



REQUEST FOR PROPOSALS

TO PROVIDE

GEOTECHNICAL SERVICES

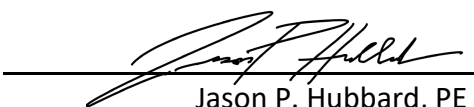
FOR THE CONSTRUCTION OF THE

MANCHESTER AVENUE POTABLE WATER PIPELINE REPLACEMENT PROJECT AND
THE MANCHESTER AVENUE RECYCLED WATER PROJECT

PROPOSALS DUE:

July 29, 2021, 2:00 P.M.

OLIVENHAIN MUNICIPAL WATER DISTRICT



Jason P. Hubbard, PE
Engineering Manager

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REQUEST FOR PROPOSALS
TO PROVIDE
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MANCHESTER AVENUE POTABLE WATER PIPELINE REPLACEMENT AND THE MANCHESTER
AVENUE RECYCLED WATER PIPELINE PROJECTS

1.0 INTRODUCTION

The Olivenhain Municipal Water District (District) is seeking proposals for geotechnical services during the construction of two separate pipeline projects: Manchester Potable Water Pipeline Replacement and Manchester Recycled Water Pipeline Construction. Both projects are located in the city of Encinitas. Construction management and inspection services will be provided by others.

1.1 Manchester Avenue Potable Water Pipeline Replacement Project

The District has designed and received construction bids for the replacement of an existing 12 inch CML&C steel pipeline in Manchester Avenue near the intersection of Encinitas Boulevard and Rancho Santa Fe Road in Encinitas, CA. The pipeline replacement project includes significant construction activity in the intersection confluence of Rancho Santa Fe Road, Encinitas Boulevard, and Manchester Avenue and continues southwest in Manchester Avenue a distance of approximately 1,900 feet. Due to the tight construction corridor and adjacent businesses, the majority of the project is anticipated to be constructed at night with some day work as allowed by the City of Encinitas. A project overview is shown in Exhibit 1. Final project plans and specifications can be found on the District's website at: <https://www.olivenhain.com/about-us/bids-planning/>

An approximate schedule of the major milestones includes:

Award contract	July 2021
Begin Construction	August 2021
End Construction	April 2022

1.2 Manchester Avenue Recycled Water Pipeline Project

The District has completed design and will be bidding for the construction of approximately 7,000 linear feet of new 6 inch PVC recycled water pipeline

located in Manchester Avenue and El Camino Real between Via Poco on the west and Tennis Club Drive on the north. Some work near the vicinity of Interstate 5/Via Poco and in the intersection of Manchester Avenue and El Camino Real may require night work however the majority of the project is anticipated to be constructed with restricted hours during the daytime. The pipeline will be installed in the existing paved road right-of-way. A project overview is shown in Exhibit 2.

The plans and specifications are in the process of being reviewed by the City of Encinitas. The District has filed an application with the City for a Coastal Development Permit. Until comments are received, the schedule for approval of the permit is unknown.

The 100 percent complete plans and quantity estimate are available through the following link: <https://www.olivenhain.com/projects/> under the Manchester Avenue Recycled Water Pipeline Project, Geotechnical. The Environmental IS/MND is available through the same link under Environmental. The District's Standard Specifications are available on the District website. An approximate schedule of the major milestones includes:

Advertise Construction Contract	August 2021
Open Bids	September 2021
Award Contract	October 2021
Begin Construction	November 2021
End Construction	June 2022

2.0 SCOPE OF SERVICES

The District is requesting proposals for the provision of geotechnical testing services during construction to include soils and paving testing, concrete cylinder testing (as necessary), and geotechnical recommendations if unsuitable soils or other site conditions are encountered during construction. In general, these services are anticipated to include but are not limited to the following:

- Nightwork
- Detailed field reports (with photographs) to be submitted with monthly invoicing
- Final report
- Compliance with City of Encinitas requirements
- Coordination with District's Construction Management firm

3.0 SPECIAL CONSIDERATIONS

The consultant shall schedule their services in a manner which will provide the necessary, timely services required during all phases of construction of this project. Extended and nighttime hours may be required in order to mitigate project traffic or other impacts as required by the City of Encinitas. For the purposes of preparing a proposal, assume that construction work hours will be:

- For the Manchester Potable Project, Monday through Friday 9:00 A.M. to 3:30 P.M for daytime work and Monday through Thursday 8:00 P.M. to 6:00 A.M for nighttime work for the specific areas of work shown on the Plans. See TRAFFIC CONTROL, STAGING AND WORK HOURS NOTE #15 on sheet 3 of the signed plans and project specifications 00810, 01150, and 01305.
- For the Manchester Recycled Project, Monday through Friday from 9:00 AM to 3:00 PM.

4.0 SUBMITTAL REQUIREMENTS

Submit to the District, one (1) executed original, clearly marked on the cover, and an electronic format (PDF) on a thumb drive or email.

Proposals shall be limited to 12 pages not including cover, tabs, resumes, scope, or fee estimate. Limit resumes to a maximum of 2 pages per identified staff member. Provide the following information at a minimum:

- Legal company name and experience.
- Name of 4 similar projects performed within the past 4 years including the staff member who worked on the project
- Name and experience of proposed on site staff member(s)
- Proposed scope of work for each project (provide separately for each project)
- Other relevant information regarding your proposal

Please provide separate standalone scope and fee proposals for each project.

The Proposal must be received no later than 2:00 p.m. PST, on July 29, 2021 by the office of:

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

Email submission by the above deadline may proceed the executed original.

5.0 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 July 26, 2021.

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

OMWD will not hold a pre-proposal meeting. Consultants are encouraged to do their own field reconnaissance.

Individual 30-minute technical meetings with consultant teams who are seriously competing for the project will be scheduled if OMWD 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 may attend the meeting. The last day for meeting is July 23, 2021. Contact Tess Garnica at tgarnica@olivenhain.com to schedule a meeting.

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

6.0 CONSULTANT NOMINATION AND SELECTION PROCESS

A Consultant Selection Panel (Panel) will be established for this project. The Panel will evaluate the Proposals based on the information submitted.

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

If necessary, OMWD 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 OMWD is unable to reach an acceptable agreement with the selected firm, OMWD 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 that OMWD enter into the proposed agreement. The General Manager will make the final recommendation to the OMWD Board of Directors, concerning the proposed agreement. Final authority to approve the agreement rests with OMWD's Board of Directors. A contract is expected to be presented to the Board of Directors for consideration at their August 18, 2021 meeting.

7.0 EVALUATION CRITERIA

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

7.1 Approach to Work (25%)

- Understanding of project and objectives
- Responsiveness to the 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

7.2 Project Manager and Team Qualifications (35%)

- 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

7.3 Project Experience (25%)

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

7.4 Project Cost (15%)

- Costs match scope or work and schedules outlined in the contract documents and other material
- Competitive costs and rates

8.0 SPECIAL CONDITIONS

This RFP does not commit OMWD 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 OMWD and are public records, and as such may be subject to public review.

OMWD 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. OMWD reserves the right to reject all proposals and terminate the project. If OMWD cancels or revises the RFP, rejects all Proposals or terminates the project, all proposers will be notified in writing by OMWD.

OMWD 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 3) and to provide the Insurance Certificates and all other required documentation within 10 calendar days of notification of selection.

Proposals are due July 29, 2021 at 2:00 pm.

Attachments:

Exhibit 1 – Overview on the Manchester Avenue Potable Water Pipeline Replacement Project

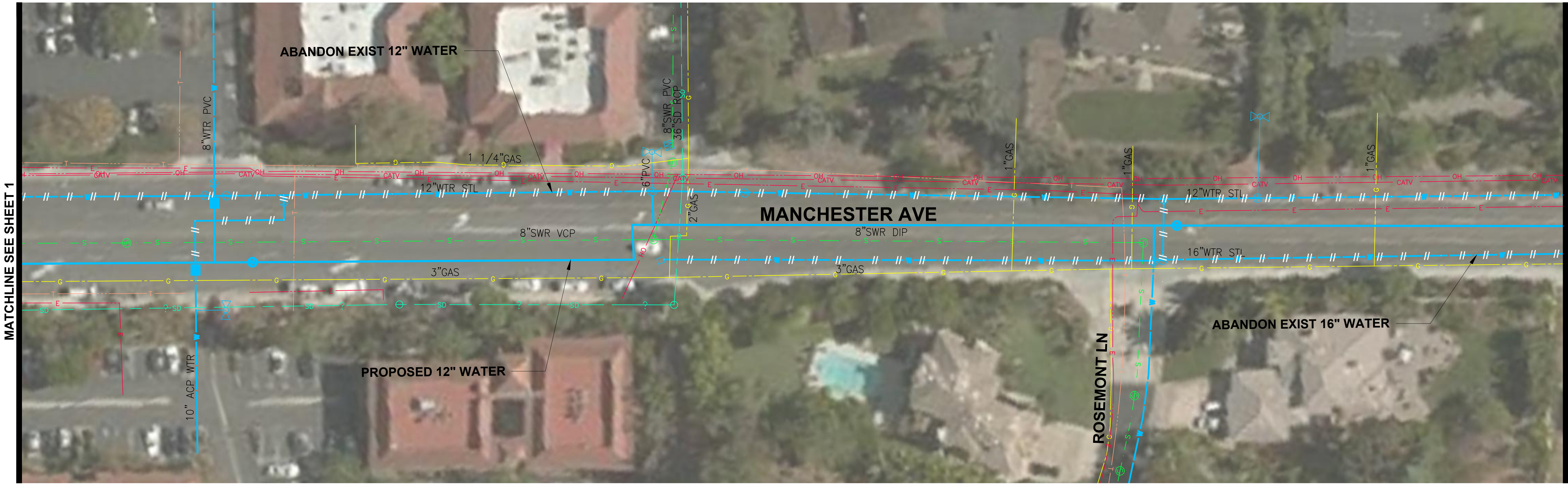
Exhibit 2 – Overview of the Manchester Avenue Recycled Water Pipeline Project

Exhibit 3 – Draft Professional Services Agreement

Exhibit 1

Overview of the Manchester Ave. Potable Water Pipeline Replacement Project

P:\Projects\DLME (0132)\0006 Task Order\DWG 2017-2- Manchester Pipeline\CADD\PLAN 1.dwg 11/27/2017 08:58



NOTE:
EXISTING UTILITIES HAVE BEEN APPROXIMATELY LOCATED BASED ON AS-BUILT PLANS BUT HAVE NOT BEEN FIELD CHECKED, POTHOLED, OR REVIEWED WITH OWNERS. THE PROPOSED PIPELINE ALIGNMENT SHOWN IS CONCEPTUAL ONLY AND HAS NOT BEEN CHECKED FOR VERTICAL OR HORIZONTAL CLEARANCES, DESIGN CONSTRAINTS OR OTHER REQUIREMENTS.



CONCEPTUAL ALIGNMENT FOR PIPELINE REPLACEMENT PROJECT ALONG
RANCHO SANTA FE RD, MANCHESTER AVE & ENCINITAS BLVD

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

Infrastructure
14271 Danjelson Street
Poway, Calif 92064
T 858.413.2400 F 858.413.2440
www.lecorporation.com

SHEET
2 of 2

ORIGINAL SCALE IN INCHES

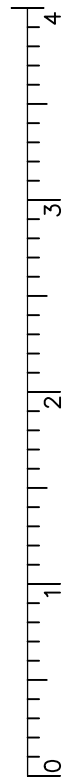


Exhibit 2

Overview of the Manchester Ave. Recycled Water Pipeline Project

Exhibit 3

Professional Services Agreement Draft

PROFESSIONAL SERVICES AGREEMENT
GEOTECHNICAL SERVICES
FOR THE OLIVENHAIN MUNICIPAL WATER DISTRICT

21AGRXXX
D120040 and D120049

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 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 [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. 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 |
| 3. Explosion and Collapse Hazard | Completed Operations |

- | | |
|---|----------------------------|
| 4. Underground Hazard | 8. Independent Contractors |
| 5. Projects/Completed Operations Hazard | 9. Personal Liability |

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 "
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
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 _____, 20XX.

Dated: _____, 20XX

Olivenhain Municipal Water District,
a public agency

By: _____
Kimberly A. Thorner
General Manager

Dated: _____, 20XX

CONSULTANT

By: _____

Title: _____