



**Orange County Sanitation District
OPERATIONS COMMITTEE
Regular Meeting Agenda
Wednesday, October 2, 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, lttyner@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 Committee 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 Committee 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.

- Headquarters Complex Ad Hoc Committee Meeting Update

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**[2019-591](#)****RECOMMENDATION:**

Approve Minutes of the Regular Meeting of the Operations Committee held September 4, 2019.

Originator: Kelly Lore

Attachments: [Agenda Report](#)
[09-04-2019 Operations Committee Minutes](#)

2. UPS AND BATTERY CHARGER MAINTENANCE**[2019-537](#)****RECOMMENDATION:**

- A. Approve a purchase order service contract with Odyssey Power Corporation for uninterruptible power supply (UPS) and battery charger inspection and preventative maintenance services for Plant Nos. 1 and 2 and pump stations, per Specification S-2019-1081BD, for a total amount not to exceed \$125,490 for the period of October 1, 2019 through September 30, 2020, with four, one-year renewal options; and

- B. Approve a contingency of \$25,098 (20%) for each contract period.

Originator: Rob Thompson

Attachments: [Agenda Report](#)
[S-2019-1081BD SERVICE CONTRACT](#)

NON-CONSENT:

3. TUSTIN AVENUE MANHOLE AND PIPE REPAIR, PROJECT NO. [2019-584](#)
FE17-06

RECOMMENDATION: Recommend to the Board of Directors to:

- A. Receive and file Bid Tabulation and Recommendation for Tustin Avenue Manhole and Pipe Repair, Project No. FE17-06;
- B. Award a Construction Contract to Nuline Technologies, LLC for Tustin Avenue Manhole and Pipe Repair, Project No. FE17-06, for a total amount not to exceed \$350,000; and
- C. Approve a contingency of \$35,000 (10%).

Originator: Kathy Millea

Attachments: [Agenda Report](#)
[FE17-06 Construction Contract](#)

4. MP-275/MP-276 CENTRAL GENERATION ENGINE OVERHAULS AT [2019-571](#)
PLANT NOS. 1 AND 2

RECOMMENDATION: Recommend to the Board of Directors to:

- A. Award a service contract to UPS Midstream Services, Inc. to provide Central Generation Engine Overhauls at Plant Nos. 1 and 2 (for a total of two engines), Specification No. S-2019-1074BD, for a total amount not to exceed \$5,636,335; and
- B. Approve a contingency of \$1,127,268 (20%).

Originator: Rob Thompson

Attachments: [Agenda Report](#)
[S-2019-1074BD FINAL SERVICE CONTRACT](#)

INFORMATION ITEMS:

5. ORANGE COUNTY SANITATION DISTRICT'S SAFETY AND SECURITY PROGRAM [2019-598](#)

RECOMMENDATION:

Information Item.

Originator: Celia Chandler

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:

The next Operations Committee meeting is scheduled for Wednesday, November 6, 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 #: 2019-591

Agenda Date: 10/2/2019

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 Regular Meeting of the Operations Committee held September 4, 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 Operations Committee meeting held September 4, 2019



CALL TO ORDER

A meeting of the Operations Committee was called to order by Committee Chair Bob Collacott on Wednesday, September 4, 2019 at 5:03 p.m. in the Administration Building. Director Tim Shaw led the Flag Salute.

DECLARATION OF QUORUM:

A quorum was declared present as follows:

Present: Robert Collacott, Mariellen Yarc, Allan Bernstein, Steve Jones, Lucille Kring, Tim Shaw, Jesus Silva, Fred Smith, David Shawver and John Withers
Absent: Brad Avery, Doug Chaffee, Phil Hawkins and Sandra Massa-Lavitt

STAFF MEMBERS PRESENT: Jim Herberg, General Manager; Rob Thompson, Assistant General Manager; Lorenzo Tyner, Assistant General Manager; Kathy Millea, Director of Engineering; Lan Wiborg, Director of Environmental Services; Kelly Lore, Clerk of the Board; Jennifer Cabral; Don Cutler; Mike Dorman; Dean Fisher; Al Garcia; Rich Leon; Cortney Light; Jeff Mohr; Riaz Moinuddin; Tyler Ramirez; Wally Ritchie; and Eros Yong.

OTHERS PRESENT: Brad Hogin, General Counsel; Bob Ooten, Alternate Director, CMSD; and Austin Mejia, Supervisor Chaffee's office.

PUBLIC COMMENTS:

None.

REPORTS:

A report was not provided by the General Manager or the Committee Chair.

CONSENT CALENDAR:

1. APPROVAL OF MINUTES

[2019-511](#)

Originator: Kelly Lore

MOVED, SECONDED, AND DULY CARRIED TO:

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

Ayes: Robert Collacott, Mariellen Yarc, Allan Bernstein, Steve Jones, Lucille Kring, Tim Shaw, Fred Smith, David Shawver and John Withers

Noes: None

Absent: Brad Avery, Doug Chaffee, Phil Hawkins, Sandra Massa-Lavitt and Jesus Silva

Abstentions: None

2. QUARTERLY ODOR COMPLAINT REPORT

[2019-507](#)

Originator: Rob Thompson

ACTION TAKEN TO:

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

Ayes: Robert Collacott, Mariellen Yarc, Allan Bernstein, Steve Jones, Lucille Kring, Tim Shaw, Fred Smith, David Shawver and John Withers

Noes: None

Absent: Brad Avery, Doug Chaffee, Phil Hawkins, Sandra Massa-Lavitt and Jesus Silva

Abstentions: None

3. CAPITAL IMPROVEMENT PROGRAM CONTRACT PERFORMANCE REPORT

[2019-519](#)

Originator: Kathy Millea

MOVED, SECONDED, AND DULY CARRIED TO:

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

Ayes: Robert Collacott, Mariellen Yarc, Allan Bernstein, Steve Jones, Lucille Kring, Tim Shaw, Fred Smith, David Shawver and John Withers

Noes: None

Absent: Brad Avery, Doug Chaffee, Phil Hawkins, Sandra Massa-Lavitt and Jesus Silva

Abstentions: None

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

[2019-520](#)

Originator: Kathy Millea

MOVED, SECONDED, AND DULY CARRIED TO: 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%).

Ayes: Robert Collacott, Mariellen Yarc, Allan Bernstein, Steve Jones, Lucille Kring, Tim Shaw, Fred Smith, David Shawver and John Withers

Noes: None

Absent: Brad Avery, Doug Chaffee, Phil Hawkins, Sandra Massa-Lavitt and Jesus Silva

Abstentions: None

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

[2019-534](#)

Originator: Rob Thompson

MOVED, SECONDED, AND DULY CARRIED TO: 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%).

Ayes: Robert Collacott, Mariellen Yarc, Allan Bernstein, Steve Jones, Lucille Kring, Tim Shaw, Fred Smith, David Shawver and John Withers

Noes: None

Absent: Brad Avery, Doug Chaffee, Phil Hawkins, Sandra Massa-Lavitt and Jesus Silva

Abstentions: None

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

[2019-530](#)

Originator: Rob Thompson

MOVED, SECONDED, AND DULY CARRIED TO: 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%).

Ayes: Robert Collacott, Mariellen Yarc, Allan Bernstein, Steve Jones, Lucille Kring, Tim Shaw, Fred Smith, David Shawver and John Withers

Noes: None

Absent: Brad Avery, Doug Chaffee, Phil Hawkins, Sandra Massa-Lavitt and Jesus Silva

Abstentions: None

Director Silva arrived at the meeting at 5:11 p.m.

NON-CONSENT:

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

Originator: Kathy Millea

MOVED, SECONDED AND DULY CARRIED TO: 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%).

Ayes: Robert Collacott, Mariellen Yarc, Allan Bernstein, Steve Jones, Lucille Kring, Tim Shaw, Jesus Silva, Fred Smith, David Shawver and John Withers

Noes: None

Absent: Brad Avery, Doug Chaffee, Phil Hawkins and Sandra Massa-Lavitt

Abstentions: None

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

Originator: Kathy Millea

MOVED, SECONDED AND DULY CARRIED TO: 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%).

Ayes: Robert Collacott, Mariellen Yarc, Allan Bernstein, Steve Jones, Lucille Kring, Tim Shaw, Jesus Silva, Fred Smith, David Shawver and John Withers

Noes: None

Absent: Brad Avery, Doug Chaffee, Phil Hawkins and Sandra Massa-Lavitt

Abstentions: None

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

[2019-529](#)

Originator: Rob Thompson

MOVED, SECONDED AND DULY CARRIED TO: 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.

Ayes: Robert Collacott, Mariellen Yarc, Allan Bernstein, Steve Jones, Lucille Kring, Tim Shaw, Jesus Silva, Fred Smith, David Shawver and John Withers

Noes: None

Absent: Brad Avery, Doug Chaffee, Phil Hawkins and Sandra Massa-Lavitt

Abstentions: None

Director Shaw departed the meeting at 5:40 p.m.

INFORMATION ITEMS:

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

Originator: Kathy Millea

Received and filed the information item.

Information Only.

Director Jones departed the meeting at 5:53 p.m.

DEPARTMENT HEAD REPORTS:

The Director of Engineering reported that, at the request of committee Chair Collacott, two proposed changes were added to the Strategic Plan: feasibility of on-site anaerobic digestion for green waste + food waste and the expansion of the GWRS to include mining for brackish water in shallow aquifers.

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 5:57 p.m. to the meeting to be held on Wednesday, October 2, 2019 at 5:00 p.m.

Submitted by:

Kelly A. Lore, MMC
Clerk of the Board



OPERATIONS COMMITTEE

Agenda Report

File #: 2019-537

Agenda Date: 10/2/2019

Agenda Item No: 2.

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

SUBJECT:

UPS AND BATTERY CHARGER MAINTENANCE

GENERAL MANAGER'S RECOMMENDATION

RECOMMENDATION:

- A. Approve a purchase order service contract with Odyssey Power Corporation for uninterruptible power supply (UPS) and battery charger inspection and preventative maintenance services for Plant Nos. 1 and 2 and pump stations, per Specification S-2019-1081BD, for a total amount not to exceed \$125,490 for the period of October 1, 2019 through September 30, 2020, with four, one-year renewal options; and
- B. Approve a contingency of \$25,098 (20%) for each contract period.

BACKGROUND

The Orange County Sanitation District (the Sanitation District) contracts routine inspection and preventative maintenance for UPS and battery chargers. The UPS and battery charger systems provide continuous power to loads after a utility loss until standby generators provide power and allows continuous monitoring of treatment plant process and pump station status during a power outage. The intent of this service contract is to ensure reliable, functioning battery back-up power for critical operational equipment and IT equipment located throughout the Sanitation District's treatment facilities; keeping business systems up and running when electricity supply is disrupted.

RELEVANT STANDARDS

- Maintain a proactive asset management program
- 24/7/365 treatment plant reliability

PROBLEM

Currently, there are over 160 UPS and battery charger locations with various manufacturers and models that require routine inspection and preventative maintenance throughout Plant Nos. 1 and 2 and pump stations. Preventative maintenance associated with UPS and battery chargers requires the combination of specialized technical skills and highly technical pieces of electronic equipment. The lack of proper routine inspection and maintenance could lead to catastrophic and costly failures.

PROPOSED SOLUTION

Staff recommends a purchase order service contract to provide routine inspection and preventative maintenance of UPS and battery chargers as outlined in Specification No. S-2019-1081BD. Having this service contract in place would ensure the reliability of UPS and battery chargers, minimizing the effect of electricity supply disruptions while prolonging the life of these critical back-up power systems.

TIMING CONCERNS

N/A

RAMIFICATIONS OF NOT TAKING ACTION

Without proper routine inspection and preventative maintenance, failure of critical communications and control systems could result if the Sanitation District loses primary electrical utility power at Plant Nos. 1 and 2 or pump stations. Upon failure and loss of all power, there is a possibility of a spill and environmental impact to local and surrounding areas.

PRIOR COMMITTEE/BOARD ACTIONS

September 2018 - Approve purchase order renewal for final year of contract services with Camali Corp. for UPS and battery charger maintenance for Plant Nos. 1 and 2 and pump stations, per Specification No. S-2014-619, for preventative maintenance services.

ADDITIONAL INFORMATION

With the existing service contract set to expire on September 30, 2019, a new bid posting was advertised on June 7, 2019. Four competitive bids were received. These 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, Odyssey Power Corporation, for UPS and battery charger maintenance for inspection and preventative maintenance services.

Summary information on the bid opening is as follows:

<u>Bidder</u>	<u>Bid Amount</u>
Odyssey Power Corporation	\$125,490.00
Concept Power, Inc.	\$128,555.38
M.C. Dean, Inc.	\$174,388.90
Automated Power, Inc.	\$347,438.00

A 20% contingency is being requested due to scheduled CIP projects that will be coming online within this 5-year cycle, which will add additional UPS equipment and battery chargers. Since the design and construction of these projects were not completed prior to receiving bids for the new service contract, details about these facilities could not be included in the solicitation for bids.

CEQA

N/A

FINANCIAL CONSIDERATIONS

This request complies with authority levels of the Sanitation District's Purchasing Ordinance. This recommendation will 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>
10/02/2019	\$125,490	\$25,098 (20%)

ATTACHMENT

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

- Service Contract

RM:DH:ab

**SERVICE CONTRACT
UPS AND BATTERY CHARGER MAINTENANCE
Specification No. S-1019-1081BD**

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 **Odyssey Power Corporation** with a principal place of business at **625 N. Shepard Street, Anaheim, CA 92806** (hereinafter referred to as "Contractor") collectively referred to as the "Parties".

WITNESSETH

WHEREAS, OCSD desires to temporarily retain the services of Contractor for UPS and Battery Charger Maintenance "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 October 2, 2019, the Operations Committee 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 exceed One Hundred Twenty Five Thousand Four Hundred Ninety Dollars (\$125,490.00).
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**
 - 4.1 OCSD shall pay, net thirty (30) days, upon receipt and approval, by OCSD’s Project Manager or designee, of itemized invoices submitted for Milestones 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.

4.2 Invoices shall be emailed by Contractor to OCSD Accounts Payable at APStaff@OCSD.com and "INVOICE" with the Purchase Order Number and Specification Number S-2019-1081BD 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 31, 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. **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.

15. **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").

16. **Warranties** In addition to the warranties stated in Exhibit "A", the following shall apply:

16.1 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.

- 16.2 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.
17. **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.
18. **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.
19. **Familiarity with Work** By executing this Contract, Contractor warrants that: 1) it has investigated the work to be performed; 2) it has investigated the site of the work and is aware of all conditions there; and 3) 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.
20. **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.
21. **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.
22. **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.
23. **Contractor's Employees Compensation**
- 23.1 **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.

- 23.2 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.
- 23.3 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.
- 23.4 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.
- 23.5 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.
- 23.6 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.
24. **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.

- 25. 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.
- 26. 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.
- 27. 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.
- 28. Dispute Resolution**
- 28.1 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.
- 28.2 In the event the Parties are unable to timely resolve the dispute through mediation, the issues in dispute shall be submitted to arbitration pursuant to California Code of Civil Procedure, Part 3, Title 9, Sections 1280 et seq. For such purpose, an agreed arbitrator shall be selected, or in the absence of agreement, each party shall select an arbitrator, and those two (2) arbitrators shall select a third. Discovery may be conducted in connection with the arbitration proceeding pursuant to California Code of Civil Procedure Section 1283.05. The arbitrator, or three (3) arbitrators acting as a board, shall take such evidence and make such investigation as deemed appropriate and shall render a written decision on the matter in question. The arbitrator shall decide each and every dispute in accordance with the laws of the State of California. The arbitrator's decision and award shall be subject to review for errors of fact or law in the Superior Court for the County of Orange, with a right of appeal from any judgment issued therein.
- 29. Attorney's Fees** If any action at law or inequity or if any proceeding in the form of an Alternative Dispute Resolution (ADR) is necessary to enforce or interpret the terms of this 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.

30. **Survival** The provisions of this Contract dealing with Payment, Warranty, Indemnity, and Forum for Enforcement, shall survive termination or expiration of this Contract.
31. **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.
32. **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.
33. **Disclosure** Contractor agrees not to disclose, to any third party, data or information generated from this project without the prior written consent from OCSD.
34. **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.
35. **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.
36. **Third Party Rights** Nothing in this Contract shall be construed to give any rights or benefits to anyone other than OCSD and Contractor.
37. **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.
38. **Read and Understood** By signing this Contract, Contractor represents that he has read and understood the terms and conditions of the Contract.
39. **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.
40. **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.
41. **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: Jennifer Garnant
Sales Administrator
Odyssey Power Corporation
625 N. Shepard Street
Anaheim, CA 92806

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: _____

Robert Collacott
Chair, Operations Committee

Dated: _____

By: _____

Kelly A. Lore
Clerk of the Board

Dated: _____

By: _____

Ruth Zintzun
Purchasing and Contracts Manager

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 #: 2019-584

Agenda Date: 10/2/2019

Agenda Item No: 3.

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

SUBJECT:

TUSTIN AVENUE MANHOLE AND PIPE REPAIR, PROJECT NO. FE17-06

GENERAL MANAGER'S RECOMMENDATION

RECOMMENDATION: Recommend to the Board of Directors to:

- A. Receive and file Bid Tabulation and Recommendation for Tustin Avenue Manhole and Pipe Repair, Project No. FE17-06;
- B. Award a Construction Contract to Nuline Technologies, LLC for Tustin Avenue Manhole and Pipe Repair, Project No. FE17-06, for a total amount not to exceed \$350,000; and
- C. Approve a contingency of \$35,000 (10%).

BACKGROUND

The Orange County Sanitation District (Sanitation District) owns and operates a regional sewer in the area of Tustin Avenue and Orangethorpe Avenue in the cities of Anaheim and Placentia. The vitrified clay sewer was originally installed in 1960. The Sanitation District has identified significant cracks in the pipe as well as a manhole defect resulting from an Orange County Transportation Authority (OCTA) sewer relocation project.

RELEVANT STANDARDS

- Comply with California Public Contract Code Section 20103.8, award construction contract to lowest responsive, responsible bidder
- Achieve less than 2.1 sewer spills per 100 miles

PROBLEM

The Sanitation District sewer in Tustin Avenue south of Orangethorpe Avenue has pipe and manhole defects that need repair.

PROPOSED SOLUTION

Award a Construction Contract for the Tustin Avenue Manhole and Pipe Repair, Project No. FE17-06, to repair the cracked pipe and replace the improperly abandoned manhole.

TIMING CONCERNS

Sewer spills are possible due to significant cracked sections of pipe and an obstruction inside the abandoned manhole.

RAMIFICATIONS OF NOT TAKING ACTION

The possibility of spills in the 24-inch sewer system along Tustin Avenue would remain.

PRIOR COMMITTEE/BOARD ACTIONS

N/A

ADDITIONAL INFORMATION

OCTA completed a grade separation project along Tustin Avenue at the border of the cities of Anaheim and Placentia which included a partial relocation of this sewer. The Sanitation District performed a pre-construction inspection of the existing 24-inch sewer pipes affected by, and adjacent to, the OCTA grade separation project. The inspection identified 5 existing significant longitudinal cracks up to 10-feet long in multiple sections of pipe not affected by the OCTA project. After completion of the OCTA project, the Sanitation District performed an inspection of OCTA's work and found that one manhole was abandoned improperly. Subsequently, the Sanitation District accepted a \$70,000 reimbursement from OCTA to repair the manhole. Sanitation District staff developed Contract Documents to repair the cracks and manhole under a single project, Tustin Avenue Manhole and Pipe Repair, Project No. FE17-06.

The Sanitation District advertised Project No. FE17-06 for bids on June 28, 2019 and three sealed bids were received on August 13, 2019. A summary of the bid opening follows:

Engineer's Estimate	\$150,000
<u>Bidder</u>	<u>Amount of Bid</u>
Nuline Technologies, LLC	\$350,000
Charles King Company	\$353,000
Mehta Mechanical Company, Inc.	\$367,000

The bids were evaluated in accordance with the Sanitation District's policies and procedures. An evaluation of the apparent low bidder, Nuline Technologies, LLC, determined the bid to be both responsive and responsible. Based on this, an Award Notice was sent to all the bidders on September 4, 2019 informing them of the intent of Sanitation District staff to recommend award of the construction contract to Nuline Technologies, LLC.

After receipt of the bids and considering the cost differences when compared with the Engineer's estimate, staff reviewed the Engineer's estimate and determined that the contractor's estimates for construction is significantly higher than typical and historical costs. Staff believes that this is due to the additional risks and constraints of the project related to the proximity of the work to railroad and bridge piers. Staff believes that the bids are valid and recommends award as stated above.

CEQA

The project is categorically exempt under Class 1 set forth in California Code of Regulations sections 15301 of CEQA, and statutorily exempt from CEQA under Public Resources Code section 21080.21 and no further CEQA review is required.

FINANCIAL CONSIDERATIONS

This request complies with authority levels of the Sanitation District's Purchasing Ordinance. This recommendation will be funded under the Repairs and Maintenance for the Operations and Maintenance Department (Budget Update, Fiscal Years 2019-20, Page 47). The 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:

- Construction Contract

RL:dm:gc

PART A
CONTRACT AGREEMENT

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CONTRACT AGREEMENT

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CONTRACT AGREEMENT
ORANGE COUNTY SANITATION DISTRICT

PROJECT NO. FE17-06
TUSTIN AVE MANHOLE AND PIPE REPAIR

THIS AGREEMENT is made and entered into, to be effective, this October 23, 2019, by and between Nuline Technologies, LLC, 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. FE17-06
TUSTIN AVE MANHOLE AND PIPE REPAIR

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. FE17-06

TUSTIN AVE MANHOLE AND PIPE REPAIR

SECTION – 4 PLANS AND SPECIFICATONS

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

PROJECT NO. FE17-06

TUSTIN AVE MANHOLE AND PIPE REPAIR

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 ninety (90) 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 five (5) 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. FE17-06
TUSTIN AVE MANHOLE AND PIPE REPAIR

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 Three Hundred Fifty Thousand Dollars (\$350,000) 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: Eight Million Dollars (\$8,000,000) per occurrence and a general aggregate limit of Eight Million Dollars (\$8,000,000) 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 Eight Million Dollars (\$8,000,000) per occurrence and a general aggregate limit of Eight Million Dollars (\$8,000,000) 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 Three Million Dollars (\$3,000,000) and a general aggregate limit of Three Million Dollars (\$3,000,000) for bodily injury, personal injury and property damage;
- Or alternatively, (2) Three Million Dollars (\$3,000,000) 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 One Million Dollars (\$1,000,000) 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.

CONFORMED

C-CA-022619
PROJECT NO. FE17-06
TUSTIN AVE MANHOLE AND PIPE REPAIR

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

TO CONTRACTOR: Nuline Technologies, LLC
 102 Second Street, Suite B
 Encinitas, CA 92024

Copy to: Dominic Burtech, Partner
 Nuline Technologies, LLC
 102 Second Street, Suite B
 Encinitas, CA 92024

CONFORMED

C-CA-022619
PROJECT NO. FE17-06
TUSTIN AVE MANHOLE AND PIPE REPAIR

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

CONTRACTOR: Nuline Technologies, LLC
102 Second Street, Suite B
Encinitas, CA 92024

By _____

Printed Name

Its _____

CONTRACTOR's State License No. 997520 (Expiration Date – 10/31/2020)

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. FE17-06
TUSTIN AVE MANHOLE AND PIPE REPAIR

ATTACHMENT 2 – SCHEDULE OF PRICES

See next pages from the Bid Submittal Forms (Nuline Technologies, LLC)

BF-14 Schedule of Prices, Pages 1-2

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: Nuline Technologies, LLC
(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 ten percent (10%) of the Total Amount of Bid and shall be in conformance with the Contract Document for the lump sum price of ... All amounts included in this Item greater than ten percent (10%) shall be paid under the Item "All Other Work" at the end of the Project.	Lump Sum	L.S.		= \$ 35,000.00
2.	Sheeting, Shoring and Bracing as described in Division 01, Section 01155 and in conformance with the Contract Documents for the lump sum price of...	Lump Sum	L.S.		= \$ 40,000.00
3.	Permits as described in Division 01, Section 01155 and in conformance with the Contract Documents for the lump sum price of...	Allowance	Allow.		= \$32,000
4.	All Other Work set forth in the Contract Documents except for the Work performed in items 1 through 3 inclusive, as described in Division 01, Section 01155 and in conformance with the Contract Documents for the lump sum price of...	Lump Sum	L.S.		= \$ 243,000.00

350,000.00 B.G.
\$ 350,096.51

TOTAL AMOUNT OF BID (BASIS OF AWARD)

Garcia, Brandon

From: Patti_Nuline <patti@nulinetech.net>
Sent: Thursday, September 12, 2019 7:05 AM
To: Garcia, Brandon
Cc: 'Frank Durazo'
Subject: EXTERNAL: RE: FE17-06: Total Amount of Bid Correction to \$350,000

Warning: This email originated from outside OCSD. **Do not click links or open attachments** unless you recognize the sender and are expecting the message.

That is correct.

Thank you,
Patti Strain
Office Manager

Nu-Line Technologies, LLC. | 102 Second Street, Suite B, Encinitas, CA 92024
Ph. (760) 634-5153 | Fax (760) 634-6780 | Cell (760) 859-5273 | Email patti@nulinetech.net



From: Garcia, Brandon [mailto:BGarcia@OCSD.COM]
Sent: Wednesday, September 11, 2019 3:54 PM
To: Patti_Nuline <patti@nulinetech.net>
Cc: 'Frank Durazo' <fdurazo@nulinetech.net>
Subject: FE17-06: Total Amount of Bid Correction to \$350,000

Patti,

OCSD issued clarification request No. 1 to Nu Line Technologies, LLC which informed you that the Total Amount of Bid was corrected from \$350,096.51 to \$350,000, as the total of all line items were not in agreement with the \$350,096.51 amount.

Would Nu Line Technologies, LLC. please respond to this email acknowledging that \$350,000 is the correct Total Amount of Bid.



Thank You,
Brandon Garcia, CPPB
Orange County Sanitation District
Contracts, Purchasing & Materials Management Division | Contracts Administrator
Office: 714.593.7024 | www.ocsewers.com





OPERATIONS COMMITTEE

Agenda Report

File #: 2019-571

Agenda Date: 10/2/2019

Agenda Item No: 4.

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

SUBJECT:

MP-275/MP-276 CENTRAL GENERATION ENGINE OVERHAULS AT PLANT NOS. 1 AND 2

GENERAL MANAGER'S RECOMMENDATION

RECOMMENDATION: Recommend to the Board of Directors to:

- A. Award a service contract to UPS Midstream Services, Inc. to provide Central Generation Engine Overhauls at Plant Nos. 1 and 2 (for a total of two engines), Specification No. S-2019-1074BD, for a total amount not to exceed \$5,636,335; and
- B. Approve a contingency of \$1,127,268 (20%).

BACKGROUND

The Orange County Sanitation District (Sanitation District) operates eight Central Generation (Cen Gen) engines manufactured by Cooper Bessemer, now part of General Electric (GE). These engines are no longer in production, but parts are available from GE and other third-party vendors. The engines generate approximately two-thirds of the Sanitation District's electric demand. Additionally, waste heat from the engines is recovered and supplies the majority of the process heat demand used in the solids digestion process and the absorption chiller at Plant No. 1 (which provides cooling for the Administration Building, Laboratory Building, Central Generation Building, and Operations Building). At Plant No. 2, the waste heat generated by the engines is also converted into electrical energy using a steam turbine.

The Cen Gen engines are recommended to have a major bottom-end overhaul at 140,000 run hours, approximately every 20 to 25 years. The engine types installed at the Sanitation District in the mid-1990s are not common. There are few companies in California that supply these heavy rebuild services. There have been three unsuccessful bid attempts by the Sanitation District to accomplish the bottom-end overhauls. Over the past three years, bids were received, but were deemed non-responsive for various commercial reasons and ranged from \$2.6 million to \$4.8 million, per engine.

RELEVANT STANDARDS

- Protect Orange County Sanitation District assets
- Maintain a proactive asset management program

- Use all practical and effective means for resource recovery
- 24/7/365 treatment plant reliability

PROBLEM

The Cen Gen engines require a major bottom-end overhaul at approximately 140,000 run-hours, and a lesser top-end overhaul approximately every 40,000 run-hours. Two engines are overdue for major bottom-end overhauls.

PROPOSED SOLUTION

Staff recommends awarding a Contract to UPS Midstream Services, Inc. to provide parts and services to overhaul two Cen Gen engines located at Plant Nos. 1 and 2.

TIMING CONCERNS

The existing Cooper Bessemer Gas Engine No. 1 at Plant No. 1 and Engine No. 5 at Plant No. 2 are past their recommended bottom-end overhaul service intervals.

RAMIFICATIONS OF NOT TAKING ACTION

Failure to take action on this repair will inhibit the ability to reliably generate electricity and produce process heat, resulting in a potential additional annual cost of approximately \$1,400,000 per engine per year at Plant No. 1, and \$1,680,000 per engine per year at Plant No. 2 to offset energy purchases and incurred demand charges.

In addition, the engines are critical for process treatment requirements and use of digester gas produced in the digestion process. If the engines are not available, it will result in significant flaring of digester gas.

PRIOR COMMITTEE/BOARD ACTIONS

April 2019 - Board of Directors authorized the General Manager to commence negotiations with identified firms for the overhaul of two Central Generation engines located at Plant Nos. 1 and 2.

ADDITIONAL INFORMATION

A Request for Proposal (RFP) was issued on June 19, 2019 via PlanetBids and closed on July 25, 2019 for the overhaul of two Cen Gen engines. The Sanitation District received four responsive proposals which were first evaluated on a pass/fail basis, then individually scored and weighted by the evaluators. The members of the evaluation committee consisted of staff from the Engineering, and Operations & Maintenance Departments.

Three of the four proposals passed the first round of evaluation by having the required company experience with similar engine overhauls. The three proposals that passed the first round were then evaluated based on the following criteria: (1) proposed staffing and project organization; (2) work

plan; and (3) cost. The two top scoring proposals each submitted a Best and Final Offer for cost and the highest scoring firm was then identified. The Sanitation District was then able to successfully negotiate mutually agreed upon contractual terms and conditions.

Based on these results, staff recommends awarding the Service Contract to UPS Midstream Services, Inc.

TABLE 1
Proposal Evaluation*

Evaluator	Universal Plant Services dba. UPS Midstream Services, Inc.	GE Oil & Gas dba Cooper Machinery Services	Reciprocating Technology Services
1	880	798	116
2	860	833	331
3	895	833	296
4	860	833	71
5	890	833	121
TOTAL AVERAGE WEIGHTED SCORE (Points)	877	826	187
TOTAL FINAL NEGOTIATED COST	\$5,636,334.63	\$6,191,817.37	Not Opened

Staff evaluated replacement of major engine parts as a part of this procurement based on historical wear patterns. It is anticipated that some parts that are not specified for replacement will need replacement after inspection. These parts may include an engine crank shaft and/or the master rod bearings. Rather than unnecessarily replacing costly parts, a project contingency of 20% is requested to cover unexpected wear.

The Sanitation District's asset management plan calls for the continued use of the Cen Gen Systems for another 25 years. The bottom-end overhauls serve as a midlife refurbishment for the engines to meet a 50-year life cycle. Staff has investigated other higher efficiency technology like fuel cells. These new technologies are not commercially viable. Refurbishing the engines and leveraging current investment is the recommended action.

CEQA

N/A

FINANCIAL CONSIDERATIONS

This request complies with the authority levels of the Sanitation District's Purchasing Ordinance. This item has been budgeted in the FY19-20 budget Update, Operating and Maintenance Department Repairs & Maintenance line item (Pg. 47).

<u>Date of Approval</u>	<u>Contract Amount</u>	<u>Contingency</u>
10/23/2019	\$5,636,335	\$1,127,268 (20%)

ATTACHMENT

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

- Service Contract

SERVICE CONTRACT
Central Generation Engine Overhauls at Plants 1 & 2
Specification No. S-2019-1074BD

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 UPS Midstream Services, Inc. with a principal place of business at 990 Peiffers Lane, Harrisburg, PA 17109 (hereinafter referred to as "Contractor") collectively referred to as the "Parties".

WITNESSETH

WHEREAS, OCSD desires to temporarily retain the services of Contractor for Central Generation Engine Overhauls at Plants 1 & 2 "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 October 23, 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"	Proposal
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 Five Million Six Hundred Thirty-Six Thousand Three Hundred Thirty-Five Dollars (\$5,636,335.00).
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 or perform work under a maintenance 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**
 - 4.1 OCSD shall pay, net thirty (30) days, upon receipt and approval, by OCSD’s Project Manager or designee, of itemized invoices submitted for Milestones 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.
 - 4.2 Invoices shall be emailed by Contractor to OCSD Accounts Payable at APStaff@OCSD.com and “INVOICE” with the Purchase Order Number and Specification No. S-2019-1074BD 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. In no event shall Contractor's efficiency in performing the work, fixed or lump sum components, or the make-up of Contractor's labor and equipment rates be subject to review.
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 Contract shall be completed within four hundred twenty (420) calendar days from the effective date of the Notice to Proceed.
9. **Renewals** Not Used
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, to the extent such damages or injuries arise out of or are 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. **Limitation of Damages** Notwithstanding anything to the contrary in any of the contract documents, neither party shall be liable to the other for any consequential, indirect, incidental, special, liquidated or punitive damages (including but not limited to loss of use, revenue or profits, inventory or use charges, cost of capital or claims of customers) howsoever caused. The foregoing shall not limit any damages that may be recoverable under California Civil Code section 3300, nor shall the foregoing apply to claims caused by Contractor's gross negligence, willful misconduct or fraud.
17. **Limitation of Liability** Contractor's total liability with respect to this Agreement, or any breach thereof, whether based on contract, warranty, tort (including negligence), strict liability or otherwise, shall not exceed two times the Contract Price.
18. **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").

- 19. Warranties** In addition to the warranties stated in Exhibit "A", the following shall apply:
- 19.1 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.
- 19.2 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.
- 20. Liquidated Damages** Not Used
- 21. 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.
- 22. 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.
- 23. Familiarity with Work** By executing this Contract, Contractor warrants that: 1) it has investigated the work to be performed; 2) it has investigated the site of the work and is aware of all conditions there; and 3) 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.
- 24. 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.
- 25. Environmental Compliance** Contractor shall, at its own cost and expense, comply with all Federal, State, and local environmental laws, regulations, and policies which apply to the Contractor, its subcontractors, and the Services, including, but not limited to, all applicable Federal, State, and local air pollution control laws and regulations.
- 26. 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.

- 27. 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.
- 28. Contractor's Employees Compensation**
- 28.1 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.
- 28.2 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.
- 28.3 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.
- 28.4 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.
- 28.5 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.

28.6 **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.

29. **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.

30. **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.

31. **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.

32. **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.

33. **Dispute Resolution**

33.1 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.

33.2 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.

34. **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.
35. **Survival** The provisions of this Contract dealing with Payment, Warranty, Indemnity, and Forum for Enforcement, shall survive termination or expiration of this Contract.
36. **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.
37. **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.
38. **Disclosure** Contractor agrees not to disclose, to any third party, data or information generated from this project without the prior written consent from OCSD.
39. **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.
40. **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.
41. **Third Party Rights** Nothing in this Contract shall be construed to give any rights or benefits to anyone other than OCSD and Contractor.
42. **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.
43. **Read and Understood** By signing this Contract, Contractor represents that he has read and understood the terms and conditions of the Contract.

44. **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.
45. **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.
46. **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: Jackie Lagade
Principal Buyer
Orange County Sanitation District
10844 Ellis Avenue
Fountain Valley, CA 92708

Contractor: Reagan Busbee
President
UPS Midstream Services, Inc.
990 Peiffers Lane
Harrisburg, PA 17109

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
Chair, Board of Directors

Dated: _____

By: _____
Kelly A. Lore
Clerk of the Board

Dated: _____

By: _____
Ruth Zintzun
Purchasing and Contracts Manager

UPS MIDSTREAM SERVICES, INC.

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 #: 2019-598

Agenda Date: 10/2/2019

Agenda Item No: 5.

FROM: James D. Herberg, General Manager
Originator: Celia Chandler, Director of Human Resources

SUBJECT:

ORANGE COUNTY SANITATION DISTRICT'S SAFETY AND SECURITY PROGRAM

GENERAL MANAGER'S RECOMMENDATION

RECOMMENDATION:

Information Item.

BACKGROUND

Each month, staff provides an informational presentation on topics of interest to the Board of Directors. This month's topic: Orange County Sanitation District's Safety and Security Program.

RELEVANT STANDARDS

- Provide a safe and collegial workplace

ATTACHMENT

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

N/A