10,907,155	10.0%	10.0%	0.0%
	PSA	LSA Associates, Inc.	08/11/2016	\$420,927	\$0	\$420,927	10.0%	10.0%	0.0%



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Table 3 - Active Engineering Services Agreements

Project / Contract		Consultant	Award Date	Board Award Value	Amendments	Current Contract Value	Original Contingency	Current Contingency	Contingency Used
P1-129 Return Activated Sludge Piping Replacement at Activated Sludge Plant No. 1									
P1-129	Return Activated Sludge Piping Replacement at Activated Sludge Plant No. 1	PDSA AECOM Technical Services, Inc.	06/20/2017	\$523,039	\$27,015	\$550,054	10.0%	10.0%	5.2%
P2-110 Consolidated Demolition and Utility Improvements at Plant 2									
P2-110	Consolidated Demolition and Utility Improvements at Plant 2	PCSA Stantec Consulting Services, Inc.	01/25/2017	\$1,499,839	\$0	\$1,499,839	10.0%	10.0%	0.0%
P2-122 Headworks Modifications at Plant 2 for GWRS Final Expansion									
P2-122	Headworks Modifications at Plant 2 for GWRS Final Expansion	PDSA CDM Smith Inc.	05/24/2017	\$5,319,930	\$0	\$5,319,930	10.0%	10.0%	0.0%
P2-123 Return Activated Sludge Piping Replacement at Plant 2									
P2-123	Return Activated Sludge Piping Replacement at Plant 2	PDSA SPEC Services, Inc.	02/15/2018	\$668,217	\$0	\$668,217	10.0%	10.0%	0.0%
P2-124 Interim Food Waste Receiving Facility									
P2-124	Interim Food Waste Receiving Facility	PDSA Kennedy/Jenks Consultants	09/05/2018	\$695,000	\$0	\$695,000	10.0%	10.0%	0.0%
P2-92 Sludge Dewatering and Odor Control at Plant 2									
P2-92	Sludge Dewatering and Odor Control at Plant 2	PCSA Brown and Caldwell	12/17/2014	\$4,798,328	\$0	\$4,798,328	10.0%	10.0%	0.0%
P2-98 Primary Treatment Rehabilitation at Plant 2									
P2-98	Primary Treatment Rehabilitation at Plant 2	PDSA Black & Veatch	07/27/2016	\$18,141,423	\$1,279,488	\$19,420,911	10.0%	10.0%	7.1%
P2-98B	B/C-Side Primary Clarifiers Interim Repair at Plant 2	PCSA Black & Veatch	01/23/2019	\$549,534	\$0	\$549,534	10.0%	10.0%	0.0%
SP-196 Process Control Systems Upgrades Study									
SP-196	Process Control Systems Upgrades Study	PSA Stantec Consulting Services, Inc.	03/01/2018	\$1,389,866	\$9,000	\$1,398,866	10.0%	10.0%	0.6%
Total				\$149,702,267	\$12,974,258	\$162,676,525			

** Ammended by Board Action



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Table 4 - Active Task Orders by Master Agreement

Master Agreement / Project	Consultant	Award Date	Original Task Order Value	Amendments	Current Task Order Value
2012 Master Professional Design Service Agreements					
FE10-21 Area 02 Craig Regional Park Manhole Improvements	GHD	10/8/2012	\$58,440	\$41,560	\$100,000
2015 Master Professional Design Service Agreements					
FE14-05 Plant No. 1 Fleet Services UST Leak Remediation	Dudek	9/1/2015	\$86,116	\$73,137	\$159,253
FE16-14 Slater Pump Station Valve Replacements	Dudek	11/6/2017	\$175,500	\$0	\$175,500
PS17-02 Guidelines for Development in the Area of OCSD Facilities	AECOM	8/21/2017	\$93,187	\$0	\$93,187
2017 Master Agreements for Wastewater Treatment Studies					
P1-101 Spill Prevention, Control, and Countermeasure Plan for Sludge Dewatering and Odor Control at Plant No. 1	AECOM	06/27/2018	\$28,216	\$10,935	\$39,151
PS17-10 Emergency Overflow Weirs, Wing Wall Structural and Geotechnical Investigations	HDR Engineering, Inc.	05/21/2019	\$260,415	\$0	\$260,415
PS18-01 Asset Management Plan Development	HDR Engineering, Inc.	04/03/2019	\$274,777	\$0	\$274,777
PS18-05 Plant No. 2 Future Site Plan Development	Brown and Caldwell	05/22/2019	\$122,389	\$0	\$122,389
2017 Master Agreements for Collection Planning Studies					
No Task Orders Issued	--	--	--	--	--
2017 Master Agreements for CEQA Studies					
No Task Orders Issued	--	--	--	--	--
2018 Master Professional Design Service Agreements					
J-127 Natural Gas Pipelines Replacement at Plant Nos. 1 and 2	Black & Veatch	1/21/2019	\$271,964	\$0	\$271,964
		Total	\$1,371,004	\$125,632	\$1,496,636



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PART 3 – MASTER BUDGET PROJECTS

The Board-adopted budget for Fiscal Years 2018-19 and 2019-20 includes master program budgets that allow staff to more quickly initiate, execute, and manage smaller projects that fit within the scope of a particular program. The projects chartered under these program budgets are referred to as sub-projects and are managed to the same standards as projects specifically listed in the adopted budget. A status table for each of these programs listing the sub-projects is attached.

Master Program Title	Status Table
Planning Studies Program	Table 5
Research Program	Table 6
Small Construction Projects Program	Table 7
Information Technology Capital Program	Table 8
Operations & Maintenance Capital Program	Table 9



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Table 5 - Planning Studies Status Report

Project Number	Project Name	Status	Allocated Budget
PS15-01	PS15-01 Biosolids Master Plan	Closed	\$ 3,496,985
PS15-02	PS15-02 Edinger Pump Station Rehabilitation Study	Active	\$ 971,000
PS15-06	PS15-06 Seismic Evaluation of Structures at Plant Nos. 1 and 2	Active	\$ 3,860,000
PS15-07	PS15-07 Pressurization and Odor Control Study at Newport Beach	Closed	\$ 344,145
PS15-08	PS15-08 Collections Capacity Evaluation Study	Active	\$ 3,682,000
PS15-10	PS15-10 2017 Facilities Master Plan	Active	\$ 3,850,000
PS16-01	PS16-01 Stormwater Master Plan	Active	\$ 1,415,700
PS16-02	PS16-02 SCE Feed Reliability Improvements Study	Active	\$ 293,000
PS16-04	PS16-04 Rectangular Primary Clarifier Reliability Study at Plant No. 1	Closed	\$ 298,389
PS17-01	PS17-01 Fire Flow Testing at Plant No. 1	Closed	\$ 28,043
PS17-02	PS17-02 Guidelines for Development in the Area of OCSD Facilities	Active	\$ 176,000
PS17-03	PS17-03 Active Fault Location Study at Plant No. 2	Active	\$ 1,300,000
PS17-04	PS17-04 Office Workspace Study for Plant No 1 and 2	Active	\$ 110,000
PS17-08	PS17-08 CEQA - Facilities Master Plan	Active	\$ 1,170,000
PS17-09	PS17-09 Calibration of Plant 1/Plant 2 InfoWorks Hydraulic Model	Closed	\$ 51,996
PS17-10	PS17-10 Emergency Overflow Weirs, Wing Wall Structural and Geotechnical Inves	Active	\$ 465,000
PS18-01	PS18-01 Asset Management Plan Development	Active	\$ 420,000
PS18-02	PS18-02 Bushard Diversion Structure Rehabilitation Study	Active	\$ 96,000
PS18-03	PS18-03 AS Plant Aeration Alternatives Study at Plant 2	Closed	\$ -
PS18-04	PS18-04 Easements Assessment	Closed	\$ -
PS18-05	PS18-05 Plant No. 2 Future Site Plan Development	Active	\$ 217,000
PS18-06	PS18-06 Go/No-Go Lights and Signage	Active	\$ 495,000
PS18-07	PS18-07 ASCE Review of CIP Program	Active	\$ 50,000
PS18-08	PS18-08 Plant 2 Cen Gen Engine Exhaust Oxidizer Catalyst Cracking Root Cause Ar	Closed	\$ -
PS18-09	PS18-09 Ocean Outfall Condition Assessment and Scoping Study	Active	\$ 1,850,000
PS18-10	PS18-10 Root Cause Analysis of Malfunctioning Process Units at TFSC Facility at PI	Active	\$ 41,000
PS18-11	PS18-11 ETAP Model Updates for Plant Nos 1 and 2	Active	\$ 553,000
PS18-12	PS18-12 Laboratory Building Implementation Study	Closed	\$ -
Grand Total			\$ 25,234,258
Number of Chartered Projects			28
Board Approved Program Budget			\$ 28,652,000
Remaining Unallocated Budget			\$ 3,417,742



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Table 6 - Research Program Status Report

Project Number	Project Name	Status	Allocated Budget
RE17-01	RE17-01 Operational Research Technical Support FY18-19	Active	\$ 650,000
RE17-02	RE17-02 Biogas Scrubber Evaluation	Active	\$ 865,000
RE17-03	RE17-03 Reliant Wet Well Wizard Test	Active	\$ 74,000
RE17-04	RE17-04 AquaNereda Aerobic Granular Sludge Process	Active	\$ 242,000
RE17-05	RE17-05 Organica FCR Process	On Hold	\$ 242,000
RE17-06	RE17-06 TWAS Pump Reliability Improvement Trials at Plant No. 2	Closed	\$ 10,159
RE17-07	RE17-07 Super Oxygenation System Research at Seal Beach Pump Station	Cancelled	\$ 80,000
RE18-01	RE18-01 Trickling Filter Bleach Test at Plant No. 1	Active	\$ 125,000
RE18-02	RE18-02 Protein Matrix Demonstration Study at Plant No 1	Active	\$ 150,000
Grand Total			\$ 2,438,159
Number of Chartered Projects			9
Board Approved Program Budget			\$ 8,500,000
Remaining Unallocated Budget			\$ 6,061,841



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Table 7 - Small Construction Projects Program Status Report

Project Number	Project Name	Status	Allocated Budget
FE10-21	FE10-21 Area 02 Craig Regional Park Manhole Improvements	Active	\$ 1,359,000
FE12-10	FE12-10 IT Server Room Cooling Improvements	Closed	\$ 956,086
FE13-04	FE13-04 Plant No. 2 Trickling Filter Chemical Odor Control	Closed	\$ 4,745,752
FE14-03	FE14-03 Rehabilitation of Digester Mixing Pumps at P2 Digesters E, H, R, S, and T	Active	\$ 1,360,000
FE14-05	FE14-05 Plant No. 1 Fleet Services UST Leak Remediation	Active	\$ 1,487,311
FE15-01	FE15-01 Fullerton Creek Channel Crossing	Closed	\$ 84,640
FE15-06	FE15-06 Gas Compressor Building Piping Replacement at Plant 2	Closed	\$ 1,605,540
FE15-07	FE15-07 Secondary Treatment and Plant Water VFD Replacement at Plant 1	Active	\$ 3,319,600
FE15-09	FE15-09 CenGen Hot Water Pipe Bracing at Plant 1	Active	\$ 425,000
FE15-10	FE15-10 East Lido Force Main Rehabilitation	Active	\$ 2,228,000
FE16-01	FE16-01 Big Canyon Nature Park Improvements	Closed	\$ 29,915
FE16-02	FE16-02 Jamboree Sewer Realignment at Big Canyon	Closed	\$ 54,434
FE16-05	FE16-05 Buried Water Valve Support Upgrades at Plant 2	Active	\$ 250,000
FE16-06	FE16-06 Fuel Cell Facilities Demolition	Active	\$ 900,000
FE16-08	FE16-08 Carbon Canyon Clay Pipe Repairs	Closed	\$ 648,756
FE16-10	FE16-10 East Basin Distribution Box Repair	Active	\$ 1,021,960
FE16-11	FE16-11 Lane Channel Crossing	Active	\$ 500,000
FE16-12	FE16-12 Garfield Road Perimeter Security Fence	Closed	\$ 37,410
FE16-13	FE16-13 Collections Infrastructure Relocation at Plant 2, Phase 1B	Closed	\$ 93,747
FE16-14	FE16-14 Slater Pump Station Valve Replacements	Active	\$ 1,050,000
FE17-01	FE17-01 Carbon Canyon Pipeline Sag Repairs	Active	\$ 783,000
FE17-03	FE17-03 Battery Storage System at Plant No. 1	Active	\$ 571,000
FE17-04	FE17-04 Storm Water Compliance Improvements at 3 Pump Stations	Closed	\$ 8,929
FE17-05	FE17-05 Plant 1 ICS Network Extension	Active	\$ 950,000
FE17-06	FE17-06 Tustin Ave Manhole and Pipe Repair	Active	\$ 273,000
FE17-07	FE17-07 Fruit Street Trunk Sewer Relocation - OC Streetcar	Closed	\$ 8,474
FE17-08	FE17-08 Big Canyon Trunk Sewer Realignment - BCCC Maintenance Yard	Active	\$ 130,000
FE18-01	FE18-01 Interim Relocation to 18350 Mt. Langley	Active	\$ 665,000
FE18-02	FE18-02 Jamboree Sewer Transfer	Closed	\$ 300,000
FE18-03	FE18-03 Building 6 Staff Consolidation	Closed	\$ -
FE18-04	FE18-04 Activated Sludge Basin Lighting Repair at Plant No. 2	Active	\$ 1,600,000
FE18-05	FE18-05 Plant Water Pipe Replacement at AS 1 at Plant No. 1	Closed	\$ -
FE18-06	FE18-06 CenGen Instrument Air Compressors Replacement at Plant No. 1 and Nc	Active	\$ 1,450,000
FE18-07	FE18-07 Pump Station Electrical Bypass Improvements	Closed	\$ -
FE18-08	FE18-08 West Trunk Bypass Sewer Realignment	Active	\$ 98,000
FE18-10	FE18-10 Mt Langley HVAC Replacement and Upgrades	Active	\$ 560,000
FE18-11	FE18-11 Headworks Explosive Gas Monitoring Systems at Plant No. 1 and No. 2	Active	\$ 335,000
FE18-12	FE18-12 Erosion Control at Santa Ana River and Hamilton Ave	Active	\$ 245,000
FE18-13	FE18-13 Redhill Relief Sewer Protection at State Route 55	Active	\$ 520,000
FE18-14	FE18-14 Plant Water Pipeline Replacement in Kinnison, Lindstrom, and Scott Tun	Active	\$ 1,425,000
FE18-15	FE18-15 Plant Boiler System Relief at Plant No. 2	Active	\$ 180,000
FE18-16	FE18-16 Truck Loading Basement Drain Modifications at Plant No. 1	Active	\$ 440,000
FE18-17	FE18-17 Trunkline Sampler Power Feed at Plant No 2	Closed	\$ 160,000
FE18-18	FE18-18 Portable Generator Connector at Lido Pump Station	Active	\$ 106,000
FE18-19	FE18-19 12KV Distribution B and East RAS Pump Station Roofing Replacement	Active	\$ 600,000
FE18-20	FE18-20 Blower Building No. 1 Air Compressors at Plant No. 1	Active	\$ 1,200,000
FE19-01	FE19-01 Portable Generator Connectors at Nine Pump Stations	Closed	\$ 1,300,000
Grand Total			\$ 36,065,554
Total Chartered Project			47
Board Approved Program Budget			\$ 53,250,000
Remaining Unallocated Budget			\$ 17,184,446



ORANGE COUNTY SANITATION DISTRICT

Capital Improvement Program

Contract Performance Report

For the period ending June 30, 2019

Table 8 - Information Technology Capital Program Status Report

Project Number	Project Name	Status	Allocated Budget
IT16-03	IT16-03 Plant 2 Internet Connection	Active	\$ 50,000
IT16-05	IT16-05 Plant 2 Radio Repeater Upgrade	Closed	\$ 35,000
IT16-06	IT16-06 Network Equipment 2016-17	Closed	\$ 44,302
IT16-07	IT16-07 Server Replacement and Obsolescence	Closed	\$ 337,332
IT16-08	IT16-08 IT Security 2016-17	Active	\$ 162,000
IT16-09	IT16-09 iPACS Enhancements	Active	\$ 85,000
IT16-10	IT16-10 LIMS Compliance Improv Project	Active	\$ 754,800
IT16-11	IT16-11 Business Continuity Plan	Active	\$ 140,000
IT17-01	IT17-01 VMWare	Active	\$ 800,000
IT17-02	IT17-02 Upgrade Active Directory Directory to 2016	Active	\$ 56,000
IT17-03	IT17-03 Upgrade ShoreTel System Server	Active	\$ 190,000
IT17-04	IT17-04 PCI Improvements	Closed	\$ 131,093
IT17-05	IT17-05 Conference Room Monitor Upgrade	Active	\$ 75,686
IT17-06	IT17-06 Printer Obsolescence	Active	\$ 350,000
IT17-07	IT17-07 Safety Management Suite	Active	\$ 106,000
IT17-08	IT17-08 Perimeter Physical Security Im	Closed	\$ 170,077
IT17-09	IT17-09 MYOCSD Redesign	Closed	\$ 170,077
IT17-10	IT17-10 Electronic Operator Round Form	Active	\$ 45,000
IT17-11	IT17-11 P2 Radio Repeater	Closed	\$ 170,077
IT17-12	IT17-12 Sever/Network Power Improvements	Active	\$ 90,000
IT17-13	IT17-13 Graphric Workstations for PAO	Closed	\$ 15,000
IT17-14	IT17-14 Specialized Application Programing & Support	Active	\$ 600,000
IT17-15	IT17-15 Data Storage Replac/Obsolescens	Active	\$ 600,000
IT18-02	IT18-02 Fleet Management Information System	Active	\$ 250,000
IT18-03	IT18-03 Timecard Systems Upgrade	Active	\$ 150,000
IT18-04	IT18-04 Conference Rooms Audio System Replacement	Active	\$ 90,000
IT18-05	IT18-05 Trusted System Document Management	Active	\$ 100,000
IT18-06	IT18-06 Server Replacement and Obsolescence FY18/19-19/20	Active	\$ 900,000
IT18-07	IT18-07 Network Equipment FY18/19-19/20	Active	\$ 850,000
IT18-09	IT18-09 Records Management Information System	Active	\$ 100,000
IT18-10	IT18-10 Board Services Management System	Active	\$ 60,000
IT18-11	IT18-11 IT Security Budget 2018-2019	Active	\$ 150,000
Grand Total			\$ 7,827,444
Total Chartered Project			32
Board Approved Program Budget			\$ 10,000,000
Remaining Unallocated Budget			\$ 2,172,556



ORANGE COUNTY SANITATION DISTRICT

Capital Improvement Program

Contract Performance Report

For the period ending June 30, 2019

Table 9 - Operations & Maintenance Capital Program Status Report

Project Number	Project Name	Status	Allocated Budget
FR00001	FR00001 SALS Hidrostal Pump	Active	\$ 212,268
FR00002	FR00002 Chopper Pump at Dig P P2	Active	\$ 212,268
FR00008	FR00008 Rag Bin Ramp Retrofit	Active	\$ 33,038
FR00011	FR00011 Westside Impeller / Line Replacement	Active	\$ 108,368
SC16-01	SC16-01 Maint. Storage Area Tool Cage	Active	\$ 12,000
SC17-01	SC17-01 CENGEN #1 Elevator Rehab	Active	\$ 12,000
SC17-02	SC17-02 P1 CenGen Plant Water Piping Rehabilitation	Active	\$ 250,000
SC17-03	SC17-03 CenGen Oil Filter Platform	Active	\$ 60,000
SC17-04	SC17-04 P1 CenGen 12KV Circuit Breaker Replacement	Active	\$ 220,000
SC17-05	SC17-05 Hidrostal Pump - TEFC Close Coupled Motor #2 (Pump for SALS)	Active	\$ 261,260
SC17-06	SC17-06 P1 Lab UPS System Replacement	Active	\$ 290,294
SC18-01	SC18-01 P1 Primary Clarifier Fall Protection Improvements	Active	\$ 50,000
SC18-02	SC18-02 Joint Cen Gen Oil Centrifuge Heater & Controls Rehabilitation (MP-18)	Active	\$ 120,000
SC18-03	SC18-03 P1 SALS Main Duty Pump & Motor and Installation - Remaining 2 (MP-52)	Active	\$ 500,000
SC18-04	SC18-04 Edinger UPS Replacement (MP-444)	Active	\$ 15,000
SC18-05	SC18-05 Improvements to P1 Laboratory Boilers - New Burners (MP-485)	Active	\$ 311,000
SC18-06	SC18-06 Pump Station Bypass Parts - Procurement (MP-426)	Active	\$ 500,000
SC18-08	SC18-08 MacArthur Pump Station - FM Valve Replacement	Active	\$ 55,109
SC18-09	SC18-09 Admin Bldg UPS System Replacement	Active	\$ 185,000
SC18-10	SC18-10 P2 South Scrubber Complex Bleach Pump Turndown (MP-420)	Active	\$ 44,900
Grand Total			\$ 3,452,505
Total Chartered Project			20
Board Approved Program Budget			\$ 15,622,000
Remaining Unallocated Budget			\$ 12,169,495



ORANGE COUNTY SANITATION DISTRICT **Capital Improvement Program** **Contract Performance Report** For the period ending June 30, 2019

PART 4 – STAFF AUGMENTATION CONTRACT

In May 2016, the Sanitation District Board of Directors approved a \$41 million professional services agreement with Jacobs Project Management Co. to provide supplemental engineering and support staff services for a four-year term with the option of three one-year renewals. The benefits of using staff augmentation, as opposed to hiring full-time staff or limited-term employees, include rapid mobilization of highly skilled/technical staff, flexibility to change the mix of staff positions on an immediate and as-needed basis, the ability to reduce staff as workloads decrease, access to technical experts to support special tasks, and access to staff with wastewater project experience.

A status table for the Staff Augmentation Contract Status is attached under Table 10, and the Staff Augmentation Labor Summary can be found under Table 11.

Table 10 - Staff Augmentation Contract Status

	Total Fees	Time
Contract	\$41,000,000	86 months ⁽¹⁾
Actuals to Date	\$16,404,460 40%	38 months 44%
Remaining	\$24,595,540 60%	48 months 56%

⁽¹⁾ Assuming three 1-year extensions

Table 11 - Staff Augmentation Labor Summary

	This Quarter	Inception to Date
Labor Hours	9,777	122,111
Full Time Equivalents	21.7	21.4
Labor Costs (no expenses)	\$1,262,195	\$16,006,931
Average Hourly Rate	\$129	\$131



Orange County Sanitation District

Administration Building
10844 Ellis Avenue
Fountain Valley, CA 92708
(714) 593-7433

OPERATIONS COMMITTEE

Agenda Report

File #: 2019-520

Agenda Date: 9/4/2019

Agenda Item No: 4.

FROM: James D. Herberg, General Manager
Originator: Kathy Millea, Director of Engineering

SUBJECT:

SUNFLOWER AND RED HILL INTERCEPTOR REPAIR, PROJECT NO. 7-66

GENERAL MANAGER'S RECOMMENDATION

RECOMMENDATION: Recommend to the Board of Directors to:

- A. Approve a Professional Design Services Agreement with GHD Inc. to provide engineering services for Sunflower and Red Hill Interceptor Repair, Project No. 7-66, for an amount not to exceed \$308,712; and
- B. Approve a contingency of \$30,871 (10%).

BACKGROUND

The Orange County Sanitation District (Sanitation District) completed construction of the Sunflower Interceptor Reach 3 and Red Hill Interceptor Reach 4 and 5, Project No. 7-6-3 in 1971, ranging in size from 27 inches to 84 inches in diameter. The concrete pipe includes PVC lining on the upper 270-degrees of the pipe section to protect the concrete from corrosive sewer gas. PVC lining was not installed on the bottom 90 degrees because it was expected to be covered by the liquid in the pipe, which is not corrosive to concrete.

RELEVANT STANDARDS

- Protect Orange County Sanitation District assets

PROBLEM

In 2015, as part of the Sanitation District asset management program, the pipe between Red Hill Avenue at MacArthur Boulevard in Irvine and Sunflower Avenue at South Timber Street in Costa Mesa was assessed for internal corrosion and lining condition. This section also includes three siphons, but it was only possible to enter and assess one of the three siphons.

The Sanitation District's assessment indicated the PVC lining has failed at multiple locations and concrete below the 270-degree lining has corroded.

The services of a design consultant are needed to complete this project.

PROPOSED SOLUTION

Approve a Professional Design Services Agreement with GHD Inc.

TIMING CONCERNS

The concrete pipe continues to corrode until a construction project is designed and completed.

RAMIFICATIONS OF NOT TAKING ACTION

Increased risk of failure of the pipe due to continued concrete corrosion causing a sewage spill and property damage.

PRIOR COMMITTEE/BOARD ACTIONS

N/A

ADDITIONAL INFORMATIONConsultant Selection:

The Sanitation District requested and advertised for proposals for Sunflower and Red Hill Interceptor Repair, Project No. 7-66, on April 30, 2019. The following evaluation criterion were described in the Request for Proposals (RFP) and used to determine the most qualified Consultant.

CRITERION	WEIGHT
Project Understanding and Approach	30%
Related Project Experience	30%
Project Team and Staff Qualifications	40%

Three proposals were received on June 10, 2019 and evaluated in accordance with the evaluation process set forth in the Sanitation District's Purchasing Ordinance No. OCSD-52 (Purchasing Ordinance), by a pre-selected Evaluation Team consisting of the following Sanitation District staff.

Rich Leon	Project Manager
Don Stokes	Maintenance Manager
William Cassidy	Engineering Supervisor

The Evaluation Team also included two non-voting representatives from the Contracts Administration Division and Engineering Division. Following scoring by the Evaluation Team, using the evaluation criterion and weighting described above, interviews were deemed unnecessary. Based on the ranking shown below, GHD Inc. was selected as the most qualified Consultant.

	GHD Inc.	LAN Inc.	Atkins NA Inc.
Evaluator 1	1st	2nd	3rd

Evaluator 2	1st	2nd	3rd
Evaluator 3	1st	3rd	2nd
Combined Ranking	1st	2nd	3rd

The selected firm's team had the best understanding of the project and most pertinent recent experience with repairs similar to this project.

Review of Fee Proposal and Negotiations:

Proposals were accompanied by sealed fee proposals. In accordance with the Sanitation District's Purchasing Ordinance, the fee proposal of only the highest-ranked firm was opened after approval by the Director of Engineering of the Evaluation Committee's recommendation.

Staff conducted negotiations with GHD Inc. to clarify the requirements of the Scope of Work, the assumptions used for the estimated level of effort, and the proposed approach to meet the goals and objectives for the project. One negotiating meeting was held where staff and the Consultant reviewed the Project Elements, Preliminary Design, and Final Design tasks for clarity and desired level of effort. These negotiations modified the design process to streamline the process. As a result of these negotiations, GHD Inc. submitted a revised fee proposal.

	Original Fee Proposal	Negotiated Fee
Total Hours	1,830	1,797
Total Fee	\$326,623	\$308,712

The Consultant's fringe and overhead costs, which factor into the billing rate, have been substantiated. The contract profit is 9.94%, which is based on an established formula included in the Sanitation District's standard design agreements.

Based on the above, staff has determined that the final negotiated fee is fair and reasonable for the level of effort required for this project and recommends award of the Professional Design Services Agreement to GHD Inc.

CEQA

This project is exempt from CEQA under the Class 1 categorical exemptions set forth in California Code of Regulations, Title 14, Section 15301 - Section 15301 (Class 1) exempts from CEQA "the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination," including "(b) Existing facilities of both investor and publicly-owned utilities used to provide electric power, natural gas, sewerage, or other public utility services".

The project consists of minor repairs to existing PVC lining and concrete pipe.

A Notice of Exemption will be filed with the OC Clerk-Recorder after the Sanitation District Board award of the Professional Design Services Agreement contract.

FINANCIAL CONSIDERATIONS

This request complies with authority levels of the Sanitation District's Purchasing Ordinance. This item has been budgeted, (Adopted Budget Update FY2019-20, Appendix, Page A-11) and the project budget is sufficient for the recommended action.

ATTACHMENT

The following attachment(s) may be viewed on-line at the OCSD website (www.ocsd.com) with the complete agenda package:

- Professional Design Services Agreement

PROFESSIONAL DESIGN SERVICES AGREEMENT

THIS AGREEMENT, is made and entered into to be effective the 25th day of September, 2019, by and between the ORANGE COUNTY SANITATION DISTRICT, hereinafter referred to as "SANITATION DISTRICT", and GHD INC., for purposes of this Agreement hereinafter referred to as "CONSULTANT".

WITNESSETH:

WHEREAS, the SANITATION DISTRICT desires to engage a CONSULTANT for **Sunflower and Red Hill Interceptor Repairs, Project No. 7-66**; and to provide Design services for designing repairs of damaged PVC linings and concrete on 6,000 linear feet of large diameter concrete pipe; 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 September 25, 2019 the Board of Directors, by Minute Order, accepted the recommendation of the Director of Engineering and General Manager pursuant to SANITATION DISTRICT's Purchasing Ordinance to approve this Agreement between the SANITATION DISTRICT and CONSULTANT.

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

1. SCOPE OF WORK

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

- A. The CONSULTANT shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all design, drawings, specifications, and other 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 laws, codes, industry standards and liability for damages caused by errors, omissions, noncompliance with industry standards, and/or negligence on the part of the CONSULTANT or its Subconsultants.
- B. CONSULTANT is responsible for the quality of work prepared under this Agreement and shall ensure that all work is performed to the standards of best engineering practice for clarity, uniformity, and completeness. CONSULTANT shall respond to all comments, suggestions, and recommendations on the SANITATION DISTRICT's review comment sheets (i.e. DS1, DS2 and DS3). All

comments shall be incorporated into the design prior to the next submittal deadline or addressed, in writing, as to why the comment has 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 work is not performed to the satisfaction of the SANITATION DISTRICT and does not conform to the requirements of this Agreement or any applicable industry standards, the CONSULTANT shall, without additional compensation, promptly correct or revise any errors or deficiencies in its designs, drawings, specifications, or other services within the timeframe specified by the Project Engineer/Project Manager. The SANITATION DISTRICT may charge to CONSULTANT all costs, expenses and damages associated with any such corrections or revisions.
- D. All CAD drawings, figures, and other work shall be produced by CONSULTANTS and Subconsultants using the SANITATION DISTRICT CAD Manual. Conversion of CAD work from any other non-standard CAD 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 approval of the SANITATION DISTRICT.

Electronic files shall be subject to an acceptance period of 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. The CONSULTANT shall ensure that all plans and specifications prepared or recommended under this Agreement allow for competitive bidding. The CONSULTANT shall design such plans or specifications so that procurement of services, labor or materials are not available from only one source, and shall not design plans and specifications around a single or specific product, piece of major equipment or machinery, a specific patented design or a proprietary process, unless required by principles of sound engineering practice and supported by a written justification that has been approved in writing by the SANITATION DISTRICT. The CONSULTANT shall submit this written justification to the SANITATION DISTRICT prior to beginning work on such plans and specifications. Whenever the CONSULTANT recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the project.
- F. All professional services performed by the CONSULTANT, including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by the CONSULTANT, pursuant to this Agreement, are for the sole use of the SANITATION DISTRICT, its agents and employees. Neither the documents nor their contents shall be released to any third party

without the prior written consent of the SANITATION DISTRICT. This provision does not apply to information that (a) was publicly known, or otherwise known to the CONSULTANT, at the time that it was disclosed to the CONSULTANT by the SANITATION DISTRICT, (b) subsequently becomes publicly known to the CONSULTANT other than through disclosure by the SANITATION DISTRICT.

2. COMPENSATION

Total compensation shall be paid to CONSULTANT for services in accordance with the following provisions:

A. Total Compensation

Total compensation shall be in an amount not to exceed Three Hundred Eight Thousand Seven Hundred Twelve Dollars (\$308,712). 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 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 of 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 general 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.

3. REALLOCATION OF TOTAL COMPENSATION

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

4. PAYMENT

A. 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. CONSULTANT shall allocate costs in the same manner as it would for payment requests as described in this Section of the Agreement. CONSULTANT shall warrant and certify the accuracy of these costs and understand that submitted costs are subject to Section 11 - AUDIT PROVISIONS.

B. CONSULTANT may submit monthly or periodic statements requesting payment for those items included in Section 2 - COMPENSATION hereof in the format as required by the SANITATION DISTRICT. Such requests shall be based upon the amount and value of the work and services performed by CONSULTANT under this Agreement and shall be prepared by CONSULTANT and accompanied by such supporting data, including a detailed breakdown of all costs incurred and project element work performed during the period covered by the statement, 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 on a per-project-element basis.

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.

He may, at his discretion, retain an amount equal to that which insures that the total amount paid to that date does not exceed the percentage of the completed work for each project element or 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, 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 ten thousand dollars (\$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.

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

- A. To the extent CONSULTANT's employees and/or Subconsultants who will perform Work during the design and preconstruction phases of a construction contract for which Prevailing Wage Determinations have been issued by the DIR and as more specifically defined under Labor Code Section 1720 et seq, CONSULTANT and Subconsultants shall comply with the registration requirements of Labor Code Section 1725.5. Pursuant to Labor Code Section 1771.4, the Work is subject to compliance monitoring and enforcement by the DIR.

- B. The CONSULTANT and Subconsultants shall maintain accurate payroll records and shall comply with all the provisions of Labor Code Section 1776, and shall submit payroll records to the Labor Commissioner pursuant to Labor Code Section 1771.4(a)(3). Penalties for non-compliance with the requirements of Section 1776 may be deducted from progress payments per Section 1776.
- C. Pursuant to Labor Code Section 1776, the CONSULTANT and Subconsultants shall furnish a copy of all certified payroll records to SANITATION DISTRICT and/or general public upon request, provided the public request is made through SANITATION DISTRICT, the Division of Apprenticeship Standards or the Division of Labor Enforcement of the Department of Industrial Relations.
- D. The CONSULTANT and Subconsultants shall comply with the job site notices posting requirements established by the Labor Commissioner per Title 8, California Code of Regulation Section 16461(e).

6. DOCUMENT OWNERSHIP – SUBSEQUENT CHANGES TO PLANS AND SPECIFICATIONS

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

All documents, including but not limited to, original plans, studies, sketches, drawings, computer printouts and disk files, and specifications 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 plans or specifications, where the subsequent changes or uses are not authorized or approved by CONSULTANT, provided that the service rendered by CONSULTANT was not a proximate cause of the damage.

7. INSURANCE

- A. General

- i. Insurance shall be issued and underwritten by insurance companies acceptable to the SANITATION DISTRICT.
- i. 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.

- ii. Coverage shall be in effect prior to the commencement of any work under this Agreement.

B. General Liability

The CONSULTANT shall maintain during the life of this Agreement, including the period of warranty, Commercial General Liability Insurance written on an occurrence basis providing the following minimum limits of liability coverage: two million dollars (\$2,000,000) per occurrence with two million dollars (\$2,000,000) aggregate. Said insurance shall include coverage for the following hazards: Premises-Operations, blanket contractual liability (for this Agreement), products liability/completed operations (including any product manufactured or assembled), broad form property damage, blanket contractual liability, independent contractors liability, personal and advertising injury, mobile equipment, owners and contractors protective liability, and cross liability and severability of interest clauses. A statement on an insurance certificate will not be accepted in lieu of the actual additional insured endorsement(s). If requested by SANITATION DISTRICT and applicable, XCU coverage (Explosion, Collapse and Underground) and Riggers/On Hook Liability must be included in the General Liability policy and coverage must be reflected on the submitted Certificate of Insurance.

C. Umbrella Excess Liability

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

D. Automotive/Vehicle liability Insurance

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

E. Drone Liability Insurance

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

F. Worker's Compensation Insurance

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

G. Errors and Omissions/Professional Liability

CONSULTANT shall maintain in full force and effect, throughout the term of this Agreement, standard industry form professional negligence errors and omissions insurance coverage in an amount of not less than 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.

H. Proof of Coverage

The CONSULTANT shall furnish the SANITATION DISTRICT with original certificates and amendatory endorsements effecting coverage. Said policies and endorsements shall conform to the requirements herein stated. All certificates and endorsements are to be received and approved by the SANITATION DISTRICT before work commences. The SANITATION DISTRICT reserves the right to require complete, certified copies of all required insurance policies, including endorsements, effecting the coverage required, at any time. The following are approved forms that must be submitted as proof of coverage:

- Certificate of Insurance ACORD Form 25 (5/2010) or equivalent.
- Additional Insurance (ISO Form) CG2010 11 85 or
 (General Liability) The combination of (ISO Forms)
 CG 2010 10 01 and CG 2037 10 01

 All other Additional Insured endorsements must
 be submitted for approval by the SANITATION
 DISTRICT, and the SANITATION DISTRICT
 may reject alternatives that provide different or
 less coverage to the SANITATION DISTRICT.
- Additional Insured Submit endorsement provided by carrier for the
 (Auto Liability) SANITATION DISTRICT approval.
- Waiver of Subrogation State Compensation Insurance Fund
 Endorsement No. 2570 or equivalent.
- Cancellation Notice State Compensation Insurance Fund
 Endorsement No. 2065 or equivalent.

I. Cancellation Notice

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

days prior to the effective date of the change(s) if the change would reduce coverage or increase deductibles or SIR amounts or otherwise reduce or limit the scope of insurance coverage provided to the SANITATION DISTRICT.

J. Primary Insurance

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

K. Separation of Insured

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

L. Non-Limiting (if applicable)

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

M. Deductibles and Self-Insured Retentions

Any deductible and/or self-insured retention must be declared to the SANITATION DISTRICT on the Certificate of Insurance. All deductibles and/or self-insured retentions require approval by the SANITATION DISTRICT. At the option of the SANITATION DISTRICT, either: the insurer shall reduce or eliminate such deductible or self-insured retention as respects the SANITATION

DISTRICT; or the CONSULTANT shall provide a financial guarantee satisfactory to the SANITATION DISTRICT guaranteeing payment of losses and related investigations, claim administration and defense expenses.

N. Defense Costs

Liability policies shall have a provision that defense costs for all insureds and additional insureds are paid in addition to and do not deplete any policy limits.

O. Subconsultants

The CONSULTANT shall be responsible to establish insurance requirements for any Subconsultant hired by the CONSULTANT. The insurance shall be in amounts and types reasonably sufficient to deal with the risk of loss involving the Subconsultant's operations and work.

P. Limits Are Minimums

If the CONSULTANT maintains higher limits than any minimums shown above, then SANITATION DISTRICT requires and shall be entitled to coverage for the higher limits maintained by CONSULTANT.

8. SCOPE CHANGES

In the event of a change in the Scope of Work, requested by 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.

9. 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 by CONSULTANT. CONSULTANT shall include a description of the scope of work to be done by each Subconsultant and each CONSULTANT's project team member. CONSULTANT shall include the respective compensation amounts for CONSULTANT and each Subconsultant on a per-project-element basis, 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.

10. ENGINEERING REGISTRATION

The CONSULTANT's personnel 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 requires the services of a registered engineer. Such services hereunder will be performed under the direct supervision of registered engineers.

11. 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.

12. LEGAL RELATIONSHIP BETWEEN PARTIES

The legal relationship between the parties hereto is that of an independent contractor and nothing herein shall be deemed to make CONSULTANT an employee of the SANITATION DISTRICT.

13. 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.

Notices shall be mailed to the SANITATION DISTRICT at:

ORANGE COUNTY SANITATION DISTRICT
10844 Ellis Avenue
Fountain Valley, CA 92708-7018
Attention: Clarice Marcin, Senior Contracts Administrator
Copy: Richard Leon, Project Manager

Notices shall be mailed to CONSULTANT at:

GHD Inc.
320 Goddard Way, Suite 200
Irvine, CA 92618
Attention: Greg Watanabe, Project Principal

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

14. 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 and/or CONSULTANT in accordance with Section 13 - NOTICES.

15. 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, computation and study materials in its files pertaining to the work described in this Agreement, which is requested in writing by the SANITATION DISTRICT.

16. COMPLIANCE

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.

17. 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 agreements for that party.

18. 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.

19. 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 it may be entitled.

20. PROGRESS REPORTS

Monthly progress reports shall be submitted for review by the tenth day of the following month and must include as a minimum: 1) current activities, 2) future activities, 3) potential items that are not included in the Scope of Work, 4) concerns and possible delays, 5) percentage of completion, and 6) budget status.

21. WARRANTY

CONSULTANT shall perform its services in accordance with generally accepted industry and professional standards. If, within the 12-month period following completion of its services, 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).

22. INDEMNIFICATION

To the fullest extent permitted by law, CONSULTANT shall indemnify, defend (at CONSULTANT's sole cost and expense and with legal counsel approved by 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.

23. DUTY TO DEFEND

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

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

24. CONSULTANT PERFORMANCE

The CONSULTANT's performance shall be evaluated by the SANITATION DISTRICT. A copy of the evaluation shall be sent to the CONSULTANT for comment. The evaluation, together with the comments, shall be retained by the SANITATION DISTRICT and may be considered in future CONSULTANT selection processes.

25. COMPLIANCE WITH SANITATION DISTRICT POLICIES AND PROCEDURES

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

26. CLOSEOUT

When the SANITATION DISTRICT determines that all Work authorized under the Agreement is fully complete and that the SANITATION DISTRICT requires no further work from CONSULTANT, or the Agreement is otherwise terminated or expires in accordance with the terms of the Agreement, the SANITATION DISTRICT shall give the Consultant written notice that the Agreement will be closed out. CONSULTANT shall submit all outstanding billings, work submittals, deliverables, reports or similarly related documents as required under the Agreement within thirty (30) days of receipt of notice of Agreement closeout.

Upon receipt of CONSULTANT's submittals, the SANITATION DISTRICT shall commence a closeout audit of the Agreement and will either:

- i. Give the CONSULTANT a final Agreement Acceptance: or
- ii. Advise the CONSULTANT in writing of any outstanding item or items which must be furnished, completed, or corrected at the CONSULTANT's cost.

CONSULTANT shall be required to provide adequate resources to fully support any administrative closeout efforts identified in this Agreement. Such support must be provided within the timeframe requested by the SANITATION DISTRICT.

Notwithstanding the final Agreement Acceptance the CONSULTANT will not be relieved of its obligations hereunder, nor will the CONSULTANT be relieved of its obligations to complete any portions of the work, the non-completion of which were not disclosed to the SANITATION DISTRICT (regardless of whether such nondisclosures were fraudulent, negligent, or otherwise); and the CONSULTANT shall remain obligated under all those provisions of the Agreement which expressly or by their nature extend beyond and survive final Agreement Acceptance.

Any failure by the SANITATION DISTRICT to reject the work or to reject the CONSULTANT's request for final Agreement Acceptance as set forth above shall not be deemed to be acceptance of the work by the SANITATION DISTRICT for any purpose nor imply acceptance of, or agreement with, the CONSULTANT's request for final Agreement Acceptance.

27. ENTIRE AGREEMENT

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

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

GHD 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 Used (or Not Attached)
Attachment "D" – Allowable Direct Costs
Attachment "E" – Fee Proposal
Attachment "F" – Not Used (or Not Attached)
Attachment "G" – Not Used (or Not Attached)
Attachment "H" – Not Used (or Not Attached)
Attachment "I" – Cost Matrix & Summary
Attachment "J" – Not Used (or Not Attached)
Attachment "K" – Minor Subconsultant Hourly Rate Schedule (Not Used)
Attachment "L" – OCSD Safety Standards

CMM



OPERATIONS COMMITTEE

Agenda Report

File #: 2019-534

Agenda Date: 9/4/2019

Agenda Item No: 5.

FROM: James D. Herberg, General Manager
Originator: Rob Thompson, Assistant General Manager

SUBJECT:

BLANKET PURCHASE ORDER FOR ARC FLASH SUIT & GLOVE RENTAL PROGRAM FROM CINTAS CORPORATION

GENERAL MANAGER'S RECOMMENDATION

RECOMMENDATION: Recommend to the Board of Directors to:

- A. Approve Blanket Purchase Order with Cintas Corporation for 12 calorie per square centimeter rated daily wear uniform and 65 calorie per square centimeter rated Arc Flash Suit and Electrically Insulated Glove Lease Program per Cooperative Agreement Contract: R-BB-19002, for a total amount not to exceed \$380,185 for a three-year contract term, plus one additional three-year renewal option; and
- B. Approve contingency of \$19,000 (5%).

BACKGROUND

The Orange County Sanitation District's (Sanitation District) maintenance staff are required by Occupational Safety and Health Administration (OSHA) per National Fire Protection Association (NFPA) 70E standards to wear appropriately rated personal protective equipment (PPE). Arc flash suits and electrically insulated gloves are used by electrical, instrumentation, and HVAC maintenance staff to perform daily tasks with electrical exposure.

All 65 calorie per square centimeter (cal/cm²) rated arc flash suits worn by electrical, instrumentation, and HVAC maintenance are currently laundered at a local dry cleaning establishment through a blanket purchase order. Risk Management has determined that this type of PPE should be laundered at an industrial facility in order to avoid cross-contamination with local dry cleaning to maintain flame-resistant properties.

RELEVANT STANDARDS

- Commitment to safety & reducing risk in all operations
- Provide a safe and collegial workplace
- Participate in local, state, and national cooperative purchasing programs

PROBLEM

Due to the nature of the work being performed by electrical, instrumentation, and HVAC maintenance staff, and frequency of use, PPE will need to continue to be laundered or repaired/replaced on a reoccurring frequency. Local dry cleaners have been deemed a risk for cross-contamination or improper care of garments with flame-resistant material. Additionally, local dry cleaner use requires staff to deliver and coordinate pick-up of garments.

PROPOSED SOLUTION

Staff recommends entering into a blanket purchase order with Cintas Corporation (Cintas) for the arc flash uniform daily wear, 65 cal/cm² suit and electrical insulated glove rental program. This program would launder, inspect, and/or replace the garments; meet compliance with NFPA 70E and ANSI 107 standards; eliminate the risk of cross-contamination at local dry cleaning establishments; and reduce staff time away from maintenance work. Electrically insulated gloves require regular testing and associated recordkeeping which is provided by the vendor.

Comparatively, replacement of PPE garments, at the frequency of use, would not be as cost effective.

TIMING CONCERNS

N/A

RAMIFICATIONS OF NOT TAKING ACTION

Continuing current practices creates potential liability due to the risk of possible cross-contamination at local dry cleaning businesses and improper care of flame-resistant material.

PRIOR COMMITTEE/BOARD ACTIONS

N/A

ADDITIONAL INFORMATION

OMNIA Partners is the largest purchasing organization for the public sector. It is comprised of the two leading cooperative purchasing organizations: U.S. Communities and National IPA. The collective buying power of these two cooperatives deliver best value and large cost savings for public agencies nationwide. Contracts through this organization have all been competitively solicited through the Request for Proposal (RFP) process, evaluated for best value using best industry practices, and publicly awarded by a government entity acting as the lead agency. The Cintas Contract, Number R-BB-19002, was initially awarded via U.S. Communities with Prince William County Public Schools, VA as the lead agency.

CEQA

N/A

FINANCIAL CONSIDERATIONS

This request complies with authority levels of the Sanitation District's Purchasing Ordinance. This recommendation would be funded under the Repairs and Maintenance line item for Operations and Maintenance Department (Budget Update Fiscal Year 2019-20, Page 47), and the available funding is sufficient for this action.

<u>Date of Approval</u>	<u>Contract Amount</u>	<u>Contingency</u>
09/04/2019	\$380,185	\$19,000 (5%)

ATTACHMENT

The following attachment(s) may be viewed on-line at the OCSD website (www.ocsd.com) with the complete agenda package:

N/A

RM:ab:gc



OPERATIONS COMMITTEE

Agenda Report

File #: 2019-530

Agenda Date: 9/4/2019

Agenda Item No: 6.

FROM: James D. Herberg, General Manager
Originator: Rob Thompson, Assistant General Manager

SUBJECT:

ON-CALL PREVENTATIVE MAINTENANCE SERVICES FOR ELECTRICAL EQUIPMENT (MP-278)

GENERAL MANAGER'S RECOMMENDATION

RECOMMENDATION: Recommend to the Board of Directors to:

- A. Approve a Contract to provide on-call electrical maintenance services, Specification No. S-2019-1006BD-R, with Hampton Tedder Technical Services for a one-year period effective November 1, 2019 through October 31, 2020, for an amount not to exceed \$1,657,950, and approve four, one-year renewal options; and
- B. Approve a contingency of \$82,898 (5%).

BACKGROUND

The Orange County Sanitation District (Sanitation District) maintains large electrical distribution systems at the treatment plants and pump stations. The National Fire Protection Association (NFPA) 70B Standard, Recommended Practice for Electrical Equipment Maintenance, recommends testing and maintenance requirements to reduce hazards to life and property that can result from failure or malfunction of industrial-type electrical systems and equipment. The Sanitation District's electrical distribution equipment, systems, and components must be operational within applicable NFPA 70B standards and manufacturer's tolerances to avoid breakdown. Breakdowns can be costly failures and may result in major disruptions. The Sanitation District's electrical equipment must be field inspected, maintained, and calibrated at regular intervals to ensure reliability and safety.

RELEVANT STANDARDS

- Protect Orange County Sanitation District assets
- 24/7/365 treatment plant reliability
- Maintain a proactive asset management program

PROBLEM

There has been a significant increase in the number of pieces of electrical distribution equipment installed by CIP projects that require significant labor effort to test, calibrate, and maintain. The electrical equipment includes protective relays and circuit breakers.

PROPOSED SOLUTION

Sanitation District staff recommends contracting with Hampton Tedder Technical Services as the lowest responsive and responsible bidder for on-call services to perform electrical equipment preventive maintenance activities per NFPA 70B requirements. NFPA 70B details standardized preventive maintenance for electrical, electronic, and communication systems equipment to prevent equipment failures and worker injuries.

TIMING CONCERNS

Proceeding as soon as possible is desired to ensure that electrical equipment reliability and availability is maintained at a high level within the power distribution systems.

RAMIFICATIONS OF NOT TAKING ACTION

Not taking action will mean greater risk of downtime and potential breakdowns or failures of electrical equipment.

PRIOR COMMITTEE/BOARD ACTIONS

N/A

ADDITIONAL INFORMATION

The proper maintenance of the Sanitation District's electrical assets helps avoid unplanned downtime and ensure continuous operations of our water treatment facility. To accomplish this task properly, there is a need for additional resources. An inventory summary for the Sanitation District's key electrical equipment is listed below:

Electrical Equipment Type	Plant 1	Plant 2	Pump Station	Total
Motor Control Centers	90	107	23	220
Switchgears	49	70	6	125
Variable Frequency Drives	160	134	42	336
Large Oil-Filled Transformers	53	72	0	115
Generators	12	19	9	40
Large Uninterruptible Power Supply	23	12	18	53
Battery Systems	21	17	0	38

The Sanitation District advertised for bids on May 16, 2019. Two sealed bids were received on June 18, 2019. The bids were evaluated in accordance with the Sanitation District's policies and procedures. Staff recommends awarding a service contract to the lowest responsive and responsible bidder, Hampton Tedder Technical Services, for on-call services to perform electrical equipment preventive maintenance activities. This contract can address up to approximately 150 electrical preventive maintenance tasks per year to help staff better maintain all its electrical assets and ensure

their reliability.

The summary information on the bid opening is as follows:

Bidder	Amount of Bid
Hampton Tedder Technical Services	\$1,657,950
HALCO Testing Services	\$1,876,500

CEQA

N/A

FINANCIAL CONSIDERATIONS

This request complies with authority levels of the Sanitation District's Purchasing Ordinance. This recommendation would be funded under the Repairs and Maintenance line item for Operations and Maintenance Department (Budget Update Fiscal Year 2019-20, Page 47), and the available funding is sufficient for this action.

<u>Date of Approval</u>	<u>Contract Amount</u>	<u>Contingency</u>
09/04/2019	\$1,657,950	\$82,898 (5%)

ATTACHMENT

The following attachment(s) may be viewed on-line at the OCSD website (www.ocsd.com) with the complete agenda package:

- Service Contract for Spec. No. S-2019-1006BD-R

RM:ab:ac

SERVICE CONTRACT
ON-CALL PREVENTIVE MAINTENANCE SERVICES FOR OCSD ELECTRICAL EQUIPMENT
Specification No. S-2019-1006BD-R (Rebid)

THIS CONTRACT 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 "OCSD") and Hampton Tedder Technical Services with a principal place of business at 4571 State Street, Montclair, CA 91763 (hereinafter referred to as "Contractor") collectively referred to as the "Parties".

WITNESSETH

WHEREAS, OCSD desires to temporarily retain the services of Contractor for the On-Call Preventive Maintenance (PM) Services for OCSD Electrical Equipment "Services" as described in Exhibit "A"; and

WHEREAS, OCSD has chosen Contractor to conduct Services in accordance with Ordinance No. OCSD-52; and

WHEREAS, on September 25, 2019, the Board of Directors of OCSD, by minute order, authorized execution of this Contract between OCSD and Contractor; and

WHEREAS, Contractor is qualified by virtue of experience, training, and expertise to accomplish such Services,

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 Contract and all exhibits hereto (called the "Contract") is made by OCSD and the Contractor. The terms and conditions herein exclusively govern the purchase of Services as described in Exhibit "A".

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

Exhibit "A"	Scope of Work
Exhibit "B"	Bid
Exhibit "C"	Acknowledgement of Insurance Requirements
Exhibit "D"	OCSD Safety Standards
Exhibit "E"	Not Used
Exhibit "F"	Human Resources Policies

1.3 In the event of any conflict or inconsistency between the provisions of this Contract and any of the provisions of the exhibits hereto, the provisions of this Contract shall in all respects govern and control.

1.4 The provisions of this Contract may be amended or waived only by a writing executed by authorized representatives of both Parties hereto.

- 1.5 The various headings in this Contract are inserted for convenience only and shall not affect the meaning or interpretation of this Contract or any paragraph or provision hereof.
- 1.6 The term “days”, when used in the Contract, shall mean calendar days, unless otherwise noted as business days.
- 1.7 OCSD 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 “hours”, when used in this Contract, shall be as defined in Exhibit “A”.
- 1.9 Contractor shall provide OCSD with all required premiums and/or overtime work at no charge beyond the price provided under “Compensation” below.
- 1.10 Except as expressly provided otherwise, OCSD accepts no liability for any expenses, losses, or action incurred or undertaken by Contractor as a result of work performed in anticipation of purchases of said services by OCSD.
- 2. Compensation** Compensation to be paid by OCSD to Contractor for the Services provided under this Contract shall be a total amount not to exceed one million six hundred fifty-seven thousand nine hundred fifty Dollars (\$1,657,950.00).
- 3. California Department of Industrial Relations (DIR) Registration and Record of Wages**
- 3.1 To the extent Contractor’s employees and/or its subcontractors who will perform Work during the design and preconstruction phases of a construction contract for which Prevailing Wage Determinations have been issued by the DIR and as more specifically defined under Labor Code Section 1720 et seq, Contractor and its subcontractors 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.
- 3.2 The Contractor and its subcontractors 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 1771.4(a)(3). Penalties for non-compliance with the requirements of Section 1776 may be deducted from progress payments per Section 1776.
- 3.3 Pursuant to Labor Code Section 1776, the Contractor and its subcontractors shall furnish a copy of all certified payroll records to OCSD and/or general public upon request, provided the public request is made through OCSD, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the Department of Industrial Relations.
- 3.4 The Contractor and its subcontractors shall comply with the job site notices posting requirements established by the Labor Commissioner per Title 8, California Code of Regulation Section 16461(e).
- 4. Payments and Invoicing**
- OCSD shall pay, net thirty (30) days, upon receipt and approval, by OCSD’s Project Manager or designee, of itemized invoices submitted for each task completed in accordance with Exhibit “A”. OCSD, at its sole discretion, shall be the determining party as to whether the Services have been satisfactorily completed and accepted.

- 4.1 Invoices shall be emailed by Contractor to OCSD Accounts Payable at APStaff@OCSD.com and "INVOICE" with the Purchase Order Number and **S-2019-1006BD-R (Rebid)** shall be referenced in the subject line.
5. **Audit Rights** Contractor agrees that, during the term of this Contract and for a period of three (3) years after its termination, OCSD shall have access to and the right to examine any directly pertinent books, documents, and records of Contractor relating to the invoices submitted by Contractor pursuant to this Contract.
6. **Scope of Work** Subject to the terms of this Contract, Contractor shall perform the Services identified in Exhibit "A". Contractor shall perform said Services in accordance with generally accepted industry and professional standards.
7. **Modifications to Scope of Work** Requests for modifications to the Scope of Work hereunder can be made by OCSD at any time. All modifications must be made in writing and signed by both Parties.
8. **Contract Term**
The Services provided under this Agreement shall be for the period of one (1) year commencing on November 1, 2019 and continuing through October 1, 2020.
9. **Renewals**
- 9.1 OCSD may exercise the option to renew this Contract for up to four (4) one-year periods based upon the criteria set forth in Exhibit "A", under the terms and conditions contained herein. OCSD shall make no obligation to renew nor give reason if it elects not to renew.
- 9.2 This Contract may be renewed by OCSD Purchase Order.
10. **Extensions** The term of this Contract may be extended only by written instrument signed by both Parties.
11. **Performance** Time is of the essence in the performance of the provisions hereof.
12. **Termination**
- 12.1 OCSD reserves the right to terminate this Contract for its convenience, with or without cause, in whole or in part, at any time, by written notice from OCSD of intent to terminate. Upon receipt of a termination notice, Contractor shall immediately discontinue all work under this Contract (unless the notice directs otherwise). OCSD shall thereafter, within thirty (30) days, pay Contractor for work performed (cost and fee) to the date of termination. Contractor expressly waives any claim to receive anticipated profits to be earned during the uncompleted portion of this Contract. Such notice of termination shall terminate this Contract and release OCSD from any further fee, cost or claim hereunder by Contractor other than for work performed to the date of termination.
- 12.2 OCSD reserves the right to terminate this Contract immediately upon OCSD's determination that Contractor is not complying with the Scope of Work requirements, if the level of service is inadequate, or any other default of this Contract.
- 12.3 OCSD may also immediately cancel for default of this Contract in whole or in part by written notice to Contractor:
- if Contractor becomes insolvent or files a petition under the Bankruptcy Act; or
 - if Contractor sells its business; or

- if Contractor breaches any of the terms of this Contract; or
 - if total amount of compensation exceeds the amount authorized under this Contract.
- 12.4 All OCSD property in the possession or control of Contractor shall be returned by Contractor to OCSD upon demand, or at the termination of this Contract, whichever occurs first.
13. **Insurance** Contractor and all subcontractors shall purchase and maintain, throughout the life of this Contract and any periods of warranty or extensions, insurance in amounts equal to the requirements set forth in the signed Acknowledgement of Insurance Requirements (attached hereto and incorporated herein as Exhibit "C"). Contractor shall not commence work under this Contract until all required insurance is obtained in a form acceptable to OCSD, nor shall Contractor allow any subcontractor to commence service pursuant to a subcontract until all insurance required of the subcontractor has been obtained. Failure to maintain required insurance coverage shall result in termination of this Contract.
14. **Bonds** - NOT USED.
15. **Indemnification and Hold Harmless Provision** Contractor 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 Contractor's services under this Contract, or by its subcontractor(s) or by anyone directly or indirectly employed by Contractor, and whether such damage or injury shall accrue or be discovered before or after the termination of the Contract. Except as to the sole active negligence of or willful misconduct of OCSD, Contractor shall indemnify, protect, defend and hold harmless OCSD, 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 Contractor's performance under the Contract, 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 Contract, and/or (c) on account of any goods and services provided under this Contract. This indemnification provision shall apply to any acts or omissions, willful misconduct, or negligent misconduct, whether active or passive, on the part of Contractor or of anyone employed by or working under Contractor. To the maximum extent permitted by law, Contractor'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. Contractor agrees to provide this defense immediately upon written notice from OCSD, and with well qualified, adequately insured, and experienced legal counsel acceptable to OCSD.
16. **OCSD Safety Standards** OCSD requires Contractor and its subcontractor(s) to follow and ensure their employees follow all Federal, State, and local regulations as well as OCSD Safety Standards while working at OCSD locations. If during the course of the Contract it is discovered that OCSD Safety Standards do not comply with Federal, State, or local regulations, then the Contractor is required to follow the most stringent regulatory requirement at no additional cost to OCSD. Contractor and all of its employees and subcontractors, shall adhere to all applicable OCSD Safety Standards attached hereto in Exhibit "D" and the Human Resources Policies (Exhibit "F").
17. **Warranties** In addition to the warranties stated in Exhibit "A", the following shall apply:
- 17.1 Manufacturer's standard warranty shall apply. All manufacturer warranties shall commence

on the date of acceptance by the OCSD Project Manager or designee of the work as complete.

- 17.2 **Contractor's Warranty (Guarantee):** If within a one (1) year period of completion of all work as specified in Exhibit "A", OCSD informs Contractor that any portion of the Services provided fails to meet the standards required under this Contract, Contractor shall, within the time agreed to by OCSD and Contractor, take all such actions as are necessary to correct or complete the noted deficiency(ies) at Contractor's sole expense.

18. Liquidated Damages - NOT USED.

19. **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 Contract.

20. **Freight (F.O.B. Destination)** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.

21. **Familiarity with Work** By executing this Contract, Contractor 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 Contract. Should Contractor discover any latent or unknown conditions materially differing from those inherent in the work or as represented by OCSD, it shall immediately inform OCSD of this and shall not proceed, except at Contractor's risk, until written instructions are received from OCSD.

22. **Regulatory Requirements** Contractor shall perform all work under this Contract in strict conformance with applicable Federal, State, and local regulatory requirements including, but not limited to, 40 CFR 122, 123, 124, 257, 258, 260, 261, and 503, Title 22, 23, and California Water Codes Division 2.

23. **Licenses, Permits, Ordinances and Regulations** Contractor represents and warrants to OCSD 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 the work performed under the terms of this Contract will be paid by Contractor.

24. **Applicable Laws and Regulations** Contractor shall comply with all applicable Federal, State, and local laws, rules, and regulations. Contractor also agrees to indemnify and hold harmless from any and all damages and liabilities assessed against OCSD as a result of Contractor's noncompliance therewith. Any permission required by law to be included herein shall be deemed included as a part of this Contract whether or not specifically referenced.

25. Contractor's Employees Compensation

- 25.1 **Davis-Bacon Act** – Contractor will pay and will require all subcontractors to pay all employees on said project a salary or wage at least equal to the prevailing rate of per diem wages as determined by the Secretary of Labor in accordance with the Davis-Bacon Act for each craft or type of worker needed to perform the Contract. The provisions of the Davis-Bacon Act shall apply only if the Contract is in excess of two thousand dollars (\$2,000.00) and when twenty-five percent (25%) or more of the Contract is funded by Federal

assistance. If the aforesaid conditions are met, a copy of the provisions of the Davis-Bacon Act to be complied with are incorporated herein as a part of this Contract and referred to by reference.

- 25.2 General Prevailing Rate – OCSD has been advised by the State of California Director of Industrial Relations of its determination of the general prevailing rate of per diem wages and the general prevailing rate for legal holiday and overtime work in the locality in which the work is to be performed for each craft or type of work needed to execute this Contract, and copies of same are on file in the Engineering Department. The Contractor agrees that not less than said prevailing rates shall be paid to workers employed on this Contract as required by Labor Code Section 1774 of the State of California. Per California Labor Code 1773.2, OCSD will have on file copies of the prevailing rate of per diem wages at its principal office and at each project site, which shall be made available to any interested party upon request.
- 25.3 Forfeiture For Violation – Contractor shall, as a penalty to OCSD, forfeit fifty dollars (\$50.00) for each calendar day or portion thereof for each worker paid (either by the Contractor or any subcontractor under it) less than the prevailing rate of per diem wages as set by the Director of Industrial Relations, in accordance with Sections 1770-1780 of the California Labor Code for the work provided for in this Contract, all in accordance with Section 1775 of the Labor Code of the State of California.
- 25.4 Apprentices – Sections 1777.5, 1777.6, 1777.7 of the Labor Code of the State of California, regarding the employment of apprentices are applicable to this Contract and the Contractor shall comply therewith if the prime contract involves thirty thousand dollars (\$30,000.00) or more or twenty (20) working days or more; or if contracts of specialty contractors not bidding for work through the general or prime Contractor are two thousand dollars (\$2,000.00) or more or five (5) working days or more.
- 25.5 Workday – In the performance of this Contract, not more than eight (8) hours shall constitute a day's work, and the Contractor shall not require more than eight (8) hours of labor in a day from any person employed by it hereunder. Contractor shall conform to Article 3, Chapter 1, Part 7 (Section 1810 et seq.) of the Labor Code of the State of California and shall forfeit to OCSD as a penalty, the sum of twenty-five dollars (\$25.00) for each worker employed in the execution of this Contract by Contractor or any subcontractor for each calendar day during which any worker is required or permitted to labor more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one (1) week in violation of said Article. Contractor shall keep an accurate record showing the name and actual hours worked each calendar day and each calendar week by each worker employed by Contractor in connection with the project.
- 25.6 Record of Wages; Inspection – Contractor agrees to maintain accurate payroll records showing the name, address, social security number, work classification, straight-time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by it in connection with the project and agrees to require that each of its subcontractors do the same. All payroll records shall be certified as accurate by the applicable Contractor or subcontractor or its agent having authority over such matters. Contractor further agrees that its payroll records and those of its subcontractors shall be available to the employee or employee's representative, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards and shall comply with all of the provisions of Labor Code Section 1776, in general. Penalties for non-compliance with the requirements of Section 1776 may be deducted from project payments per the requirements of Section 1776.

26. **South Coast Air Quality Management District's (SCAQMD) Requirements** It is Contractor's responsibility that all equipment furnished and installed be in accordance with the latest rules and regulations of the South Coast Air Quality Management District (SCAQMD). All Contract work practices, which may have associated emissions such as sandblasting, open field spray painting or demolition of asbestos containing components or structures, shall comply with the appropriate rules and regulations of the SCAQMD.
27. **Governing Law** This Contract shall be governed by and interpreted under the laws of the State of California and the Parties submit to jurisdiction in the County of Orange, in the event any action is brought in connection with this Contract or the performance thereof.
28. **Breach** The waiver of either party of any breach or violation of, or default under, any provision of this Contract, shall not be deemed a continuing waiver by such party of any other provision or of any subsequent breach or violation of this Contract or default thereunder. Any breach by Contractor to which OCSD does not object shall not operate as a waiver of OCSD's rights to seek remedies available to it for any subsequent breach.
29. **Remedies** In addition to other remedies available in law or equity, if the Contractor fails to make delivery of the goods or Services or repudiates its obligations under this Contract, or if OCSD rejects the goods or Services or revokes acceptance of the goods or Services, OCSD may (1) cancel the Contract; (2) recover whatever amount of the purchase price OCSD has paid, and/or (3) "cover" by purchasing, or contracting to purchase, substitute goods or Services for those due from Contractor. In the event OCSD elects to "cover" as described in (3), OCSD shall be entitled to recover from Contractor as damages the difference between the cost of the substitute goods or Services and the Contract price, together with any incidental or consequential damages.
30. **Dispute Resolution**
- 30.1 In the event of a dispute as to the construction or interpretation of this Contract, 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.
- 30.2 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.
31. **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

Contract, 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.

32. **Survival** The provisions of this Contract dealing with Payment, Warranty, Indemnity, and Forum for Enforcement, shall survive termination or expiration of this Contract.
33. **Severability** If any section, subsection, or provision of this Contract, or any agreement or instrument contemplated hereby, or the application of such section, subsection, or provision is held invalid, the remainder of this Contract 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. **Damage to OCSD's Property** Any of OCSD's property damaged by Contractor, any subcontractors or by the personnel of either will be subject to repair or replacement by Contractor at no cost to OCSD.
35. **Disclosure** Contractor agrees not to disclose, to any third party, data or information generated from this project without the prior written consent from OCSD.
36. **Independent Contractor** The legal relationship between the parties hereto is that of an independent contractor, and nothing herein shall be deemed to make Contractor an OCSD employee. During the performance of this Contract, Contractor and its officers, employees, and agents shall act in an independent capacity and shall not act as OCSD's officers, employees, or agents. Contractor and its officers, employees, and agents shall obtain no rights to any benefits which accrue to OCSD's employees.
37. **Limitations upon Subcontracting and Assignment** Contractor shall not delegate any duties nor assign any rights under this Contract without the prior written consent of OCSD. Any such attempted delegation or assignment shall be void.
38. **Third Party Rights** Nothing in this Contract shall be construed to give any rights or benefits to anyone other than OCSD and Contractor.
39. **Non-Liability of OCSD Officers and Employees** No officer or employee of OCSD shall be personally liable to Contractor, or any successor-in-interest, in the event of any default or breach by OCSD or for any amount which may become due to Contractor or to its successor, or for breach of any obligation for the terms of this Contract.
40. **Read and Understood** By signing this Contract, Contractor represents that he has read and understood the terms and conditions of the Contract.
41. **Authority to Execute** The persons executing this Contract on behalf of the Parties warrant that they are duly authorized to execute this Contract and that by executing this Contract, the Parties are formally bound.
42. **Entire Contract** This Contract 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.

- 43. Notices** All notices under this Contract 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. Rejection or other refusal to accept or the inability to deliver because of changed address for which no notice was given as provided hereunder shall be deemed to be receipt of the notice, demand or request sent. All notices shall be effective when first received at the following addresses:

OCSD:	Darius Ghazi Senior Buyer Orange County Sanitation District 10844 Ellis Avenue Fountain Valley, CA 92708
Contractor:	Dave Dunavant Estimator Hampton Tedder Technical Services 4571 State Street Montclair, CA 91763

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

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

ORANGE COUNTY SANITATION DISTRICT

Dated: _____	By: _____ David John Shawver Board Chairman
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Dated: _____	By: _____ Kelly A. Lore Clerk of the Board
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Dated: _____	By: _____ Ruth Zintzun Purchasing & Contracts Manager
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COMPANY

Dated: _____	By: _____
	_____ Print Name and Title of Officer
	_____ IRS Employer's I.D. Number



Orange County Sanitation District

Administration Building
10844 Ellis Avenue
Fountain Valley, CA 92708
(714) 593-7433

OPERATIONS COMMITTEE

Agenda Report

File #: 2019-512

Agenda Date: 9/4/2019

Agenda Item No: 7.

FROM: James D. Herberg, General Manager
Originator: Kathy Millea, Director of Engineering

SUBJECT:

RETURN ACTIVATED SLUDGE PIPING REPLACEMENT AT PLANT NO. 2, PROJECT NO. P2-123

GENERAL MANAGER'S RECOMMENDATION

RECOMMENDATION: Recommend to the Board of Directors to:

- A. Approve a Professional Construction Services Agreement with Spec Services, Inc. to provide construction support services for Return Activated Sludge Piping Replacement at Plant No. 2, Project No. P2-123, for a total amount not to exceed \$252,329; and
- B. Approve a contingency of \$25,233 (10%).

BACKGROUND

Orange County Sanitation District's (Sanitation District) Plant No. 2 has two biological secondary treatment facilities, one of which is the Activated Sludge Plant, which uses pure oxygen for wastewater treatment. The Activated Sludge Plant was built in 1979 and includes a concrete deck that seals oxygen into the process basins and ninety-two light poles and fixtures installed throughout the facility to provide operators safe working conditions at night.

RELEVANT STANDARDS

- 24/7/365 treatment plant reliability
- Comply with California Government Code Section 4256 to engage the best qualified firm "on the basis of demonstrated competence and qualifications" and "negotiate fair and reasonable fees"

PROBLEM

The project requires the design consultant to provide as-needed services during construction including submittal review, answering the contractor's requests for information, reviewing construction change orders, participating in meetings, site visits, and preparing record drawings.

PROPOSED SOLUTION

Award a Professional Construction Services Agreement with the design consultant Spec Services,

Inc., to provide engineering support services during construction.

TIMING CONCERNS

Engineering support services will be needed at the start of construction, which is anticipated for October 23, 2019.

RAMIFICATIONS OF NOT TAKING ACTION

The engineering support services needed to facilitate, and review construction activities would not be available, which may negatively impact the contract execution.

PRIOR COMMITTEE/BOARD ACTIONS

March 2018 - Approved a Professional Design Services Agreement with Spec Services, Inc. for providing engineering services for Return Activated Sludge Piping Replacement at Plant No. 2, Project No. P2-123, for an amount not to exceed \$668,217, and approved a contingency of \$66,822 (10%).

ADDITIONAL INFORMATION

Spec Services, Inc. has successfully furnished engineering services for the design of this project and their support services during construction will provide continuity through the completion of the project. Staff negotiated with Spec Services, Inc. for these support services in accordance with the Sanitation District's adopted policies and procedures. A review of the proposed price was conducted using estimated quantities of requests for information, submittals, meetings, site visits, change order review, and design revisions, as well as the level of effort for preparing record drawings. Based on this review, staff determined the negotiated fee to be fair and reasonable for these services.

CEQA

This project is exempt from CEQA under the Class 1 categorical exemptions set forth in California Code of Regulations Section 15301. Section 15301 (Class 1) exempts from CEQA "the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination", including "(b) Existing facilities of both investor and publicly-owned utilities used to provide electric power, natural gas, sewerage, or other public utility services".

The project consists of minor alterations to existing public facilities.

A Notice of Exemption for this project was filed and recorded with the County of Orange on March 29, 2018 after the Board of Directors approved the Professional Design Services Agreement.

FINANCIAL CONSIDERATIONS

This request complies with authority levels of the Sanitation District's Purchasing Ordinance. This project has been budgeted (FY2019-20 Budget Update, Appendix A, Page A-10) and the budget is

sufficient to award the Professional Construction Services Agreement.

ATTACHMENT

The following attachment(s) may be viewed on-line at the OCSD website (www.ocsd.com) with the complete agenda package:

- Professional Construction Services Agreement

PROFESSIONAL CONSTRUCTION SERVICES AGREEMENT

THIS AGREEMENT, is made and entered into to be effective the «date» day of «Month», «year» by and between the ORANGE COUNTY SANITATION DISTRICT, hereinafter referred to as "SANITATION DISTRICT", and «CONSULTANT COMPANY», for purposes of this Agreement hereinafter referred to as "CONSULTANT".

WITNESSETH:

WHEREAS, the SANITATION DISTRICT desires to engage a CONSULTANT to provide Construction Support Services for **RETURN ACTIVATED SLUDGE PIPING REPLACEMENT AT PLANT NO.2, PROJECT P2-123**; and,

WHEREAS, CONSULTANT is qualified to provide the necessary services for Construction Support Services in connection with these requirements; and,

WHEREAS, the SANITATION DISTRICT has adopted procedures in accordance with the SANITATION DISTRICT Board of Directors' Ordinance No. OCSD-52 Section 4.03(B) for the continuation of services and has proceeded in accordance with said procedures to perform this work; and,

WHEREAS, at its regular meeting on «Board Meeting Date» the Board of Directors, by Minute Order, accepted the recommendation of the Operations Committee pursuant to SANITATION DISTRICT Board of Directors' Ordinance No. OCSD-52 to approve this Agreement between the SANITATION DISTRICT and CONSULTANT.

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

1. SCOPE OF WORK

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

- A. The CONSULTANT shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all design, drawings, specifications, and other 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 laws, codes, industry standards and liability for damages caused by errors, omissions, noncompliance with industry standards, and/or negligence on the part of the CONSULTANT or its Subconsultants.
- B. CONSULTANT is responsible for the quality of work prepared under this Agreement and shall ensure that all work is performed to the standards of best engineering practice for clarity, uniformity, and completeness.

- C. In the event that work is not performed to the satisfaction of the SANITATION DISTRICT and does not conform to the requirements of this Agreement or any applicable industry standards, the CONSULTANT shall, without additional compensation, promptly correct or revise any errors or deficiencies in its designs, drawings, specifications, or other services within the timeframe specified by the Project Engineer/Project Manager. The SANITATION DISTRICT may charge to CONSULTANT all costs, expenses and damages associated with any such corrections or revisions.
- D. All CADD drawings, figures, and other work shall be produced by CONSULTANTS and Subconsultants using the SANITATION DISTRICT standard software. 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 be subject to an acceptance period of «Number of Days» calendar days during which the SANITATION DISTRICT shall perform appropriate acceptance tests. 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, reports, and estimates compiled or composed by the CONSULTANT, pursuant to this Agreement, are for the sole use of the SANITATION DISTRICT, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the SANITATION DISTRICT. This provision does not apply to information that (a) was publicly known, or otherwise known to the CONSULTANT, at the time that it was disclosed to the CONSULTANT by the SANITATION DISTRICT, (b) subsequently becomes publicly known to the CONSULTANT other than through disclosure by the SANITATION DISTRICT.

2. COMPENSATION

Total compensation shall be paid to CONSULTANT for services in accordance with the following provisions:

A. Total Compensation

Total compensation shall be in an amount not to exceed «Grand Total Written Amount» Dollars (\$«Grand Total Amount»). 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 the attached 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 of 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 general 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 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.

3. REALLOCATION OF TOTAL COMPENSATION

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

4. PAYMENT

- A. 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. CONSULTANT shall allocate costs in the same manner as it would for payment requests as described in this Section of the Agreement. CONSULTANT shall warrant and certify the accuracy of these costs and understand that submitted costs are subject to Section 11 - AUDIT PROVISIONS.
- B. CONSULTANT may submit monthly or periodic statements requesting payment for those items included in Section 2 - COMPENSATION hereof in the format as required by the SANITATION DISTRICT. Such requests shall be based upon the amount and value of the work and services performed by CONSULTANT under this Agreement and shall be prepared by CONSULTANT and accompanied by such supporting data, including a detailed breakdown of all costs incurred and project element work performed during the period covered by the statement, 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 on a per-project-element basis.

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.

He may, at his discretion, retain an amount equal to that which insures that the total amount paid to that date does not exceed the percentage of the completed work for each project element or 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, 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 ten thousand dollars (\$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.

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

- A. To the extent CONSULTANT's employees and/or Subconsultants who will perform Work during the design and preconstruction phases of a construction contract for which Prevailing Wage Determinations have been issued by the DIR and as more specifically defined under Labor Code Section 1720 et seq, CONSULTANT and Subconsultants shall comply with the registration requirements of Labor Code Section 1725.5. Pursuant to Labor Code Section 1771.4, the Work is subject to compliance monitoring and enforcement by the DIR.
- B. The CONSULTANT and Subconsultants shall maintain accurate payroll records and shall comply with all the provisions of Labor Code Section 1776, and shall submit payroll records to the Labor Commissioner pursuant to Labor Code Section 1771.4(a) (3). Penalties for non-compliance with the requirements of Section 1776 may be deducted from progress payments per Section 1776.
- C. Pursuant to Labor Code Section 1776, the CONSULTANT and Subconsultants shall furnish a copy of all certified payroll records to SANITATION DISTRICT and/or general public upon request, provided the public request is made through SANITATION DISTRICT, the Division of Apprenticeship Standards or the Division of Labor Enforcement of the Department of Industrial Relations.
- D. The CONSULTANT and Subconsultants shall comply with the job site notices posting requirements established by the Labor Commissioner per Title 8, California Code of Regulation Section 16461(e).

6. DOCUMENT OWNERSHIP – SUBSEQUENT CHANGES TO PLANS AND SPECIFICATIONS

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

All documents, including but not limited to, original plans, studies, sketches, drawings, computer printouts and disk files, and specifications 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 plans or specifications, 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.

[NOTE TO CA: In this section, insert insurance amounts from your project's DIFE.]

7. INSURANCE

A. General

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

B. General Liability

The CONSULTANT shall maintain during the life of this Agreement, including the period of warranty, Commercial General Liability Insurance written on an occurrence basis providing the following minimum limits of liability coverage: One Million Dollars (\$1,000,000) per occurrence with One Million Dollars (\$1,000,000) aggregate. Said insurance shall include coverage for the following hazards: Premises-Operations, blanket contractual liability (for this Agreement), products liability/completed operations (including any product manufactured or assembled), broad form property damage, blanket contractual liability, independent contractors liability, personal and advertising injury, mobile equipment, owners and contractors protective liability, and cross liability and severability of interest clauses. A statement on an insurance certificate will not be accepted in lieu of the actual additional insured endorsement(s). If requested by

SANITATION DISTRICT and applicable, XCU coverage (Explosion, Collapse and Underground) and Riggers/On Hook Liability must be included in the General Liability policy and coverage must be reflected on the submitted Certificate of Insurance.

C. Umbrella Excess Liability

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

D. Automotive/Vehicle liability Insurance

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

E. Worker's Compensation Insurance

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

F. 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.

G. 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.

H. 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, Div. 260, 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.

I. 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.

J. Separation of Insured

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

K. 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.

L. 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.

M. Defense Costs

Liability policies shall have a provision that defense costs for all insureds and additional insureds are paid in addition to and do not deplete any policy limits.

N. 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.

O. 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.

8. SCOPE CHANGES

In the event of a change in the Scope of Work, requested by 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.

9. 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 by CONSULTANT. CONSULTANT shall include a description of the scope of work to be done by each Subconsultant and each CONSULTANT's project team member. CONSULTANT shall include the respective compensation amounts for CONSULTANT and each Subconsultant on a per-project-element basis, 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.

10. ENGINEERING REGISTRATION

The CONSULTANT's personnel 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 requires the services of a registered engineer, such services hereunder will be performed under the direct supervision of registered engineers.

11. 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.

12. LEGAL RELATIONSHIP BETWEEN PARTIES

The legal relationship between the parties hereto is that of an independent contractor and nothing herein shall be deemed to make CONSULTANT an employee of the SANITATION DISTRICT.

13. 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.

Notices shall be mailed to the SANITATION DISTRICT at:

ORANGE COUNTY SANITATION DISTRICT
10844 Ellis Avenue
Fountain Valley, CA 92708-7018
Attention: Jay Kaura, Contracts Administrator
Copy: Richard Leon, Project Manager

Notices shall be mailed to CONSULTANT at:

«CONSULTANT COMPANY»

«Street Address»

«City, State Zip»

Attention: «CONSULTANT's Representative»

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

14. 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 and/or CONSULTANT in accordance with Section 13 - NOTICES.

15. 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, computation and study materials in its files pertaining to the work described in this Agreement, which is requested in writing by the SANITATION DISTRICT.

16. COMPLIANCE

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.

17. 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 agreements for that party.

18. 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.

19. 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 it may be entitled.

20. PROGRESS REPORTS

Monthly progress reports shall be submitted for review by the tenth day of the following month and must include as a minimum: 1) current activities, 2) future activities, 3) potential items that are not included in the Scope of Work, 4) concerns and possible delays, 5) percentage of completion, and 6) budget status.

21. WARRANTY

CONSULTANT shall perform its services in accordance with generally accepted industry and professional standards. If, within the 12-month period following completion of its services, 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).

22. INDEMNIFICATION

To the fullest extent permitted by law, CONSULTANT shall indemnify, defend (at CONSULTANT's sole cost and expense and with legal counsel approved by 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, consultants, and agents (collectively the "Indemnified Parties"), from and against any and all claims, damages, liabilities, causes of action, suits, arbitration awards, losses, judgments, fines, penalties, costs and expenses including without limitation, attorneys' fees, disbursements and court costs, and all other professional, expert or consultants fees and costs and the SANITATION DISTRICT's general and administrative expenses (individually, a "Claim", or 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, consultants, 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 from:

- (A) the sole or 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.

23. DUTY TO DEFEND

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

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

24. CONSULTANT PERFORMANCE

The CONSULTANT's performance shall be evaluated by the SANITATION DISTRICT. A copy of the evaluation shall be sent to the CONSULTANT for comment. The evaluation, together with the comments, shall be retained by the SANITATION DISTRICT and may be considered in future CONSULTANT selection processes.

25. 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 this 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.

26. ENTIRE AGREEMENT

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

IN WITNESS WHEREOF, this Agreement has been executed in the name of the SANITATION

DISTRICT, by its officers thereunto duly authorized, and CONSULTANT as of the day and year first above written.

CONSULTANT: COMPANY NAME

By _____ Date _____

Printed Name & Title

ORANGE COUNTY SANITATION DISTRICT

By _____ Date _____
Chair, Board of Directors

By _____ Date _____
Clerk of the Board

By _____ Date _____
Contracts, Purchasing and
Materials Management Manager

Attachments: Attachment "A" – Scope of Work
Attachment "B" – Labor Hour Matrix
Attachment "C" – Not Used
Attachment "D" – Allowable Direct Costs
Attachment "E" – Fee Proposal
Attachment "F" – Not Used
Attachment "G" – Acknowledgment of PCSD
Attachment "H" – N/A
Attachment "I" – Cost Matrix & Summary
Attachment "J" – Not Used
Attachment "K" – Hourly Rate Schedule for Minor Subconsultant

XXX:xx



Orange County Sanitation District

Administration Building
10844 Ellis Avenue
Fountain Valley, CA 92708
(714) 593-7433

OPERATIONS COMMITTEE

Agenda Report

File #: 2019-514

Agenda Date: 9/4/2019

Agenda Item No: 8.

FROM: James D. Herberg, General Manager
Originator: Kathy Millea, Director of Engineering

SUBJECT:

RETURN ACTIVATED SLUDGE PIPING REPLACEMENT AT PLANT NO. 2, PROJECT NO. P2-123

GENERAL MANAGER'S RECOMMENDATION

RECOMMENDATION: Recommend to the Board of Directors to:

- A. Receive and file Bid Tabulation and Recommendation for Return Activated Sludge Piping Replacement at Plant No. 2, Project P2-123;
- B. Receive and file Orange County Sanitation District's Notice of Intent to Award dated August 8, 2019;
- C. Receive and file Award Protest from W.M. Lyles Co. dated August 13, 2019, concerning the award to Shimmick Construction Company;
- D. Receive and file response letter from Shimmick Construction Company dated August 20, 2019, regarding the bid protest of W.M. Lyles Co.;
- E. Receive and file Orange County Sanitation District's determination letter dated August 23, 2019, to W.M. Lyles Co. responding to Award Protest;
- F. Deny award protest filed by W.M. Lyles Co.;
- G. Award a Construction Contract to Shimmick Construction Company for Return Activated Sludge Piping Replacement at Plant No. 2, Project No. P2-123, for a total amount not to exceed \$6,042,111; and
- H. Approve a Construction Contract contingency of \$604,211 (10%).

BACKGROUND

Orange County Sanitation District's (Sanitation District) Plant No. 2 has two biological secondary treatment facilities, one of which is the Activated Sludge Plant, which uses pure oxygen for wastewater treatment. The Activated Sludge Plant was built in 1979 and includes a concrete deck that seals oxygen into the process basins and ninety-two light poles and fixtures installed throughout the facility to provide operators safe working conditions at night.

RELEVANT STANDARDS

- 24/7/365 treatment plant reliability
- Comply with California Government Code Section 4256 to engage the best qualified firm “on the basis of demonstrated competence and qualifications” and “negotiate fair and reasonable fees”

PROBLEM

There are three major deficiencies in the Activated Sludge Plant. Approximately 1,800 feet of sludge piping and appurtenances ranging in size from 4 inches to 36 inches is corroded and no longer provides reliable service. Repair of leaks on this pipe directly impacts the operation and capacity of the plant. As corrosion continues, the frequency of leakage is expected to become worse and leaks more difficult to repair.

Cracking and spalling of the concrete deck of the process basins pose oxygen safety threats and will likely reduce the life of the plant.

Exterior light poles on the plant are corroded to the point where some light fixtures have fallen, posing a safety hazard to operators from falling objects and insufficient lighting. The light poles also require significant fall protection methods to service.

PROPOSED SOLUTION

Award a construction contract for replacement of the return activated sludge discharge piping, repair the damaged concrete on the deck of the plant, and replace the light poles and fixtures.

TIMING CONCERNS

Delaying this project will extend the period when treatment interruptions could occur due to leaks from corroded pipes and cracks in concrete, and safety hazards would not be addressed.

RAMIFICATIONS OF NOT TAKING ACTION

Reliability of the treatment process will suffer, and maintenance staff will be required to make inefficient unplanned repairs to maintain the full operational ability of the aeration basin facilities. A sudden pipeline rupture is a risk to staff and equipment in the tunnel system. The damaged concrete and corroded light poles will continue to be safety concerns.

PRIOR COMMITTEE/BOARD ACTIONS

N/A

ADDITIONAL INFORMATION

The Sanitation District advertised Project No. P2-123 for bids on June 11, 2019 and eight sealed bids

\$14,000,000

Bidder	Amount of Bid
Shimmick Construction Company	\$ 6,042,110.35
W.M. Lyles Co.	\$ 6,593,870.00
Kiewit Infrastructure West Co.	\$ 6,843,000.00
Stanek Constructors, Inc.	\$ 8,414,700.00
Innovative Construction Solutions (ICS)	\$ 8,732,866.00
Steve P. Rados, Inc.	\$ 8,837,625.00
Myers & Sons Construction, LLC	\$10,620,000.00
OHL USA, Inc.	\$10,839,350.00

After receipt of the bids and considering the cost differences when compared with the Engineer's estimate, staff, in consultation with the design consultant, reviewed the Engineer's estimate and determined there were some conservative assumptions made about the material, equipment, and construction methodology to be used to complete this project. Also, the most competitive bids may

be taking advantage of reduced overhead costs. Considering that there are several bids within the same range, staff believes that the low bids are valid and recommends award as stated above.

CEQA

This project is exempt from CEQA under the Class 1 categorical exemptions set forth in California Code of Regulations Section 15301. Section 15301 (Class 1) exempts from CEQA “the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination”, including “(b) Existing facilities of both investor and publicly-owned utilities used to provide electric power, natural gas, sewerage, or other public utility services”.

The project consists of minor alterations to existing public facilities.

A Notice of Exemption for this project was filed and recorded with the County of Orange on March 29, 2018 after the Board of Directors approved the Professional Design Services Agreement.

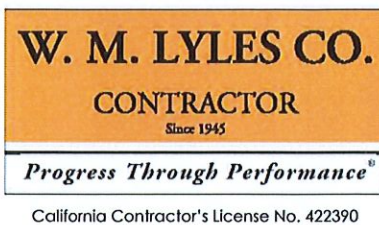
FINANCIAL CONSIDERATIONS

This request complies with authority levels of the Sanitation District’s Purchasing Ordinance. This project has been budgeted (FY2019-20 Budget Update, Appendix A, Page A-10) and the budget is sufficient for the action.

ATTACHMENT

The following attachment(s) are included in hard copy may also be viewed on-line at the OCSD website (www.ocsd.com) with the complete agenda package:

- W.M. Lyles Co. Award Protest Letter
- Shimmick Construction Company Response to Bid Protest Letter
- Sanitation District Response to W.M. Lyles Co. Award Protest
- Sanitation District Intent to Award Letter
- Construction Contract (Online Only)



Corporate Office
P.O. Box 4377
Fresno, CA 93744-4377
Telephone (559) 441-1900
Fax (559) 487-7958

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August 13, 2019

Orange County Sanitation District
Attn: Mr. Jay Kaura, Contracts Administrator
10844 Ellis Avenue
Fountain Valley, CA 92708

via electronic mail to: construction@ocsd.com

Re: Award Protest Statement. W. M. Lyles Co.'s Bid Protest for the Orange County Sanitation District's ("OCSD") Return Activated Sludge Piping Replacement at Plant No. 2. Project No. P2-123 ("Project")

Dear Mr. Kaura:

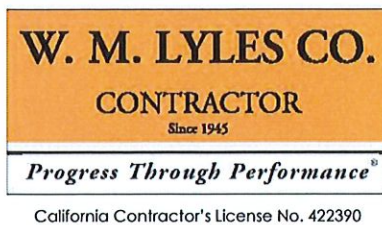
As we are in receipt of OCSD's Award Recommendation Notice dated August 8, 2019, for the above-referenced Project, we are writing you and this letter shall serve as W. M. Lyles Co.'s ("WML") formal Award Protest Statement concerning OCSD's recommendation to award the project to Shimmick Construction Company, Inc. ("SHIMMICK").

WML requests that OCSD not award the project to SHIMMICK. SHIMMICK's past safety violations give OCSD grounds to reject its bid for non-responsibility. Accordingly, WML requests that OCSD not award the project to SHIMMICK and award the project contract to WML as the lowest responsive and responsible bidder on this Project.

SHIMMICK IS NOT A RESPONSIBLE AND/OR QUALIFIED CONTRACTOR FOR THIS PROJECT BECAUSE IT HAS NUMEROUS PRIOR SERIOUS AND REPEATED SAFETY VIOLATIONS EVIDENCING AN INABILITY TO CONTROL AND MAINTAIN SAFE PROJECT SITES

The Instruction to Bidders, at Item IB-13(B)(2), pages 7 & 8, states that,

For purpose of evaluating the Safety record of a Bidder, if the Bidder has any Serious, Repeat...citations pursuant to Part 1 of Division 5 of the Labor Code and has not taken appropriate corrective action to abate further such violations.....the Bidder may be deemed Not Responsible and its Bid Rejected.



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Furthermore, Section BF-6(1) of the bid proposal asks, “Does the CONTRACTOR have any Serious, Willful, Repeat...citations....during the past five-year period?”

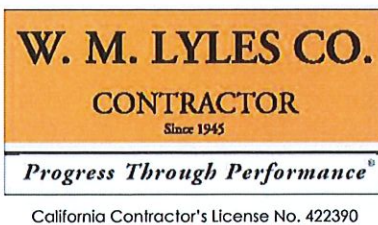
SHIMMICK, pursuant to Exhibit A, attached hereto and incorporated herein by this reference (hereinafter “OSHA Reports”), has two fatalities, numerous serious violations and repeated violations within the past five-year period. Said OSHA Reports reveal that SHIMMICK has twenty (20) serious violations and at least two repeated violations happening on separate occasions (i.e., three 1509(A) violations, and two 3203(A) violations), from July 2014 through July 2019. The fatality cases involve multiple serious violations (see Case #3 and Case #10 for fatalities). The recent past safety citation record in said OSHA Reports demonstrates SHIMMICK’s inability to control and maintain safe project sites.

Two separate incidents resulted in the partial amputation of a worker’s finger(s) (see cases #9 and #17) and another resulted in a worker sustaining a fracture in his/her tibia and fibula (see case #5). SHIMMICK had repeated violations of California Code of Regulations at Title 8, Division 1, Chapter 4, Subchapter 7, at § 3203(a). Please note that said §3203 sets forth the requirement to have an Injury and Illness Prevention Program. SHIMMICK has apparently been cited on two separate occasions for inadequate IIPP. Accordingly, SHIMMICK’s OSHA Report indicates that SHIMMICK is not a responsible bidder within the meaning of California Public Contract Code §1103.

**REJECTING SHIMMICK’S BID COMPORTS WITH SOUND PUBLIC POLICY
INVOLVING THE PROTECTION OF THE PUBLIC AND REJECTING ITS BID FOR
RESPONSIBILITY IS SUPPORTED BY CASE AND STATUTORY LAW**

OCSD should strongly consider rejecting SHIMMICK as an irresponsible bidder in light of protecting the citizens within the jurisdiction of the OCSD. OCSD is clearly legally permitted to reject SHIMMICK’s bid for want of responsibility (see Exhibit B below for legal basis). The public has an interest in the safe construction of public works projects. In calculating the sum total of protecting the public, dollars and cents are not the only factor to consider. The safety of the public is of great importance as the public can either be injured by encountering unsafe project sites or as workers at a project site.

Serious injury and fatalities are to be avoided at all costs due to the heavy toll on the families impacted by same. While nearly impossible to quantify, such injuries have a fiscal impact upon the citizens within the jurisdiction of the OCSD. Within the construction industry, it is well known that serious injuries and fatalities generally always lead to law suits and other costs, which, in turn, drive up the overall cost of a given project. As such, OCSD is well within their rights to consider the protection of the citizens of OCSD by requiring its contractors to have a demonstrably safe construction record. OCSD’s exercise of discretion in rejecting SHIMMICK’s bid for want of responsibility would provide physical and fiscal safety for the citizens within OCSD’s jurisdiction.



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OCSD has rightly taken steps to evaluate the overall competency of the contractors submitting proposals on this project. Competency embraces a contractor's prior performance, which includes their safety record. In this respect, SHIMMICK fails and has demonstrated an inability to implement proper safety procedures and/or adequately supervise its project sites. It would be well within OCSD's right to determine that SHIMMICK lacks the required responsibility and competency to safely build this Project.

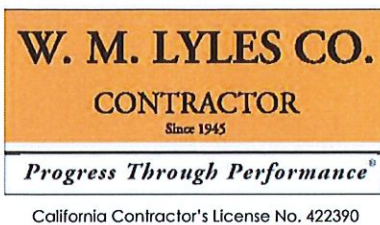
In support of the above, please see Exhibit B setting forth legal, regulatory and contractual basis for rejecting SHIMMICK's bid. Attached, as Exhibit C, are applicable pages from the IFB that were referenced above. As WML was the second lowest bidder, there are no other affected parties who would stand in line to be awarded the Project contract and thus no information is provided regarding any other bidder.

In contrast to SHIMMICK, WML has no serious, willful, or repeated violations and WML's safety history aligns with OCSD's safety requirements. In this regard, please see WML's detailed OSHA Report, attached hereto and incorporated herein by this reference as Exhibit D. Furthermore, please see August 16, 2018 Article written by Megan Cassidy and Lauren Hernandez from the San Francisco Chronicle discussing SHIMMICK's safety problems for SHIMMICK's work for the San Francisco Municipal Transportation Agency, attached hereto and incorporated herein by this reference as Exhibit E. Finally, attached, as Exhibit F, is a spreadsheet providing a summation of SHIMMICK's OSHA citations over the past five years.

CONCLUSION

WML, accordingly, requests that OCSD: 1) grant WML's bid protest by not awarding the Project contract to SHIMMICK on the grounds of SHIMMICK's safety related deficiencies (i.e., lack of responsibility); and 2) award the contract to WML as the lowest responsive, responsible bidder on the Project. WML looks forward to working with OCSD on this important Project.

This letter is intended to be: 1) a protest against any award of the contract to a bidder other than WML; 2) a request pursuant to Government Code §54954.1 for written notice of all meetings of OCSD at which any issues pertaining to the award of said contract are on the agenda for the meeting; 3) a request for communications by and between OCSD and SHIMMICK regarding WML's bid protest; 4) a request as soon as staff either reports or renders recommendations concerning any issues pertaining to the award of said contract (by telephone or fax and by email) are available to the public so we can promptly review same; and 5) a request to address OCSD pursuant to California Government Code §54954.3(a) which sets forth our right to address OCSD before or during consideration of any issues related to the award of said Contract.



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Please advise if we need to take any further steps to secure our rights and requests set forth above so that we can promptly comply. If we do not receive a response from you, we will proceed on the basis that this letter is sufficient to protest the bid of SHIMMICK.

Verification and Execution

I am the Sr. Vice President of W. M. Lyles Co., and I have read the foregoing Award Protest Statement and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information and belief, and as to those matters I believe it to be true.

I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

By 

Robert P. Saleen
Sr. Vice President of W. M. Lyles Co.

Enclosures/6
Mde

Exhibit A: OSHA Report

Page 1 of 14

Case

	#	Activity	Opened	RID	St	Type	Sc	SIC	NAICS	Vio	Establishment Name
<input type="checkbox"/>	1	1399946.015	05/10/2019	0950644	CA	Accident	Partial		237110		Shimmick Construction
<input type="checkbox"/>	2	1323735.015	08/27/2018	0950624	CA	Unprog Rel	Partial		236220		Shimmick Construction Company, Inc. And California Engineering Contractors, Inc. Joint Venture
<input type="checkbox"/>	3	1339097.015	08/10/2018	0950651	CA	Fat/Cat	Partial		237990	4	Shimmick Construction Co Inc And Con-Quest Contractors Inc
<input type="checkbox"/>	4	1325793.015	06/21/2018	1055320	WA	Referral	Partial		236220		Wa317950004 - Shimmick Parsons Jv
<input type="checkbox"/>	5	1302815.015	03/20/2018	0950635	CA	Accident	Partial		236220	2	Shimmick/Fcc/Impregilio Jv
<input type="checkbox"/>	6	1263341.015	09/11/2017	0936200	CA	Planned	Partial		237990		Nova Shimmick A Joint Venture
<input type="checkbox"/>	7	1252441.015	07/19/2017	0936200	CA	Unprog Other	Partial		237990	1	Nova Shimmick Joint Venture
<input type="checkbox"/>	8	1252345.015	07/11/2017	0936200	CA	Planned	Complete		237990	1	Nova Shimmick Joint Venture
<input type="checkbox"/>	9	1205081.015	01/24/2017	0950611	CA	Accident	Partial		236220		Shimmick / Nicholson Jv
<input type="checkbox"/>	10	1192534.015	11/21/2016	0950643	CA	Fat/Cat	Partial		236220	6	Shimmick Construction Company Inc.
<input type="checkbox"/>	11	1188158.015	10/21/2016	1055320	WA	Referral	Partial		236220	3	Wa317942851 - Shimmick Construction Company Inc
<input type="checkbox"/>	12	1167915.015	07/29/2016	1055320	WA	Planned	Partial		236220		Wa317941606 - Shimmick Construction Company Inc
<input type="checkbox"/>	13	1144056.015	04/20/2016	0950635	CA	Accident	Partial		237310	4	Shimmick Fcc Impregilio Joint Venture
<input type="checkbox"/>	14	1080515.015	07/08/2015	0950631	CA	Referral	Partial		236210	3	Shimmick Construction Company, Inc.
<input type="checkbox"/>	15	1061841.015	05/08/2015	0950635	CA	Complaint	Partial		237990		Shimmick Construction Company Inc
<input type="checkbox"/>	16	1059365.015	04/21/2015	0950631	CA	Referral	Partial		237990	2	Shimmick Construction Company Inc
<input type="checkbox"/>	17	1021893.015	01/30/2015	0950611	CA	Accident	Partial		236220	2	Shimmick-Nicholson Construction, A Joint Venture
<input type="checkbox"/>	18	995229.015	08/21/2014	0936200	CA	Planned	Complete		236210		Nova Shimmick Ajv

OSHA English | Spanish

Find it in OSHA



A TO Z INDEX

OSHA ▾ WORKER ▾ EMPLOYER ▾ STANDARDS ▾ ENFORCEMENT ▾ CONSTRUCTION ▾ TOPIC ▾ NEWS/RESOURCES ▾ DATA ▾ TRAINING ▾

Inspection Detail

Quick Link Reference

1399946.015 | 1323735.015 | 1339097.015 | 1325793.015 | 1302815.015 | 1263341.015 | 1252441.015 | 1252345.015 | 1205081.015 | 1192534.015
| 1188158.015 | 1167915.015 | 1144056.015 | 1080515.015 | 1061841.015 | 1059365.015 | 1021893.015 | 995229.015

Case Status: OPEN

Note: The following inspection has not been indicated as closed. Please be aware that the information shown may change, e.g. violations may be added or deleted. For open cases, in which a citation has been issued, the citation information may not be available for 5 days following receipt by the employer for Federal inspections or for 30 days following receipt by the employer for State inspections.

Inspection: 1399946.015 - Shimmick Construction

Inspection Information - Office: Ca Monrovia District Office

Nr: 1399946.015	Report ID: 0950644	Open Date: 05/10/2019
Shimmick Construction		
1210 Fullerton Rd.		
City Of Industry, CA 91748		Union Status: NonUnion
SIC:		
NAICS: 237110/Water and Sewer Line and Related Structures Construction		
Mailing: 8201 Edgewater Dr. Suite 202, Oakland, CA 94621		
Inspection Type:	Accident	
Scope:	Partial	Advanced Notice: N
Ownership:	Private	
Safety/Health:	Safety	Close Conference:
		Close Case:
Related Activity:	Type	ID
	Accident	1451236
		Safety
		Health

Case #1

Case Status: OPEN

Case Status: CLOSED

Inspection: 1323735.015 - Shimmick Construction Company, Inc. And California Engineering Contractors, Inc. Joint Venture

Inspection Information - Office: Ca Modesto

Nr: 1323735.015	Report ID: 0950624	Open Date: 08/27/2018
Shimmick Construction Company, Inc. And California Engineering Contractors, Inc. Joint Venture		
200 Valpico Dr.		
Tracy, CA 95376		Union Status: NonUnion
SIC:		
NAICS: 236220/Commercial and Institutional Building Construction		
Mailing: 8201 Edgewater Drive Ste 201, Oakland, CA 94621		
Inspection Type:	Unprog Rel	

Case #2

Scope:	Partial	Exhibit A: Page 3 of 14	Advanced Notice:	N
Ownership:	Private		Close Conference:	11/30/2018
Safety/Health:	Safety		Close Case:	02/25/2019

Case Status: **CLOSED**

Violation Summary						
	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations				1		1
Current Violations						
Initial Penalty	\$0	\$0	\$0	\$410	\$0	\$410
Current Penalty	\$0	\$0	\$0	\$0	\$0	\$0
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items											
	#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
Deleted	1.	01001	Other	3203(A)(4)	11/30/2018		\$0	\$410	\$0		I - Informal Settlement

Case Status: **VIOLATIONS UNDER CONTEST**

Note: The following inspection has not been indicated as closed. Please be aware that the information shown may change, e.g. violations may be added or deleted. For open cases, in which a citation has been issued, the citation information may not be available for 5 days following receipt by the employer for Federal inspections or for 30 days following receipt by the employer for State inspections.

Inspection: **1339097.015 - Shimmick Construction Co Inc And Con-Quest Contractors Inc**

Inspection Information - Office: Ca Sacramento M&T District Office				
Nr: 1339097.015		Report ID: 0950651		Open Date: 08/10/2018
Shimmick Construction Co Inc And Con-Quest Contractors Inc				
1 West Portal Ave.			Union Status: Union	
San Francisco, CA 94127				
SIC:				
NAICS: 237990/Other Heavy and Civil Engineering Construction				
Mailing: 8201 Edgewater Drivesuite 202, Oakland, CA 94621				
Inspection Type:		Fat/Cat		
Scope:		Partial		Advanced Notice: N
Ownership:		Private		
Safety/Health:		Safety		Close Conference: 02/08/2019
Emphasis:		S:Tunnel		Close Case:
Related Activity:		Type	ID	Safety
		Accident	1369816	Health

Case #3

Case Status: **VIOLATIONS UNDER CONTEST**

Violation Summary						
	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	4					4
Current Violations	4					4
Initial Penalty	\$65,300	\$0	\$0	\$0	\$0	\$65,300
Current Penalty	\$65,300	\$0	\$0	\$0	\$0	\$65,300
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items

#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	01001	Serious	3203(A)	02/08/2019		\$25,000	\$25,000	\$0	03/12/2019	-
2.	02001	Serious	4991(A)	02/08/2019		\$25,000	\$25,000	\$0	03/12/2019	-
3.	03001	Serious	8473(A)	02/08/2019	02/27/2019	\$7,650	\$7,650	\$0	03/12/2019	-
4.	04001	Serious	8473(F)	02/08/2019	02/27/2019	\$7,650	\$7,650	\$0	03/12/2019	-

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Accident Investigation Summary

Summary Nr: 108350.015

Event: 08/10/2018

Employee Is Caught Between Railway Tracks And Asphyxiates

At 4:48 p.m. on August 10, 2018, an employee was walking when he was struck by a steel beam and caught between it and the railway tracks, asphyxiating him.

Keywords: railroad track, caught between, asphyxiated, steel beam

	Inspection		Degree	Nature	Occupation
1	1339097.015		Fatality	Asphyxia	Electricians

Case Status: CLOSED

Inspection: 1325793.015 - Wa317950004 - Shimmick Parsons Jv

Inspection Information - Office: Washington Region 2

Nr: 1325793.015 Report ID: 1055320 Open Date: 06/21/2018

Wa317950004 - Shimmick Parsons Jv

2700 Se Bellevue Way
Bellevue, WA 98004

Union Status: NonUnion

SIC:

NAICS: 236220/Commercial and Institutional Building Construction

Mailing: 8201 Edgewater Dr Ste 202, Oakland, CA 94621

Inspection Type: Referral

Scope: Partial

Advanced Notice: N

Ownership: Private

Safety/Health: Safety

Close Conference: 07/27/2018

Close Case: 07/27/2018

Related Activity:

Type

ID

Safety

Health

Referral

1353001

Yes

Case Status: CLOSED

Case #4

Case Status: VIOLATIONS UNDER CONTEST

Note: The following inspection has not been indicated as closed. Please be aware that the information shown may change, e.g. violations may be added or deleted. For open cases, in which a citation has been issued, the citation information may not be available for 5 days following receipt by the employer for Federal inspections or for 30 days following receipt by the employer for State inspections.

Inspection: 1302815.015 - Shimmick/Fcc/Impregilio Jv

Inspection Information - Office: Ca Long Beach District Office

Nr: 1302815.015 Report ID: 0950635 Open Date: 03/20/2018

Shimmick/Fcc/Impregilio Jv

481 Pier D Ave. West
Long Beach, CA 90802

Union Status: Union

SIC:

NAICS: 236220/Commercial and Institutional Building Construction

Mailing: 8201 Edgewater Dr#202, Oakland, CA 94621

Inspection Type: Accident

Case #5

Scope:	Partial	Advanced Notice:	N	
Ownership:	Private			
Safety/Health:	Safety	Close Conference:	07/23/2018	
		Close Case:		
Related Activity:	Type	ID	Safety	Health
	Accident	1315280		

Case Status: VIOLATIONS UNDER CONTEST**Violation Summary**

	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	2					2
Current Violations	2					2
Initial Penalty	\$36,000	\$0	\$0	\$0	\$0	\$36,000
Current Penalty	\$36,000	\$0	\$0	\$0	\$0	\$36,000
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items

#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	01001	Serious	1509(A)	07/23/2018	08/09/2018	\$18,000	\$18,000	\$0	09/11/2018	-
2.	02001	Serious	4981(C)	07/23/2018	08/09/2018	\$18,000	\$18,000	\$0	09/11/2018	-

Accident Investigation Summary

Summary Nr: 107488.015 Event: 01/24/2018 Employee Is Struck By Wire Rope And Leg Is Fractured

At 10:00 a.m. on January 24, 2018, Employee #1 and Coworkers #1 and #2, employed by a construction company, were working at a bridge replacement project. Employee #1, an iron worker, was working on an elevated bridge platform, 235 feet above grade, and welding eyelets to the platform. Coworkers #1 and #2, also on the elevated platform, began to pull 1 inch diameter wire rope from an uncoiler. As the wire rope came free of the uncoiler, the tail end of the wire rope whipped around and struck Employee #1's left leg. Coworkers #1 and #2 radioed the foreman stationed on the ground. The foreman organized a response team, which used a man basket attached to a tower crane to ascend to the elevated work platform. Employee #1 was placed in the man basket and lowered to the ground. Emergency services were called, and Employee #1 was transported to the hospital. He was admitted and treated, including surgery, for fractures to his left leg tibia and fibula.

Keywords: struck by, construction, fracture, leg, iron worker, elevated work platform, bridge, tower crane, welding, wire rope

	Inspection		Degree	Nature	Occupation
1	1302815.015		Hospitalized injury	Cut/Laceration	Laborers, except construction

Case Status: CLOSED**Inspection: 1263341.015 - Nova Shimmick A Joint Venture****Inspection Information - Office: San Diego Area Office**

Nr: 1263341.015 Report ID: 0936200 Open Date: 09/11/2017

Nova Shimmick A Joint Venture

Point Loma Fuel Pier
San Diego, CA 92113

Union Status: NonUnion

SIC:

NAICS: 237990/Other Heavy and Civil Engineering Construction

Mailing: 185 Devlin Rd, Napa, CA 94558

Inspection Type: Planned

Scope: Partial Advanced Notice: N

Ownership: Private

Safety/Health: Safety Close Conference: 09/18/2017

Emphasis: L:Progcon, P:Progcon Close Case: 09/18/2017

Case Status: CLOSED

Case #6

Case Status: CLOSED

Inspection: 1252441.015 - Nova Shimmick Joint Venture

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Case #7

Inspection Information - Office: San Diego Area Office

Nr: 1252441.015 Report ID: 0936200 Open Date: 07/19/2017

Nova Shimmick Joint Venture
 Naval Base Point Lomafuel Depot Area
 San Diego, CA 92106 Union Status: Union

SIC:
 NAICS: 237990/Other Heavy and Civil Engineering Construction
 Mailing: 185 Devlin Rd, Napa, CA 94558

Inspection Type: Unprog Other
 Scope: Partial Advanced Notice: N
 Ownership: Private
 Safety/Health: Safety Close Conference: 07/21/2017
 Close Case: 06/14/2018

Related Activity: Type ID Safety Health
 Referral 1277117 Yes

Case Status: CLOSED

Violation Summary

	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	1					1
Current Violations	1					1
Initial Penalty	\$11,408	\$0	\$0	\$0	\$0	\$11,408
Current Penalty	\$10,500	\$0	\$0	\$0	\$0	\$10,500
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items

#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	01001	Serious	19260250 A01	10/24/2017		\$10,500	\$11,408	\$0	11/06/2017	R - Review Commission

Case Status: CLOSED

Inspection: 1252345.015 - Nova Shimmick Joint Venture

Case #8

Inspection Information - Office: San Diego Area Office

Nr: 1252345.015 Report ID: 0936200 Open Date: 07/11/2017

Nova Shimmick Joint Venture
 Naval Base Point Loma2907 Shelter Island Dr.
 San Diego, CA 92106 Union Status: NonUnion

SIC:
 NAICS: 237990/Other Heavy and Civil Engineering Construction
 Mailing: 185 Devlin Rd, Napa, CA 94558

Inspection Type: Planned
 Scope: Complete Advanced Notice: N
 Ownership: Private
 Safety/Health: Safety Close Conference: 07/14/2017
 Emphasis: L:Progcon, P:Progcon Close Case: 02/06/2018

Case Status: CLOSED

Violation Summary

	Serious	Willful	Repeat	Other	Unclass	Total

Initial Violations	1					1
Current Violations				1		1
Initial Penalty	\$4,889	\$0	\$0	\$0	\$0	\$4,889
Current Penalty	\$0	\$0	\$0	\$4,889	\$0	\$4,889
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items

#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	01001	Other	19260405 G02 IV	08/31/2017		\$4,889	\$4,889	\$0		I - Informal Settlement

Case Status: **CLOSED**

Inspection: 1205081.015 - Shimmick / Nicholson Jv

Inspection Information - Office: Ca San Francisco

Nr: 1205081.015	Report ID: 0950611	Open Date: 01/24/2017
Shimmick / Nicholson Jv 101 First St. San Francisco, CA 94105 SIC: NAICS: 236220/Commercial and Institutional Building Construction Mailing: 8201 Edgewater Dr. Suite #202, Oakland, CA 94621	Union Status: Union	
Inspection Type: Accident Scope: Partial Ownership: Private Safety/Health: Safety	Advanced Notice: N Close Conference: 04/05/2017 Close Case: 12/13/2017	
Related Activity: Type Complaint Accident	ID 1184073 1173756	Safety Yes Health

Case #9

Case Status: **CLOSED**

Violation Summary

	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations				1		1
Current Violations						
Initial Penalty	\$0	\$0	\$0	\$300	\$0	\$300
Current Penalty	\$0	\$0	\$0	\$0	\$0	\$0
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items

#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
Deleted 1.	01001	Other	5001(E)	04/10/2017		\$0	\$300	\$0	04/20/2017	F - Formal Settlement

Accident Investigation Summary

Summary Nr: 94459.015 Event: 01/15/2017 **Construction Foreman Directing Rigging Has Two Finger Amputa**

At 3:10 p.m. on January 15, 2017, Employee #1, a foreman for a construction company, Coworker #1, employed by the company to assist Employee #1, and Coworker #2, who was operating an excavator, were engaged in rigging work at a construction excavation site. Employee #1 was directing the work. Employee #1 and Coworker #1 rigged bundles of hollow bar drill steel rod onto an excavator, Komatsu PC228USLC. The bundles consisted of 10 rods, and each rod weighed approximately 140 pounds. The bundled rods were moved approximately 15 feet across the south side of the excavation site. Coworker #2, operating the excavator, then began to lower the load to the ground. The steel hook from the rigging struck and crushed Employee #1's right hand. Emergency services were called, and Employee #1 was transported to the hospital. He was admitted and treated for the amputation of his right hand's middle and ring fingers.

Keywords: struck by, amputation, rigging, material handling, construction, excavator, finger, hand, crushed, steel tube

	Inspection		Degree	Nature	Occupation
1	1205081.015		Hospitalized injury	Amputation	Construction laborers

Case Status: VIOLATIONS UNDER CONTEST

Note: The following inspection has not been indicated as closed. Please be aware that the information shown may change, e.g. violations may be added or deleted. For open cases, in which a citation has been issued, the citation information may not be available for 5 days following receipt by the employer for Federal inspections or for 30 days following receipt by the employer for State inspections.

Inspection: 1192534.015 - Shimmick Construction Company Inc.

Inspection Information - Office: Ca Van Nuys

Nr: 1192534.015	Report ID: 0950643	Open Date: 11/21/2016
Shimmick Construction Company Inc. 4765 Spring Rd. Moorpark, CA 93020 SIC: NAICS: 236220/Commercial and Institutional Building Construction Mailing: 8201 Edgewater Dr., Oakland, CA 94621	Union Status: Union	
Inspection Type: Fat/Cat Scope: Partial Ownership: Private Safety/Health: Safety	Advanced Notice: N Close Conference: 04/11/2017 Close Case:	
Related Activity: Type Accident	ID 1157737	Safety Health

Case #10

Case Status: VIOLATIONS UNDER CONTEST

Violation Summary

	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	3			3		6
Current Violations	3			3		6
Initial Penalty	\$46,800	\$0	\$0	\$1,600	\$0	\$48,400
Current Penalty	\$46,800	\$0	\$0	\$1,600	\$0	\$48,400
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items

#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	01001	Other	43000029 B01	04/26/2017	05/31/2017	\$400	\$400	\$0	05/25/2017	-
2.	01002	Other	3650(T)(15)	04/26/2017	05/31/2017	\$600	\$600	\$0	05/25/2017	-
3.	01003	Other	3650(T)(33)	04/26/2017	05/31/2017	\$600	\$600	\$0	05/25/2017	-
4.	02001	Serious	3328(A)(2)	04/26/2017	05/15/2017	\$14,400	\$14,400	\$0	05/25/2017	-
5.	03001	Serious	3650(T)	04/26/2017	05/15/2017	\$14,400	\$14,400	\$0	05/25/2017	-
6.	04001	Serious	3650(T)(11)	04/26/2017	05/15/2017	\$18,000	\$18,000	\$0	05/25/2017	-

Accident Investigation Summary

Summary Nr: 90735.015	Event: 11/16/2016	Employee Is Caught Between Forklift And Wall And Is Killed
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At 7:48 p.m. on November 16, 2016, an employee was operating a Caterpillar telehandler forklift Model 1055C, serial number KDE01436. The employee was traveling down a dirt slope ramp that was approximately twenty percent grade with the forks downgrade and the plate compactor attached to the fork with a

chain. The employee was driving with the cab door open at the time of the accident. The employee operating the forklift lost control, went into the trench and was ejected from the cab. The employee was pinned between the forklift and the dirt wall. The employee suffered internal injuries and a fractured pelvis and was fatally injured.

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Keywords: crushing, material handling, powered industrial vehicle, construction vehicle, struck by

	Inspection		Degree	Nature	Occupation
1	1192534.015		Fatality	Bruise/Contus/Abras	Construction laborers

Case Status: VIOLATIONS UNDER CONTEST

Note: The following inspection has not been indicated as closed. Please be aware that the information shown may change, e.g. violations may be added or deleted. For open cases, in which a citation has been issued, the citation information may not be available for 5 days following receipt by the employer for Federal inspections or for 30 days following receipt by the employer for State inspections.

Inspection: 1188158.015 - Wa317942851 - Shimmick Construction Company Inc

Inspection Information - Office: Washington Region 2

Nr: 1188158.015	Report ID: 1055320	Open Date: 10/21/2016
Wa317942851 - Shimmick Construction Company Inc		
Minor St. X Thomas St.Across From 222 Minor St.	Union Status: NonUnion	
Seattle, WA 98101		
SIC:		
NAICS: 236220/Commercial and Institutional Building Construction		
Mailing: 8201 Edgewater Dr Ste 202, Oakland, CA 94621		
Inspection Type: Referral		
Scope: Partial	Advanced Notice:	N
Ownership: Private		
Safety/Health: Safety	Close Conference:	10/28/2016
	Close Case:	
Related Activity: Type	ID	Safety Health
Referral	1152088	Yes

Case #11

Case Status: VIOLATIONS UNDER CONTEST

Violation Summary

	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	1			2		3
Current Violations	1			2		3
Initial Penalty	\$4,800	\$0	\$0	\$0	\$0	\$4,800
Current Penalty	\$4,800	\$0	\$0	\$0	\$0	\$4,800
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items

#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	01001A	Serious	296-155-53408(2)(D)(I)	12/15/2016	10/21/2016	\$4,800	\$4,800	\$0	12/29/2016	-
2.	01001B	Serious	296-155-53401(5)(I)	12/15/2016	10/21/2016	\$0	\$0	\$0	12/29/2016	-
3.	02001	Other	296-155-53401(5)(A)	12/15/2016	10/21/2016	\$0	\$0	\$0	12/29/2016	-
4.	02002	Other	296-155-53401(5)(G)	12/15/2016	10/21/2016	\$0	\$0	\$0	12/29/2016	-

Case Status: CLOSED

Inspection: 1167915.015 - Wa317941606 - Shimmick Construction Company Inc

Inspection Information - Office: Washington Region 2

Nr: 1167915.015

Report ID: 1055320

Open Date:

07/29/2016

Case #12

Wa317941606 - Shimmick Construction Company Inc

7004 Beach Dr Sw

Seattle, WA 98136

Union Status: Union

SIC:

NAICS: 236220/Commercial and Institutional Building Construction

Mailing: 8201 Edgewater Dr Ste 202, Oakland, CA 94621

Inspection Type: Planned

Scope: Partial

Advanced Notice: N

Ownership: Private

Safety/Health: Safety

Close Conference: 08/09/2016

Emphasis: P:Constr, S:Constr

Close Case: 08/09/2016

Case Status: CLOSED

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Case Status: PENDING ABATEMENT OF VIOLATIONS

Note: The following inspection has not been indicated as closed. Please be aware that the information shown may change, e.g. violations may be added or deleted. For open cases, in which a citation has been issued, the citation information may not be available for 5 days following receipt by the employer for Federal inspections or for 30 days following receipt by the employer for State inspections.

Inspection: 1144056.015 - Shimmick Fcc Impregilo Joint Venture

Inspection Information - Office: Ca Long Beach District Office

Nr: 1144056.015

Report ID: 0950635

Open Date: 04/20/2016

Shimmick Fcc Impregilo Joint Venture

280 Pier T Ave

Long Beach, CA 90802

Union Status: NonUnion

SIC:

NAICS: 237310/ Highway, Street, and Bridge Construction

Mailing: 8201 Edgewater Dr Suite 202, Oakland, CA 94621

Inspection Type: Accident

Scope: Partial

Advanced Notice: N

Ownership: Private

Safety/Health: Safety

Close Conference: 10/07/2016

Close Case:

Related Activity: Type

ID

Safety

Health

Accident

1081839

Case #13

Case Status: PENDING ABATEMENT OF VIOLATIONS

Violation Summary

	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	2			2		4
Current Violations	2			2		4
Initial Penalty	\$36,000	\$0	\$0	\$1,685	\$0	\$37,685
Current Penalty	\$36,000	\$0	\$0	\$1,685	\$0	\$37,685
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items

#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	01001	Other	1511(B)	10/07/2016	10/26/2016	\$560	\$560	\$0		Z - Issued
2.	01002	Other	5042(A)(9)	10/07/2016	10/26/2016	\$1,125	\$1,125	\$0		Z - Issued
3.	02001	Serious	3385(A)	10/07/2016	10/19/2016	\$18,000	\$18,000	\$0		Z - Issued
4.	03001	Serious	4999(C)(1)	10/07/2016	10/19/2016	\$18,000	\$18,000	\$0		Z - Issued

Inspection: 1080515.015 - Shimmick Construction Company, Inc.

Nr: 1080515.015	Report ID: 0950631	Open Date:	07/08/2015
Shimmick Construction Company, Inc.			
Southbound I-5 Off-Ramp-Exit 79 To Pch /			
Camino Las Ramblas		Union Status: Union	
San Juan Capistrano, CA 92675			
SIC:			
NAICS: 236210/Industrial Building Construction			
Mailing: 8201 Edgewater Dr. Suite 202 , Oakland, CA 94621			
Inspection Type:	Referral		
Scope:	Partial	Advanced Notice:	N
Ownership:	Private		
Safety/Health:	Safety	Close Conference:	01/06/2016
		Close Case:	
Related Activity:	Type	ID	Safety
	Referral	1002304	Yes

Case #14

Case Status: VIOLATIONS UNDER CONTEST

	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	3					3
Current Violations	3					3
Initial Penalty	\$26,770	\$0	\$0	\$0	\$0	\$26,770
Current Penalty	\$26,770	\$0	\$0	\$0	\$0	\$26,770
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

	#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
	1.	01001	Serious	1509(A)	01/06/2016		\$7,650	\$7,650	\$0	01/20/2016	-
	2.	02001	Serious	16160001 N03	01/06/2016		\$9,560	\$9,560	\$0	01/20/2016	-
	3.	03001	Serious	16160001 O	01/06/2016		\$9,560	\$9,560	\$0	01/20/2016	-

Inspection: 1061841.015 - Shimmick Construction Company Inc

No: 1061841.015	Report ID: 0950635	Open Date: 05/08/2015
Shimmick Construction Company Inc		
708 Pier A Street		Union Status: NonUnion
Wilmington, CA 90744		
SIC:		
NAICS: 237990/Other Heavy and Civil Engineering Construction		
Mailing: 708 Pier A Street , Wilmington, CA 90744		
Inspection Type: Complaint		

Case #15

Scope:	Partial	Advanced Notice:	N	
Ownership:	Private			
Safety/Health:	Health	Close Conference:	06/10/2015	
		Close Case:	06/10/2015	
Related Activity:	Type	ID	Safety	Health
	Complaint	982164	Yes	

Exhibit A: Page 12 of 14

Case Status: CLOSED

Case Status: OPEN

Note: The following inspection has not been indicated as closed. Please be aware that the information shown may change, e.g. violations may be added or deleted. For open cases, in which a citation has been issued, the citation information may not be available for 5 days following receipt by the employer for Federal inspections or for 30 days following receipt by the employer for State inspections.

Inspection: 1059365.015 - Shimmick Construction Company Inc

Inspection Information - Office: Ca Santa Ana District Office

Nr: 1059365.015	Report ID: 0950631	Open Date:	04/21/2015	
Shimmick Construction Company Inc				
Nb 5 Frwy Overcrossing At Las Ramblasbetween				
Camino De Estrella And San Juan Creek Rd				
Undercrosss				
San Juan Capistrano, CA 92675				
SIC:				
NAICS: 237990/Other Heavy and Civil Engineering Construction				
Mailing: 8201 Edgewater Drive, Suite 201, Oakland, CA 94621				
Inspection Type:	Referral			
Scope:	Partial	Advanced Notice:	N	
Ownership:	Private			
Safety/Health:	Safety	Close Conference:	10/01/2015	
		Close Case:		
Related Activity:	Type	ID	Safety	Health
	Referral	979690	Yes	

Case #16

Case Status: OPEN

Violation Summary

	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	2			1		3
Current Violations	2					2
Initial Penalty	\$15,300	\$0	\$0	\$475	\$0	\$15,775
Current Penalty	\$15,300	\$0	\$0	\$0	\$0	\$15,300
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items

	#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
Deleted	1.	01001	Other	1509(A)	10/02/2015		\$0	\$475	\$0	10/14/2015	J - ALJ Decision
	2.	02001	Serious	1620(A)	10/02/2015		\$7,650	\$7,650	\$0	10/14/2015	J - ALJ Decision
	3.	03001	Serious	1712(C)(1)	10/02/2015		\$7,650	\$7,650	\$0	10/14/2015	J - ALJ Decision

Case Status: OPEN

Note: The following inspection has not been indicated as closed. Please be aware that the information shown may change, e.g. violations may be added or deleted. For open cases, in which a citation has been issued, the citation information may not be available for 5 days following receipt by the employer for Federal inspections or for 30 days following receipt by the employer for State inspections.

Inspection: 1021893.015 - Shimmick-Nicholson Construction, A Joint Venture

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Case #17

Inspection Information - Office: Ca San Francisco

Nr: 1021893.015 **Report ID: 0950611** Open Date: 01/30/2015
 Shimmick-Nicholson Construction, A Joint Venture
 415 Mission St Union Status: NonUnion
 San Francisco, CA 94105
 SIC:
 NAICS: 236220/Commercial and Institutional Building Construction
 Mailing: 8201 Edgewater Drive, Suite 202, Oakland, CA 94621
 Inspection Type: Accident
 Scope: Partial Advanced Notice: N
 Ownership: Private
 Safety/Health: Safety Close Conference: 01/30/2015
 Close Case:
 Related Activity: Type ID Safety Health
 Accident 934258

Case Status: OPEN

Violation Summary

	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	1			2		3
Current Violations	1			1		2
Initial Penalty	\$9,000	\$0	\$0	\$900	\$0	\$9,900
Current Penalty	\$9,000	\$0	\$0	\$450	\$0	\$9,450
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items

	#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
Deleted	1.	01001	Other	1512(D)	04/29/2015	05/08/2015	\$0	\$450	\$0	05/08/2015	J - ALJ Decision
	2.	01002	Other	1509(A)	04/29/2015	05/08/2015	\$450	\$450	\$0	05/08/2015	J - ALJ Decision
	3.	02001	Serious	1541(A)	04/29/2015	05/04/2015	\$9,000	\$9,000	\$0	05/08/2015	J - ALJ Decision

Accident Investigation Summary

Summary Nr: 70263.015 Event: 01/12/2015 Worker'S Finger Is Caught Between Wall And Debris And Requir

At 8:30 p.m. on January 12, 2015, Employee #1 and coworker were engaged in excavation work at a commercial building construction site. Employee #1 was removing debris from a wall damaged by an excavator and the coworker was operating the excavator. The excavator hit a static line that Employee #1 was holding onto. Employee #1's hand was caught between the static line and the wall. Emergency services were called, and Employee #1 was transported to the hospital. He was admitted and treated for fractures and lacerations to his hand. The injury to his index finger was sufficiently severe and required amputation of the finger.

Keywords: wall, laceration, amputation, fracture, construction, excavation, excavator, finger, elevated work platform, caught between

	Inspection	Degree	Nature	Occupation
1	1021893.015	Hospitalized injury	Cut/Laceration	Construction Laborer

Case Status: CLOSED

Inspection: 995229.015 - Nova Shimmick Ajv

Inspection Information - Office: San Diego Area Office

Nr: 995229.015

Report ID: 0936200

Open Date:
08/21/2014

Nova Shimmick Ajv

Fuel Farm - Navsupflitlogctrsd, 199 Rosecrans St, Bldg
50

Union Status: Union

San Diego, CA 92106

SIC:

NAICS: 236210/Industrial Building Construction

Mailing: 2907 Shelter Island Dr., Ste #105, Pmb 132, San Diego, CA 92106

Inspection Type: Planned

Scope: Complete

Advanced Notice: N

Ownership: Private

Safety/Health: Safety

Close Conference: 08/21/2014

Emphasis: L:Progcon, P:Progcon

Close Case: 08/22/2014

Exhibit A: Page 14 of 14

Case #18

Case Status: CLOSEDUNITED STATES
DEPARTMENT OF LABOR

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Washington, DC 20210
☎ 800-321-6742 (OSHA)
TTY
www.OSHA.gov

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Exhibit B

LEGAL, STATUTORY, AND CONTRACTUAL BASIS FOR REJECTING BID

WML includes the following brief summation of legal, statutory and contractor rationale for rejecting SHIMMICK's bid:

1) Competitive bidding process is not for the protection of SHIMMICK. *Universal By-Products, Inc., v. City of Modesto* (1974) 43 Cal.App.3d 145, concerning competitive bidding, provides that, "The competitive bidding statutes are not intended to be for the benefit of bidders, but for the benefit and protection of the public";

2) SHIMMICK generally has no legal right to compel acceptance of its bid. "...the call for bids and the law confer on the awarding authority the duty of exercising its judgment as to whether it is in the best interests of the public entity to award the contract in question to the lowest bidder" and "[c]onsequently, the lowest qualified bidder generally has no legal right to compel acceptance of his or her bid" (*Baldwin-Lima-Hamilton Corp. v. Superior Court*, 1962, 208 Cal.App.2d 803);

3) SHIMMICK's bid can be rejected on the basis of lack of responsibility. *Inglewood-L.A. County Civic Center Auth. V. Superior Court* (1972) 7 Cal.3d 861, a contract must be awarded to the lowest bidder unless it is found that he is not responsible, i.e., not qualified to do the particular work under consideration;

4) *Raymond v. Fresno City Unified School Dist.* (1954) 123 Cal.App.2d 626, in discussing the ability of a municipal governments ability to determine responsibility, the court noted "The term 'lowest responsible bidder' has been held to mean the lowest bidder whose offer best responds in quality, fitness, and capacity to the particular requirements of the proposed work; and that where by the use of these terms the council has been invested with discretionary power as to which is the lowest responsible bidder, having regard to the quality and adaptability of the material or article to the particular requirements of its use, such discretion will not be interfered with by the courts in the absence of direct averments and proof of fraud."

5) page 1 of the Notice Inviting Bids states that, "The Orange County Sanitation District reserves the right to reject any or all Bids...."; &

6) California Public Contract Code §1103 defines a "Responsible Bidder" as follows, ".....a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract."

Statutory and case law are not the only grounds to consider in rejecting SHIMMICK's bid as OCSD clearly provided for rejecting bids in the specifications for this Project in the Notice Inviting Bids as set forth above. In summation, OCSD has the legal authority to reject SHIMMICK's bid and has announced such authority within the specifications for this Project.



ORANGE COUNTY SANITATION DISTRICT

NOTICE INVITING BIDS

**PROJECT NO. P2-123
RETURN ACTIVATED SLUDGE PIPING REPLACEMENT AT PLANT NO. 2**

The Orange County Sanitation District (OCSD) invites qualified Bidders to provide Bids for the RETURN ACTIVATED SLUDGE PIPING REPLACEMENT AT PLANT NO. 2 Project.

Bid Opening:

The complete Bid shall be submitted in a sealed envelope with the Bidder's name, Project name, Project number, and the Bid due date and time clearly marked on the envelope. The envelope must also be clearly marked "Sealed Bid – Do Not Open", and delivered to:

Orange County Sanitation District
Attention: Clerk of the Board
10844 Ellis Avenue
Fountain Valley, CA 92708

Bids shall be submitted at or **before 11:00 A.M. (Pacific Time Zone),
Monday, July 29, 2019.**

Bids will be publicly read at that time.

Bids submitted via USPS or other courier service must have the Project Name, Project Number, and the words "Sealed Bid – Do Not Open" clearly marked on the outside of the mailing envelope. Bidders shall notify Jay Kaura, Contracts Administrator via electronic telecommunication (email) at construction@ocsd.com of their mailing of the Bid package at least one day prior to the Bid Opening date.

Bids and/or revisions to Bids received after the date and time specified above will be rejected by OCSD and returned to the Bidders unopened.

Bids must be prepared and submitted in accordance with the requirements set forth in the Invitation for Bids (IFB) documents. All Bidders are required to comply with state, federal and local laws applicable thereto and as directed in the IFB documents.

The Orange County Sanitation District reserves the right to reject any or all Bids and to waive or not to waive any or all irregularities.

Location & Description of the Work:

The Project is located at Plant 2 at 22212 Brookhurst Street, Huntington Beach, CA 92646. The Work consists of the removal and replacement of approximately 1,400 linear feet of the deteriorated Returned Activated Sludge (RAS) piping, valves, valve actuators and associated wiring, flexible couplings, pipe supports, and the installation of twelve (12) new 14-inch isolation valves. In addition, concrete repairs will be made by full penetration cracking, by drilling through the defect, and injecting expanding polyurethane to fill the voids. Finally, existing light poles will be replaced at the activated sludge basin and secondary clarifiers.

IB-11 ESCROW OF BID DOCUMENTS

Refer to the Special Provisions entitled ESCROW OF BID DOCUMENTS.

IB-12 REQUEST FOR COPIES OF BIDS

Requests for copies of Bids shall be made in writing via electronic telecommunication (email) at construction@ocsd.com. Electronic copies of bids so requested will be provided by OCSD within three (3) Business Days of receipt of the request.

IB-13 BID EVALUATION PROCESS

A. General

1. The Bid evaluation period shall close upon OCSD's completion of its review and evaluation of the Bids. OCSD will give Bidders notice at the completion of Bid evaluation.
2. During the Bid evaluation period, OCSD shall determine if Bids are Responsive and Bidders are Responsible. Bids submitted in strict accordance with the IFB Documents will be deemed Responsive. A Responsible Bidder has the apparent ability to meet and successfully complete the requirements of the Contract Documents. Responsibility determination includes, but is not limited to consideration of a Bidder's trustworthiness, the quality of past performance, financial ability, and the fitness and capacity to do the proposed Work in a satisfactory manner. Bidder may be required to present further evidence that it has successfully performed similar work of comparable magnitude or provide other proof satisfactory to OCSD that it is competent to successfully perform the Work. In addition to contacting the references provided by the Bidder, OCSD may, and retains its right to contact other project owners and such other entities for which Bidder has performed or is performing work. Determination of the Bidder's responsibility will be judged based on all of the aforementioned criteria as established by information and documentation provided by the Bidder in response to instructions and specific questions in the IFB Documents, including but not limited to the Bid Submittal Forms. If the Bidder is a Joint Venture, Bidder shall be required to submit information pertaining to its joint venture partners, as specified in the Bid Submittal Forms.

B. Safety

1. All Safety evaluations will be performed utilizing data that is current at the date and time of Bid Opening.
2. For purpose of evaluating the Safety record of the Bidder, if the Bidder has any Serious, Willful, Repeat, Serious and Willful or Failure to Abate citations pursuant to Part 1 of Division 5 of the Labor Code and has not taken appropriate corrective action to abate further such violations; or if the Bidder has an accident frequency factor between 1.01 and 1.25 and has not taken appropriate corrective action to reduce its accident frequency experience; or if the Bidder has a workers' compensation experience modification rate issued and published by the Workers'

Compensation Insurance Rating Bureau of California (WCIRB) between 1.01 and 1.25 and has not taken appropriate corrective action to reduce its workplace injuries, illnesses and workers' compensation losses, or if the Bidder does not have injury prevention programs instituted to the extent required by Section 3201.5 or 6401.7 of the Labor Code, the Bidder may be deemed Not Responsible and its Bid rejected.

OCSD may require the Bidder to submit evidence of such corrective actions as described above and as specified in the SAFETY DECLARATION OF CONTRACTOR located in the Bid Submittal Forms.

3. If the Bidder has an accident frequency factor above 1.25 or a workers' compensation experience modification rate issued and published by the Workers' Compensation Insurance Rating Bureau of California (WCIRB) above 1.25, the Bid shall be deemed Non-Responsive and the Bid rejected.
4. Failure by the two (2) apparent low Bidders to submit a completed Workers' Compensation Experience Rating Form (also referred to as an Experience Rating Worksheet) and/or the completed and signed CAL/OSHA 300/300A Logs and Summaries within three (3) Business Days after the Bid Opening, or provide the reason(s) for exemption, as required, may result in their Bids being rejected as Non-Responsive.

Should the two (2) apparent low Bidders fail to meet OCSD's requirements, the next apparent low Bidder(s) shall be notified to submit the said documentation within the three (3) Business Day time frame for OCSD review.

5. Accident Frequency Factor

OCSD will evaluate the Bidder's accident frequency factors for each calendar year submitted on the CAL/OSHA 300/300A Logs and Summaries and its three (3) year average using the Accident Frequency Factor tables shown below.

Prior to completing Part 5 BID SUBMITTAL FORMS, BF-6 SAFETY DECLARATION OF CONTRACTOR (Safety Declaration) located in the Bid Submittal Forms, the Bidder shall calculate its accident frequency factors for each calendar year listed and its three (3) year average using the Accident Frequency Factor tables below. The results of those calculations should be used to respond to the Accident Frequency question on the Declaration.

a) Total Recordable Incident Rate Calculation Table

Using the OSHA Form 300 and 300A logs and the table below, the Total Recordable Incident Rate (TRIR) is calculated for the past three (3) completed calendar years and three (3) year average in the table below. (Please see the California Department of Industrial Relations (DIR) website for more detailed information)

Bid Submitted By: _____
(Name of Firm)

BF-6 SAFETY DECLARATION OF CONTRACTOR

The CONTRACTOR shall complete this form in its entirety and submit it to OCSD with its Bid in accordance with the Part 2 – Instructions to Bidders section entitled “Bid Evaluation Process”.

Prior to submitting its Bid, the CONTRACTOR shall safety pre-qualify each of its Subcontractors. The CONTRACTOR shall require each of its Subcontractors to complete Items 5 - 9 of this form, execute and submit the form to the CONTRACTOR in accordance with the Part 2 – Instructions to Bidders section entitled “Bid Evaluation Process”.

CONTRACTOR certifies the following (check the appropriate box):

1. Does the CONTRACTOR have any Serious, Willful, Repeat, Serious and Willful, or Failure to Abate citations of Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, during the past five-year period?

☐ No

☒ Yes SHIMMICK checked "Yes" on their bid.

If Yes is checked, OCSD may require the CONTRACTOR to submit evidence of corrective actions being taken to abate further violations of Part 1 of Division 5 of the Labor Code.

2. Accident Frequency

OCSD will evaluate the CONTRACTOR's accident frequency factors for each calendar year submitted on the CAL/OSHA 300/300A Logs and Summaries and its three (3) year average using the Accident Frequency Factor tables as specified in the Instructions to Bidders.

Prior to completing this Declaration, OCSD recommends that the CONTRACTOR calculate its accident frequency factors for each calendar year listed and its three (3) year average using the Accident Frequency Factor tables located in the Instructions to Bidders. The results of those calculations should be used to answer the following questions:

OCSD requires the CONTRACTOR to have an accident frequency at or below a factor of 1.25 of the national average as published by the California Department of Industrial Relations (DIR) for the specific North American Industry Classification System (NAICS) Codes and applied to the accident history of the last three (3) years.

- A. Does the CONTRACTOR have an accident frequency at or below a factor of 1.00 of the state average as published by the DIR for the specific NAICS Codes and applied to the accident history for the last three (3) years?

☐ Yes

OR


**UNITED STATES
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Establishment Search Results

Establishment	Date Range	Office	Zipcode	State
W. M. Lyles Co.	07/01/2014 to 07/31/2019	all	all	all

Please note that inspections which are known to be incomplete will have the identifying Activity Nr shown in italic. Information for these open cases is especially dynamic, e.g., violations may be added or deleted.

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By Date

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	#	Activity	Opened	RID	St	Type	Sc	SIC	NAICS	Vio	Establishment Name
<input type="checkbox"/>	1	1395805.015	04/24/2019	0950647	CA	Fat/Cat	Partial		238990		W.M. Lyles Co.
<input type="checkbox"/>	2	1359663.015	11/13/2018	0950647	CA	Accident	Partial		238990		W.M. Lyles Co.
<input type="checkbox"/>	3	1318186.015	04/30/2018	0950633	CA	Accident	Partial		236220		W. M. Lyles Co
<input type="checkbox"/>	4	1287613.015	01/12/2018	0950625	CA	Complaint	Partial		236220		W.M. Lyles Co

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Inspection Detail

Quick Link Reference

1395805.015 | 1359663.015 | 1318186.015 | 1287613.015

Case Status: OPEN

Note: The following inspection has not been indicated as closed. Please be aware that the information shown may change, e.g. violations may be added or deleted. For open cases, in which a citation has been issued, the citation information may not be available for 5 days following receipt by the employer for Federal inspections or for 30 days following receipt by the employer for State inspections.

Inspection: 1395805.015 - W.M. Lyles Co.

Inspection Information - Office: Bakersfield District Office

Nr: 1395805.015	Report ID: 0950647	Open Date: 04/24/2019
W.M. Lyles Co. Gun Club Rd. & Sherwood Ave. Wasco, CA 93280		Union Status: Union
SIC: NAICS: 238990/All Other Specialty Trade Contractors Mailing: P.O. Box 80605, Bakersfield, CA 93380		
Inspection Type:	Fat/Cat	
Scope:	Partial	Advanced Notice: N
Ownership:	Private	
Safety/Health:	Safety	Close Conference: Close Case:
Related Activity:	Type Accident	ID 1448752
		Safety
		Health

THIS CASE INVOLVES
A WORKER WHO DIED
FROM A HEART ATTACK
ON THE PROJECT SITE -
NOT A SAFETY RELATED
DEATH

Case Status: OPEN

Case Status: CLOSED

Inspection: 1359663.015 - W.M. Lyles Co.

Inspection Information - Office: Bakersfield District Office

Nr: 1359663.015	Report ID: 0950647	Open Date: 11/13/2018
W.M. Lyles Co. 5545 Harris Rd. Bakersfield, CA 93313		Union Status: Union
SIC: NAICS: 238990/All Other Specialty Trade Contractors Mailing: P.O. Box 80605, Bakersfield, CA 93380		
Inspection Type:	Accident	

Scope: Partial Advanced Notice: N
 Ownership: Private
 Safety/Health: Safety Close Conference: 03/19/2019
 Close Case: 03/19/2019
 Related Activity: Type ID Safety Health
 Accident 1397511

Exhibit D: Page 3 of 4

Case Status: CLOSED

Case Status: CLOSED

Inspection: 1318186.015 - W. M. Lyles Co

Inspection Information - Office: Ca San Bernardino

Nr: 1318186.015 Report ID: 0950633 Open Date: 04/30/2018
 W. M. Lyles Co
 59099 Sunny Slope Drive Union Status: Union
 Yucca Valley, CA 92284
 SIC:
 NAICS: 236220/Commercial and Institutional Building Construction
 Mailing: 42142 Roick Drive, Temecula, CA 92590
 Inspection Type: Accident
 Scope: Partial Advanced Notice: N
 Ownership: Private
 Safety/Health: Safety Close Conference: 10/19/2018
 Close Case: 05/14/2019
 Related Activity: Type ID Safety Health
 Accident 1330732

Case Status: CLOSED

Violation Summary

	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations				1		1
Current Violations						
Initial Penalty	\$0	\$0	\$0	\$750	\$0	\$750
Current Penalty	\$0	\$0	\$0	\$0	\$0	\$0
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items

	#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
Deleted	1.	01001	Other	1509(A)	10/19/2018		\$0	\$750	\$0	10/26/2018	J - ALJ Decision

Case Status: CLOSED

Inspection: 1287613.015 - W.M. Lyles Co

Inspection Information - Office: Ca Fresno

Nr: 1287613.015 Report ID: 0950625 Open Date: 01/12/2018
 W.M. Lyles Co
 6395 E. Floradora Avenue Union Status: Union
 Fresno, CA 93706
 SIC:
 NAICS: 236220/Commercial and Institutional Building Construction
 Mailing: 315 North Thorne Avenue, Fresno, CA 93706

Inspection Type:	Complaint	Advanced Notice:	N	
Scope:	Partial			
Ownership:	Private	Close Conference:	06/22/2018	
Safety/Health:	Health	Close Case:	06/28/2018	
Related Activity:	Type	ID	Safety	Health
	Complaint	1299847		Yes

Case Status: CLOSED

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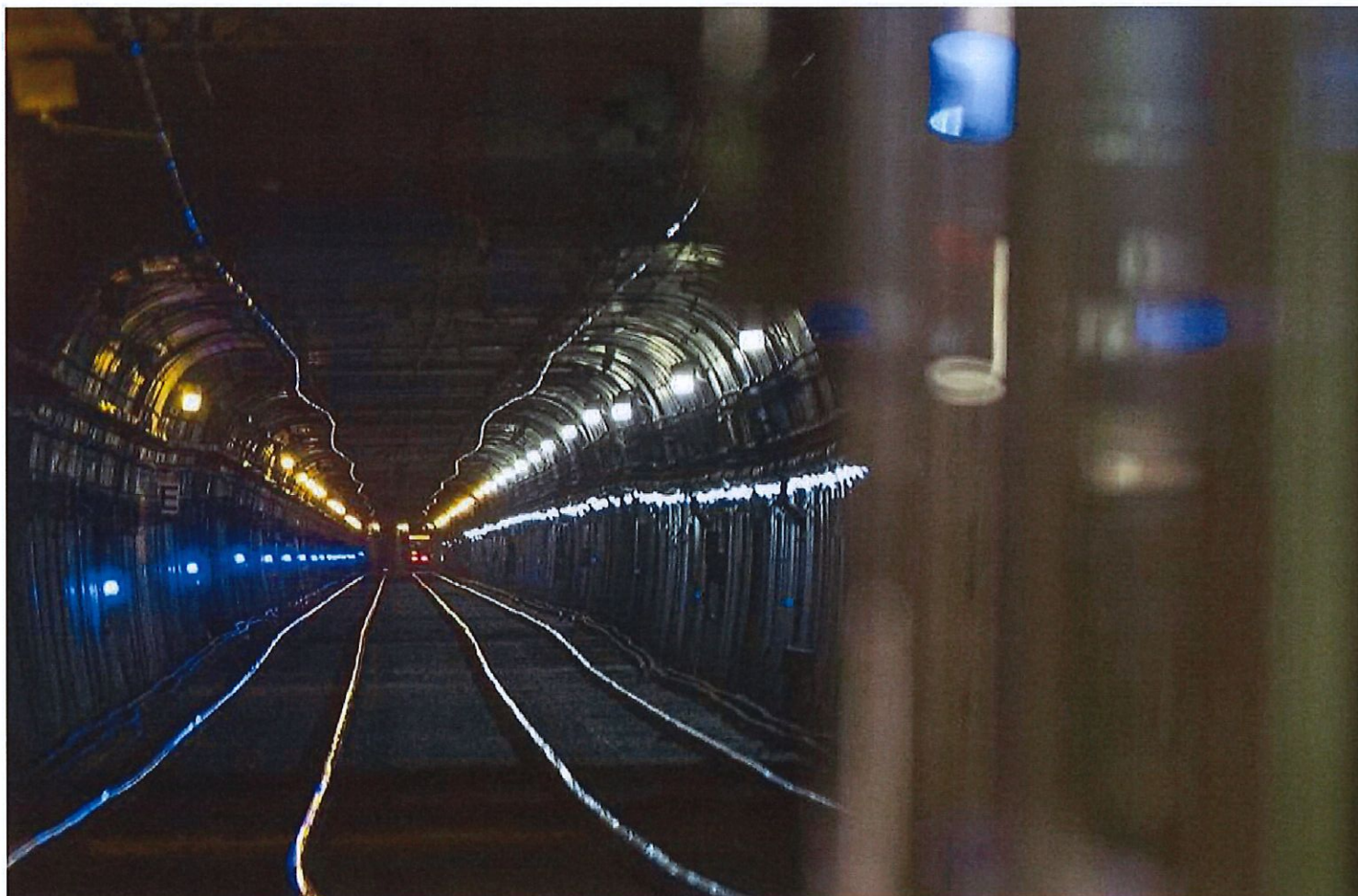
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Local Sporting Green Politics Biz+Tech US & World Opinion Datebook Food Lifestyle Vault: Ar

contractors

Megan Cassidy and Lauren Hernández

Aug. 16, 2018 | Updated: Aug. 16, 2018 9:42 p.m.



The Twin Peaks Tunnel

Photo: Jessica Christian / The Chronicle

San Francisco Municipal Transportation Agency officials said Thursday they will beef up background checks on potential contractors following revelations that a hired contractor, Shimmick Construction, had a history of safety violations.

The move comes at the direction of Mayor London Breed, less than a week after a signal technician was killed while working on the construction of the Twin Peaks Tunnel.

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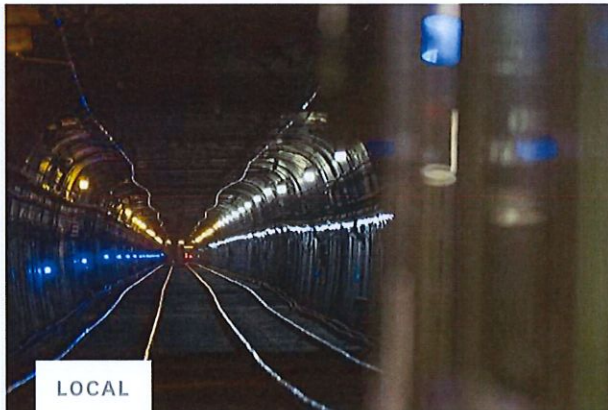
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Until now, SFMTA officials said their application process counted on potential bidders to truthfully respond to a prequalification questionnaire.

“The SFMTA uses an industry-wide standard that takes into account their workers’ compensation claims compared to the size of its overall operations,” SFMTA spokesman Paul Rose said in an email. “These contractors represented that they met those requirements.”

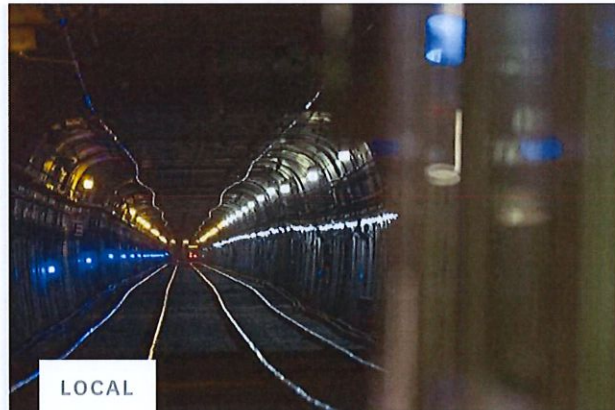
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Rose pointed to a pre-bidding document that asked Shimmick Construction officials and a business partner, “In the past ten years, has the Potential Bidder ... been cited for any serious and willful safety violations by Cal-OSHA?” The company checked the box for “no.”

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In one case it's appealing, a Shimmick Construction employee lost control of a forklift in November 2016 and died after getting ejected and pinned against a dirt wall, according to OSHA. Shimmick Construction was cited for six violations — three of which were serious — resulting in a fine of \$48,400.

Records show at least one "serious/willful" violation was upheld by an appeals board following what Cal/OSHA described as a dangerous excavation in 2011.

Shimmick Construction's history was first reported by the San Francisco Examiner and NBC Bay Area.

In an email Thursday afternoon, Rose said the department will now start fact-checking the bidders' safety backgrounds.

"Rather than rely on information from potential contractors, we are taking steps now to change the policy and ensure that we verify details in the pre-bid documents going forward," he wrote.

Last Friday, 51-year-old Patrick Ricketts was struck by a steel beam at the West Portal side of the 2.3-mile Twin Peaks Tunnel, officials said. Ricketts was pronounced dead at San Francisco General Hospital.

Cal/OSHA citations against Shimmick Construction

Nov. 16, 2016: A forklift employee died when he was ejected and pinned between the vehicle and a wall. Cal/OSHA cited Shimmick for six violations and imposed a \$48,400 fine. Shimmick is appealing the case.

July 8, 2015: Cal/OSHA issued three citations for violations of its Injury and Illness Prevention Program for construction workers, and imposed a \$26,770 fine, which Shimmick is appealing.

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Jan. 12, 2015: An employee's hand was severely injured during an excavation that Shimmick and another construction company were working on. Both companies were cited with two violations and fined \$9,450. The case is still open.

Feb. 6, 2014: Cal/OSHA issued three citations for violations of a standard that requires testing and examination of cranes and other hoisting equipment. Shimmick was fined \$2,700 and the case was closed a year later.

May 9, 2012: An employee was severely injured by a pipe, resulting in a citation for a health and safety violation and a \$450 fine. The case closed two years later.

Jan. 25, 2012: Cal/OSHA imposed a \$750 fine for six safety violations by Shimmick and another company in a case that closed more than a year later.

August 2011: Cal/OSHA fined Shimmick and another company \$67,500 for a "willful" violation of a standard related to a bridge, tunnel, and/or elevated highway construction. The case closed in 2015.

March 2011: Cal/OSHA fined Shimmick and another company \$197,375 for 14 violations, including some related to heavy construction and control of hazardous substances. The case remains open.

Source: Cal/OSHA

Work inside the 100-year-old light rail tunnel was suspended while the accident was investigated, and resumed the following day. The tunnel has been closed for service since June 25, and is scheduled to reopen this month.

Rose said SFMTA plans to complete the \$41 million project on time, and will continue to use Shimmick Construction's services.

In a statement released this week, the spokesman for Oakland-based Shimmick Construction said the company's responses to the city's questionnaire were "accurate," and that "safety is core to everything we do."

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Bidding qualification standards in San Francisco may differ by department, but officials from at least one other city entity said they're also reviewing their policies.

In the San Francisco Public Utilities Commission questionnaire, contractors are required to sign under penalty of perjury that their answers are true to their knowledge, according to press secretary Will Reisman.

Reisman said PUC staff review all responses and verify portions of those answers, but added: "We are currently updating our processes to ensure that all safety answers on the questionnaire are verified."

The review process began in July, and was not in response to the Muni death, Reisman said.

Megan Cassidy and Lauren Hernandez are San Francisco Chronicle staff writers. Email: megan.cassidy@sfchronicle.com and lauren.hernandez@sfchronicle.com Twitter: [@meganrcassidy](#) [@LaurenPorFavor](#)

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Shimmick Violation Summary Period 8/2014 to 8/2019

EXHIBIT F

Date	Status	Standard Cited	Multiple Violations	Penalty	Note
2019					
5/10/2019	Open	Accident			No further information provided
2018					
8/27/2018	Closed	Other	3203 (A)(4) General Industry Accident Preven Program	\$ 410.00	
8/10/2018	Violation Under Contest	Serious	3203 (A)(4) General Industry Accident Preven Program	\$ 25,000.00	Fatality
		Serious	4991 (A)	\$ 25,000.00	
		Serious	8473(A)	\$ 7,650.00	
		Serious	8473(A)	\$ 7,650.00	
6/21/2018	Closed	Referral			
3/20/2018	Violation Under Contest	Serious	1509 (A) (18B-CA) Construc, Accident Preven Program	\$ 18,000.00	Fractures to leg tibia and fibula
		Serious	4981 C	\$ 18,000.00	
2017					
9/11/2017	Closed	Planned			
7/19/2017	Closed	Serious	19260250 A01 General requirements for storage	\$ 11,408.00	\$10,500 penalty paid
7/11/2017	Closed	Other	19260405 G02 IV Wiring methods, components, and equipment for ger	\$ 4,889.00	\$4,889 penalty paid
1/24/2017		Other	5001 E	\$ 300.00	Fingers amputation
2016					
11/21/2016	Violation Under Contest	Other	43000029 B01	\$ 400.00	
		Other	3650 (T)(15)	\$ 600.00	
		Other	3650(T)(33)	\$ 600.00	
		Serious	3328(A)(2) (18B-CA) Servicing Multi-Piece Wheel Rims	\$ 14,400.00	Fatality
		Serious	3650(T)	\$ 14,400.00	
		Serious	3650(T)(11)	\$ 18,000.00	
10/21/2016	Violation Under Contest	Serious	296-155-53408(2)(D)(I)	\$ 4,800.00	
		Serious	296-155-53401(5)(I)	\$ -	
		Other	296-155-53401(5)(A)	\$ -	
		Other	296-155-53401(5)(G)	\$ -	
7/29/2016	Closed	Planned			
4/20/2016	Pending Abatement of Violations	Other	1511(B)	\$ 560.00	
		Other	5042(A)(9)	\$ 1,125.00	
		Serious	3385(A)	\$ 18,000.00	
		Serious	4999©(1)	\$ 18,000.00	
2015					
7/8/2015	Violation Under Contest	Serious	1509(A) (18B-CA) Construc, Accident Prevention Program	\$ 7,650.00	
		Serious	16160001 N03	\$ 9,560.00	
		Serious	16160001 O	\$ 9,560.00	
5/8/2015	Closed	Complaint			
4/21/2015	Open	Other	1509(A) (18B-CA) Construc, Accident Prevention Program	\$ 475.00	
		Serious	1620(A)	\$ 7,650.00	
		Serious	1712 C(1)	\$ 7,650.00	
1/30/2015	Open	Other	1512(D)	\$ 450.00	
		Other	1509(A) (18B-CA) Construc, Accident Prevention Program	\$ 450.00	
		Serious	1541(A)	\$ 9,000.00	Partial finger amputation
2014					
8/21/2014	Closed	Planned			



AUGUST 20TH, 2019

VIA ELECTRONIC MAIL ONLY

Mr. Jay Kaura
Contracts Administrator
Orange County Sanitation District
10844 Ellis Avenue
Fountain Valley, California 92708
construction@ocsd.com

Re: Return Activated Sludge Piping Replacement At Plant No. 2
Project No.: P2-123
Bid Date: July 29, 2019
Low Bidder: Shimmick Construction Company, Inc.

Dear Mr. Kaura:

1. Introduction

This is the response of Shimmick Construction Company, Inc. ("SCCI") to W.M. Lyles Co.'s ("Lyles") letter dated August 13, 2019 concerning the above Project. Shimmick is the most responsible low bidder who bid the Project. Lyles' contrary assertions are without merit because the OSHA citations in support of its protest against SCCI are either still pending appeal or are open. The remaining OSHA citations, and most serious safety accidents listed in Lyles' protest were not against SCCI. As detailed in its bid package, SCCI either has performed or is performing six major contracts worth \$219,485,243.00 of work over the past twelve years for the Orange County Sanitation District ("District"). There have been no OSHA reportable safety incidents on any of those projects. SCCI is a qualified and responsible bidder for the Project. The District should reject Lyles' protest and proceed to award the Project to the lowest responsive and responsible bidder: SCCI.

2. Brief Factual Summary

A. Bids Received

On July 29, 2019, the District received bids for the Project. SCCI was the low bidder by \$551,759.65, as detailed in the following table of the top three bidders:

Bidder	Bid	Spread
SCCI	\$6,042,110.35	
Lyles	\$6,593,870.00	\$551,759.65
Kiewit Infrastructure West, Co.	\$6,843,000.00	\$800,889.65

B. The District's Responsibility Specification

The District included within the Invitation to Bids the following definition of responsible bidder:

A responsible bidder has the apparent ability to meet and successfully complete the requirements of the Contract Documents. Responsibility determination includes, but is not limited to consideration of a Bidder's trustworthiness, the quality of past performance, financial ability, and the fitness and capacity to do the proposed work in a satisfactory matter.

(Invitation to Bid, p. 7, § 13-A(2).) Aside from the bidder's safety record, the District would consider at least five other categories of responsibility.

C. Lyles' Protest

On August 13, 2019, Lyles protested award to SCCI on the basis that SCCI is not a safe contractor and, therefore, not responsible to perform the work. In support, Lyles attached an OSHA report detailing various OSHA citations SCCI had received in the last five years. As detailed below, Lyles' protest is misleading and without merit. The most serious violations were not attributed to SCCI, but rather joint ventures of which SCCI was a member. Further, aside from the alleged safety infractions, Lyles does not dispute SCCI's, "trustworthiness, the quality of [SCCI's] past performance, financial ability, [or SCCI's] fitness and capacity to do the proposed work in a satisfactory matter," which are the other categories considered for responsibility. The District should reject Lyles' protest and award the Project to the lowest responsive and responsible bidder: SCCI.

3. Legal Standard

"A bidder is responsible if it can perform the contract as promised. A bid is responsive if it promises to do what the bidding instructions require." (*MCM Const., Inc. v. City & Cty. of San Francisco* (1998) 66 Cal.App.4th 359, 368, internal citations omitted.) "In the usual case, the determination that a bid is nonresponsive is not based on disputed facts, does not involve an exercise of agency discretion, and does not require a hearing for the excluded bidder." (*D.H. Williams Constr., Inc. v. Clovis Unified Sch. Dist.* (2007) 146

Cal.App.4th 757, 764.) However, “[a] determination that a bidder is responsible [or not] is a complex matter dependent, often, on information received outside the bidding process and requiring, in many cases, an application of subtle judgment.” (*Ibid.*) “[A]s in most due process cases, we believe the remedy must permit the agency to properly consider the issues in a due process hearing, and then to exercise the discretion vested in the agency by statute.” (*Ibid.*) Public bids:

[M]ust be evaluated from a practical rather than a hypothetical standpoint, with reference to the factual circumstances of the case. They must also be viewed in light of the public interest, rather than the private interest of a disappointed bidder. ‘It certainly would amount to a disservice to the public if a losing bidder were to be permitted to comb through the bid proposal or license application of the low bidder after the fact, [and] cancel the low bid on minor technicalities, with the hope of securing acceptance of his, higher bid. Such construction would be adverse to the best interests of the public and contrary to public policy.’

(*MCM Const., Inc. v. City & Cty. of San Francisco* (1998) 66 Cal.App.4th 359, 370.) There is no dispute that SCCI’s bid is responsive. There should also be no doubt that SCCI is a responsible bidder. To the extent Lyles maintains the District must reject SCCI’s bid on issues of non-responsibility, SCCI is entitled to a due process hearing before the District to establish its responsibility. As detailed below, a hearing is not necessary, because SCCI is a responsible bidder.

4. Lyles’ Protest Is Without Merit and Should Be Summarily Rejected

A. Lyles’ OSHA Citations Do Not Establish Non-responsibility

OSHA violations are not final unless and until all pending appeals have been exhausted and a final ruling has been issued on the violation. All of SCCI’s OSHA violations listed in Lyles’ protest are either still open or pending appeal. Thus, while SCCI was required to list the *citations* in its bid, the underlying violations themselves are still being contested and thus, cannot be counted against SCCI’s safety record. Further, 11 of the 18 remaining OSHA citations were not cited to SCCI, but rather to firms who were joint venturers of which SCCI was a member. Since those citations were not against SCCI, they cannot be counted towards SCCI’s safety record. It is noteworthy that those citations not filed against SCCI include one fatality, a fractured arm and leg, and the partial amputation referenced in Lyles’ protest. Lyles cites to no other objective evidence that would characterize SCCI as unsafe because that evidence refutes Lyles’ accusation. As SCCI listed in its bid, it has an accident frequency below a factor of 1.00, workers’ compensation EMR below 1.00, and has the requisite injury prevention programs in place. SCCI is a responsible bidder. The District should reject the misleading and meritless



General Engineering Contractor

protest of Lyles and award the Project to the lowest responsive and responsible bidder SCCI.

B. California Will Defer to the District's Discretion to Award to SCCI

Although Lyles' protest should be summarily rejected, it is noteworthy that any challenge to the District's decision to award to SCCI will fail. That is because California law affords vast discretion to awarding agencies in competitive bids. The review of agency decisions is "limited to an examination of the proceedings to determine whether the [District's] actions were arbitrary, capricious, entirely lacking in evidentiary support or inconsistent with proper procedure. There is a presumption that the [District's] actions were supported by substantial evidence, and [petitioner/plaintiff] has the burden of proving otherwise. [Courts] may not reweigh the evidence and must view it in the light most favorable to the [District's] actions, indulging all reasonable inferences in support of those actions." (*Bay Cities Paving & Grading, Inc. v. City of San Leandro* (2014) 223 Cal.App.4th 1181, 1187.) Here, SCCI is the lowest bidder. SCCI has been determined responsible on every District project it has ever worked on. That is why SCCI has performed or is performing \$219,485,243.00 of work with the District. Doubtless, SCCI is a responsible bidder. The District should reject the meritless protest of Lyles and award the Project to the lowest responsive and responsible bidder: SCCI.

5. Conclusion

It is undisputed SCCI submitted a responsive bid. SCCI a responsible bidder. Lyles wrongly references nonbinding OSHA citations—most of which were not cited to SCCI—to support its self-serving protest. Public bids "must be evaluated from a practical rather than a hypothetical standpoint, with reference to the factual circumstances of the case. They must also be viewed in light of the public interest, rather than the private interest of a disappointed bidder." (*MCM Const., Inc. v. City & Cty. of San Francisco* (1998) 66 Cal.App.4th 359, 370.) Here, SCCI complied with the bid documents and submitted the lowest bid. Lyles' bid protest is without merit and against public policy. The District should reject Lyles' protest and award the Project to the lowest responsive and responsible bidder: SCCI. Please contact us with any questions and please notify us of any response from Lyles and/or public hearing for consideration of this matter. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brad Fales", is written over a horizontal line.

Brad Fales
Deputy Director, Electrical Division

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Water District



Orange County Sanitation District

10844 Ellis Avenue, Fountain Valley, CA 92708

714.962.2411 • www.ocsd.com

August 23, 2019

Via Email: psaleen@wmlylesco.com
& overnight mail

Robert P. Saleen
W.M. Lyles Co.
1210 West Olive Avenue
Fresno, CA 93728

SUBJECT: OCSD Response to W.M. Lyles Co.'s Award Protest
Re: Project No. P2-123, Return Activated Sludge Piping
Replacement at Plant No. 2

This letter serves as the Orange County Sanitation District's ("OCSD") response to the Award Protest Statement ("Protest") filed by W.M. Lyles Co. ("W.M. Lyles") on August 13, 2019. The Protest challenges the recommendation that OCSD award the contract for the above-referenced project (the "Contract") to Shimmick Construction Company, Inc. ("Shimmick").

W.M. Lyles alleges that Shimmick is not a responsible and/or qualified contractor due to Shimmick's past safety violations. W.M. Lyles cites various OSHA Reports and accidents occurring on Shimmick projects to support this assertion. W.M. Lyles contends that Shimmick's purported inability to maintain safe work sites indicates that Shimmick is not a responsible bidder within the meaning of the California Public Contract Code ("PCC"), so OCSD should reject Shimmick's bid. W.M. Lyles further asserts that the requested disqualification would comport with sound public policy.

OCSD has reviewed the Protest and all necessary facts and written materials submitted, including the Protest response letter received from Shimmick on August 20, 2019, and hereby denies the relief requested based on the following:

Bidder Responsibility

Under California's competitive bidding laws, public agencies must award a public works contract to the lowest bidder unless the agency finds the bidder is non-responsible. (*City of Inglewood-L.A. Cnty. Civic Center Auth. v. Superior Ct.* (1972) 7 Cal.3d 861, 867.) The PCC defines a responsible bidder as "a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract." (PCC § 1103.)

Determining whether a bidder is responsible is "a complex matter dependent, often, on information received outside the bidding process and requiring, in many cases, the application of subtle judgment." (*Taylor Bus Service, Inc. v. San Diego Bd. of Educ.* (1987) 195 Cal.App.3d 1331, 1341-42.) Moreover, agencies may not employ concepts of relative superiority when making this responsibility determination. (*Great West Contractors, Inc. v. Irvine Unified School Dist.* (2010) 187 Cal.App.4th 1425, 1452.) A low bidder may not be deemed non-responsible simply because another bidder is *more* qualified or *more* responsible.

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Robert P. Saleen
Page 2 of 3
August 23, 2019

Shimmick is a Responsible Bidder

The Protest urges OCSD to find Shimmick non-responsible due to various accidents and safety incidents occurring on Shimmick projects. For the reasons stated below, OCSD believes these incidents provide an insufficient basis for finding Shimmick unable to satisfactorily perform this project.

First, many of the incidents cited in the Protest are not considered final for legal or administrative purposes as they are still open or pending appeal. In order to afford bidders full due process protections and allow the OSHA investigation and enforcement process to run its course, OCSD typically does not consider such incidents when evaluating a bidder's safety qualifications.

Second, several of the incidents identified in the Protest were not cited against Shimmick specifically, but rather against several of Shimmick's partners on joint venture projects. OCSD believes it is inappropriate to attribute these incidents to Shimmick without additional information.

Third, OCSD believes that the PCC and public policy behind California's competitive bidding laws prohibit public agencies from finding a bidder non-responsible for safety reasons unless the bidder demonstrates a clear and consistent pattern of significant safety violations or an inability to take appropriate safety precautions. This is especially true where, as here, the bidder meets the minimum safety qualifications of the IFB. Based on our review of the facts presented and OCSD's own investigation of these matters, OCSD does not believe the incidents cited by W.M. Lyles meet this high standard.

Simply put, the fact that a large contractor like Shimmick has had safety incidents in the past is not sufficient justification to find the contractor non-responsible. To be sure, a contractor's repeated failure to proactively address safety concerns may indicate that the bidder is not responsible, but OCSD does not find this to be the case here. OCSD has investigated the corrective actions taken by Shimmick following the violations cited in Shimmick's bid and finds these corrective actions acceptable. Moreover, Shimmick's accident frequency rate is below the industry average and OCSD has not encountered significant safety concerns on other OCSD projects performed by Shimmick.

For all these reasons, OCSD does not believe that Shimmick's past safety violations and performance history warrant a finding of non-responsibility for this project.



Robert P. Saleen
Page 3 of 3
August 23, 2019

Determination

OCSD has reviewed the Protest and all accompanying facts and documents and finds that Shimmick is a responsible bidder for the above-referenced project. Accordingly, OCSD respectfully rejects W.M. Lyles' Protest.

OCSD will proceed to recommend award of the Contract to the lowest responsive and responsible bidder, Shimmick Construction Company, Inc., at the Board of Directors Meeting on September 25, 2019.

Ruth Zintzun
Contracts & Purchasing Manager

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Orange County Sanitation District

10844 Ellis Avenue, Fountain Valley, CA 92708

714.962.2411 • www.ocsd.com

August 8, 2019

Via Email: psaleen@wmlylesco.com
& Overnight Mail

Robert P. Saleen, Senior Vice President
W.M. Lyles Co.
1210 W. Olive Avenue
Fresno, CA 93728

SUBJECT: Award Recommendation Notice
Re: Project No. P2-123
Return Activated Sludge Piping Replacement at Plant No. 2

The Orange County Sanitation District (OCSD) completed its evaluation of the Bids submitted in response to the Invitation for Bids for the above-referenced Project. The lowest responsive, responsible Bidder is Shimmick Construction Co., Inc.

Staff's recommendation for Contract award will be included as an item on OCSD's Operations Committee agenda.

The Operations Committee Meeting is scheduled for:

Date: September 4, 2019
Time: 5:00 p.m. (Pacific Time Zone)
Location: Orange County Sanitation District
Board Room, Administration Building
10844 Ellis Avenue
Fountain Valley, CA 92708

If approved by the Operations Committee, the award recommendation will be forwarded to OCSD's Board of Directors for Contract award.

The Board of Directors Meeting is scheduled for:

Date: September 25, 2019
Time: 6:00 p.m. (Pacific Time Zone)
Location: Orange County Sanitation District
Board Room, Administration Building
10844 Ellis Avenue
Fountain Valley, CA 92708



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Revision 110218



Robert P. Saleen
Page 2
August 8, 2019

The Final Agenda Report will be posted not less than 72 hours prior to the Board of Directors and/or Operations Committee Meeting. Should you wish to determine if the item has been placed on the agenda, please contact the Clerk of the Board at (714) 593-7433.

Jay Kaura
Contracts Administrator

JSK:ms

cc: K. Millea, R. Leon, Y. Dake, K. Lore, N. Dubrovski, Contract file 2.7

PART A
CONTRACT AGREEMENT

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CONTRACT AGREEMENT

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CONTRACT AGREEMENT
ORANGE COUNTY SANITATION DISTRICT

PROJECT NO. P2-123

RETURN ACTIVATED SLUDGE PIPING REPLACEMENT AT PLANT NO. 2

THIS AGREEMENT is made and entered into, to be effective, this September 25, 2019, by and between Shimmick Construction Co., Inc., hereinafter referred to as "CONTRACTOR" and the Orange County Sanitation District, hereinafter referred to as "OCSD".

WITNESSETH

That for and in consideration of the promises and agreements hereinafter made and exchanged, OCSD and CONTRACTOR agree as follows:

SECTION – 1 GENERAL CONDITIONS

CONTRACTOR certifies and agrees that all the terms, conditions and obligations of the Contract Documents as hereinafter defined, the location of the job site, and the conditions under which the Work is to be performed have been thoroughly reviewed, and enters into this Contract based upon CONTRACTOR's investigation of all such matters and is in no way relying upon any opinions or representations of OCSD. It is agreed that this Contract represents the entire agreement. It is further agreed that the Contract Documents are each incorporated into this Contract by reference, with the same force and effect as if the same were set forth at length herein, and that CONTRACTOR and its Subcontractors, if any, will be and are bound by any and all of said Contract Documents insofar as they relate in any part or in any way, directly or indirectly, to the Work covered by this Contract.

A. Contract Documents Order of Precedence

"Contract Documents" refers to those documents identified in the definition of "Contract Documents" in the General Conditions – Definitions.

CONFORMED

C-CA-022619
PROJECT NO. P2-123
RETURN ACTIVATED SLUDGE PIPING REPLACEMENT AT PLANT NO. 2

1. In the event of a conflict between one Contract Document and any of the other Contract Documents, the provisions in the document highest in precedence shall be controlling. The order of precedence of the Contract Documents is as follows:
 - a. Supplemental Agreements – the last in time being the first in precedence
 - b. Addenda issued prior to opening of Bids – the last in time being the first in precedence
 - c. Contract Agreement
 - d. Permits and other regulatory requirements
 - e. Special Provisions
 - f. General Conditions (GC)
 - g. Notice Inviting Bids and Instruction to Bidders
 - h. Geotechnical Baseline Report (GBR), if attached as a Contract Document
 - i. Plans and Specifications – in these documents the order of precedence shall be:
 - i. Specifications (Divisions 01-17)
 - ii. Plans
 - iii. General Requirements (GR)
 - iv. Standard Drawings and Typical Details
 - j. CONTRACTOR's Bid
2. In the event of a conflict between terms within an individual Contract Document, the conflict shall be resolved by applying the following principles as appears applicable:
 - a. Figured dimensions on the Contract Documents shall govern. Dimensions not specified shall be as directed by the ENGINEER. Details not shown or specified shall be the same as similar parts that are shown or specified, or as

directed. Full-size details shall take precedence over scale Drawings as to shape and details of construction. Specifications shall govern as to material and workmanship.

- b. The Contract Documents calling for the higher quality material or workmanship shall prevail. Materials or Work described in words, which so applied, have a well known technical or trade meaning shall be deemed to refer to such recognized standards. In the event of any discrepancy between any Drawings and the figures thereon, the figures shall be taken as correct.
- c. Scale Drawings, full-size details, and Specifications are intended to be fully complementary and to agree. Should any discrepancy between Contract Documents come to the CONTRACTOR's attention, or should an error occur in the efforts of others, which affect the Work, the CONTRACTOR shall notify the ENGINEER, in writing, at once. In the event any doubts or questions arise with respect to the true meaning of the Contract Documents, reference shall be made to the ENGINEER whose written decision shall be final. If the CONTRACTOR proceeds with the Work affected without written instructions from the ENGINEER, the CONTRACTOR shall be fully responsible for any resultant damage or defect.
- d. Anything mentioned in the Specifications and not indicated in the Plans, or indicated in the Plans and not mentioned in the Specifications, shall be of like effect as if indicated and mentioned in both. In case of discrepancy in the Plans or Specifications, the matter shall be immediately submitted to OCSD's ENGINEER, without whose decision CONTRACTOR shall not adjust said discrepancy save only at CONTRACTOR's own risk and expense. The decision of the ENGINEER shall be final.

In all matters relating to the acceptability of material, machinery or plant equipment; classifications of material or Work; the proper execution, progress or sequence of the Work; and quantities interpretation of the Contract Documents, the decision of the ENGINEER shall be final and binding, and shall be a condition precedent to any payment under the Contract, unless otherwise ordered by the Board of Directors.

B. Definitions

Capitalized terms used in this Contract are defined in the General Conditions, Definitions. Additional terms may be defined in the Special Provisions.

SECTION – 2 MATERIALS AND LABOR

CONTRACTOR shall furnish, under the conditions expressed in the Plans and Specifications, at CONTRACTOR'S own expense, all labor and materials necessary, except such as are mentioned in the Specifications to be furnished by OCSD, to construct and complete the Project, in good workmanlike and substantial order. If CONTRACTOR fails to pay for labor or materials when due, OCSD may settle such claims by making demand upon the Surety to this Contract. In the event of the failure or refusal of the Surety to satisfy said claims, OCSD may settle them directly and deduct the amount of payments from the Contract Price and any amounts due to CONTRACTOR. In the event OCSD receives a stop payment notice from any laborer or material supplier alleging non-payment by CONTRACTOR, OCSD shall be entitled to deduct all of its costs and expenses incurred relating thereto, including but not limited to administrative and legal fees.

SECTION – 3 PROJECT

The Project is described as:

PROJECT NO. P2-123

RETURN ACTIVATED SLUDGE PIPING REPLACEMENT AT PLANT NO. 2

SECTION – 4 PLANS AND SPECIFICATONS

The Work to be done is shown in a set of Plans and Specifications entitled:

PROJECT NO. P2-123

RETURN ACTIVATED SLUDGE PIPING REPLACEMENT AT PLANT NO. 2

Said Plans and Specifications and any revision, amendments and addenda thereto are attached hereto and incorporated herein as part of this Contract and referred to by reference.

SECTION – 5 TIME OF COMMENCEMENT AND COMPLETION

CONTRACTOR agrees to commence the Project within 15 calendar days from the date set forth in the "Notice to Proceed" sent by OCSD, unless otherwise specified therein and shall diligently prosecute the Work to completion within six hundred forty-four (644) calendar days from the date of the "Notice to Proceed" issued by OCSD, excluding delays caused or authorized by OCSD as set forth in Sections 7, 8, and 9 hereof, and applicable provisions in the General Conditions. The time for completion includes fifteen (15) calendar days determined by OCSD likely to be inclement weather when CONTRACTOR will be unable to work.

SECTION – 6 TIME IS OF THE ESSENCE

Time is of the essence of this Contract. As required by the Contract Documents, CONTRACTOR shall prepare and obtain approval of all shop drawings, details and samples, and do all other things necessary and incidental to the prosecution of CONTRACTOR's Work in conformance with an approved construction progress schedule. CONTRACTOR shall coordinate the Work covered by this Contract with that of all other contractors, subcontractors and of OCSD, in a manner that will facilitate the efficient completion of the entire Work and accomplish the required milestone(s), if any, by the applicable deadline(s) in accordance with Section 5 herein. OCSD shall have the right to assert complete control of the premises on which the Work is to be performed and shall have the right to decide the time or order in which

CONFORMED

C-CA-022619
PROJECT NO. P2-123
RETURN ACTIVATED SLUDGE PIPING REPLACEMENT AT PLANT NO. 2

the various portions of the Work shall be installed or the priority of the work of subcontractors, and, in general, all matters representing the timely and orderly conduct of the Work of CONTRACTOR on the premises.

SECTION – 7 EXCUSABLE DELAYS

CONTRACTOR shall only be excused for any delay in the prosecution or completion of the Project as specifically provided in General Conditions, “Extensions for Delay”, and the General Requirements, “By CONTRACTOR or Others – Unknown Utilities during Contract Work”. Extensions of time and extra compensation arising from such excusable delays will be determined in accordance with the General Conditions, “Extension of Time for Delay” and “Contract Price Adjustments and Payments”, and extensions of time and extra compensation as a result of incurring undisclosed utilities will be determined in accordance with General Requirements, “By CONTRACTOR or Others – Unknown Utilities during Contract Work”. OCSD’s decision will be conclusive on all parties to this Contract.

SECTION – 8 EXTRA WORK

The Contract Price as set forth in Section 11, includes compensation for all Work performed by CONTRACTOR, unless CONTRACTOR obtains a Change Order signed by a designated representative of OCSD specifying the exact nature of the Extra Work and the amount of extra compensation to be paid all as more particularly set forth in Section 9 hereof and the General Conditions, “Request for Change (Changes at CONTRACTOR’s Request)”, “OWNER Initiated Changes”, and “Contract Price Adjustments and Payments”.

In the event a Change Order is issued by OCSD pursuant to the Contract Documents, OCSD shall extend the time fixed in Section 5 for completion of the Project by the number of days, if any, reasonably required for CONTRACTOR to perform the Extra Work, as determined by OCSD’s ENGINEER. The decision of the ENGINEER shall be final.

SECTION – 9 CHANGES IN PROJECT

OCSD may at any time, without notice to any Surety, by Change Order, make any changes in the Work within the general scope of the Contract Document, including but not limited to changes:

1. In the Specifications (including Drawings and designs);
2. In the time, method or manner of performance of the Work;
3. In OCSD-furnished facilities, equipment, materials, services or site; or
4. Directing acceleration in the performance of the Work.

No change of period of performance or Contract Price, or any other change in the Contract Documents, shall be binding until the Contract is modified by a fully executed Change Order.

All Change Orders shall be issued in accordance with the requirements set forth in the General Conditions, "Request for Change (Changes at CONTRACTOR's Request)" and "OWNER Initiated Changes".

SECTION – 10 LIQUIDATED DAMAGES FOR DELAY

Liquidated Damages shall be payable in the amounts and upon the occurrence of such events or failure to meet such requirements or deadlines as provided in the Special Provisions, "Liquidated Damages and Incentives."

SECTION – 11 CONTRACT PRICE AND METHOD OF PAYMENT

A. OCSD agrees to pay and the CONTRACTOR agrees to accept as full consideration for the faithful performance of this Contract, subject to any additions or deductions as provided in approved Change Orders, the sum of Six Million Forty-Two Thousand One Hundred Ten Dollars and Thirty-Five Cents (\$6,042,110.35) as itemized on the Attached Exhibit "A".

Upon satisfaction of the conditions precedent to payment set forth in the General Requirements, Additional General Requirements and General Conditions (including but

not limited to Sections entitled "Mobilization Payment Requirements" and "Payment Itemized Breakdown of Contract Lump Sum Prices"), there shall be paid to the CONTRACTOR an initial Net Progress Payment for mobilization. OCSD shall issue at the commencement of the job a schedule which shows:

1. A minimum of one payment to be made to the CONTRACTOR for each successive four (4) week period as the Work progresses, and
2. The due dates for the CONTRACTOR to submit requests for payment to meet the payment schedule.

After the initial Net Progress Payment, and provided the CONTRACTOR submits the request for payment prior to the end of the day required to meet the payment schedule, the CONTRACTOR shall be paid a Net Progress Payment on the corresponding monthly payment date set forth in the schedule.

Payments shall be made on demands drawn in the manner required by law, accompanied by a certificate signed by the ENGINEER, stating that the Work for which payment is demanded has been performed in accordance with the terms of the Contract Documents, and that the amount stated in the certificate is due under the terms of the Contract.

Payment applications shall also be accompanied with all documentation, records, and releases as required by the Contract, Exhibit A, Schedule of Prices, and General Conditions, "Payment for Work – General". The Total amount of Progress Payments shall not exceed the actual value of the Work completed as certified by OCSD's ENGINEER. The processing of payments shall not be considered as an acceptance of any part of the Work.

B. As used in this Section, the following defined terms shall have the following meanings:

1. **“Net Progress Payment”** means a sum equal to the Progress Payment less the Retention Amount and other qualified deductions (Liquidated Damages, stop payment notices, etc.).
2. **“Progress Payment”** means a sum equal to:
 - a. the value of the actual Work completed since the commencement of the Work as determined by OCSD;
 - b. plus the value of material suitably stored at the worksite, treatment plant or approved storage yards subject to or under the control of OCSD since the commencement of the Work as determined by OCSD;
 - c. less all previous Net Progress Payments;
 - d. less all amounts of previously qualified deductions;
 - e. less all amounts previously retained as Retention Amounts.
3. **“Retention Amount”** for each Progress Payment means the percentage of each Progress Payment to be retained by OCSD to assure satisfactory completion of the Contract. The amount to be retained from each Progress Payment shall be determined as provided in the General Conditions –“Retained Funds; Substitution of Securities.”

SECTION – 12 SUBSTITUTION OF SECURITIES IN LIEU OF RETENTION OF FUNDS

Pursuant to Public Contract Code Section 22300 et seq., the CONTRACTOR may, at its sole expense, substitute securities as provided in General Conditions – “Retained Funds; Substitution of Securities.”

SECTION – 13 COMPLETION

Final Completion and Final Acceptance shall occur at the time and in the manner specified in the General Conditions, "Final Acceptance and Final Completion", "Final Payment" and Exhibit A - Schedule of Prices.

Upon receipt of all documentation, records, and releases as required by the Contract from the CONTRACTOR, OCSD shall proceed with the Final Acceptance as specified in General Conditions.

SECTION – 14 CONTRACTOR'S EMPLOYEES COMPENSATION

A. Davis-Bacon Act:

CONTRACTOR will pay and will require all Subcontractors to pay all employees on said Project a salary or wage at least equal to the prevailing rate of per diem wages as determined by the Secretary of Labor in accordance with the Davis-Bacon Act for each craft or type of worker needed to perform the Contract. The provisions of the Davis-Bacon Act shall apply only if the Contract is in excess of Two Thousand Dollars (\$2,000.00) and when twenty-five percent (25%) or more of the Contract is funded by federal assistance. If the aforesaid conditions are met, a copy of the provisions of the Davis-Bacon Act to be complied with are incorporated herein as a part of this Contract and referred to by reference.

B. General Prevailing Rate:

OCSD has been advised by the State of California Director of Industrial Relations of its determination of the general prevailing rate of per diem wages and the general prevailing rate for legal holiday and overtime Work in the locality in which the Work is to be performed for each craft or type of Work needed to execute this Contract, and copies of the same are on file in the Office of the ENGINEER of OCSD. The CONTRACTOR agrees that not less than said prevailing rates shall be paid to workers employed on this

public works Contract as required by Labor Code Section 1774 of the State of California.

Per California Labor Code 1773.2, OCSD will have on file copies of the prevailing rate of per diem wages at its principal office and at each job site, which shall be made available to any interested party upon request.

C. Forfeiture for Violation:

CONTRACTOR shall, as a penalty to OCSD, forfeit Two Hundred Dollars (\$200.00) for each calendar day or portion thereof for each worker paid (either by the CONTRACTOR or any Subcontractor under it) less than the prevailing rate of per diem wages as set by the Director of Industrial Relations, in accordance with Sections 1770-1780 of the California Labor Code for the Work provided for in this Contract, all in accordance with Section 1775 of the Labor Code of the State of California.

D. Apprentices:

Sections 1777.5, 1777.6, 1777.7 of the Labor Code of the State of California, regarding the employment of apprentices are applicable to this Contract and the CONTRACTOR shall comply therewith if the prime contract involves Thirty Thousand Dollars (\$30,000.00) or more.

E. Workday:

In the performance of this Contract, not more than eight (8) hours shall constitute a day's work, and the CONTRACTOR shall not require more than eight (8) hours of labor in a day from any person employed by him hereunder except as provided in paragraph (B) above. CONTRACTOR shall conform to Article 3, Chapter 1, Part 7 (Section 1810 et seq.) of the Labor Code of the State of California and shall forfeit to OCSD as a penalty, the sum of Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by CONTRACTOR or any Subcontractor for each calendar day during which any worker is required or permitted to labor more than eight (8) hours in any one calendar day and forty

(40) hours in any one week in violation of said Article. CONTRACTOR shall keep an accurate record showing the name and actual hours worked each calendar day and each calendar week by each worker employed by CONTRACTOR in connection with the Project.

F. Registration; Record of Wages; Inspection:

CONTRACTOR 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 by the California Department of Industrial Relations. CONTRACTOR shall maintain accurate payroll records 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.

CONTRACTOR shall comply with the job site notices posting requirements established by the Labor Commissioner per Title 8, California Code of Regulations Section 16461(e).

SECTION – 15 SURETY BONDS

CONTRACTOR shall, before entering upon the performance of this Contract, furnish Bonds approved by OCSD's General Counsel – one in the amount of one hundred percent (100%) of the Contract amount, to guarantee the faithful performance of the Work, and the other in the amount of one hundred percent (100%) of the Contract amount to guarantee payment of all claims for labor and materials furnished. As changes to the Contract occur via approved Change Orders, the CONTRACTOR shall assure that the amounts of the Bonds are adjusted to maintain 100% of the Contract Price. This Contract shall not become effective until such Bonds are supplied to and approved by OCSD. Bonds must be issued by a Surety authorized by the State Insurance Commissioner to do business in California. The Performance Bond shall remain in full force and effect through the warranty period, as specified in Section 19 below. All Bonds required to be submitted relating to this Contract must comply with California Code of

Civil Procedure Section 995.630. Each Bond shall be executed in the name of the Surety insurer under penalty of perjury, or the fact of execution of each Bond shall be duly acknowledged before an officer authorized to take and certify acknowledgments, and either one of the following conditions shall be satisfied:

- A. A copy of the transcript or record of the unrevoked appointment, power of attorney, by-laws, or other instrument, duly certified by the proper authority and attested by the seal of the insurer entitling or authorizing the person who executed the Bond to do so for and on behalf of the insurer, is on file in the Office of the County Clerk of the County of Orange; or
- B. A copy of a valid power of attorney is attached to the Bond.

SECTION – 16 INSURANCE

CONTRACTOR shall purchase and maintain, for the duration of the Contract, insurance against claims for injuries to persons, or damages to property which may arise from or in connection with the performance of the Work hereunder, and the results of that Work by CONTRACTOR, its agents, representatives, employees, or Subcontractors, in amounts equal to the requirements set forth below. CONTRACTOR shall not commence Work under this Contract until all insurance required under this Section is obtained in a form acceptable to OCSD, nor shall CONTRACTOR allow any Subcontractor to commence Work on a subcontract until all insurance required of the Subcontractor has been obtained. CONTRACTOR shall maintain all of the foregoing insurance coverages in force through the point at which the Work under this Contract is fully completed and accepted by OCSD pursuant to the provisions of the General Conditions, "Final Acceptance and Final Completion". Furthermore, CONTRACTOR shall maintain all of the foregoing insurance coverages in full force and effect throughout the warranty period, commencing on the date of Final Acceptance. The requirement for carrying the foregoing insurance shall not derogate from the provisions for indemnification of OCSD by

CONTRACTOR under Section 17 of this Contract. Notwithstanding nor diminishing the obligations of CONTRACTOR with respect to the foregoing, CONTRACTOR shall subscribe for and maintain in full force and effect during the life of this Contract, inclusive of all changes to the Contract Documents made in accordance with the provisions of the General Conditions, "Request for Change (Changes at CONTRACTOR's Request)" and/or "OWNER Initiated Changes", the following insurance in amounts not less than the amounts specified. OCSD reserves the right to amend the required limits of insurance commensurate with the CONTRACTOR's risk at any time during the course of the Project. No vehicles may enter OCSD premises/worksite without possessing the required insurance coverage.

CONTRACTOR's insurance shall also comply with all insurance requirements prescribed by agencies from whom permits shall be obtained for the Work and any other third parties from whom third party agreements are necessary to perform the Work (collectively, the "Third Parties"), The Special Provisions may list such requirements and sample forms and requirements from such Third Parties may be included in an attachment to the General Requirements. CONTRACTOR bears the responsibility to discover and comply with all requirements of Third Parties, including meeting specific insurance requirements, that are necessary for the complete performance of the Work. To the extent there is a conflict between the Third Parties' insurance requirements and those set forth by OCSD herein, the requirement(s) providing the more protective coverage for both OCSD and the Third Parties shall control and be purchased and maintained by CONTRACTOR.

A. Limits of Insurance

1. General Liability: Seven Million Dollars (\$7,000,000) per occurrence and a general aggregate limit of Seven Million Dollars (\$7,000,000) for bodily injury, personal injury and property damage. Coverage shall include each of the following:

- a. Premises-Operations.
- b. Products and Completed Operations, with limits of at least Seven Million Dollars (\$7,000,000) per occurrence and a general aggregate limit of Seven Million Dollars (\$7,000,000) which shall be in effect at all times during the warranty period set forth in the Warranty section herein, and as set forth in the General Conditions, "Warranty (CONTRACTOR's Guarantee)", plus any additional extension or continuation of time to said warranty period that may be required or authorized by said provisions.
- c. Broad Form Property Damage, expressly including damage arising out of explosion, collapse, or underground damage.
- d. Contractual Liability, expressly including the indemnity provisions assumed under this Contract.
- e. Separation of Insured Clause, providing that coverage applies separately to each insured, except with respect to the limits of liability.
- f. Independent CONTRACTOR's Liability.

To the extent first dollar coverage, including defense of any claim, is not available to OCSD or any other additional insured because of any SIR, deductible, or any other form of self-insurance, CONTRACTOR is obligated to assume responsibility of insurer until the deductible, SIR or other condition of insurer assuming its defense and/or indemnity has been satisfied.

CONTRACTOR shall be responsible to pay any deductible or SIR.

- g. If a crane will be used, the General Liability insurance will be endorsed to add Riggers Liability coverage or its equivalent to cover the usage of the crane and exposures with regard to the crane operators, riggers and others involved in using the crane.

- h. If divers will be used, the General Liability insurance will be endorsed to cover marine liability or its equivalent to cover the usage of divers.
2. Automobile Liability: The CONTRACTOR shall maintain a policy of Automobile 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:
- Either (1) a combined single limit of Five Million Dollars (\$5,000,000) and a general aggregate limit of Five Million Dollars (\$5,000,000) for bodily injury, personal injury and property damage;
- Or alternatively, (2) Five Million Dollars (\$5,000,000) per person for bodily injury and Two Million Dollars (\$2,000,000) per accident for property damage.
3. Umbrella Excess Liability: The minimum limits of general liability and automobile liability insurance required, as set forth above, shall be provided for either in a single policy of primary insurance or a combination of policies of primary and umbrella excess coverage. 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 automobile liability.
4. Drone Liability Insurance: If a drone will be used, drone liability insurance must be maintained by CONTRACTOR in the amount of One Million Dollars (\$1,000,000) in a form acceptable by OCSD.
5. Worker's Compensation/Employer's Liability: CONTRACTOR shall provide such Worker's Compensation Insurance as required by the Labor Code of the State of California, including employer's liability with a minimum limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. If an exposure to Jones Act

liability may exist, the insurance required herein shall include coverage with regard to Jones Act claims.

Where permitted by law, CONTRACTOR hereby waives all rights of recovery by subrogation because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or any other reason against OCSD, its or their officers, agents, or employees, and any other contractor or subcontractor performing Work or rendering services on behalf of OCSD in connection with the planning, development and construction of the Project. In all its insurance coverages related to the Work, CONTRACTOR shall include clauses providing that each insurer shall waive all of its rights of recovery by subrogation against OCSD, its or their officers, agents, or employees, or any other contractor or subcontractor performing Work or rendering services at the Project. Where permitted by law, CONTRACTOR shall require similar written express waivers and insurance clauses from each of its Subcontractors of every tier. A waiver of subrogation shall be effective as to any individual or entity, even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium, directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

6. Pollution Liability Insurance: CONTRACTOR shall purchase and maintain insurance for pollution liability covering bodily injury, property damage (including loss of use of damaged property or property that has not been physically injured or destroyed), cleanup costs, and defense costs (including costs and expenses for investigation, defense, or settlement of claims). Coverage shall carry limits of at least Five Million Dollars (\$5,000,000) and shall apply to sudden and non-sudden pollution conditions

(including sewage spills), both at the site or needed due to migration of pollutants from the site, resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials, or other irritants, contaminants or pollutants.

If CONTRACTOR provides coverage written on a claims-made basis, OCSD has the right to approve or reject such coverage in its own discretion. If written on a claims-made basis, the CONTRACTOR warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract, and that continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of two years beginning from the time that the Project under this Contract is completed.

7. Limits are Minimums: If CONTRACTOR maintains higher limits than the minimums shown in this Section, OCSD requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR.

B. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by OCSD. At the option of OCSD, either: the Insurer shall reduce or eliminate such deductibles or self-insured retentions as respects OCSD, its Directors, officers, agents, CONSULTANTS, and employees; or CONTRACTOR shall provide a financial guarantee satisfactory to OCSD guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

C. Other Insurance Provisions

1. Each such policy of General Liability Insurance and Automobile Liability Insurance shall be endorsed to contain, the following provisions:

- a. OCSD, its Directors, officers, agents, CONSULTANTS, and employees, and all public agencies from whom permits will be obtained, and their Directors, officers, agents, and employees are hereby declared to be additional insureds under the terms of this policy, but only with respect to the operations of CONTRACTOR at or from any of the sites of OCSD in connection with this Contract, or acts and omissions of the additional insured in connection with its general supervision or inspection of said operations related to this Contract.
 - b. Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by OCSD shall be excess only and not contributing with insurance provided under this policy.
2. 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 by certified mail, return receipt requested, and that coverage shall not be cancelled for non-payment of premium except after ten (10) days prior written notice by certified mail, return receipt requested. Should there be changes in coverage or an increase in deductible or SIR amounts, CONTRACTOR undertakes to procure a manuscript endorsement from its insurer giving 30 days prior notice of such an event to OCSD, or to have its insurance broker/agent send to OCSD a certified letter describing the changes in coverage and any increase in deductible or SIR amounts. The certified letter must be sent Attention: Risk Management and shall be received not less than twenty (20) days prior to the effective date of the change(s). The letter must be signed by a Director or Officer of the broker/agent and must be on company letterhead, and may be sent via e-mail in pdf format.

3. Coverage shall not extend to any indemnity coverage for the active negligence of any additional insured in any case where an agreement to indemnify the additional insured would be invalid under California Civil Code Section 2782(b).
4. If required by a public agency from whom permit(s) will be obtained, each policy of General Liability Insurance and Automobile Liability Insurance shall be endorsed to specify by name the public agency and its legislative members, officers, agents, CONSULTANTS, and employees, to be additional insureds.

D. Acceptability of Insurers

Insurers must have an "A-", or better, Policyholder's Rating, and a Financial Rating of at least Class VIII, or better, in accordance with the most current A.M. Best Rating Guide. OCSD recognizes that State Compensation Insurance Fund has withdrawn from participation in the A.M. Best Rating Guide process. Nevertheless, OCSD will accept State Compensation Insurance Fund for the required policy of worker's compensation insurance, subject to OCSD's option, at any time during the term of this Contract, to require a change in insurer upon twenty (20) days written notice. Further, OCSD will require CONTRACTOR to substitute any insurer whose rating drops below the levels herein specified. Said substitution shall occur within twenty (20) days of written notice to CONTRACTOR by OCSD or its agent.

E. Verification of Coverage

CONTRACTOR shall furnish OCSD with original certificates and mandatory endorsements affecting coverage. Said policies and endorsements shall conform to the requirements herein stated. All certificates and endorsements are to be received and approved by OCSD before Work commences. OCSD reserves the right to require complete, certified copies of all required insurance policies, including endorsements, affecting the coverage required by these Specifications at any time.

F. Subcontractors

CONTRACTOR shall be responsible to establish insurance requirements for any Subcontractors hired by CONTRACTOR. The insurance shall be in amounts and types reasonably sufficient to deal with the risk of loss involving the Subcontractor's operations and work. OCSD and any public agency issuing permits for the Project must be named as "Additional Insured" on any General Liability or Automobile Liability policy obtained by a Subcontractor. The CONTRACTOR must obtain copies and maintain current versions of all Subcontractors' policies, Certificate of Liability and mandatory endorsements effecting coverage. Upon request, CONTRACTOR must furnish OCSD with the above referenced required documents.

G. Required Forms and Endorsements

1. Required ACORD Form

- a. Certificate of Liability Form 25

2. Required Insurance Services Office, Inc. Endorsements (when alternative forms are shown, they are listed in order of preference)

In the event any of the following forms are cancelled by Insurance Services Office, Inc. (ISO), or are updated, the ISO replacement form or equivalent must be supplied.

- | | | |
|----|--|---|
| a. | Commercial General Liability | Form CG-0001 10 01 |
| b. | Additional Insured Including
Products-Completed Operations | Form CG-2010 10 01 and
Form CG-2037 10 01 |
| c. | Waiver of Transfer of Rights of
Recovery Against Others to Us/
Waiver of Subrogation | Form CG-2404 11 85; or
Form CG-2404 10 93 |

3. Required State Compensation Insurance Fund Endorsements

- | | | |
|----|-----------------------|----------------------|
| a. | Waiver of Subrogation | Endorsement No. 2570 |
| b. | Cancellation Notice | Endorsement No. 2065 |

4. Additional Required Endorsements

- a. Notice of Policy Termination Manuscript Endorsement

5. Pollution Liability Endorsements

There shall be a Separation of Insured Clause or endorsement, providing that coverage applies separately to each insured, except with respect to the limits of liability. There shall also be an endorsement or policy language containing a waiver of subrogation rights on the part of the insurer.

OCSD, its directors, officers, agents, CONSULTANTS and employees and all public agencies from whom permits will be obtained as well as their directors, officers, agents, and employees shall be included as insureds under the policy. Any additional insured endorsement shall contain language at least as broad as the coverage language contained in ISO form CG 20 10 11 85 or alternatively in both CG 20 10 10 01 and CG 20 37 10 01 together.

SECTION – 17 RISK AND INDEMNIFICATION

All Work covered by this Contract done at the site of construction or in preparing or delivering materials to the site shall be at the risk of CONTRACTOR alone. CONTRACTOR shall save, indemnify, defend, and keep OCSD and others harmless as more specifically set forth in General Conditions, "General Indemnification".

SECTION – 18 TERMINATION

This Contract may be terminated in whole or in part in writing by OCSD in the event of substantial failure by the CONTRACTOR to fulfill its obligations under this Agreement, or it may be terminated by OCSD for its convenience provided that such termination is effectuated in a manner and upon such conditions set forth more particularly in General Conditions, "Termination for Default" and/or "Termination for Convenience", provided that no termination

may be effected unless proper notice is provided to CONTRACTOR at the time and in the manner provided in said General Conditions. If termination for default or convenience is effected by OCSD, an equitable adjustment in the price provided for in this Contract shall be made at the time and in the manner provided in the General Conditions, "Termination for Default" and "Termination for Convenience".

SECTION – 19 WARRANTY

The CONTRACTOR agrees to perform all Work under this Contract in accordance with the Contract Documents, including OCSD's designs, Drawings and Specifications.

The CONTRACTOR guarantees for a period of at least one (1) year from the date of Final Acceptance of the Work, pursuant to the General Conditions, "Final Acceptance and Final Completion" that the completed Work is free from all defects due to faulty materials, equipment or workmanship and that it shall promptly make whatever adjustments or corrections which may be necessary to cure any defects, including repairs of any damage to other parts of the system resulting from such defects. OCSD shall promptly give notice to the CONTRACTOR of observed defects. In the event that the CONTRACTOR fails to make adjustments, repairs, corrections or other work made necessary by such defects, OCSD may do so and charge the CONTRACTOR the cost incurred. The CONTRACTOR's warranty shall continue as to any corrected deficiency until the later of (1) the remainder of the original one-year warranty period; or (2) one year after acceptance by OCSD of the corrected Work. The Performance Bond and the Payment Bond shall remain in full force and effect through the guarantee period.

The CONTRACTOR's obligations under this clause are in addition to the CONTRACTOR's other express or implied assurances under this Contract, including but not limited to specific manufacturer or other extended warranties specified in the Plans and Specifications, or state

law and in no way diminish any other rights that OCSD may have against the CONTRACTOR for faulty materials, equipment or Work.

SECTION – 20 ASSIGNMENT

No assignment by the CONTRACTOR of this Contract or any part hereof, or of funds to be received hereunder, will be recognized by OCSD unless such assignment has had prior written approval and consent of OCSD and the Surety.

SECTION – 21 RESOLUTION OF DISPUTES

OCSD and the CONTRACTOR shall comply with the provisions of California Public Contract Code Section 20104 et. seq., regarding resolution of construction claims for any Claims which arise between the CONTRACTOR and OCSD, as well as all applicable dispute and Claims provisions as set forth in the General Conditions and as otherwise required by law.

SECTION – 22 SAFETY & HEALTH

CONTRACTOR shall comply with all applicable safety and health requirements mandated by federal, state, city and/or public agency codes, permits, ordinances, regulations, and laws, as well as these Contract Documents, including but not limited to the General Requirements, Section entitled “Safety” and Exhibit B OCSD Safety Standards.

SECTION – 23 NOTICES

Any notice required or permitted under this Contract shall be sent by certified mail, return receipt requested, at the address set forth below. Any party whose address changes shall notify the other party in writing.

TO OCSD: Orange County Sanitation District
 10844 Ellis Avenue
 Fountain Valley, California 92708-7018
 Attn: Clerk of the Board

Copy to: Orange County Sanitation District
 10844 Ellis Avenue
 Fountain Valley, California 92708-7018
 Attn: Construction Manager

 Bradley R. Hogin, Esquire
 Woodruff, Spradlin & Smart
 555 Anton Boulevard
 Suite 1200
 Costa Mesa, California 92626

TO CONTRACTOR: Shimmick Construction Co., Inc.
 530 Technology Drive, Suite 300
 Irvine, CA 92618

Copy to: Matthew Kuzmick, Executive Vice-President –
 Southwest Area
 Shimmick Construction Co., Inc.
 530 Technology Drive, Suite 300
 Irvine, CA 92618

CONFORMED

C-CA-022619
PROJECT NO. P2-123
RETURN ACTIVATED SLUDGE PIPING REPLACEMENT AT PLANT NO. 2

IN WITNESS WHEREOF, the parties hereto have executed this Contract Agreement as the date first hereinabove written.

CONTRACTOR: Shimmick Construction Co., Inc.
530 Technology Drive, Suite 300
Irvine, CA 92618

By _____

Printed Name

Its _____

CONTRACTOR's State License No. 594575 (Expiration Date – 5/31/2020)

OCSD: Orange County Sanitation District

By _____

David John Shawver
Board Chairman

By _____

Kelly A. Lore
Clerk of the Board

By _____

Ruth Zintzun
Purchasing & Contracts Manager

EXHIBIT A
SCHEDULE OF PRICES

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EXHIBIT A

SCHEDULE OF PRICES

EXA-1 BASIS OF COMPENSATION

CONTRACTOR will be paid the Contract Price according to the Schedule of Prices, and all other applicable terms and conditions of the Contract Documents.

EXA-2 PROGRESS PAYMENTS

Progress payments will be made in accordance with all applicable terms and conditions of the Contract Documents, including, but not limited to:

1. Contract Agreement – Section 11 – “Contract Price and Method of Payment;”
2. General Conditions – “Payment – General”;
3. General Conditions – “Payment – Applications for Payment”;
4. General Conditions – “Payment – Mobilization Payment Requirements;”
5. General Conditions – “Payment – Itemized Breakdown of Contract Lump Sum Prices”;
6. General Conditions – “Contract Price Adjustments and Payments”;
7. General Conditions – “Suspension of Payments”;
8. General Conditions – “OCSD’s Right to Withhold Certain Amounts and Make Application Thereof”; and
9. General Conditions – “Final Payment.”

EXA-3 RETENTION AND ESCROW ACCOUNTS

A. Retention:

OCSD shall retain a percentage of each progress payment to assure satisfactory completion of the Work. The amount to be retained from each progress payment shall be determined as provided in General Conditions – “Retained Funds; Substitution of Securities”. In all contracts between CONTRACTOR and its Subcontractors and/or Suppliers, the retention may not exceed the percentage specified in the Contract Documents.

B. Substitution of Securities:

CONTRACTOR may, at its sole expense, substitute securities as provided in General Conditions – “Retained Funds; Substitution of Securities.” Payment of Escrow Agent:

In lieu of substitution of securities as provided above, the CONTRACTOR may request and OCSD shall make payment of retention earned directly to the escrow agent at the expense of the CONTRACTOR. At the expense of the CONTRACTOR, the CONTRACTOR may direct the investment of the payments into securities consistent with Government Code §16430 and the CONTRACTOR shall receive the interest earned on the investments upon the same terms provided for in this article for securities deposited by the CONTRACTOR. Upon satisfactory completion of the Contract, the CONTRACTOR shall receive from the escrow agent all securities, interest and payments received by the escrow agent from OCSD, pursuant to the terms of this article. The CONTRACTOR shall pay to each Subcontractor, not later than twenty (20) calendar days after receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each Subcontractor, on the amount of retention withheld to ensure the performance of the Subcontractor. The escrow agreement used by the escrow agent pursuant to this article shall be substantially similar to the form set forth in §22300 of the California Public Contract Code.

C. Release of Retention:

Upon Final Acceptance of the Work, the CONTRACTOR shall submit an invoice for release of retention in accordance with the terms of the Contract.

D. Additional Deductibles:

In addition to the retentions described above, OCSD may deduct from each progress payment any or all of the following:

1. Liquidated Damages that have occurred as of the date of the application for progress payment;
2. Deductions from previous progress payments already paid, due to OCSD's discovery of deficiencies in the Work or non-compliance with the Specifications or any other requirement of the Contract;
3. Sums expended by OCSD in performing any of the CONTRACTOR'S obligations under the Contract that the CONTRACTOR has failed to perform, and;
4. Other sums that OCSD is entitled to recover from the CONTRACTOR under the terms of the Contract, including without limitation insurance deductibles and assessments.

The failure of OCSD to deduct any of the above-identified sums from a progress payment shall not constitute a waiver of OCSD's right to such sums or to deduct them from a later progress payment.

EXA-4 STOP PAYMENT NOTICE

In addition to other amounts properly withheld under this article or under other provisions of the Contract, OCSD shall retain from progress payments otherwise due the CONTRACTOR an amount equal to one hundred twenty-five percent (125%) of the amount claimed under any stop payment notice under Civil Code §9350 et. seq. or other lien filed against the CONTRACTOR for labor, materials, supplies, equipment, and any other thing of value claimed to have been furnished to and/or incorporated into the Work; or for any other alleged contribution thereto. In addition to the foregoing and in accordance with Civil Code §9358 OCSD may also satisfy its duty to withhold funds for stop payment notices by refusing to release funds held in escrow pursuant to public receipt of a release of stop payment notice executed by a stop payment notice claimant, a stop payment notice release bond, an order of a court of competent jurisdiction, or other evidence satisfactory to OCSD that the CONTRACTOR has resolved such claim by settlement.

EXA-5 PAYMENT TO SUBCONTRACTORS

Requirements

1. The CONTRACTOR shall pay all Subcontractors for and on account of Work performed by such Subcontractors, not later than seven (7) days after receipt of each progress payment as required by the California Business and Professions Code §7108.5. Such payments to Subcontractors shall be based on the measurements and estimates made pursuant to article progress payments provided herein.
2. Except as specifically provided by law, the CONTRACTOR shall pay all Subcontractors any and all retention due and owing for and on account of Work performed by such Subcontractors not later than seven (7) days after CONTRACTOR'S receipt of said retention proceeds from OCSD as required by the California Public Contract Code §7107.

EXA-6 PAYMENT OF TAXES

Unless otherwise specifically provided in this Contract, the Contract Price includes full compensation to the CONTRACTOR for all taxes. The CONTRACTOR shall pay all federal, state, and local taxes, and duties applicable to and assessable against any Work, including but not limited to retail sales and use, transportation, export, import, business, and special taxes. The CONTRACTOR shall ascertain and pay the taxes when due. The CONTRACTOR will maintain auditable records, subject to OCSD reviews, confirming that tax payments are current at all times.

EXA-7 FINAL PAYMENT

After Final Acceptance of the Work, as more particularly set forth in the General Conditions, "Final Acceptance and Final Completion", and after Resolution of the Board authorizing final payment and satisfaction of the requirements as more particularly set forth in General Conditions – "Final Payment", a final payment will be made as follows:

1. Prior to Final Acceptance, the CONTRACTOR shall prepare and submit an application for Final Payment to OCSD, including:
 - a. The proposed total amount due the CONTRACTOR, segregated by items on the payment schedule, amendments, Change Orders, and other bases for payment;
 - b. Deductions for prior progress payments;
 - c. Amounts retained;
 - d. A conditional waiver and release on final payment for each Subcontractor (per Civil Code Section 8136);
 - e. A conditional waiver and release on final payment on behalf of the CONTRACTOR (per Civil Code Section 8136);
 - f. List of Claims the CONTRACTOR intends to file at that time or a statement that no Claims will be filed,
 - g. List of pending unsettled claims, stating claimed amounts, and copies of any and all complaints and/or demands for arbitration received by the CONTRACTOR; and
 - h. For each and every claim that resulted in litigation or arbitration which the CONTRACTOR has settled, a conformed copy of the Request for Dismissal with prejudice or other satisfactory evidence the arbitration is resolved.
2. The application for Final Payment shall include complete and legally effective releases or waivers of liens and stop payment notices satisfactory to OCSD, arising out of or filed in connection with the Work. Prior progress payments shall be subject to correction in OCSD's review of the application for Final Payment. Claims filed with the application for Final Payment must be otherwise timely under the Contract and applicable law.
3. Within a reasonable time, OCSD will review the CONTRACTOR'S application for Final Payment. Any recommended changes or corrections will then be forwarded to the CONTRACTOR. Within ten (10) calendar days after receipt of recommended changes from OCSD, the CONTRACTOR will make the changes, or list Claims that will be filed as a result of the changes, and shall submit the revised application for Final

Payment. Upon acceptance by OCSD, the revised application for Final Payment will become the approved application for Final Payment.

4. If no Claims have been filed with the initial or any revised application for Final Payment, and no Claims remain unsettled within thirty-five (35) calendar days after Final Acceptance of the Work by OCSD, and agreements are reached on all issues regarding the application for Final Payment, OCSD, in exchange for an executed release, satisfactory in form and substance to OCSD, will pay the entire sum found due on the approved application for Final Payment, including the amount, if any, allowed on settled Claims.
5. The release from the CONTRACTOR shall be from any and all Claims arising under the Contract, except for Claims that with the concurrence of OCSD are specifically reserved, and shall release and waive all unreserved Claims against OCSD and its officers, directors, employees and authorized representatives. The release shall be accompanied by a certification by the CONTRACTOR that:
 - a. It has resolved all Subcontractors, Suppliers and other Claims that are related to the settled Claims included in the Final Payment;
 - b. It has no reason to believe that any party has a valid claim against the CONTRACTOR or OCSD which has not been communicated in writing by the CONTRACTOR to OCSD as of the date of the certificate;
 - c. All warranties are in full force and effect, and;
 - d. The releases and the warranties shall survive Final Payment.
6. If any claims remain open, OCSD may make Final Payment subject to resolution of those claims. OCSD may withhold from the Final Payment an amount not to exceed one hundred fifty percent (150%) of the sum of the amounts of the open claims, and one hundred twenty-five percent (125%) of the amounts of open stop payment notices referred to in article entitled stop payment notices herein.
7. The CONTRACTOR shall provide an unconditional waiver and release on final payment from each Subcontractor and Supplier providing Work under the Contract (per Civil Code Section 8138) and an unconditional waiver and release on final payment on behalf of the CONTRACTOR (per Civil Code Section 8138) within thirty (30) days of receipt of Final Payment.

EXA-8 DISCOVERY OF DEFICIENCIES BEFORE AND AFTER FINAL PAYMENT

Notwithstanding OCSD's acceptance of the application for Final Payment and irrespective of whether it is before or after Final Payment has been made, OCSD shall not be precluded from subsequently showing that:

1. The true and correct amount payable for the Work is different from that previously accepted;

2. The previously-accepted Work did not in fact conform to the Contract requirements, or;
3. A previous payment or portion thereof for Work was improperly made.

OCSD also shall not be stopped from demanding and recovering damages from the CONTRACTOR, as appropriate, under any of the foregoing circumstances as permitted under the Contract or applicable law.

ATTACHMENT 1 – CERTIFICATION FOR REQUEST FOR PAYMENT

I hereby certify under penalty of perjury as follows:

That the claim for payment is in all respects true, correct; that the services mentioned herein were actually rendered and/or supplies delivered to OCSD in accordance with the Contract.

I understand that it is a violation of both the federal and California False Claims Acts to knowingly present or cause to be presented to OCSD a false claim for payment or approval.

A claim includes a demand or request for money. It is also a violation of the False Claims Acts to knowingly make use of a false record or statement to get a false claim paid. The term "knowingly" includes either actual knowledge of the information, deliberate ignorance of the truth or falsity of the information, or reckless disregard for the truth or falsity of the information. Proof of specific intent to defraud is not necessary under the False Claims Acts. I understand that the penalties under the Federal False Claims Act and State of California False Claims Act are non-exclusive, and are in addition to any other remedies which OCSD may have either under contract or law.

I hereby further certify, to the best of my knowledge and belief, that:

1. The amounts requested are only for performance in accordance with the Specifications, terms, and conditions of the Contract;
2. Payments to Subcontractors and Suppliers have been made from previous payments received under the Contract, and timely payments will be made from the proceeds of the payment covered by this certification;
3. This request for progress payments does not include any amounts which the prime CONTRACTOR intends to withhold or retain from a Subcontractor or Supplier in accordance with the terms and conditions of the subcontract; and
4. This certification is not to be construed as Final Acceptance of a Subcontractor's performance.

Name

Title

Date

CONFORMED

C-EXA-080414
PROJECT NO. P2-123
RETURN ACTIVATED SLUDGE PIPING REPLACEMENT AT PLANT NO. 2

ATTACHMENT 2 – SCHEDULE OF PRICES

See next pages from the Bid submittal Forms (Shimmick Construction Co., Inc.):

BF-14 Schedule of Prices, Pages 1-3

Bid Submitted By: Shimmick Construction Co, Inc.
(Name of Firm)

BF-14 SCHEDULE OF PRICES

INSTRUCTIONS

A. General

For Unit Prices, it is understood that the following quantities are approximate only and are solely for the purpose of estimating the comparison of Bids, and that the actual value of Work will be computed based upon the actual quantities in the completed Work, whether they be more or less than those shown. CONTRACTOR's compensation for the Work under the Contract Documents will be computed based upon the lump sum amount of the Contract at time of award, plus any additional or deleted costs approved by OCSD via approved Change Orders, pursuant to the Contract Documents.

Bidder shall separately price and accurately reflect costs associated with each line item, leaving no blanks. Any and all modifications to the Bid must be initialed by an authorized representative of the Bidder in accordance with the Instructions to Bidders, Preparation of Bid.

Bidders are reminded of Instruction to Bidders, Discrepancy in Bid Items, which, in summary, provides that the total price for each item shall be based on the Unit Price listed for each item multiplied by the quantity; and the correct Total Price for each item shall be totaled to determine the Total Amount of Bid.

All applicable costs including overhead and profit shall be reflected in the respective unit costs and the TOTAL AMOUNT OF BID. The Bid price shall include all costs to complete the Work, including profit, overhead, etc., unless otherwise specified in the Contract Documents. All applicable sales taxes, state and/or federal, and any other special taxes, patent rights or royalties shall be included in the prices quoted in this Bid.

B. Basis of Award

AWARD OF THE CONTRACT WILL BE MADE ON THE BASIS OF THE LOWEST RESPONSIVE AND RESPONSIBLE BID.

Note 1: Base Bid. Includes all costs necessary to furnish all labor, materials, equipment and services for the construction of the Project per the Contract Documents.

Bid Submitted By: Shimmick Construction Company, Inc.
(Name of Firm)

EXHIBIT A
SCHEDULE OF PRICES

BASE BID ITEMS (Refer to Note 1 in the Instructions):

Item No.	Description	Unit of Measurement	Approx Qty	Unit Price	Extended Price
1.	Mobilization: The amount for this Bid Item shall not exceed 4% of the Total Amount of Bid and shall be in conformance with the Contract Documents for the lump sum price of... All amounts included in this Bid Item greater than the allowable maximum payment of 4% of the Total Amount of Bid shall be paid under the Bid Item "Demobilization".	Lump Sum	1		= \$ 240,000.00
2.	Hazardous Material Mitigation and Controls: This item includes all labor, material, and equipment necessary to mitigate, remove, and properly dispose of all Hazardous Waste including Lead and Asbestos. Work shall be performed in accordance with the plans and specifications.	Lump Sum	1		= \$ 114,588.00
3.	Crack Repair: This item includes all labor, material, and equipment for surface preparation and expanding polyurethane injection for Aeration Basin cracks. Unit price bid shall include labor, equipment, and materials needed for confined space entry into aeration basin during application of crack injection. Work shall be performed in accordance with the plans and specifications for the linear foot unit price of...	Linear Feet	1290	X \$ 126.14	= \$ 163,494.60
4.	Spall Repair: This item includes all labor, material, and equipment for saw cutting, substrate concrete removal, substrate and rebar preparation and mortar repair of spalled/delamination aeration basin surfaces. Work shall be performed in accordance with the plans and specifications for the square foot unit price of...	Square Feet	4945	X \$ 86.15	= \$ 429,167.75

BF-14 SCHEDULE OF PRICES

C-BF-121817
PROJECT NO. P2-123
RETURN ACTIVATED SLUDGE PIPING REPLACEMENT AT PLANT NO. 2
ADDENDUM NO. 1

Bid Submitted By: Shimmick Construction Company, Inc.
(Name of Firm)

EXHIBIT A
SCHEDULE OF PRICES
(continued)

Item No.	Description	Unit of Measurement	Approx Qty	Unit Price	Extended Price
5.	Completion of Work: This item includes labor, materials, and equipment necessary for all portions of Work set forth in the Contract Documents except for the Work performed in Items 1, 2, 3, 4, and 6, as described in Division 01, Section 01155 and in conformance with the Contract Documents for a lump sum price of...	Lump Sum	1		= \$ <u>5,033,060.00</u>
6.	Demobilization: The amount for this Bid Item shall not be less than 1% of the Total Amount of Bid and shall include but not be limited to the acceptance of Work by OCSD, completion of all items on final punch list, final cleanup and processing of final progress payment request, in conformance with the Contract Documents for a lump sum price of ... All amounts greater than 4% which were included in Bid Item 1 Mobilization shall be paid under this Demobilization Bid Item.	Lump Sum	1		= \$ <u>61,000.00</u>

TOTAL AMOUNT OF BID (BASIS OF AWARD)

\$ 6,042,110.35



OPERATIONS COMMITTEE

Agenda Report

File #: 2019-529

Agenda Date: 9/4/2019

Agenda Item No: 9.

FROM: James D. Herberg, General Manager
Originator: Rob Thompson, Assistant General Manager

SUBJECT:

PLANT NO. 2 EFFLUENT PUMP STATION ANNEX, VARIABLE FREQUENCY DRIVE MODERNIZATION, AND MANUFACTURER SERVICE AGREEMENT

GENERAL MANAGER'S RECOMMENDATION

RECOMMENDATION: Recommend to the Board of Directors to:

- A. Approve Sole Source Purchase Order to the Original Equipment Manufacturer, Siemens Industry, Inc., to modernize three Effluent Pump Station Annex (EPSA) Variable Frequency Drives (VFDs) for a fixed amount not to exceed \$368,879, plus applicable tax and shipping;
- B. Approve Sole Source Purchase Order for SIEPRO® Technical Service Agreement with Siemens Industry, Inc. to perform annual preventative maintenance, for a three-year period, for an amount not to exceed \$68,805, plus applicable tax and shipping; and
- C. Approve contingency funds of 20% for each contract, for a combined total not to exceed \$87,537.

BACKGROUND

The Orange County Sanitation District (Sanitation District) operates three 3,000 horsepower EPSA pumps at Plant No. 2, each rated for 120 million gallons per day (mgd), designed to pump secondary effluent through the ocean outfall system to the Pacific Ocean. These pumps are driven by a Siemens Sinamics Perfect Harmony Medium Voltage VFD with the NXGI digital control system. They were installed in 2008 through Project No. J-77, Effluent Pump Station Annex, that replaced Foster Booster Pump Station.

RELEVANT STANDARDS

- Maintain a proactive asset management program
- Meet volume and water quality needs for the GWRS
- 24/7/365 treatment plant reliability

PROBLEM

The manufacturer has announced the obsolescence of critical components within the NXGI digital

control system of the VFD. Should any of the obsolete components fail, replacement parts are no longer available from the manufacturer which could result in considerable downtime. In addition, the drives are halfway through their anticipated life cycle. An increased level of major preventative maintenance is required to maintain optimum operating conditions and increased reliability to the process.

During construction of Project No. J-117B, Outfall Low Flow Pump Station, one or two Ocean Outfall Booster Station (OOPS) pumps will be unavailable due to scheduled rehabilitation. At this point, reliable EPSA pumps become increasingly critical to maintain our ocean outfall capacity.

PROPOSED SOLUTION

Award two contracts to the original equipment manufacturer, Siemens Industry, Inc. One contract is to upgrade obsolete components in the NXGI digital control system to the latest NXG Pro to include refurbishing the power cells. This modernization will reset the asset lifecycle to 20 years when maintained to the manufacturer's recommendation.

The second contract is to procure a three-year Technical Service Agreement (TSA) for scheduled annual maintenance. Under this service agreement, the Sanitation District will benefit from an 8% discount to the upgrade and refurbishment cost of the first contract. This savings will recoup about 57% of the TSA contract cost while maintaining the highest possible uptime of the drives.

TIMING CONCERNS

Construction for Project No. J-117B and OOPS pumps rehabilitation is scheduled to start in summer of 2020. Current plans call for completing all three drives no later than one year from Notice to Proceed.

RAMIFICATIONS OF NOT TAKING ACTION

Reliability of ocean outfall pumping capacity is reduced and EPSA VFD failures will disrupt Project No. J-117B.

PRIOR COMMITTEE/BOARD ACTIONS

N/A

ADDITIONAL INFORMATION

Due to operational constraints involved with the release of the EPSA VFDs and need for vendor to make multiple site visits to support each VFD start-up, a 20% contingency is proposed.

CEQA

N/A

FINANCIAL CONSIDERATIONS

This request complies with authority levels of the Sanitation District's Purchasing Ordinance. This recommendation would be funded under the Repairs and Maintenance line item for Operations and Maintenance Department (Budget Update Fiscal Year 2019-20, Page 47), and the available funding is sufficient for this action.

<u>Date of Approval</u>	<u>Contract Amount</u>	<u>Contingency</u>
09/04/2019	\$437,684	\$87,537 (20%)

ATTACHMENT

The following attachment(s) may be viewed on-line at the OCSD website (www.ocsd.com) with the complete agenda package:

N/A

RM:ab:gc



Orange County Sanitation District

Administration Building
10844 Ellis Avenue
Fountain Valley, CA 92708
(714) 593-7433

OPERATIONS COMMITTEE

Agenda Report

File #: 2019-518

Agenda Date: 9/4/2019

Agenda Item No: 10.

FROM: James D. Herberg, General Manager
Originator: Kathy Millea, Director of Engineering

SUBJECT:

PROCESS CONTROL SYSTEMS UPGRADES STUDY, PROJECT NO. SP-196

GENERAL MANAGER'S RECOMMENDATION

RECOMMENDATION:

Information Only.

BACKGROUND

The Supervisory Control and Data Acquisition (SCADA) system provides essential process monitoring, control, and archiving of process data, which is required for regulatory compliance. The existing SCADA system utilizes programmable logic controllers (PLCs) and a Human-Machine-Interface (HMI) system consisting of networks, servers, workstations, software, and a data archiving system referred to as a historian. This system provides automatic control and allows operators to interactively monitor and control the process facilities from centralized areas, assuring that the systems are performing properly and that alarm conditions can be monitored and responded to immediately.

The existing HMI is no longer supported and requires emulation software to use Windows-based workstations. The HMI software package, CRISP, is no longer supported by any vendor. There are a few people in the workforce outside the Orange County Sanitation District (Sanitation District) who can make software changes to support the current and future needs of the Sanitation District. This system is likely to become increasingly difficult to service and maintain with time.

Furthermore, the existing standard PLC model has reached the end of commercial availability and requires the selection of a new model for future designs. Sufficient spare parts have been purchased by the Sanitation District for system maintenance; however, a long-term solution is required.

Process Control Systems Upgrades Study, Project No. SP-196, which was awarded by the Board of Directors on February 28, 2018, is conducting a study and multi-phase procurement to evaluate and select a vendor platform that will replace the SCADA system. The outcome of this study will select a vendor and develop a scope of work and procurement strategy to replace existing SCADA systems as part of the future Process Control Systems Upgrades, Project No. J-120. The team is at a major milestone with the project in their evaluation of different vendor packages and would like to provide an update.

Staff will present an overview and update of the Process Control Systems Upgrades Study, Project No. SP-196.

RELEVANT STANDARDS

- Sustain 1, 5, 20-year horizons
- 24/7/365 treatment plant reliability

PRIOR COMMITTEE/BOARD ACTIONS

February 2018 - Approved a Professional Services Agreement with Stantec Consulting Services, Inc. to provide engineering services for the Process Control Systems Upgrades Study, Project No. SP-196, for an amount not to exceed \$1,398,866, and approved a contingency of \$139,887 (10%).

ADDITIONAL INFORMATION

N/A

CEQA

The proposed Process Control Systems Upgrades Study, Project No. SP-196, will be used solely as a planning tool to evaluate possible future actions and develop long-term planning strategies for upgrading the current system. The Sanitation District has not approved, adopted, funded, or otherwise authorized any future actions relating to the Process Control Systems or any other facilities to be analyzed in the Study. The Study is therefore eligible for an exemption from CEQA under CEQA Guidelines section 15262 and no further action is required.

The Sanitation District filed and recorded a Notice of Exemption for this project with the County of Orange Clerk-Recorder on March 1, 2018.

FINANCIAL CONSIDERATIONS

This item is informational and does not require any commitment of funds.

ATTACHMENT

The following attachment(s) may be viewed on-line at the OCSD website (www.ocsd.com) with the complete agenda package:

N/A