

REQUEST FOR PROPOSALS

PROFESSIONAL AUDITING SERVICES



DUE DATE: May 5, 2023 – 4:00 p.m.

Olivenhain Municipal Water
District 1966 Olivenhain Road
Encinitas, CA 92024
760-753-6466

INTRODUCTION:

Olivenhain Municipal Water District (hereinafter called "the District") is requesting audit service proposals from qualified certified public accounting firms to perform annual audits and issue opinions on the District's financial statements for a three-year period for years ending June 30, 2024, 2025, and 2026 with an option to extend the contract for two (2) additional years ending June 30, 2027 and 2028.

It is the firm's responsibility to obtain a thorough understanding of the District's accounting system, the scope of audit, and the work to be performed in order to successfully complete the audit prior to submitting their proposal and maximum price bid.

DESCRIPTION OF THE DISTRICT:

The District is a governmental corporation governed by a publicly elected five-member Board of Directors. The District's Board of Directors delegate management responsibility of the day-to-day operations of the District to an appointed General Manager. The District currently has a total of 89 full-time employees for potable and recycled water and wastewater (sewer) operations.

The District has a Finance Committee, which provides oversight and guidance on financial matters. The Finance Committee meets at least quarterly and is comprised of the Board Treasurer, a Board Member, the General Manager, and the Finance Manager. The Finance Committee reviews financial matters that require Board action before they are presented to the full board.

The District's service area is approximately 48 square miles. This service area lies within the northern region of San Diego County and includes portions of incorporated areas such as Encinitas, Carlsbad, San Diego, Solana Beach, San Marcos and large portions of unincorporated areas such as 4S Ranch, Rancho Cielo, Rancho Santa Fe, Elfin Forest, and Santa Fe Valley. All of these communities are fairly affluent. The total estimated population served by the District is 86,000.

The District is at approximately 95% of its ultimate build-out of approximately 34,400 equivalent dwelling units. 69.6% of water that the District delivers is for domestic use, 29.2% for commercial and irrigation use (including construction and recycled water), and 1.2% for agricultural use. Residential customers represent the majority of District's customer base. The District's top 10 (ten) water customers are golf courses and homeowners' associations. The District relies on the San Diego County Water Authority (SDCWA) as a sole source of untreated water. The District owns a water treatment plant. Purchased untreated potable water is treated at the David C. McCollom Water Treatment Plant (DCMWTP). DCMWTP is a 34 million gallons

per day potable water treatment facility. The District then sells excess treatment services from its DCMWTP to Vallecitos Water District to optimize DCMWTP's capacity.

The District provides sewer collection and treatment services to a portion of the District's service area and sells recycled water to golf courses and other customers for irrigation. The District's 4S Ranch Water Reclamation Facility (WRF) collects and treats sewage from two specific areas of the District, Rancho Cielo and 4S Ranch. Sewage is processed in the 4S WRF through various treatment stages to produce California Title 22 tertiary treated recycled water that can be used for unrestricted irrigation purposes. The 4S WRF currently produces approximately 1 million gallons per day (mgd) of its maximum production of 2.0 mgd to meet recycled water demand in the southeast quadrant of the District's service area. In order to meet demand in the southeast, the District entered into purchases recycled water agreement with Rancho Santa Fe Community Services District and the City of San Diego.

The District serves recycled water in the northwest of its service area as well. The southeast and northwest recycled water systems are a separate recycled water system. To meet recycled water demand in the northwest, the District purchases recycled water from from the Vallecitos Water District and San Elijo Joint Powers Authority.

The District also operates the San Diego County Water Authority Elfin Forest Recreational Reserve. One of San Diego County's most precious natural resources, the Reserve offers approximately 11 miles of hiking, mountain biking, and equestrian trails, as well as picnic areas and scenic mountain viewing points. The 784-acre reserve was developed by OMWD in partnership with San Diego County Water Authority and US Department of the Interior – Bureau of Land Management, as an element of the Olivenhain Water Storage Project and the Authority's Emergency Storage Project.

During the fiscal year ended June 30, 2022, the District billed 17,417 acre-feet (AF) of potable water through 28,713 active potable water meters and 2,774 AF of recycled water through 314 active recycled meters. The District provided wastewater collection services to 7,250 sewer equivalent dwelling units (EDUs) in 4S Ranch, Rancho Cielo, Santa Luz, and Black Mountain Ranch.

The District is operated as an enterprise fund. As an enterprise fund, the District maintains a self-balancing set of accounts established to record the financial position and results that pertain to each activity to enhance internal control and to further the attainment of other management objectives. These groups of accounts, which are sub funds of the reporting entity, are identified in the District's books and records.

The District utilizes Microsoft Dynamic Great Plains (GP) for processing payroll, fund management, accounts payable, accounts receivable, inventory, fixed assets, and project accounting transactions. CIS Infinity is used for the District's Utility Billing and Customer Information System. The District is subject to Government Accounting Standards Board (GASB) 68 reporting requirements for its Miscellaneous Classic and PEPRAs under the CalPERS retirement program. The District does not have postemployment benefits other than pension plans, and therefore was not subject to the GASB 74 & 75 reporting requirements that took effect in fiscal year 2018. For the fiscal year ended 2022, the District implemented GASB 87 (leases).

The District has been successful in attaining federal grant funds to fund various projects. At least for fiscal year 2024, the District is expected to expend more than \$750,000 in federal funds and would therefore be subject to single audit requirements.

The District submits its CAFR (Comprehensive Annual Financial Report) to the Government Finance Officers Association and has received the Certificate of Achievement for Excellence in Financial Reporting for 27 consecutive years.

The District's audited financial information and adopted budget documents are available online at <https://www.olivenhain.com/about-us/administration/government-transparency/>.

SCOPE OF THE AUDIT:

The audits are to be performed in accordance with Generally Accepted Auditing Standards (GAAS), Generally Accepted Accounting Principles (GAAP), Governmental Accounting Standards Board (GASB) guidelines, and all other applicable guidelines.

The auditors will evaluate the adequacy of the internal control system and, where weaknesses are noted, make appropriate recommendations for improvements. A management letter will be submitted by the auditing firm if material weaknesses are noted or if otherwise deemed appropriate.

The auditor will be required to make an immediate written report of all irregularities, fraud and illegal acts, of which they become aware, to the Board President and General Manager.

The audit will cover the general purpose financial statements, footnote disclosures to the audited financial statements,, and schedules to support the audited financial statements.

The auditing firm shall submit a draft of the Audited Financial Statements, Notes to the Financial Statements, and Required Supplementary Information (RSI), no later than October 15 of each year. The District shall provide a year-end adjusted trial balance no later than September 10 of each year. Prepared by Client (PBC) list items and other relevant records for audit testing will be made available after September 10 of each year, or date agreed on for audit fieldwork. Records for the interim audit of internal controls will be available on date agreed on for the interim audit fieldwork.

The auditing firm will complete a single audit (if applicable for the fiscal year) and issue a report on the single audit as required by the federal government.

The auditing firm shall provide one copy of the Management Representation Letter, a copy of the Communications with Those Charged with Governance Letter, a copy of the Other Comments Letter, and a copy of the Auditor Opinion Letter. The auditing firm shall provide copies of Microsoft Excel and Word files that contain the Audited Financial Statements, Notes to the Basic Financial Statements, the Required Supplementary Information (RSI), and any other supporting schedules for Annual Comprehensive Financial Report (ACFR) printing and reproduction. The partner in charge of the audit shall be available to attend at least one Board Committee meeting and one Board meeting to review and present audit results and reports.

The audit firm will assist with the preparation of the District's ACFR in accordance with the requirements of Government Finance Officers Association (GFOA) and the Government Accounting Standards Board (GASB). The District submits its ACFR under the GFOA's "Certificate of Achievement of Excellence in Financial Reporting" award program. The transmittal letter, management's discussion and analysis, and statistical sections will be prepared by the District for review and comment by the audit firm prior to release of the District's CAFR.

A copy of the District's Comprehensive Annual Financial Report (CAFR) is available on District's website at

<https://www.olivenhain.com/about-us/administration/government-transparency/>.

The audit firm shall make available its working papers and respond to all reasonable inquiries of successor auditors and others to review working papers of the District, upon the District's written consent. The auditing firm will retain all working papers, at the firm's expense, for a minimum of five years, or longer, if required by generally accepted auditing standards.

The audit firm will be required to provide up to 20 hours of consultation annually at no charge, either verbal or written as requested, by answering questions regarding but not limited to payroll, taxes, internal controls, auditing, financial reporting, and accounting procedures and issues. The selected auditors shall also provide financial advice and counsel on significant matters occurring throughout the year.

The District values consistency and efficiency. It is requested that the same audit staff be assigned to the audit from the beginning to the end of the annual audit. Any new audit staff will be supervised during the time they are in the field conducting an audit.

PROPOSAL REQUIREMENTS:

Four (4) hard copies and one (1) electronic copy of a proposal must be received **not later than 4:00 p.m. Friday, May 5, 2023**, at the office of:

Olivenhain Municipal Water District
1966 Olivenhain Road
Encinitas, CA 92024

Attention: Rainy Selamat, Finance Manager
Subject: Proposal for Professional Auditing Services

The following information is required by the deadline for the firm to be

considered: A COPY OF THE PROPOSAL TO INCLUDE:

1. Transmittal letter

A signed letter of transmittal briefly stating the proposer's understanding of the work to be done, the commitment to perform the work within the required time period, a statement of why the firm believes itself to be the best qualified to perform the engagement, and a statement that the proposal is a firm and irrevocable offer until August 31, 2023.

2. Detailed proposal

3. Bidding proposal

GENERAL REQUIREMENTS OF THE PROPOSAL:

The purpose of the proposal is to demonstrate the qualifications, competence, and capacity of the firms seeking to undertake an independent audit of a special district in order to meet the requirements described in this Request for Proposal. The proposal shall demonstrate the qualifications of the firm and of the particular staff to be assigned to this engagement. It should also specify an audit approach that will meet the Request for Proposal requirements.

INDEPENDENCE:

The firm should provide an affirmation statement that it is independent of the District as defined by generally accepted auditing standards. The firm should also list and describe its professional relationships involving the District for the past five years, together with a statement explaining why such relationships do not constitute a conflict of interest relative to performing the proposed audit.

LICENSE TO PRACTICE:

An affirmation statement should be included indicating that the firm and all assigned key professional staff are properly licensed to practice in California.

FIRM QUALIFICATIONS AND EXPERIENCE:

The proposal should state the size of the firm, the size of the firm's governmental audit staff, the location of the office from which the work on this engagement is to be performed, and the number and nature of professional staff to be employed in this engagement.

The firm is also required to submit information on the report of its most recent peer review, with a statement of whether the peer review included a review of specific government engagements. In addition, the firm will submit a statement whether they have been the object of any disciplinary action in the past three years.

PARTNER/SUPERVISORY/STAFF QUALIFICATIONS AND EXPERIENCE:

The firm should identify the principal supervisory and management staff, including engagement partners, managers, other supervisors and specialists who would be assigned to the engagement, and indicate whether each person is licensed to practice as a Certified Public Accountant in California. The firm should also supply information on the government auditing experience of each person, including information on relevant continued education and professional organizations relevant to the performance of this audit.

SIMILAR ENGAGEMENTS WITH OTHER GOVERNMENT ENTITIES:

For the firm's office that will be assigned responsibility for the audit, list the most significant engagements (maximum of five), including single audit experience and list of clients who received the GFOA award, performed for water districts, wastewater districts, and other special districts in the last five years that are similar to the engagement described in this Request for Proposal.

Indicate the scope of work, date, engagement partner, total hours, and the name and telephone number of the principal client contact.

SPECIFIC AUDIT APPROACH:

The proposal should set forth a work plan, including an explanation of the audit methodology to be followed, type and extent of statistical sampling, compliance tests, substantive tests, and analytical tests to be performed, as well as a schedule (by date and hours) of the work to be performed to meet the requirements of this Request for Proposal.

IDENTIFICATION OF ANTICIPATED POTENTIAL AUDIT PROBLEMS:

The proposal should identify and describe any anticipated potential audit problems, the firm's approach to resolving these problems, and specific assistance that will be requested from the District.

BIDDING PROPOSAL:

The bidding proposal should contain all pricing information relative to performing the audit engagement as described in this Request for Proposal. A schedule of rates for partners, specialists, supervisors, and staff, multiplied by the number of hours anticipated by each, should be included. The bidding proposal shall contain all direct and indirect costs including out-of-pocket expenses to arrive at an all-inclusive maximum price.

The bidding proposal should separately list the cost of completing a single audit for each fiscal year. A single audit may be required during the agreement period. At least for fiscal year 2024, the District is expected to expend more than \$750,000 in federal funds and would therefore be subject to single audit requirements.

If it should become necessary for the District to request the auditor to render additional service to either supplement the services requested in this Request for Proposal or to perform additional work, such additional work shall be performed only if set forth in an addendum to the contract between the District and the firm. Any such additional work agreed to between the District and the firm shall be performed at the same rates set forth in the schedule of fees and expenses included in the formal bidding proposal.

DISTRICT OBLIGATION:

PAYMENT TERM:

Progress payments will be made based on hours of work performed during the engagement in accordance with the firm's formal bidding proposal. Interim billings shall cover a period of not less than one calendar month.

SELECTION PROCESS:

Proposals submitted will be evaluated by the District's Finance Committee, comprised of Treasurer, Board member, and staff appointed by General Manager.

The District reserves the right to retain all proposals submitted and use any idea in a proposal regardless of whether that proposal is selected.

During the evaluation process, the Committee may, at its discretion, request any one or all firms to make oral presentations and personal introduction of the proposed managing accountant and/or senior partner of the audit. Such presentations will provide firms with an opportunity to answer any questions the Committee may have on a firm's proposal. Not all firms may be selected to make such oral presentations. Routine clarification may be obtained by telephone or e-mail.

The final selection will be made based on the Committee's recommendations. The Committee's recommended audit firm will be brought forward to the District's Board of Directors regular monthly meeting for consideration and approval by the full Board. Final selection by the Committee will be based on the firm's qualifications, experience, audit approach, and bid. Please note that the lowest bid will not be the sole deciding factor in the final selection.

It is anticipated that a firm will be selected by July 14, 2023. Following notification of the firm selected, it is expected that a contract will be executed by approximately August 16, 2023.

Submission of a proposal constitutes acceptance by the firm of the conditions contained in this Request for Proposal unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the District and the firm selected.

The District reserves the right to reject any and all proposals. The District also reserves the right to cancel the contract, due to unsatisfactory performance of audit services, between audit years with a 30-day written notice. The District may extend the contract an additional two years, at any time, upon agreeable terms with the successful bidder.

For additional information and inquiries, contact:

Rainy Selamat
Finance Manager
Olivenhain Municipal Water
District 1966 Olivenhain Road
Encinitas, California 92024
rselamat@olivenhain.com
760.632.4218

The proposing firm warrants the following:

1. The firm is willing and able to obtain an Errors and Omissions Insurance Policy providing a prudent amount of coverage for the willful or negligent acts or omissions of any officers, employees, or agents thereof.
2. The firm will not delegate or subcontract its responsibilities under an agreement without the express prior written permission of the Olivenhain Municipal Water District.
3. All information provided by the firm in connection with this proposal is true and correct.
4. The firm will acknowledge and agree with all terms and conditions stated in this Request for Proposal.
5. The firm will sign the attached Standard Professional Service Agreement and to provide insurance certificates and all other required documentation within seven (7) days of notification of selection.

Firm

Authorized Representative/Date

Attachment: OMWD Standard Professional Service Agreement

ATTACHMENT

STANDARD PROFESSIONAL SERVICES AGREEMENT
FOR THE OLIVENHAIN MUNICIPAL WATER DISTRICT

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 NAME, 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 an [TYPE OF COMPANY] to provide [SERVICES] with in the District boundaries.
3. CONSULTANT is an [TYPE OF COMPANY] licensed to do business in the State of California with [EXPERTISE]
4. The District desires to retain CONSULTANT to provide [SERVICES TO BE PROVIDED].

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

1. Services to Be Performed. CONSULTANT agrees to perform [SERVICES TO BE PERFORMED AND PROJECT NAME]. 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 \$XX,XXX. 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 provided during the previous month. Progress payments will be made based on hours of work performed. 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 [INSERT CONSULTANT TYPE] with expertise in [EXPERTISE] 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 DATE. 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. 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.

12. 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.

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

14. 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 its sole option:

14.1 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

14.2 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

14.3 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

14.4 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.

15. 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:

15.1 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.

15.2 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.

15.3 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.

15.4 ACORD Certificate of Liability Insurance and Additional Insured Endorsements. All insurance required by Paragraph 15.1, 15.2, and 15.3 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 15.1 with the **Olivenhain Municipal Water District (District), the District's Engineer/Architect, the District's Representatives, Consultants, 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.

16. 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.

17. 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.

18. Miscellaneous Provisions.

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

18.2 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.

18.3 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.

18.4 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.

18.5 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.

18.6 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.

18.7 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.

18.8 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.

18.9 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.

18.10 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.

18.11 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.

18.12 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.

18.13 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.

18.14 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"
FULL NAME
Attn:
ADDRESS
CITY, STATE, ZIP
Fax No. :(XXX) XXX-XXXX

To: "District"

Olivenhain Municipal Water District
Attn: General Manager
1966 Olivenhain Road
Encinitas, California 92024

18.15 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 _____, 20XX.

Dated: _____, 20XX

Olivenhain Municipal Water District,
a public agency

By: _____
Kimberly A. Thorner
General Manager

Dated: _____, 20XX

CONSULTANT

By: _____

Title: _____