

## COOPERATIVE SERVICES AGREEMENT BETWEEN COUNTY OF ORANGE AND SOUTH COAST WATER DISTRICT

This cooperative services Agreement for Poche Clean Beach Project Long Term Operation Services (“Agreement”), for purposes of identification numbered ~~MA-080-XXXX~~ MA-080-21011524, is by and between the County of Orange (“County”), a political subdivision of the State of California, and South Coast Water District (“District”), a special district. County and District may be referred to as PARTIES and individually as PARTY.

### RECITALS

WHEREAS, on October 31, 2006, the County Board of Supervisors authorized the County to accept a State Clean Beach Initiative grant of \$1,500,000 to construct the Poche Clean Beach Project (Project) urban runoff treatment facility, to treat and reduce bacteria in urban runoff discharging at Poche Beach; and

WHEREAS, District has been providing operation and maintenance services for the Project since 2010 and has represented that it is qualified to provide such services to County as further set forth herein; and

WHEREAS, District desires to continue to provide operation and maintenance services to County; and

WHEREAS, County desires that District continue to provide operations and maintenance services for the Project, on a time and materials basis, as more specifically described herein.

### TERMS AND CONDITIONS

NOW THEREFORE, in consideration of the above Recitals, which are incorporated by reference herein, and for valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the PARTIES agree as follows:

1. **Scope of Services:** This Agreement, including all attachments hereto, specifies the contractual terms and conditions by which District will provide Poche Clean Beach Project Long Term Operation Services (“Services”) to County. District agrees to provide Services in accordance with this Agreement, and as described in Attachment A, Scope of Work, and Attachment B, Estimated Annual Operation and Maintenance Schedule, attached hereto and incorporated by reference. District agrees to provide Services on a time and materials basis, for compensation as more specifically described in Attachment C, District’s Pricing, and Attachment D, South Coast Water District Labor and Equipment Rates, attached hereto and incorporated herein by reference.
2. **Contract Term:** The term of this Agreement shall become effective July 1, 2021 or upon approval by the Orange County Board of Supervisors, whichever occurs later, and shall continue ~~for ten years from that date~~ until June 30, 2031 unless otherwise terminated as provided herein.

3. **Allowable Discharge of Filter Backwash:** County permission to discharge to District facilities is as set forth in the Agreement number D08-44 (Diversion Agreement), **attached hereto and incorporate by reference as Attachment E.**
4. **Contingency of Funds:** District acknowledges that funding or portions of funding for this Agreement may be contingent upon County and City of San Clemente budget approval, **attached hereto and incorporate by reference as Attachment F;** receipt of funds from, and/or obligation of funds by, the State of California or the City of San Clemente to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or request modification of this Agreement without penalty but shall reimburse District for any costs incurred up to that time.
5. **Conditions Affecting Work:** District shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Agreement and to know the general conditions which can affect the work or the cost thereof. District shall communicate to County any changes in work to be performed that will change the cost or nature of the services under the Scope of Work.
6. **District's Personnel:** District warrants that all persons employed to provide service under this Agreement have satisfactory past work records indicating their ability to accept the kind of responsibility anticipated under this Contract. District does not warrant or represent that it is an expert in the design of the facilities of the type constructed for the County and, therefore, County agrees to rely on its own engineering expertise as to the design and preparation of operating instructions for the facility. All District personnel shall be required to wear uniforms, badges and/or other means of identification which are to be issued and provided by District and must be worn at all times while working on County property. County's Project Manager (**identified in Section 12**) must be notified in writing, within seven days of notification of award of Agreement, of the uniform and/or badges and/or other identification to be worn by employees prior to beginning work and notified in writing seven days prior to any changes in this procedure.
7. **No Waiver by County:** The failure of County in any one or more instances to insist upon strict performance of any of the terms of this Agreement or to exercise any option herein conferred, shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.
8. **Conflict of Interest:** District shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County concerning the Scope of Work. This obligation shall apply to the District; District's employees, agents, and relatives; sub-tier Consultants; and third parties associated with accomplishing work and services hereunder. District's obligations under this paragraph shall be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.

9. **Breach of Agreement:** The failure of District to comply with any of the provisions, covenants or conditions of this Agreement, shall constitute a material breach of this Agreement. In such event County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Agreement:
- i. Afford District written notice of the breach and ten calendar days or such shorter time that may be specified in this Agreement within which to cure the breach.
  - ii. Notify District to immediately cease work.
  - iii. Terminate the Agreement immediately without penalty and pay amounts due for work performed up to the date of termination.
  - iv. All remedies for breach under this Agreement whether state herein or available at law, in equity, or otherwise shall be limited by the Limitation of Liability stated in Article 26 below.
10. **Agreement Disputes:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Agreement is not disposed of in a reasonable period of time by District and County's Project Manager (identified in Section 12), such matter shall be brought to the attention of OC Public Works, by way of the following process:
- i. District shall submit to OC Public Works a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Agreement, unless County, on its own initiative, has already rendered such a final decision.
  - ii. District's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Agreement, District shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Agreement adjustment for which District believes County is liable.
  - iii. Pending the final resolution of any dispute arising under, related to, or involving this Agreement and subject to Section 21, Termination, of this Agreement, which provides each Party to terminate this Agreement without penalty immediately with cause or after 45 days written notice with cause, District agrees to diligently proceed with the performance of this Agreement, including the delivery of goods and/or provision of services up to the date of termination. District's failure to diligently proceed up to the date of termination shall be considered a material breach of this Agreement.
  - iv. Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by a senior official of OC Public Works. If County fails to render a decision within 90 days after receipt of District's demand, it shall be deemed a final decision adverse to District's contentions. County's final decision shall be conclusive and binding

regarding the dispute unless District commences action in a court of competent jurisdiction to contest such decision within 90 days following the date of County's final decision or one year following the accrual of the cause of action, whichever is later.

11. **Orderly Termination:** Upon termination or other expiration of this Agreement, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Agreement. In addition, each Party will assist the other Party in orderly termination of this Agreement and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.
12. **Notices:** Any and all notices, requests, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of County's Project Manager ([see below](#)) and District's routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: OC Public Works/OC Environmental Resources

Attn: Beatrice Musacchia  
2301 North Glassell Street  
Orange, CA 92865-2773  
Tel: 714-955-0612  
Email: Beatrice.Musacchia@ocpw.ocgov.com

District:South Coast Water District.

Attn: Mr. Joseph N. McDivitt, Director of Operations  
31592 West Street  
Laguna Beach, CA 92651-6907  
Phone: 949-499-4555 ext. 3122  
Email: jmcdivitt@scwd.org

13. **Governing Law and Venue:** This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.

14. **Entire Agreement:** This Agreement, including Attachments **A, B, C, D, E and F** which are attached hereto and incorporated herein by this reference contains the entire Agreement between the Parties with respect to the matters herein.
15. **Amendments:** No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
16. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
17. **Delivery:** Time is of the essence in this Agreement.
18. **Acceptance/Payment:** Unless otherwise agreed to in writing by County; 1) acceptance shall not be deemed complete unless in writing and until all services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears.
19. **Assignment or Subcontracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. The performance of this Agreement may not be assigned by District without the express written consent of County. District will not sub-contract the performance of facility operations without the express written consent of County. Any changes to pre-approved sub-contractors, or any other subcontracting of services where costs for services exceed \$2,000.00, require District to obtain prior written authorization of County. Any attempt by District to assign or sub-contract the performance of any portion of this Agreement under conditions other than stated herein shall be invalid and shall constitute a breach of this Agreement.
20. **Non-Discrimination:** In the performance of this Agreement, District agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical conditions, marital status, or sex of such persons. District acknowledges that a violation of this provision shall subject District to all the penalties imposed for a violation of Anti-Discrimination Law or regulation, including but not limited to, Section 1720 et seq. of the California Labor Code.
21. **Termination:** In addition to any other remedies or rights it may have by law and those set forth in this Agreement, both Parties have the right to terminate this Agreement without penalty immediately with cause or after 45 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of Agreement, any misrepresentation or fraud on the part of the Party. Exercise by either Party of its right to terminate the Agreement shall relieve County of all further obligations.
22. **Consent to Breach Not Waiver:** No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any

consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

23. **Remedies Not Exclusive:** The remedies for breach set forth in this Agreement are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Agreement does not preclude resort by either Party to any other remedies provided by law.
24. **Independent Contractor:** District shall be considered an Independent Contractor, and not the District, its employees, nor anyone working for District under this Agreement shall be considered an agent or an employee of County. Not the District, employees nor anyone working for the District under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.
25. **Performance:** District shall perform all work under this Agreement, taking necessary steps and precautions to perform the work to County's satisfaction. District shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by District under this Agreement. District shall perform all work diligently, carefully, and in a good and workman-like manner.
26. **Insurance Provisions:** Prior to the provision of services under this Agreement, the District agrees to purchase all required insurance at District's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Agreement have been complied with. District agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Agreement. **The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy.** In addition, all subcontractors performing work on behalf of District pursuant to this Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for District.

District shall ensure that all subcontractors performing work on behalf of District pursuant to this Agreement shall be covered under District's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for District. District shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from District under this Agreement. It is the obligation of District to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by District through the entirety of this Agreement for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) ~~and deductibles~~ shall be clearly stated on the Certificate of Insurance. ~~If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a zero (0) by the appropriate line of coverage.~~ Any self-insured retention (SIR) ~~or deductible~~ in an amount in excess of **Fifty Thousand Dollars (\$50,000)** ~~(\$5,000 for automobile liability), which~~ shall specifically be approved by the ~~County Executive Office (CEO)/Office of Risk~~

Management County's Risk Manager, or designee, upon review of District's current audited financial report. If District's SIR is approved, District, in addition to, and without limitation of, any other indemnity provision(s) in this Agreement, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from District's, its agents, employee's or subcontractor's performance of this Agreement, District shall defend the County at its sole cost and expense with counsel approved by the Board of Supervisors against same; and
- 2) District's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the District's SIR provision shall be interpreted as though the District was an insurer and the County was the insured.

Upon notice of any actual or alleged claim or loss arising out of a subcontractor's work hereunder, subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the District and Additional Insureds.

If the District fails to maintain insurance acceptable to the County for the full term of this ~~Contract~~ Agreement, the County may terminate this Agreement.

**Qualified Insurer**

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the District shall provide the minimum limits and coverage as set forth below:

<b><u>Coverage</u></b>	<b><u>Minimum Limits</u></b>
Commercial General Liability	\$34,000,000 per occurrence \$32,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per occurrence

Pollution Liability \_\_\_\_\_\$1,000,000  
per claims made or occurrence

**Required Coverage Forms**

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

**Required Endorsements**

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the **County of Orange, its elected and appointed officials, officers, ~~agents and employees~~ and agents** as Additional Insureds, ~~or provide blanket coverage which shall state~~ **AS REQUIRED BY WRITTEN CONTRACT.**
- 2) A primary non-contributing endorsement evidencing that the District's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.
- ~~2)3)~~ A ~~Products and Completed Operations~~ endorsement using ISO Form CG2037 (ed. 10/01) or a for, at least as broad, or an acceptable alternative is the ISO from CG2010 (ed. 11/85)

The Pollution Liability policy shall contain the following endorsements which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement naming the **County of Orange, its elected and appointed officials, officers, ~~agents and employees~~ and agents** as Additional Insureds. ~~for its vicarious liability.~~

- 2) A primary ~~and~~ non-contributing endorsement evidencing that the District's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the **County of Orange, its elected and appointed officials, officers, ~~agents and employees~~ and agents** or provide blanket coverage which shall stat **AS REQUIRED BY WRITTEN CONTRACT** when acting within the scope of their appointment or employment.

All insurance policies required by this Agreement shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, ~~agents and employees~~ and agents when acting within the scope of their appointment or employment.

District shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Agreement, upon which the County may suspend or terminate this Agreement.

If District's Pollution Liability coverage, is a "~~Claims Made~~" ~~claims-made~~ policy(~~ies~~), District shall agree to maintain coverage for two (2) years following the completion of the Agreement.

The Commercial General Liability policy shall contain a severability of interests clause ~~also known as a "separation of insureds" clause~~ (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation\*.

If the District fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified ~~vendor~~ Contractor.

County expressly retains the right to require District to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify District in writing of changes in the insurance requirements. If District does not deposit copies of acceptable ~~c~~Certificates of ~~i~~nsurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Agreement may be in breach without further notice to District, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit District's liability hereunder nor to fulfill the indemnification

provisions and requirements of this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

27. **Changes:** District shall make no changes in the work or perform any additional work without County's specific written approval.
28. **Change of Ownership:** District agrees that if there is a change or transfer in ownership of District's business prior to completion of this Agreement, the new owners shall be required under terms of sale or other transfer to assume District's duties and obligations contained in this Agreement and complete them to the satisfaction of County.
29. **Force Majeure:** District shall not be deemed in breach of contract due to District's inability to perform caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided District gives written notice of the cause of District's inability to perform to County within 36 hours of the start of the delay and District avails themselves of any available remedies.
30. **Confidentiality:** District agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Agreement. All such records and information shall be considered confidential and kept confidential by District and District's staff, agents and employees. However, County acknowledges that District as a public agency is subject to the California Public Records Act. District will endeavor to keep documents confidential and not disclose them to any third parties unless directed to do so by court order.
31. **Compliance with Laws:** District represents and warrants that services to be provided under this Agreement shall fully comply, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County.
32. **Pricing:** The Agreement price (not to exceed \$250,000 annually), as more fully ~~set forth~~described in Attachments C and D, ~~includes~~is compensation on a Time and Materials basis for providing Services in accordance with ~~required specifications, or Services as specified in~~ the scopes of work set forth in Attachments A and B, and no additional compensation will be allowed therefore, unless otherwise provided for in this Agreement.  
Compensation ~~Billing~~ rates reflected in Attachment D may thereafter be adjusted starting July 1, 2022, and then annually on July 1 of each fiscal year ~~annually each fiscal year (July 1- June 30) on July 1st thereafter,~~ during the term of the Agreement. Said adjustment ~~and~~ shall not exceed two and one half percent (2.5%) of the rates for the previous fiscal year. District will provide sixty (60) days prior written notice to County of any increase of the billing compensation rate to be effective the following July 1st for that following fiscal year.
33. **Terms and Conditions:** District and County acknowledges that it has read and agrees to all terms and conditions included in this Agreement.
34. **Headings:** The various headings and numbers herein, the grouping of provisions

of this Agreement into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

35. **Severability:** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
36. **Calendar Days:** Any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
37. **Attorney’s Fees:** In any action or proceeding to enforce or interpret any provision of this Agreement, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney’s fees, costs and expenses.
38. **Interpretation:** This Agreement has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Agreement by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Agreement.
39. **Authority:** The Parties to this Agreement represent and warrant that this Agreement has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
42. **Employee Eligibility Verification:** District warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens, and others and that all its employees performing work under this Agreement meet the citizenship or alien status requirement set forth in Federal statutes and regulations. District shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. District shall retain all such documentation for all covered employees for the period prescribed by the law. District shall indemnify, defend with counsel approved in writing by County, and hold harmless, County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against District or County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Agreement.

43. **Indemnification:** District agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by District pursuant to this Agreement. If judgment is entered against District and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, District and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
44. **Audits/Inspections:** District agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of District for the purpose of auditing or inspecting any aspect of performance under this Agreement. The inspection and/or audit will be confined to those matters connected with the performance of the Agreement including, but not limited to, the costs of administering the Agreement. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the District's records before final payment is made.

District agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Agreement or by law. District agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, District agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Agreement.

Should the District cease to exist as a legal entity, the District's records pertaining to this Agreement shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's **Project Manager** (identified in Section 12)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates first written above.

**SOUTH COAST WATER DISTRICT**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Corporate Officer

Corporate Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates first written above.

**County of Orange**, a political subdivision  
of the State of California:

By: \_\_\_\_\_ Date: \_\_\_\_\_

Director of OC Public Works

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**  
**County Counsel**

By \_\_\_\_\_

Deputy

Date \_\_\_\_\_

**ATTACHMENT A**

**SCOPE OF WORK**

**I. GENERAL DESCRIPTION**

District shall provide all labor, tools, materials, equipment, etc. required for the long term operations and maintenance services for the Poche Clean Beach Project (hereinafter referred to as Treatment Facility). All work shall be performed in accordance with that certain agreement entitled Cooperative Services Agreement Between County of Orange and South Coast Water District, to which this Scope of Work is appended to as Attachment A.

**II. SCOPE OF WORK**

**A. Annual Operations and Maintenance**

1. District shall provide personnel and equipment necessary to effectively operate the Treatment Facility on a day-to-day basis in accordance with:
  - a.) facility operations and maintenance manual(s) provided by the County;
  - b.) treated runoff water quality data;
  - c.) standard industry operating practices for comparable facilities, and
  - d.) best professional judgment of District staff.
2. District shall provide continued operation and maintenance services under this Agreement effective on July 1, 2021, or upon approval by the Orange County Board of Supervisors, whichever occurs later, and shall continue for ten years from that date, or June 30, 2031, unless otherwise terminated as provided herein.
3. Operations and maintenance services shall include: conducting filter backwash discharges from the system, recordkeeping, inspection, operation, maintenance, calibration, cleaning and/or replacement of the in-channel filter screen, removal of light floatable in-channel debris, inflatable diversion dam, wet well filters, pumps, piping, flow meters, turbidity meters, sand filters, wet well, surge tank, level sensors, mechanical equipment, air compressor, electrical equipment, UV equipment, discharge pipeline outlet, communication systems, general equipment corrosion maintenance, operations data reporting, and other services as acceptable to District. Annual operations and maintenance tasks with corresponding estimated frequencies are outlined in Attachment B herein. However, during the course of performing operations and maintenance services, District may adjust the frequency of visits necessary to effectively operate and maintain the facility.
4. District shall document operation and maintenance activities on daily checklists, recording data for runoff volumes treated, backwash volumes

discharged, maintenance performed, repairs made, equipment utilized and materials expended. District shall submit monthly operations reports which include: number of days of effective operation, runoff volumes treated, backwash volumes discharged and major maintenance actions. County shall provide formats for the daily checklist and monthly operations reports.

5. District shall perform the following activities for County in accordance with Nuisance Water-Special Wastewater Discharge (NSWD), Permit No. SCWD-N4-011-10-23 [South Orange County Wastewater Authority (SOCWA) Permit]:
  - a. Assess calibration and notify County if any devices do not appear to be in good working order as described in Part 3, paragraph 13.
  - b. Provide shut down and termination of diversion services described in Part 5, paragraph 4, Special Requirements.
6. County, as owner and user of the Treatment Facility, shall remain the Permittee under SOCWA Permit and is responsible for compliance with the terms and conditions of said permit. This Agreement is not intended to limit nor relieve County's responsibilities under said permit and is not intended to be a delegation to District of County's obligations under said permit.
7. Conduct annual discharge pipe inspection as required in accordance Section 13 of Coastal Development Permit (CDP) No. 5-06-093 issued by the California Coastal Commission by qualified personnel to identify signs of deterioration and provide recommendations for necessary maintenance and protection of PVC discharge pipe for the Treatment Facility. The intent of the inspection requirement is to ensure that the discharge pipe is maintained in good working condition for the duration of its service life.
8. District may subcontract outside specialty services to perform certain maintenance and facility improvements activities, in accordance with requirements of Articles 19 Assignment or Subcontracting, and 26 Insurance Provisions. County shall pay costs for such services upon invoicing by District. District may also purchase equipment or materials necessary for facility operations and maintenance. If cost for any single equipment item necessary for operation and maintenance activities exceeds \$2,000.00, District shall request written approval from County prior to purchase.
9. As part of annual operation and maintenance services, District shall also coordinate, provide oversight during, and provide recommendations for acceptance of repair or replacement of facility materials, equipment, and workmanship, where such repair or replacement is necessary and is covered under guarantees extended by the contractor or equipment vendors to County. If repairs are determined to not fall under equipment vendors, District may elect to conduct repairs directly or request engagement of specialty services.
10. County shall provide permitting and maintenance services with regard to Prima Deshecha Channel beach outfall maintenance to manage channel

backwater levels. County shall be responsible for heavy debris removal within the channel. County shall also be responsible for directly opening accounts and paying charges for water, wastewater, telephone/data line, electrical, and other utilities necessary for Treatment Facility operation.

11. If water quality or facility performance becomes problematic, District shall use its best professional judgment to determine the source of the problem and provide recommendations to County to improve performance of Treatment Facility. County may request District implement its recommendations in accordance with the terms and conditions of this Agreement. County acknowledges that the ultimate performance of Treatment Facility is a function of the design and construction of the facility and that to the extent that Treatment Facility fails to achieve desired water quality as a result of its design and construction that such failures are beyond District's responsibility and control.

### **III. ADDITIONAL SERVICES**

- A. Upon direction from County, District shall also perform, or engage outside specialty services to perform, additional services related to the overall operations and condition of Treatment Facility. Additional services may include: water quality sampling and analysis; unanticipated repairs not covered by equipment vendor warranty; structural improvements to Treatment Facility; and other services acceptable to District. Structural improvements may include provision of data line and programming for remote monitoring of process control.
- B. Additional services will be performed only with the written approval of County.

## ATTACHMENT B

## ESTIMATED ANNUAL OPERATION &amp; MAINTENANCE SCHEDULE

Operation	Daily	Weekly	Monthly	Annual
<b>Channel Diversion/Inflatable Dam</b>				
Maintain and repair inflatable dam		<b>as necessary</b>		
Visually inspect for proper inflation and operation	<b>X</b>			
Visually inspect bladders for punctures or abrasions			<b>X</b>	
Remove light floatable debris from in-channel filter		<b>2/week</b>		
Check air compressor and level control gauges show proper levels; maintenance/recharge as necessary	<b>X</b>			
Check panel and gate HMI for faults or deflation; correct as necessary	<b>X</b>			
Field adjust set points as necessary to provide automatic operation			<b>X</b>	
Check panels are closed and locked	<b>X</b>			
<b>Wet Well</b>				
Open wet well and visually inspect		<b>X</b>		
Remove, replace and clean filter panels				<b>4/year</b>
Remove accumulated silt and debris from sump				<b>4/year</b>
Maintain pumps per manufacturer		<b>per manufacturer</b>		
<b>System Human Machine Interface (HMI)</b>				
Check for alarms; correct as necessary	<b>X</b>			
Check system flows are within 400-800 GPM	<b>X</b>			
Check UV output is 98%-100%; maintain or replace lamps as necessary	<b>X</b>			
Check turbidity	<b>X</b>			
If system is in bypass, determine cause and correct	<b>X</b>			
Check backwash surge tank level; verify maximum allowable flow setting on surge tank discharge valve	<b>X</b>			
Field adjust set points for automatic operation			<b>X</b>	

Operation	Daily	Weekly	Monthly	Annual
Record all values to compare with prior visits, including facility influent and effluent flow meter totalizers	X			
<b>Pump Control Panel</b>				
Check for high water alarm; determine cause and reset	X			
Check all hand/off/auto switches are set to auto	X			
<b>Filters</b>				
Check control panel is powered on	X			
Check inlet gauge reads <50 PSIG	X			
Check pressure differential <10 PSIG	X			
Adjust differential pressure set point as necessary to maintain <10 PSIG			X	
Record gauge values to compare with prior visits	X			
Perform partial media removal and/or replacement				X
<b>Surge Tank</b>				
Check filter backwash discharge <= 60 GPM	X			
Record backwash volumes	X			
<b>Piping, Gate, Valves, and Meters</b>				
Check piping for leaks; reseal as necessary	X			
Maintain and repair effluent discharge pipe and duckbill check valve			as necessary	
Maintain and exercise valves, gate per manufacturer			per manufacturer	
Video inspection of pipeline				X
Flow and turbidity meters – maintenance and calibration				2/year
<b>General Site Maintenance and Security</b>				
Check all panels and enclosure are closed and locked	X			
General facility corrosion maintenance (sand/paint)			as necessary	

Operation	Daily	Weekly	Monthly	Annual
Site debris, drains, and lighting maintenance	as necessary			
<b>Reporting</b>				
Prepare and submit operations report to County			X	

**ATTACHMENT C  
DISTRICT'S PRICING**

I. **COMPENSATION:** This is a Time and Materials Agreement between the County and District for long term operation and maintenance services for the Treatment Facility in a time frame agreed upon between District and County Project Manager\_ (see Section 12 of the Agreement) , as set forth in Attachment "A" Scope of Work".

District agrees to furnish all staffing, labor, equipment, tools, and materials necessary to perform the services on a Time and Materials basis in accordance with the Scope of Work. District has provided an estimated cost for Annual Facility Operations and Maintenance, based on District's best understanding of facility operations and maintenance requirements. District shall not exceed this Annual Facility Operations and Maintenance estimated cost without written approval of the County's Project Manager. As part of the cost estimate for Annual Facility Operations and Maintenance, District has provided a list of designated key project personnel, their classification, billing rate, and estimated hours, which is presented in Attachment D, Section 1 titled District Personnel.

II. **ESTIMATED FEES AND CHARGES:**

A. Annual Facility Operations & Maintenance:  
Annual Operations & Maintenance shall not exceed without the written approval of County's Project Manager: \$ 175,000

B. Additional Services:  
Any additional labor, tools, equipment, etc. not included in Annual Operation & Maintenance must have prior written authorization by County Project Manager.  
Additional Services shall not exceed: \$ 75,000

Compensation for services shall be based on an hourly rate as set forth in Attachment "D" South Coast Water District, Labor and Equipment Billing Rates, attached hereto and incorporated herein by this reference.

District shall submit invoice describing project name, name and classification of staff involved and numbers of hours being billed.

District invoice shall include charges and supporting documentation for outside specialty services.

C. Total Annual Agreement Amount Not to Exceed: \$ 250,000

D. **TOTAL TEN YEAR AGREEMENT AMOUNT NOT TO EXCEED:**  
..... **\$2,500,00**  
**0**

- III. PRICE INCREASES/DECREASES:** No price increases will be permitted during the first period of the Agreement. All price decreases will automatically be extended to the County. The County requires bona fide proof of cost increases prior to any price adjustment. A minimum of one hundred eighty (180) days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. The County may enforce, adjust, negotiate, or cancel escalating price Agreements or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Agreement. Adjustments increasing the District's profit will not be allowed.
- IV. FIRM DISCOUNT AND PRICING STRUCTURE:** District guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. District agrees that no price increases shall be passed along to County during the term of this Agreement not otherwise specified and provided for within this Agreement.
- V. DISTRICT'S EXPENSE:** District will be responsible for all costs related to photo copying, mobile telephone communications and fax communications while on County sites during the performance of work and services under this Agreement.
- VI. PAYMENT TERMS:** Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange. Invoices shall be verified and approved by County and subject to routine processing requirements. The responsibility for providing an acceptable invoice to County for payment rests with District. Incomplete or incorrect invoices are not acceptable and will be returned to District for correction.

Billing shall cover services not previously invoiced. Payments made by County shall not preclude the right of County from thereafter disputing any items involved or billed under this Agreement and shall not be construed as acceptance of any part of the services.

- VII. INVOICING INSTRUCTIONS:** District will provide an invoice on District's letterhead. Each invoice will have a number and will include the following information:
  - A. District's name and address
  - B. District's remittance address, if different from A, above
  - C. Name of County agency/department
  - D. Delivery/service address
  - E. Agreement number
  - F. Service Date
  - G. Service Description (as specified above)
  - H. Total
  - I. Taxpayer ID number

Incomplete or incorrect invoices are not acceptable and will be returned to District for correction. Invoices and support documentation are to be forwarded to:

OC Public Works  
Attn: Procurement Support  
601 North Ross Street, 8th Floor  
Santa Ana, CA 92703  
AccountsPayables@ocpw.ocgov.com

District has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to County via an EFT Authorization Form.

**ATTACHMENT D**  
**SOUTH COAST WATER DISTRICT LABOR AND EQUIPMENT RATES**

<b>I. DISTRICT PERSONNEL</b>	<b>RATE PER HOUR</b>
CHIEF OPERATIONS OFFICER	\$167.18
DIRECTOR OF OPERATIONS	\$127.44
OPERATIONS SUPERINTENDENT	\$106.45
COLLECTION SYSTEM OPERATOR I	\$55.09
COLLECTION SYSTEM OPERATOR I - OT	\$82.64
COLLECTION SYSTEM OPERATOR II	\$60.80
COLLECTION SYSTEM OPERATOR II - OT	\$91.20
COLLECTION SYSTEM OPERATOR III	\$67.11
COLLECTION SYSTEM OPERATOR III - OT	\$100.67
COLLECTION SYSTEM LEAD OPERATOR	\$74.97
COLLECTION SYSTEM LEAD OPERATOR - OT	\$112.46
LIFT STATION MECHANIC II	\$ 66.13
LIFT STATION MECHANIC II - OT	\$ 99.19
COLLECTION SYSTEM SUPERVISOR	\$86.21
COLLECTION SYSTEM SUPERVISOR - OT	\$129.32
SCADA/ELECTRICAL TECHNICIAN	\$89.57
SCADA/ELECTRICAL TECHNICIAN	\$134.35
SCADA SYS. AUTOMATION PROGRAMMER	\$107.56
SCADA SYS. AUTOMATION PROGRAMMER - OT	\$161.34
TRANSMISSION MAIN OPERATOR III	\$62.42
TRANSMISSION MAIN OPERATOR III - OT	\$93.63
TRANSMISSION MAIN SENIOR OPERATOR	\$62.42
TRANSMISSION MAIN SENIOR OPERATOR - OT	\$93.63
TRANSMISSION MAIN LEAD OPERATOR	\$71.09
TRANSMISSION MAIN LEAD OPERATOR - OT	\$106.63
TREATMENT PLANT SENIOR OPERATOR	\$77.84
TREATMENT PLANT SENIOR OPERATOR - OT	\$116.76
TREATMENT PLANT LEAD OPERATOR	\$81.74
TREATMENT PLANT LEAD OPERATOR - OT	\$122.61
WATER RESOURCES MANAGER	\$127.41

<b>II. DISTRICT EQUIPMENT</b>	<b>RATE PER HOUR</b>
VAC-CON COMBO TRUCK (Unit #1890)	\$112.00
VAC-CON COMBO TRUCK (Unit #92)	\$112.00
VAC-CON JETTER TRUCK (Unit #1994)	\$112.00
WATER TRUCK (Unit #95)	\$45.00
TV VAN (Unit #80)	\$ 67.00
VALVE TURNING TRUCK (Unit #14)	\$67.00
BACKHOE (Unit #100)	\$ 40.00
BOBCAT TRAILER (Unit #251)	\$30.00
SKIPLOADER (Unit #101)	\$56.00
LEAK TRUCK (Unit #1713)	\$51.00
DUMP TRUCK (Unit #24)	\$35.00
ONE-TON FLATBED (DUMP OR CRANE)	\$35.00
2500 PICKUP TRUCK (3/4 Ton - Various #s)	\$15.00
1500 PICKUP TRUCK (1/2 Ton - Various #s)	\$10.00
SAW CUTTER - WALK-BEHIND (Unit #125)	\$55.00
SEWER PUMP - TRAILER MOUNT - 8"	\$82.00
SEWER PUMP - TRAILER MOUNT - 6"	\$28.00
GENERATOR 250KW	\$56.00
GENERATOR 150KW	\$39.00
GENERATOR 60KW	\$28.00
SOIL COMPACTOR	\$10.00
AIR COMPRESSOR 185 CFM	\$20.00
BORING TOOL	\$11.25
FLASHING ARROW BOARD	\$20.00
SMALL PUMPS, TOOLS & EQUIP.	\$11.25