

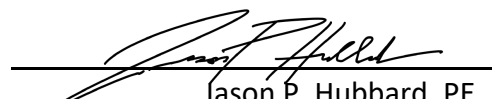


REQUEST FOR PROPOSALS FOR THE
OMWD CONCRETE TANK INSPECTION AND REHABILITATION PLAN
TO PROVIDE
PROFESSIONAL ENGINEERING SERVICES
FOR THE INSPECTION, STRUCTURAL AND SEISMIC ANALYSIS, AND THE
DEVELOPMENT OF A REHABILITATION PLAN FOR
PRESTRESSED CONCRETE WATER STORAGE TANKS

PROPOSALS DUE:

September 13, 2021, 2:00 P.M.

OLIVENHAIN MUNICIPAL WATER DISTRICT



Jason P. Hubbard, PE
Engineering Manager

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1.0 INTRODUCTION

The Olivenhain Municipal Water District (District) is requesting proposals from firms with qualified staff and experience in the inspection, structural and seismic analysis, and development of repair, rehabilitation, or replacement recommendations for prestressed concrete water storage tanks. It is important to the District firms have an established local office.

The purpose of the project is to evaluate and if necessary, make recommendations for repairs and improvements to the Wanket, Santa Fe Valley, Gano, and Berk Tanks. The goal for the tank improvements and repairs is to provide the District with facilities that can feasibly meet all applicable current codes and standards as well as operational needs.

The District owns and operates five prestressed concrete water storage tanks as listed in the following table.

Name	Capacity (MG)	Date Constructed	Use
Wanket	3.0	1976	Out of Service
Gaty II	12.5	1980	Potable
Santa Fe Valley	3.0	2004	Recycled
Gano	6.5	2006	Potable
Berk	2.5	2008	Potable

The District has a phased capital improvement program to complete inspections and if necessary, repair, rehabilitation, or replacement. The locations of the tanks are listed below and shown in Figure 1.

Wanket Tank – The Wanket Tank is located in the City of Encinitas just east of Quail Gardens Drive, at the north end of the driving range for the Encinitas Ranch Golf Course.

Gaty II Tank – The Gaty II Tank is located in the County of San Diego at the north end of Rancho Summit Drive, north of Rancho Santa Fe, east of La Costa, southwest of Elfin Forest.

Santa Fe Valley Tank – The Santa Fe Valley Tank is located in the County of San Diego, north of Camino del Sur, and northeast of Maranatha Drive, in the 4S Ranch/Del Sur area.

Gano Tank – The Gano Tank is located in the County of San Diego at the south end of Artesian Trail, west of Camino del Sur, in the Del Sur/Black Mountain Ranch area.

Berk Tank – The Berk Tank is located in the County of San Diego near the intersection of Via Rancho Cielo and Avenida Apice, in the Rancho Cielo Development.

This Request for Proposals (RFP) is for the Wanket, Santa Fe Valley, Gano, and Berk Tanks. Depending on the outcome of the inspection and rehabilitation plan, and the Consultant's performance, the District may expand the scope of work to design improvements to these tanks.

This RFP describes the minimum required scope of services, the consultant selection process, and the minimum information to be included in the Proposal. Failure to submit all requested information according to the requirements and procedures of this RFP may be cause for disqualification.

2.0 OLIVENHAIN MUNICIPAL WATER DISTRICT

The District serves approximately 86,000 people through approximately 22,000 potable water connections, (28,000 meters) in a 48 square-mile area including portions of the unincorporated County of San Diego, and the Cities of Carlsbad, Encinitas, Solana Beach, San Marcos, and San Diego. The District's mission statement is to serve present and future customers in a service-oriented manner by:

Water – Providing safe, reliable, high-quality drinking water while exceeding all regulatory requirements in a cost-effective and environmentally responsive manner.

Recycled Water/ Wastewater – Providing recycled water and wastewater treatment in the most cost-effective and environmentally responsive method.

Parks – Safely operating the Elfin Forest Recreational Reserve and providing users with a unique recreational, educational, and environmental experience.

Emergency Management – Complying with policies and procedures adhering to local, state, and federal guidelines for national security and disaster preparedness.

Sustainable Operations – Pursuing alternatives and/or renewable resources with the most sustainable, efficient, and cost-effective approach.

3.0 BACKGROUND

Budgets for inspection, structural and seismic analysis, planning, design, and construction for the tanks have been included in the District’s Capital Improvement Program, starting in Fiscal Year (FY) 2019-20 and continuing for 10 years, as shown below. The larger annual budgets include funding for the design/construction of possible upgrades, repair and rehabilitation. Substantial recommended projects may be separated as new CIP projects.

- FY 2021 - 2022 - \$253,000
- FY 2022 – 2023 - \$ 45,000
- FY 2023 – 2024 - \$ 41,000
- FY 2024 – 2025 - \$ 36,000
- FY 2025 – 2026 - \$215,000
- FY 2026 – 2027 - \$ 46,000
- FY 2027 – 2028 - \$ 55,000
- FY 2028 – 2029 - \$ 50,000

The tanks are further described below. Note: Access to the interior of all tanks is through the roof.

Wanket Tank - The Wanket Tank was originally a part of the District’s potable water system but was no longer needed and was taken out of service in 2013. The Wanket Tank is being considered for conversion to recycled water. It is one-third owned by the San Dieguito Water District. Because of changes to the potable distribution system, it would be difficult for the District to fill the tank for leakage testing, and beneficially use the water after the test. The tank is not buried. Dexter Wilson Engineering, Inc. completed the Wanket Reservoir Storage Valuation and Conversion Cost estimate in August 2010. The report and as-built drawings are considered secure documents and can be provided upon request.

Gaty II Tank - Richard Brady & Associates completed a Structural Condition Assessment Report on the Gaty II Reservoir dated January 2021. The report is considered a secure document and can be provided upon request.

Santa Fe Valley Tank – The Santa Fe Valley Tank is partially buried. It needs to be cleaned prior to the inspection and District Operations staff are currently working to schedule the cleaning in the winter of 2021-2022. Several years ago, a pump station in the vicinity of the tank was damaged by settlement and had to be repaired. District staff are researching tank survey data to see if the tank experienced settlement. This information will be provided to the Consultant if relevant. The as-built drawings are considered secure documents and can be provided upon request.

Gano Tank – The Gano Tank is partially buried and has a ladder/staircase system to access the roof. The exterior coating cracked as a result of a wildfire several years ago. The as-built drawings are considered secure documents and can be provided upon request.

Berk Tank – The Berk Tank is not buried and has a ladder/staircase system to access the roof. This tank was cleaned in early August 2021. Cleaning/inspection report and the as-built drawings are considered secure documents and can be provided upon request.

4.0 OMWD PROJECT MANAGEMENT

The project will be managed by Jason P. Hubbard, Engineering Manager.

5.0 SCOPE OF SERVICES

The following items should be considered a framework for the scope of services to be used in proposal formation for the project. The District understands this RFP may not fully describe the services envisioned. Therefore, the District will be relying on the Consultant to provide modifications or amplifying information to the scope of services described herein, based on their professional expertise in this subject area. The Consultant is encouraged to incorporate items deemed necessary to meet the needs of the District in completion of the project, including attending the necessary meetings with the District to gather information, receive input and approvals, and review preliminary results. The District expects firm recommendations on upgrades, repairs, rehabilitation, or replacement along with construction budget estimates.

Schedule – The District prefers to inspect the Wanket, Gano, and Berk Tanks in consecutive weeks as soon as possible after the notice to proceed. The District will attempt to schedule the tank inspections to fit the Consultant’s proposed schedule, making effective and efficient use of specialty inspectors and equipment. The Santa Fe Valley Tank can be inspected as soon as District staff completes a cleaning; to be scheduled in the winter of 2021-2022, and coordinated with the Consultant. All

inspection work should be completed within six (6) months of the notice to proceed. The final report should be completed no later than June 30, 2022.

1. Review Existing Data and Information

Review all available existing data for each of the listed tank sites including record drawings, shop drawings, geotechnical reports, past investigations, photographs, improvement and/or repair plans, and other available reports.

2. Prepare Description of Each Tank

Visit each tank site. Provide a description of the tanks (type; year built; floor, wall, & roof materials; buried, partially buried, above ground; etc.). Include the review of available photographs.

3. Prepare Detailed Inspection and Structural Analysis Plan

Ascertain best way to analyze interior and exterior of each tank and describe the methods to be used including documenting findings and safety requirements. Please note: The Wanket Tank is empty and will remain empty through the duration of this project. Prepare a draft detailed inspection plan listing each step, responsibilities, and time line for each tank. Include a confined space entry plan. Prepare a plan for structural analysis for District review. Meet with Operations Department staff and review the inspection plan. Incorporate comments and prepare final inspection plan.

4. Perform Field Inspection

Perform a field investigation for each site. Note, entry into each tank is considered a confined space entry. The Consultant shall be certified and experienced in confined space entries. The District can assist with the logistics of coordinating the work, but the Consultant shall be responsible for providing all safety plans, all necessary equipment including but not limited to ladders, hydraulic lifts, rafts, SCUBA gear (tanks other than Wanket), remote controlled equipment, harnesses, air quality maintenance and air quality monitoring equipment, lighting, etc. for confined space entry into each tank, and lock-out/tag-out, to perform inspection, and establish a baseline condition for each tank. The Consultant shall disinfect all personnel and equipment prior to entering each tank. A detailed inspection plan shall be submitted to the District for approval prior to performing the work. The inspection will address:

- Watertightness of structure.
 - For the Wanket Tank, the Consultant will evaluate watertightness without the District filling the tank. Consultant will provide a cost

estimate to repair typical leakage, based on design and construction of Wanket, and their experience with other similar tanks.

- Functionality of the underdrain system.
 - For the Wanket Tank, the Consultant will evaluate the underdrain without the District filling the tank, based on design and construction of Wanket, and their experience with other similar tanks.
- Exterior surface of the wall and roof to locate any signs of possible deterioration or corrosion, including rust stains, efflorescence, cracks, spalling, leaks, damp spots, and protective coating failing.
- Perform “sound testing” on gunite or shotcrete cover coat at areas or signs of deterioration for evidence of separation or “disbonding” from the core wall.
- Examine the interior surface of the floor, wall, and roof to locate any signs of possible deterioration or corrosion, cracks, spalling, or leaks. Note: Other than Wanket, the reservoirs may be in use during the examinations.
- Examine floor, wall, and roof integrity including deflections and joint condition.
- Determine condition of ladders (interior & exterior) including verification of anchorage to wall or roof, soundness of rungs in side rails, and condition of fall-protection device.
- Determine condition of roof rails, vent curb, vent cover, roof hatch, wall access hatch, drainage scuppers and down drains, vertical stressing bar cans, and other appurtenances.
- Examine interior piping and appurtenances including overflow structure and pipe for corrosion and restriction of flow.
- Examine and quantify civil site deficiencies including but not limited to site access, security, reservoir above ground piping and appurtenances condition, road and/or pavement condition, and drainage issues.
- As an optional task, with evidence of spalling and/or delamination of the shotcrete and prestressing cables from the concrete core wall, and with Consultant’s recommendation and District approval, perform prestressed reinforcement investigations on six (6) 8-inch square areas for each reservoir as described in ANSI/AWWA D-110.

5. Perform Geotechnical Investigations

Perform geotechnical investigations to ascertain seismic design parameters including peak ground accelerations.

6. Prepare Seismic Structural Analysis

Prepare seismic structural analysis for each tank site to identify deficiencies on the with current applicable codes and standards, including UBC, ACI, and AWWA.

7. Prepare Draft and Final Reports

Provide a draft report addressing all four tanks to include results of the above analyses with the following for review and comment:

- A list of types of repairs and/or upgrades required (i.e. square feet of concrete or gunite repairs, square feet of protective coatings, repairs of pre-stressing wires, repairs to vertical stress bar cans, repairs to roof drainage cans, linear feet of major cracks, linear feet of caulking at joints, vent curb repairs, etc.) and associated estimated costs for the repairs and/or upgrades required.
- Recommendations for method of performing repairs and upgrades, including but not limited to operational coordination.
- Seismic upgrades, if applicable, and recommended repairs and associated estimated costs.
- Estimated design and construction costs for recommended upgrades, repair, rehabilitation and replacement, if recommended.
- Remaining useful life of the reservoir if repairs and upgrades are performed.
- If underwater inspections are performed, provide a video and report.
- Provide three (3) hard copies and two (2) CD's of a draft and final report.

8. Workshop with District Staff on Draft Report

Prepare for, conduct, and summarize a workshop with District staff on the results of the inspections, studies, and analyses. Explain the findings and recommendations. Provide a list of changes to the draft report that will be made to produce the final report. The Consultant shall include preliminary or intermediate workshops if they deem them necessary to ascertain more information/District guidance or to correct/review draft results.

9. Provide Project Management

Provide project management including monitoring of progress and expenditures. With each monthly invoice, provide a brief progress report including tasks completed and upcoming.

6.0 PROPOSED MODIFICATIONS TO THE SCOPE OF SERVICES

The District is interested in the Consultant's creative ideas to improve the scope of services and results of the inspection and structural analysis. Creative ideas should be clearly identified in the proposed scope of services. If exclusions, options, and/or alternate fee schedules are presented, they should be clearly explained.

7.0 OMWD FURNISHED SERVICES TO SELECTED CONSULTANT

The following information and services will be made available to the Consultant by the District on request:

- Plans, specifications, shop drawings, photographs, and reports, if available.
- Wilson and Brady reports mentioned previously.
- Sanitary survey for the Wanket, Gano, and Berk Tanks.
- Survey data for the Santa Fe Valley Tank, if relevant.
- Access to the tanks.
- Attend meetings with the Consultant and answer questions regarding the Project work.

8.0 SPECIAL CONSIDERATIONS

The Consultant shall schedule their in-tank services for each tank in a manner which will complete inspections in as short a time as possible, and with minimal interruption to system operational status. The Wanket Reservoir is currently out of service but the inspections should be completed in as short a time as possible to minimize the time required of District Operations staff. All scheduled inspections shall be approved by the District in advance of work.

9.0 PROPOSAL REQUIREMENTS

Written proposals are to include at a minimum a detailed a discussion of the Consultant's approach to the project including a breakdown and explanation of project tasks, an estimation of hours for individual tasks and sub-tasks by the Consultant and any subconsultant(s), and documentation of the Consultant's and subconsultant(s) qualifications for the Scope of Services. An estimation of hours with costs are to be provided with the proposal. The cost analysis shall include the identity, classification, and estimated hours for personnel and allowable direct costs.

The Proposal should be concise, well organized, and should demonstrate the responder's qualifications and experience related to the project. Responders will be evaluated based on the information submitted according to the following:

Executive Summary

Include a short summary of the entire Proposal describing the highlights of the Proposal.

Identification of Responder

- Legal name and address of company.

- Legal form of company (partnership, corporation, joint venture, etc.). If the company is a joint venture, identify the members of the joint venture and provide all information required under this section for each member. If company is a wholly owned subsidiary of a "parent company," identify the "parent company."
- Number of years the company has maintained a local office.
- Number of employees in the office.
- Name, title, address, and telephone number of person to contact concerning the Proposal.
- Name, title, address, and telephone number of person who will sign the agreement if selected for the project.

Experience

Describe the firm's experience in completing similar consulting efforts. List at least three (3) successfully completed similar projects, and include the following information about the client for each project: the client's name, project manager/contact person, and phone numbers. Also describe the type of work performed and value of consulting contract. The District will consider consulting projects currently being performed.

Proposed Approach to Accomplish the Work

Describe your approach to the scope of work. Identify project constraints. Describe any suggested enhancements to the scope and creative ideas for accomplishing the project objectives.

Project Team, Project Organization, and Key Personnel

Provide an organization chart and proposed staffing plan, based upon the scope of work, and estimated project schedule, showing personnel by title, position, and name. Staff shown in the proposal will be assumed to be available for the duration of the contract.

Describe the specific qualifications and capabilities of the designated project manager and support staff. The proposal should identify all individuals who will perform and oversee work on this project. The team must include a State of California registered structural engineer. Indicate the role and responsibilities of the prime consultant and all subconsultants. Key personnel assigned to the project shall not be reassigned without prior approval and the Consultant shall request approval of the District before any new personnel are assigned to the project. The District reserves the right to reject or remove personnel performing services in this contract in its sole discretion.

Statement on Conflicts of Interest

The Consultant shall submit a statement verifying that personal and organizational conflicts of interest prohibited by law do not exist, in conformance with the District's Standard Agreement for Professional Services (Exhibit "A"). Any documentation required by the District shall be submitted by the Consultant and all subconsultants.

The Consultant shall provide as a separate appendix to their proposal (not part of the maximum 20 page count), any substantive comments related to their ability and willingness to sign the District's Standard Agreement for Professional Services. Any significant or substantive comments brought forth by the selected consultant after the selection process is completed may be cause for rejection.

Consultant Proposed Scope of Work, Hours, and Cost Proposal

A proposed Scope of Work shall be submitted as an Appendix to the Proposal. A cost proposal shall also be submitted with the Proposal which states a total fee, not-to-exceed upper limit for the work. Payment for professional services will be time and material based on: (1) actual base hourly labor rates, and (2) direct costs. The only direct costs allowed to be billed by the Consultant and subconsultants are: mileage at the IRS rate, report printing, blueprinting, and postage. The District will not pay any markup for reproduction costs, subconsultant costs, or other direct costs. Costs for IT, MIS, computer usage, overhead resource charges, and similar related costs should be included in each individual labor rate. Separate charges or multipliers will not be considered by the District.

Provide an estimated cost analysis for the following items:

- Total fee for each task listed in the Scope of Work
- Labor (personnel classifications, estimated hours and hourly rates)
- Direct costs
- Subcontracts

The estimated fee will be compared to the scope of work for reasonableness. Personnel rates will be compared to those of other similar firms.

Monthly invoices shall identify each person's actual hours on the project and must include a narrative of the work performed during the previous month. Supporting invoices for direct and subcontracted costs must be included with invoice. Provide an hourly rate schedule for each labor classification for the Consultant and each subconsultant. Rate schedules shall specify an effective term and a maximum annual increase for time extending beyond the effective term. The rates may be used as the basis of payment for extra work outside the contract scope of services, but which is performed by the Consultant after specifically requested in writing by the Consultant and authorized in writing by the District.

10.0 SUBMITTAL REQUIREMENTS

One (1) executed original, clearly marked on the cover, and three (3) additional copies of the Proposal shall be submitted to District offices along with the proposal in electronic format (PDF) on a thumb drive. The proposal shall not exceed twenty (20) pages in length, excluding front and back cover, dividers, resumes and organizational chart, and appendices. Limit resumes to a maximum of two pages each. The proposal shall be signed by an individual or individuals authorized to execute legal documents on behalf of the Consultant. Proposals and/or modifications thereto received subsequent to the hour and date specified herein will not be considered.

The Proposal must be received no later than 2:00 p.m. PST, on September 13, 2021 at the office of:

OLIVENHAIN MUNICIPAL WATER DISTRICT
ATTN: Jason P. Hubbard, PE
Engineering Manager
1966 Olivenhain Road
Encinitas, CA 92024

11.0 PRE-SUBMITTAL ACTIVITIES

Questions concerning this Request for Proposals should be directed in writing by email to the address below. The last day for questions is September 6, 2021.

OLIVENHAIN MUNICIPAL WATER DISTRICT
ATTN: Jason P. Hubbard, PE
Engineering Manager
1966 Olivenhain Road
Encinitas, CA 92024
jhubbard@olivenhain.com

The District will hold a field walk of the listed tanks beginning with Wanket Tank and proceeding to Berk, Santa Fe Valley, and Gano, for interested consultants on Tuesday August 24, 2021 at 9:00 AM. Meet in the middle parking lot for the Encinitas Ranch Golf Course (go straight when entering the parking lot entrance). In light of the Wanket and Berk Tank access route and current conditions, each team may send only one representative, with their own personal protective equipment. Social distancing will be in effect.

Individual 30-minute technical meetings with consultant teams who are seriously competing for the project may be scheduled if the District staff have availability. The meetings are intended to answer questions and discuss ideas, which will be kept

confidential. Do not discuss team qualifications at the meetings. The proposed consultant project manager and technical lead may attend the meeting. The last day for meeting is September 6, 2021. Contact Tess Garnica at TGarnica@Olivenhain.com to schedule a meeting.

The District reserves the right to revise the RFP before the date Proposals are due. Revisions to the RFP will be mailed or emailed to all potential proposers. The District reserves the right to extend the date by which the Proposals are due.

12.0 CONSULTANT NOMINATION AND SELECTION PROCESS

A Consultant Selection Panel (Panel) may be established for this project and, if established, will include representatives from the District. District staff will evaluate the Proposals based on the information submitted.

The District anticipates selecting a consultant based on the proposals received but reserves the right to interview selected firms. The District will rank the finalists as to qualifications and select the successful consultant.

If necessary, the District will enter into negotiations with the selected firm. The scope of work provided in the proposal will be used as a basis for contract negotiations. Negotiations will cover: scope of work, contract terms and conditions, and price. If the District is unable to reach an acceptable agreement with the selected firm, the District will terminate negotiations with the selected firm and negotiations with the second ranked firm will be initiated.

After negotiating a proposed agreement that is fair and reasonable, the negotiating team will recommend to the General Manager the District enter into the proposed agreement. The General Manager will make the final recommendation to the District Board of Directors, concerning the proposed agreement. Final authority to approve the agreement rests with the District's Board of Directors. A contract is expected to be presented to the Board of Directors for consideration at their October 13, 2021 meeting.

13.0 EVALUATION CRITERIA

The Proposals will be evaluated based on the minimum following criteria. Other factors may be taken into account by the District during Proposal review.

13.1 Approach to Work (25%)

- Understanding of project and objectives
- Responsiveness to issues identified in RFP

- Level of detail discussed
- Other issues not addressed in RFP but deemed essential to the effective conduct of the project
- Tasks clearly defined
- Activities well-coordinated
- Flexibility to changes in scope and schedule
- Provisions for technical and quality control

13.2 Project Manager and Team Qualifications (50%)

- Specialized Qualifications of the Project Manager and Team
- Involvement and commitment of key personnel
- Ability to perform within schedule with assigned staff
- Current depth of technical expertise in firm

13.3 Project Experience (25%)

- Experience and Performance on similar projects
- Proven specialization of the firm on similar projects

14.0 SCHEDULE FOR NOMINATION, SELECTION, AND AWARD

The District anticipates the process for nominating and selecting a consultant, and awarding the contract, will be according to the following tentative schedule:

Issue RFP	August 9, 2021
• Tank Field Meeting	August 24, 2021, 9:00 AM
• Last Day for Questions	September 6, 2021
• Last Day for Meetings with District	September 6, 2021
• Proposals Due	September 13, 2021, 2:00 PM
• Notification of Selection	September 20, 2021
• Completion of Contract Negotiations	September 27, 2021
• Draft Board Memo	September 29, 2021
• Board Approval	October 13, 2021

15.0 SPECIAL CONDITIONS

This RFP does not commit the District to award a contract, to defray any costs incurred in the preparation of a proposal pursuant to this RFP, or to procure or contract for work. All proposals submitted in response to this RFP become the property of the District and are public records, and as such may be subject to public review.

The District reserves the right to cancel, in part or in its entirety, this RFP including, but

not limited to selection schedule, submittal date, and submittal requirements. The District reserves the right to reject all proposals and terminate the project. If the District cancels or revises the RFP, rejects all Proposals or terminates the project, all proposers will be notified in writing by the District.

The District reserves the right to request additional information and/or clarifications from any or all proposers to this RFP.

The selected consultant will be required to sign an Agreement for Professional Services (Exhibit A) and to provide the Insurance Certificates and all other required documentation within 10 calendar days of notification of selection.

Proposals are due September 13, 2021 at 2:00 pm.

Attachments:

Exhibit A – Agreement for Professional Services

Exhibit A

Agreement for Professional Services

PROFESSIONAL SERVICES AGREEMENT
FOR ENGINEERING SERVICES
FOR THE OLIVENHAIN MUNICIPAL WATER DISTRICT

21AGRXXX
D120085

This Agreement is entered into by and between the Olivenhain Municipal Water District, a Municipal Water District organized and operating pursuant to Water Code Sections 71000 *et seq.* (hereinafter the District) and CONSULTANT, a California corporation organized and operating in the State of California (hereinafter “CONSULTANT”).

R-E-C-I-T-A-L-S

1. The District is a public agency organized and operating pursuant to Water Code Sections 71000 *et seq.*, which provides water, recycled water, and sewer service within certain areas of Northern San Diego County.
2. The District requires the services of a licensed Professional Engineer to provide inspection, structural and seismic analysis, and the development of a rehabilitation plan for prestressed concrete water storage tanks on various projects within the District’s boundaries.
3. CONSULTANT is a professional engineering firm licensed to do business in the State of California with expertise in inspection, structural and seismic analysis, and the development of a rehabilitation plan for prestressed concrete water storage tanks.
4. The District desires to retain CONSULTANT to provide professional engineering services for the Olivenhain Municipal Water District Concrete Tank Inspection and Rehabilitation Plan.

C-O-V-E-N-A-N-T-S

1. Services to Be Performed. CONSULTANT agrees to perform professional engineering services for the Olivenhain Municipal Water District Concrete Tank Inspection and

Rehabilitation Plan. The services to be provided by CONSULTANT are more particularly described in the Scope and Cost Proposal attached hereto as Exhibit "A" and incorporated herein by reference. All work performed by CONSULTANT shall be subject to review and approval by the District. The District shall have no obligation to approve any work found defective by the District, in its sole discretion.

2. Correction of Defective Work. CONSULTANT agrees to correct all labor or materials found defective by the District at its sole cost and expense. All work found defective by the District shall be corrected in the time specified by the District by written notice to CONSULTANT.

3. Price for Work. CONSULTANT agrees to perform all work described in Exhibit "A" for a total price not to exceed \$_____ for the Olivenhain Municipal Water District Concrete Tank Inspection and Rehabilitation Plan. No increase in this price shall be allowed without the express written consent of the District. The District shall have no obligation to grant this consent and may deny consent to any price increase, in its sole discretion.

4. Payment for Work. CONSULTANT shall bill the District monthly for all labor and materials provided during the previous month. All billings shall include a complete description of all work completed during the previous month, including hours and costs of each person performing the work and shall also include a detailed description of progress to date on each task of work described in Exhibit "A". All bills shall be subject to review and approval by the District. Invoices approved by the District will be paid on a monthly basis thirty (30) days after the invoice has been approved by the District. The District shall have no obligation to pay for any work not expressly approved by the District. The District's approval shall not be unreasonably withheld. CONSULTANT shall provide the District with any additional information requested by the District from time to time to support any item contained on an invoice no later than seven (7) days after a written request for this information from the District.

5. Extra Work. The District may request additional work or services from CONSULTANT from time to time, as the District shall determine, in its sole discretion. CONSULTANT shall not commence any extra work without a written change order expressly approved by the District, in writing. Work performed by CONSULTANT without an approved

change order signed by the District will not be paid for by the District. In the event the District determines that additional work is justified, the parties shall agree on the additional work to be performed and the price to be paid for this additional work prior to commencement of any additional work by CONSULTANT. It is understood by the parties that CONSULTANT shall not be entitled to any payment for extra work unless the District determines that it desires extra work to be performed and a written change order has been executed by the parties. Attached as Exhibit "B" is the Request for Additional Work Form required by the District for all requests for additional work or task transfers.

6. Standard of Care. In performing all work and services required by this Agreement, CONSULTANT agrees to use the highest degree of skill and expertise ordinarily exercised, under similar circumstances, by a licensed Professional Engineer with expertise to provide professional engineering services and the other services described in the Scope and Cost Proposal attached as Exhibit "A". As a material term of this Agreement, CONSULTANT warrants and represents that it has secured all licenses required by federal or California law to perform all work and services required by this Agreement. CONSULTANT agrees to perform all work required by this Agreement at all times in strict accordance with all applicable federal, state, and local laws and regulations which apply to the labor or materials being provided.

7. Work Performance Standards. CONSULTANT agrees to perform all work and services required by this Agreement in a manner which complies with all federal and state health and safety standards and in a manner which avoids damage or injury to any real or personal property of any person or entity, including any real or personal property of the District. CONSULTANT agrees to perform the work at all times in a manner which avoids the creation of any trespass or private or public nuisance during conduct of the work.

8. Liability for Work of Agents, Independent Contractors, and Subcontractors. CONSULTANT shall be solely liable and responsible for all labor and materials provided by any director, officer, agent, employee, subcontractor, supplier, or independent contractor hired or retained by CONSULTANT to perform any work or to provide any materials or supplies. The District shall have no liability whatsoever for any work or services performed or any materials or

supplies provided by CONSULTANT or its directors, officers, agents, employees, subcontractors, suppliers, or independent contractors.

9. Time for Completion of Services. As a material term of this Agreement, CONSULTANT agrees to complete all work and services required by this agreement by no later than June 30, 2022. The breach of this paragraph shall constitute a material breach of this Agreement.

10. District Termination Right. The District shall have the express right to terminate this Agreement at any time without cause by giving seven (7) consecutive days advance written notice to CONSULTANT. This Agreement shall be automatically terminated without further action of any party upon expiration of the seven (7) day period. Promptly upon receipt of any termination notice from the District, CONSULTANT shall cease all further work and services, except as otherwise expressly directed by the District in the written termination notice. In the event the District exercises its termination right, CONSULTANT shall be paid only for work and services performed and approved by the District to the date this Agreement terminates. The District shall have the express right to withhold any payment otherwise due CONSULTANT to correct any labor or materials determined to be defective by the District at the time of termination. All plans, maps, drawings, reports, designs, or other writings of any type or nature prepared by CONSULTANT as a result of this Agreement shall become and remain the sole property of the District. All such writings shall be provided to the District not later than seven (7) consecutive days after termination of this Agreement for any reason. All labor, supplies, work and materials provided by CONSULTANT in conjunction with this Agreement shall become and remain the sole property of the District.

11. Hazardous and Toxic Waste. For purposes of this section, the term “hazardous or toxic waste” means any solid, liquid, or gaseous product classified as a hazardous or toxic waste under any federal, state, or local laws, rules, regulations, or ordinances, and all gas and oil products and by-products of every kind or nature. CONSULTANT shall be solely liable and responsible for the proper clean-up and removal of all hazardous or toxic waste used, handled, stored, or spilled by CONSULTANT or any director, officer, agent, employee, subcontractor, independent contractor or representative of CONSULTANT. CONSULTANT shall pay all fees, costs,

expenses and fines necessary to clean-up or remediate any hazardous or toxic waste for which CONSULTANT is liable under this paragraph in strict accordance with all federal, state and local laws, rules and regulations at CONSULTANT's sole cost and expense. CONSULTANT shall not be liable for any hazardous or toxic waste used, handled, stored or spilled by the District or its directors, officers, employees or contractors.

In the event any third party, including any regulatory agency, brings any claim or cause of action against the District to clean-up or remediate any hazardous or toxic waste for which CONSULTANT is liable under this section, CONSULTANT shall also indemnify and hold harmless the District and its directors, officers, agents, and employees from all claims, actions, losses, costs, fees, expenses, fines, and penalties, of whatever type or nature, including all costs of defense and attorneys fees, upon written demand for indemnity from the District.

12. Independent Contractor. As a material term of this Agreement, it is expressly agreed between the parties that CONSULTANT is performing all work and services for the District pursuant to this Agreement as an independent contractor and not as an agent or employee of the District. The parties further agree and acknowledge that the District expects CONSULTANT to make its own independent determination of the means and methods to perform all work required by this Agreement, and will not be directed as to any of these means or methods by the District.

13. Conflicts of Interest Prohibited. As a material term of this Agreement, CONSULTANT shall not in any way attempt to use its position to influence any decision of the District in which it knows, or has reason to know, its has a financial interest other than the compensation provided in this agreement. As a material term of this Agreement, CONSULTANT warrants and represents that it does not, to the best of its knowledge, have any economic interests which would conflict with any of its duties under this Agreement. CONSULTANT agrees not to secure any economic interest during the performance of this Agreement which conflicts with its duties to the District under this Agreement.

14. Breach. The breach of any term or provision of this Agreement by CONSULTANT shall constitute a material breach of this Agreement.

15. District Remedies for Breach. In the event CONSULTANT breaches any term, covenant, or condition of this Agreement or fails to perform any work or services required by this Agreement, the District shall be entitled to elect all or any of the following remedies at the District's sole option:

15.1 Unilateral Termination. Unilaterally terminate this Agreement by written notice to CONSULTANT. Upon election of this remedy by the District, Paragraph 10 governing District Termination Right shall apply; or

15.2 Specific Enforcement. Enforce any provision of this Agreement by specific performance. If this remedy is elected by the District, CONSULTANT agrees that specific performance is appropriate and reasonable given the unique and special services being performed by CONSULTANT and expressly waives the right to contest the right of the District to seek specific performance in any subsequent action or proceeding between the parties; or

15.3 File suit against CONSULTANT for damages arising from breach of this Agreement. In the event the District elects this remedy, it shall be entitled to recover all damages authorized by law; and/or

15.4 The District shall be entitled to withhold such amounts as the District determines are appropriate, in its sole discretion, to complete the work or services required by this Agreement, or to correct any labor or materials resulting from CONSULTANT's negligence.

In the event the District is required to pay any sum or amount to complete any labor or materials services required by this Agreement, or to correct any labor or materials resulting from CONSULTANT's negligence, amounts paid by the District shall earn interest at the rate of one percent (1%) per month from the date of payment until the District is repaid in full.

16. Insurance. At all times during the term of this Agreement, CONSULTANT must maintain a commercial liability insurance policy, workers' compensation insurance, and professional liability insurance in strict accordance with all terms of this paragraph. The insurance required by this paragraph shall be provided as follows:

16.1 Liability Insurance. Following execution of this Agreement, and prior to commencement of any work, CONSULTANT shall provide the District with proof of liability insurance coverage with an insurance company licensed to do business in the State of California and acceptable to the District, providing \$1,000,000 of coverage per occurrence and \$2,000,000 minimum aggregate. The liability insurance coverage shall include each of the following types of insurance:

A. General Liability:

- | | |
|-----------------------------------------|---------------------------------------------------------------|
| 1. Comprehensive Form | 6. Contractual Insurance |
| 2. Premises-Operations | 7. Broad form Property Damage, Including Completed Operations |
| 3. Explosion and Collapse Hazard | 8. Independent Contractors |
| 4. Underground Hazard | 9. Personal Liability |
| 5. Projects/Completed Operations Hazard | |

B. Auto Liability

1. Comprehensive Form
2. Owned
3. Hired

The policy shall include contractual coverage sufficiently broad to insure the matters set forth in the section entitled “Indemnity” in this Agreement. The deductible amount shall not exceed \$5,000.00. Also included in such insurance shall be a “cross-liability” or “severability of interest” clause.

16.2 Workers’ Compensation Insurance. Following execution of this Agreement and prior to commencement of any work, CONSULTANT shall submit proof of insurance showing they have obtained, for the period of the agreement, full workers’ compensation insurance coverage for no less than the statutory limits covering all persons whom CONSULTANT employs or may employ in carrying out the work under this agreement.

16.3 Professional Liability Insurance. Following execution of this Agreement, and prior to commencement of any work, CONSULTANT shall provide the District with proof of professional liability insurance with an insurance provider licensed to do business in the State of California, providing \$1,000,000 of coverage per occurrence and \$2,000,000 minimum aggregate. This insurance shall have a deductible not to exceed \$5,000.

16.4 ACORD Certificate of Liability Insurance and Additional Insured Endorsements. All insurance required by Paragraph 16.1, 16.2, and 16.3 of this agreement shall be submitted on an ACORD Certificate of Liability Insurance. Insurers must be authorized to do business and have an agent for service of process in the State of California and have an ‘A’ financial strength rating and a financial size rating of at least Class VI in accordance with the most current A.M. Best’s Rating Guide. Additional Insured Endorsements must be provided for the Liability Insurance called out in Paragraph 16.1 with the **Olivenhain Municipal Water District (District), the District’s Engineer/Architect, the District’s Representatives, CONSULTANT’s, and each of the District’s Directors, Officers, Agents, and Employees** named as additional insureds. The insurance must include a Waiver of Subrogation and must be Primary and non-Contributory. The additional insured endorsements must be provided on Form CG 20 10 10 01. The insurance certificate and endorsements shall be cancelable with notice delivered to the District in accordance with the policy provisions.

17. Job Site Safety. CONSULTANT shall be solely liable and responsible for complying with all federal, state and local laws, rules and regulations pertaining to job safety for all agents, employees, subcontractors, suppliers, and independent contractors retained by CONSULTANT to perform any work or services or to provide any materials required by this Agreement. However, CONSULTANT shall not be liable or responsible for overall job site safety or the job site safety for any workers or agents employed by any construction contractor performing any work for the District on any construction project.

18. Indemnity. As a material term of this Agreement, CONSULTANT agrees to hold harmless, indemnify, and defend the District and its directors, officers, employees, agents, and representatives from and against any and all demands, liability, claims, suits, actions, damages, costs, fees, expenses, fines, and penalties, of whatever type or nature, including, but not limited to, reasonable attorney fees, to the extent arising out of, pertaining to, or relating to the willful misconduct, recklessness, or negligence of CONSULTANT, including its directors, officers, employees, agents, subcontractors, sub-consultants, suppliers, independent contractors, or other persons and entities employed or utilized by CONSULTANT in the performance of this Agreement. In the event that any administrative proceeding, litigation or arbitration is instituted

naming the District or any other indemnified parties as a defendant, the District and such other indemnified parties shall be entitled to appoint their own independent counsel to represent them, and CONSULTANT agrees to pay all reasonable attorneys fees, expert fees and costs, and litigation costs associated with this defense within thirty (30) days of any billing; provided however, that the CONSULTANT's obligation shall be limited as provided by Civil Code Section 2782.8 to the extent that the CONSULTANT establishes its proportionate percentage of fault by stipulation of all the parties to the proceeding or a final adjudicatory determination.

19. Miscellaneous Provisions.

19.1 California Law Governs. This Agreement shall be governed by California law.

19.2 Jurisdiction and Venue. In the event of any legal or equitable proceeding to enforce or interpret the terms and conditions of this Agreement, the parties agree that jurisdiction and venue shall lie only in the federal or state courts in or nearest to the North County Judicial District, County of San Diego, State of California.

19.3 Modification. This Agreement may not be altered in whole or in part except by a written modification approved by the Board of Directors of the District and executed by all the parties to this Agreement.

19.4 Attorneys' Fees. In the event any arbitration, action or proceeding is initiated to challenge, invalidate, enforce or interpret any of the terms of this Agreement, the prevailing party shall be entitled to all attorneys' fees, all expert fees and costs, and all litigation fees, costs, and expenses in addition to any other relief granted by law. This provision shall apply to the entire Agreement.

19.5 Entire Agreement. This Agreement, together with all exhibits attached hereto, contains all representations and the entire understanding between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, or agreements, whether or not such correspondence, memoranda or agreements are in conflict with this Agreement, are intended to be replaced in total by this Agreement and its exhibits. CONSULTANT warrants and represents that no District representative has made any oral

representations or oral agreements not contained in this Agreement. CONSULTANT further warrants and represents that CONSULTANT has not relied upon any oral statements or promises made by any District representative or agent in executing this Agreement. The parties mutually declare that this Agreement and its exhibits constitute a final, complete and integrated agreement between the parties.

19.6 Prohibition on Assignment. CONSULTANT shall not be entitled to assign or transfer all or any portion of its rights or obligations in this Agreement without obtaining the express prior written consent of the District. The District shall have no obligation to give its consent to any assignment and may deny any requested assignment, in its sole discretion.

19.7 Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties and on their respective purchasers, successors, heirs and assigns.

19.8 Unenforceable Provisions. The terms, conditions, and covenants of this Agreement shall be construed whenever possible as consistent with all applicable laws and regulations. To the extent that any provision of this Agreement, as so interpreted, is held to violate any applicable law or regulation, the remaining provisions shall nevertheless be carried into full force and effect and remain enforceable.

19.9 Representation of Capacity to Contract. Each party to this Agreement represents and warrants that he or she has the authority to execute this Agreement on behalf of the entity represented by that individual. This representation is a material term of this Agreement.

19.10 Opportunity to be Represented by Independent Counsel. Each of the parties to this Agreement warrants and represents that it has been advised to consult independent counsel of its own choosing and has had a reasonable opportunity to do so prior to executing this Agreement.

19.11 No Waiver. The failure of either party to enforce any term, covenant or condition of this Agreement on the date it is to be performed shall not be construed as a waiver of that party's right to enforce this, or any other, term, covenant, or condition of this Agreement at any later date or as a waiver of any term, covenant, or condition of this Agreement. No waiver shall occur unless the waiver is expressly stated in writing and signed by the person for the party

having the authority to expressly waive the benefit or provision, in writing. No oral waivers shall be effective against either party.

19.12 No Joint Venture and No Third Party Beneficiaries. Nothing in this Agreement is intended to create a joint venture, partnership or common enterprise relationship of any kind between the District and CONSULTANT. No third parties shall be construed as beneficiaries of any term, covenant or provision of this Agreement.

19.13 Time of Essence. The parties agree that time is of the essence as to all matters specified in this Agreement. The parties mutually declare that this is a material term of this Agreement.

19.14 Notices. All letters, statements, or notices required pursuant to this Agreement shall be deemed effective upon receipt when personally served, transmitted by facsimile machine, or sent certified mail, return receipt requested, to the following addresses or facsimile numbers:

To: "CONSULTANT"
CONSULTANT
Attn:
Address
City, State ZIP
Fax No.

To: "District"
Olivenhain Municipal Water District
Attn: Kimberly A. Thorner, General Manager
1966 Olivenhain Road
Encinitas, California 92024
Fax No. (760) 753-5640

19.15 Effective Date. The effective date of this Agreement executed in counterparts in Olivenhain, California, within the North County Judicial District, County of San Diego, State of California, is _____, 2021.

Dated: _____, 2021

Olivenhain Municipal Water District,
a public agency

By: _____
Kimberly A. Thorner
General Manager

Dated: _____, 2021

CONSULTANT

By: _____

Title: _____

DRAFT