

**CONTRACT MA-080-11011725
BETWEEN
THE COUNTY OF ORANGE
AND
SOUTH COAST WATER DISTRICT
FOR
POCHE CLEAN BEACH PROJECT LONG TERM OPERATION SERVICES**

THIS Contract MA-080-11011725 for Poche Clean Beach Project Long Term Operation Services, (hereinafter referred to as "Contract") is made and entered into as of the date fully executed by and between the County of Orange, OC Public Works, a political subdivision of the State of California, (hereinafter referred to as "County") and South Coast Water District, a County Water District, (hereinafter referred to as "District"), which are sometimes individually referred to as ("Party"), or collectively referred to as ("Parties").

RECITALS

WHEREAS, the County desires to enter into this Contract for Poche Clean Beach Project Long Term Operation Services; and,

WHEREAS, District has represented that it is qualified to provide Poche Clean Beach Project Long Term Operation Services as further set forth herein; and,

WHEREAS, District agrees to provide Treatment Facility Operation Services, as more specifically described in the Scope of Work, attached hereto as Attachments A and B, and incorporated herein; and,

WHEREAS, County agrees to pay District the fees as further set forth in District's Pricing, attached hereto as Attachments C, D, and E, and incorporated herein; and,

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

1. **Scope of Services:** This Contract, including Attachments, specifies the contractual terms and conditions by which the District will provide Poche Clean Beach Project Long Term Operation Services under a Time and Materials Contract, as set forth in the Scope of Work identified and incorporated herein by this reference as Attachments A and B to this Contract.
2. **Contract Term:** ~~The initial term of this Contract shall become effective upon execution of all signatures, and shall continue for one year from that date, unless otherwise terminated as provided herein. This Contract may be renewed upon expiration of the initial term for four (4) consecutive one year periods, upon mutual agreement of both Parties. The County is not obligated to give a reason or notice if it elects not to renew. Renewal amendments may require approval of the County Board of Supervisors.~~

AMENDMENT #1 RENEWAL (2ND YEAR)

The initial term of Contract was for one year, from July 01, 2011 to June 30, 2012. The Contract shall now be renewed for one (1) additional year effective July 1, 2012, or the date that the Contract is executed by all parties, whichever occurs later, in the amount of \$200,000.00. When the renewal period is completed, Contract may then be renewed for three (3) additional years, upon mutual agreement of the Parties and approval by the County Board of Supervisors.

AMENDMENT #2 RENEWAL (3rd YEAR)

Contract shall be effective July 1, 2013 and shall continue for one year from that date, unless otherwise terminated as provided herein. This Contract may be renewed upon expiration of the initial term, for two (2) additional years, upon mutual agreement of both parties. The County is not obligated to give a reason or notice if it elects not to renew. Renewal amendments may require County Board of Supervisors approval.

AMENDMENT #3 RENEWAL (4th YEAR)

Contract shall be effective July 1, 2014 and shall continue for one year from that date, unless otherwise terminated as provided herein. This Contract may be renewed upon expiration of the initial term, for one (1) additional year, upon mutual agreement of both parties. The County is not obligated to give a reason or notice if it elects not to renew. Renewal amendments may require County Board of Supervisors approval.

AMENDMENT #4 RENEWAL (5th YEAR)

Contract shall be effective July 1, 2015 and shall continue for one year from that date, unless otherwise terminated as provided herein. This Contract may not be renewed.

3. **Allowable Discharge of Filter Backwash:** County permission to discharge to District facilities is as set forth in the Diversion Agreement.
4. **Contingency of Funds:** District acknowledges that funding or portions of funding for this Contract may be contingent upon State and City of San Clemente budget approval; 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 Contract without penalty but shall reimburse District for any costs incurred up to that time.
5. **Conditions Affecting Work:** The District shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract 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:** The District warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility anticipated under this Contract. The 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, the County agrees to rely on its own engineering expertise as to the design and preparation of operating instructions for the facility. All District's personnel shall be required to wear uniforms, badges and/or other means of identification which are to be issued and provided by the District and must be worn at all times while working on County property. The County Project Manager must be notified in writing, within seven days of notification of award of Contract, 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 the County in any one or more instances to insist upon strict performance of any of the terms of this Contract 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:** The 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; the District's employees, agents, and relatives; sub-

tier Consultants; and third parties associated with accomplishing work and services hereunder. The 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 Contract:** The failure of the District to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - i. Afford the District written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - ii. Notify District to immediately cease work.
 - iii. Terminate the Contract immediately without penalty and pay amounts due for work performed up to the date of termination.
 - iv. All remedies for breach of contract 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. **Contract 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 Contract is not disposed of in a reasonable period of time by the District and the County's project manager, such matter shall be brought to the attention of OC Public Works, by way of the following process:
 - i. The 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 Contract, unless the County, on its own initiative, has already rendered such a final decision.
 - ii. The District's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the 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 Contract adjustment for which the District believes the County is liable.
 - iii. Pending the final resolution of any dispute arising under, related to, or involving this Contract and subject to Section 21, Termination, of this Agreement, which provides each Party to terminate this contract without penalty immediately with cause or after 45 days written notice with cause, the District agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services up to the date of termination. The District's failure to diligently proceed up to the date of termination shall be considered a material breach of this Contract.
 - 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 the County fails to render a decision within 90 days after receipt of the District's demand, it shall be deemed a final decision adverse to the District's contentions. The County's final decision shall be conclusive and binding regarding the dispute unless the District commences action in a court of competent jurisdiction to contest such decision within 90 days following the date of the 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 Contract, 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 Contract. In addition, each Party will assist the other Party in orderly termination of this Contract 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 the County's Project Manager 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
Attn: ~~George Edwards~~ Ann Mesa
2301 N. Glassell Street
Orange, CA 92865-2773
RE: Poche Clean Beach Project

cc: OCPW/Purchasing & Contracts
Attn: Avelino Javier
300 N. Flower St., Rm. 838
Santa Ana, Ca 92703

District: South Coast Water District.
Attn: Mr. Joseph N. McDivitt, Director of Operations
31592 West Street
Laguna Beach, CA 92651-6907

Amendment #2
(Renewal)
Change Name

13. **Governing Law and Venue (A):** This Contract 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 Contract, 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 Contract (B):** This Contract, including Attachments A, B, C, D, E, and F which are attached hereto and incorporated herein by this reference contains the entire Contract between the Parties with respect to the matters herein.
15. **Amendments (C):** No alteration or variation of the terms of this Contract 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 (D):** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
17. **Delivery (E):** Time is of the essence in this Contract.
18. **Acceptance/Payment (F):** 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 (I):** 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 Contract 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. A list of pre-approved sub-contractors for any other services under this contract is presented in Attachment E, Section 2. Any changes to the list of 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 Contract under conditions other than stated herein shall be invalid and shall constitute a breach of this Contract.

20. **Non-Discrimination (J):** In the performance of this Contract, 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 (K) :** In addition to any other remedies or rights it may have by law and those set forth in this Contract, both Parties have the right to terminate this Contract without penalty immediately with cause or after 45 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of Contract, any misrepresentation or fraud on the part of the Party. Exercise by either Party of its right to terminate the Contract shall relieve County of all further obligations.
22. **Consent to Breach Not Waiver (L):** No term or provision of this Contract 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 (M):** The remedies for breach set forth in this Contract 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 Contract does not preclude resort by either Party to any other remedies provided by law.
24. **Independent Contractor (N):** District shall be considered an independent Contractor, and not the District, its employees, nor anyone working for District under this Contract 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 (O):** District shall perform all work under this Contract, 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 the District under this Contract. District shall perform all work diligently, carefully, and in a good and workman-like manner
26. **Indemnification (P):**

A. District Indemnification Obligation: District agrees, to the fullest extent permitted by law, to indemnify 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 damage, liability, or cost (including attorney's fees and costs of defense) to the extent caused by District's negligent acts arising out of the performance of services described under the Scope of Work in this Contract including sub-contractors or others for whom District is legally liable that this indemnity shall not apply to any negligent acts, errors or omissions attributable to County, its directors, officers, employees, authorized volunteers, or sub-contractors, or other for who County is legally liable.

B. County Indemnification Obligation: County agrees, to the fullest extent permitted by law, to indemnify and hold District, its directors, officers, employees, and agents harmless from any damage,

liability, or cost (including attorney's fees and costs of defense) to the extent caused by County's negligent acts, errors, or omissions arising from work that is the subject of this Contract provided, however, that this indemnity shall not apply to any negligent acts, errors or omissions attributable to District, its directors, officers, employees, authorized volunteers, or sub-contractors, or others for whom District is legally liable.

The liability of the District with respect to the indemnification obligations of the District as set forth in this Agreement shall be limited to the proceeds of that certain policy of insurance described herein as Pollution Legal Liability (including Contract Services Pollution Liability), to be purchased and effective within 30 days of the effective date of this agreement, which shall name the County as an additional insured (pursuant to the requirements herein), and said insurance shall be primary coverage and in no event shall the County seek to recover beyond said policy from the District with respect to the services of the District under this Contract. Notwithstanding the above, District shall provide commercial general liability insurance as set forth herein for the purpose of covering negligence with respect to third parties for injuries to persons or property where the same is not covered by said Pollution Legal Liability coverage. Provided, however, that nothing herein is intended to shift to District the County's separate indemnification obligations contained in the SOCWA Permit or the Diversion Agreement. The County agrees that the aggregate liability of the District, its officers, directors, employees, agents, and subcontractors to the County, with respect to harm to County owned equipment at the Treatment Facility resulting from negligence of the District (other than as covered under the Pollution Legal Liability) shall be limited to the amounts paid to District for said services under this Contract. This limitation applies to liability based on any legal theory, including, but not limited to negligence, strict liability, or breach of contract.

The pollution legal liability coverage shall be submitted to the County for review and the County shall pay the policy cost to the District as an expense of the project. Payment by the County will be due no later than 30 days after receipt of an invoice from the District for the policy cost.

27. **Insurance Provisions:** Prior to the provisions of services under this Contract, District agrees to purchase insurance as indicated in this Section and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of District pursuant to this Contract shall obtain insurance subject to the terms and conditions as set forth in Exhibit F, and that such insurance list District and County as additional insureds.

All insurance policies required by this Contract shall declare any deductible or self-insured retention (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management. District shall be responsible for reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance.

County recognizes that District is insured at its sole cost and expense as a participant in the ACWA Joint Power Insurance Authority (JPIA), which provides general liability coverage to cover liability, damages, costs, losses, claims, and expenses resulting from or connected with the acts, errors, or omissions of the District in performing its work.

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

Qualified Insurer: The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier).

Minimum insurance company ratings as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com** shall be A-(Secure Best's Rating) and VIII (Financial Size Category).

If the carrier is a non-admitted carrier in the state of California, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings. This

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

Coverage	Minimum Limits
Pollution Legal Liability (to include Contracted Services Pollution Liability); On-Site Clean Up Costs and Off-Site Cleanup Costs coverage (to be acquired by the District as set forth herein)	\$1,000,000 combined single limit \$2,000,000 aggregate "claims made" coverage
Commercial General Liability covering property damage and injury to third parties	\$1,000,000 combined single limit \$2,000,000 aggregate per occurrence coverage
Automobile Liability including coverage for owned, non-owned and hired vehicles (to be provided by the District at its cost through its existing coverage)	\$1,000,000 combined single limit per occurrence
Workers' Compensation (to be provided by the District at its cost through its existing coverage)	Statutory
Professional Liability (to be provided by the District at its cost through its existing coverage)	\$1,000,000 per occurrence

All liability insurance, except Professional Liability and Pollution Legal Liability, required by this Contract shall be at least \$1,000,000 combined single limit per occurrence. Professional Liability and Pollution Legal Liability may also be provided on a "Claims Made" basis. The minimum aggregate limit for the Pollution Legal Liability (including the General Liability) policy shall be \$2,000,000.

The County of Orange shall be named as an additional insured on all insurance policies required by this Contract with respect to work done by the District under the terms of this Contract (except Worker's Compensation/Employers' Liability and Professional Liability). An additional insured endorsement evidencing that the County of Orange is an additional insured shall accompany the Certificate of Insurance.

All insurance policies required by this Contract shall be primary insurance to coverage or self-insurance retained by the County, and any other insurance maintained by the County of Orange shall be excess and non-contributing with insurance provided by these policies. An endorsement evidencing that the District insurance is primary and non-contributing shall specifically accompany the Certificates of Insurance.

All insurance policies required by this Contract shall give the County of Orange 30 days notice in the event of cancellation. This shall be evidenced by an endorsement separate from the Certificate of Insurance. In addition, the cancellation clause must include language as follows, which edits the pre-printed ACORD certificate.

~~SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENT OR REPRESENTATIVE.~~

All insurance policies required by this Contract shall waive all rights to subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting in the scope of their appointment or employment.

The Commercial General Liability policy shall contain a severability of interests, clause.

The District is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or be self-insured in accordance with the provisions of that code. The District will comply with such provisions and shall furnish the County satisfactory evidence that the District has secured, for the period of this Contract, statutory Workers' Compensation insurance and Employers' Liability insurance with minimum limits of \$1,000,000 per occurrence.

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 days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

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 Contract. 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 certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to District, and County shall be entitled to all legal remedies.

28. **Changes (R):** District shall make no changes in the work or perform any additional work without the County's specific written approval.
29. **Change of Ownership (S):** District agrees that if there is a change or transfer in ownership of District's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume District's duties and obligations contained in this Contract and complete them to the satisfaction of County.
30. **Force Majeure (T):** 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 himself of any available remedies.
31. **Confidentiality (U):** 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 Contract. 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.
32. **Compliance with Laws (V):** District represents and warrants that services to be provided under this Contract 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.
33. **Pricing (X):** The Contract price, as more fully set forth in Attachments C and D, includes compensation on a Time and Materials basis for providing services in accordance with required specifications, or services as specified in the Scope of Work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
34. **Waiver of Jury Trial (Y):** Each Party acknowledges that it is aware of and has had the opportunity to seek advise of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any

matters whatsoever arising out of or in any way connected with this Contract and /or any other claim of injury or damage.

35. **Terms and Conditions (Z):** District and County acknowledges that it has read and agrees to all terms and conditions included in this Contract.
36. **Headings (AA):** The various headings and numbers herein, the grouping of provisions of this Contract 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.
37. **Severability (BB):** If any term, covenant, condition or provision of this Contract 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.
38. **Calendar Days (CC):** Any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
39. **Attorneys Fees (DD):** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney’s fees, costs and expenses.
40. **Interpretation (EE):** This Contract has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. 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 Contract 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 Contract against the Party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Contract.
41. **Authority (FF):** The Parties to this Contract represent and warrant that this Contract 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 (GG):** The 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 Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The 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. The District shall retain all such documentation for all covered employees for the period prescribed by the law. The District shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the District or the 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 Contract.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates shown opposite their respective signatures.

SOUTH COAST WATER DISTRICT

By _____

Print
Name _____

Title GENERAL MANAGER

Date _____

COUNTY OF ORANGE

a political subdivision of the State of California

By _____

Print
Name _____

Title _____

Date _____

**APPROVED AS TO FORM:
COUNTY COUNSEL**

By _____
Deputy

Date: _____

ATTACHMENT A
SCOPE OF WORK/REQUIREMENTS

I. GENERAL DESCRIPTION:

District shall provide all labor, tools, materials, tools, equipment, etc. required to provide to the County 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 this Contract.

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 dry weather basis in accordance with: 1) facility operations and maintenance manual(s) provided by the County; 2) treated runoff water quality data; 3) standard industry operating practices for comparable facilities, and 4) best professional judgment of District staff.
2. District shall initiate operation and maintenance services under this Contract on a mutually agreeable date upon a written Notice to Proceed from the County.
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, 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 the 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. The District shall submit brief 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 the County in accordance with Nuisance Water-Special Wastewater Discharge (NSWD) Permit No. SCWD-N4-011 [SOCWA Permit]. (Paragraph references in this Section 7 are to the Permit):
 - prepare reporting for County signature and submission to SOCWA as described in Paragraph 3 of Part 3;
 - prepare reports for the site described in Paragraph 6 of Part 3 for County signature and submission to SOCWA;
 - prepare reports of analytical and flow data for signature of the County and submission to SOCWA as described in Paragraph 8 of Part 3;
 - assess calibration and notify County if any devices do not appear to be in good working order as described in Paragraph 12 of Part 3.
 - prepare the self-monitoring reports described in Part 4 and submit reports to County for signature and County's submission to SOCWA.

- assist County in preparing notices of non-compliance described in Paragraph 5 of Part 4.
 - provide shut down and termination of diversion services described in Paragraph 4 of Part 5, Special Requirements.
6. County, as owner and User of the Treatment Facility, shall remain the Permittee under NSW Permit No. SCWD-N4-011 (SOCWA Permit) and is responsible for compliance with the terms and conditions of said permit. This contract is not intended to limit nor relieve the County's responsibilities under said permit and is not intended to be a delegation to the District of County's obligations under said permit.
 7. 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 27 Insurance Provisions. County shall pay costs for such services upon invoicing by the 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 \$2000.00, District shall request written approval from County prior to purchase.
 8. 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 the County. If repairs are determined to not fall under contractor or equipment vendors, the District may elect to conduct repairs directly or request engagement of specialty services.
 9. 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.
 10. If water quality or facility performance becomes problematic the District shall use its best professional judgment to determine the source of the problem and provide recommendations to the County to improve performance of the Treatment Facility. County may request District to implement its recommendations in accordance with the terms and conditions of this Contract. County acknowledges that the ultimate performance of the Treatment Facility is a function of the design and construction of the facility and that to the extent that the 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.

B. Additional Services

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

ATTACHMENT B
POCHE CLEAN BEACH PROJECT
ESTIMATED ANNUAL OPERATION & MAINTENANCE SCHEDULE

Operation	Daily	Weekly	Monthly	Annual
Channel Diversion/Inflatable Dam				
Visually inspect for proper inflation and operation	X			
Visually inspect bladders for punctures or abrasions			X	
Remove light floatable debris from in-channel filter		2/week		
Check air compressor and level control gauges show proper levels; maintenance/recharge as necessary	X			
Check panel and gate HMI for faults or deflation; Correct as necessary	X			
Field adjust setpoints as necessary to provide automatic operation			X	
Check panels are closed and locked	X			
Wet Well				
Open wet well and visually inspect	-	X		
Remove, replace and clean filter panels				4times/yr
Remove accumulated silt and debris from sump				4times/yr
Maintain pumps per manufacturer	per manufacturer			
System Human Machine Interface (HMI)				
Check for alarms; correct as necessary	X			
Check system flows are within 400-800 GPM	X			
Check UV output is 98%-100%; maintain or replace lamps as necessary	X			
Check turbidity	X			
If system is in bypass, determine cause and correct	X			
Check backwash surge tank level; verify maximum allowable flow setting on surge tank discharge valve	X			
Field adjust setpoints for automatic operation			X	
Record all values to compare with prior visits, including facility influent and effluent flow meter totalizers	X			
Pump Control Panel				
Check for high water alarm; determine cause and reset	X			
Check all hand/off/auto switches are set to auto	X			

Operation	Daily	Weekly	Monthly	Annual
Filters				
Check control panel is powered on	X			
Check inlet gauge reads <50 PSIG	X			
Check pressure differential <10 PSIG	X			
Adjust differential pressure setpoint as necessary to maintain <10 PSIG			X	
Record gauge values to compare with prior visits	X			
Perform partial media removal and/or replacement				X
Surge Tank				
Check filter backwash discharge <= 60 GPM	X			
Record backwash volumes	X			
Piping, Gate, Valves, and Meters				
Check piping for leaks; reseal as necessary	X			
Video inspection of pipeline				X
Maintain and exercise valves, gate per manufacturer	per manufacturer			
Flow and turbidity meters - calibration and maintenance				2 times/yr
General Site Maintenance and Security				
Check all panels and enclosure are closed and locked	X			
General facility corrosion maintenance (sand/paint)	as necessary			
Site debris, drains, and lighting maintenance	as necessary			
Reporting				
Prepare and submit operations report to County			X	

**ATTACHMENT C
DISTRICT'S PRICING SHEET**

1. **Compensation:** This is a Time and Materials Contract between the County and District for long term operation and maintenance services for Poche Clean Beach Project Treatment Facility in a time frame agreed upon between the District and the County Project Manager, 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 E Staffing Plan, Section 1.

2. **Fees and Charges:** County will pay the following fees in accordance with the provisions of this Contract.

A. Annual Facility Operations & Maintenance

- i. Annual Operations & Maintenance shall not exceed \$ 120,000
without the written approval of the County's Project Manager.

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

- i. Additional Services shall not exceed \$ 80,000

C. Total Contract Amount Shall Not Exceed \$ 200,000

- a. 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.
 - b. District shall submit invoice describing project name, name and classification of staff involved and numbers of hours being billed.
 - c. District invoice shall include charges and supporting documentation for outside specialty services.
3. **Price Increases/Decreases:** No price increases will be permitted during the first period of the Contract. All price decreases will automatically be extended to the County. No retroactive price adjustments will be considered. A request for rate increases upon contract renewal must be submitted by January 31st prior to the commencement of the renewal period, and must be supported by documentation acceptable to the County Project Manager. An increase exceeding 10% of the base average project key classification billing rate of \$82.63/hour identified in Attachment E, Section 1 will require Board of Supervisor approval.
 4. **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 the County during the term of this Contract not otherwise specified and provided for within this Contract.

5. **District's Expense:** The 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 Contract.

6. **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 the County and subject to routine processing requirements. The responsibility for providing an acceptable invoice to the County for payment rests with the District. Incomplete or incorrect invoices are not acceptable and will be returned to the District for correction.

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

7. **Invoicing:** The District will provide an invoice on the District's letterhead. Each invoice will have a number and will include the following information:

1. District's name and address
2. District's remittance address, if different from 1, above
3. Name of County agency/department
4. Delivery/service address
5. Contract number
6. Service Date
7. Service Description (as specified above)
8. Total
9. Taxpayer ID number
10. Supporting documentation for outside services.

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

OC Public Works
Attention: Accounts Payable
300 N. Flower Street, Room 838
Santa Ana, CA 92703-5000

**ATTACHMENT D
 DISTRICT LABOR AND EQUIPMENT BILLING RATES**

Personnel Classification	Actual Average Pay Rate	Base Billing Rate	Overtime Billing Rate
District Counsel	85.95	165.00	165.00
General Manager	86.54	150.00	150.00
Directors of Operations, Engineering, Finance	65.78	125.00	125.00
Controller	58.16	125.00	125.00
Managers	51.33	110.00	110.00
Sr. Civil Engineer/Const. Manager	49.09	100.00	100.00
Chief Plant Operator	43.34	100.00	150.00
Superintendent	45.15	100.00	150.00
Inspectors/Project Managers	44.96	90.00	110.00
Plant Operator	26.54	55.00	108.00
Associate Engineer	38.94	90.00	110.00
Contract Administrator	39.69	85.00	105.00
Assistant IT Manager	43.39	85.00	105.00
Supervisors	35.08	80.00	100.00
Transmission Main Superintendent	40.87	80.00	100.00
Electricians	36.32	76.00	96.00
Management Assistant Sr.	37.62	75.00	95.00
Network Engineer	35.97	75.00	95.00
Conservation/Recycled Officer	34.66	75.00	95.00
Recreation Manager	37.21	75.00	75.00
Lift Station Mechanic	34.06	70.00	85.00
Administrative Assistants Sr.	33.53	70.00	85.00
Support Services Technicians	33.91	70.00	85.00
Finance/Budget Analyst	35.15	70.00	85.00
Water Quality	34.06	70.00	85.00
Transmission Main Operator Sr.	30.96	65.00	80.00
GIS Specialist	28.73	65.00	80.00
Special Projects Coordinator	32.56	65.00	80.00
Fleet Maintenance Coordinator	32.26	65.00	80.00
Meter Reader Field Supervisor	30.19	60.00	75.00
Accountant, Payroll	30.21	60.00	75.00
Accountant, Special Projects	51.93	60.00	75.00
Ops Maint Tech	27.38	60.00	75.00
System Operators Sr.	34.06	55.00	70.00
System Operators	26.45	55.00	70.00
Engineering Technician Sr.	27.67	55.00	70.00
Administrative Assistants	26.24	55.00	70.00
Facilities Maintenance Worker II	26.25	55.00	70.00
O. & M. Service Workers	20.91	50.00	65.00
O. & M. Service Workers	23.71	50.00	65.00
Transmission Main Operators	24.39	50.00	65.00
Accountants	25.46	50.00	65.00
Conservation Technician	30.19	50.00	65.00
Meter Readers	22.49	47.00	60.00
Customer Service Reps	22.65	47.00	60.00
Permitting Coordinator	19.49	45.00	55.00
Mechanic	17.54	40.00	52.00

<u>EQUIPMENT:</u>	Rates Per Hr.
VAC-CON TRUCK (Unit #86)	\$110.00
VAC-CON TRUCK (Unit #92)	\$110.00
WATER TRUCK (Unit #95)	\$55.00
TV VAN (Unit #80)	\$66.00
VACUUM TRUCK (Unit #14)	\$66.00
BACKHOE (Unit #200)	\$55.00
BOBCAT WITH TRAILER (Unit #251)	\$55.00
JETTER (Unit #94)	\$55.00
SEWER RODDER (Unit #7)	\$55.00
SKIPLOADER (Unit #102)	\$55.00
LEAK TRUCK (Unit #13)	\$50.00
DUMP TRUCK (Unit #24)	\$27.50
ONE TON FLATBED (DUMP OR CRANE)	\$27.50
SAW CUTTER - WALK-BEHIND (Unit #125)	\$100.00
SEWER PUMP - TRAILER MOUNT - 8"	\$80.50
SEWER PUMP - TRAILER MOUNT - 6"	\$27.50
GENERATOR 250KW	\$55.00
GENERATOR 150KW	\$38.50
GENERATOR 60KW	\$27.50
SOIL COMPACTOR	\$25.00
AIR COMPRESSOR 185 CFM	\$16.50
BORING TOOL	\$11.00
FLASHING ARROW BOARD	\$11.00
SMALL PUMPS, TOOLS & EQUIP.	\$11.00

**ATTACHMENT E
STAFFING PLAN**

1. Key Personnel to perform Contract duties:

	Name	Classification and Regular Hourly Rate	Estimated Hours
1.	Joe McDivitt	Director of Operations @ \$125/hr	50
2.	John Langill	Operations Superintendent @ \$100/hr	50
3.	Steve Dishon	Chief Plant Operator @ \$100/hr	250
4.	Efrem Rodriguez	Lift Station Mechanic @ \$70/hr	100
5.	Matson or Moses	System Electrician @ \$76/hr	100
6.	To be assigned	System Operator @ \$55/hr	400
7.	Michele Collins	Contract Administrator @ \$85/hr	50
8.	Helen Eriksen	Accountant @ \$50/hr	100
	Average Project Key Classification (1-8) Billing Rate \$82.63/hr		

Substitution of District’s key personnel in any given category or classification shall be allowed with approval of the County Project Manager. District reserves the right to involve other District personnel in the performance of services based on the nature and timing of the service/classification required. County reserves the right to have any of Contractor personnel removed from providing services to County under this Contract. County is not required to provide any reason for the request for removal of any Contractor personnel.

2. Sub-Contractor(s)

In accordance with Article 30, “Assignment or Sub-Contracting”, listed below are Sub-contractor(s) anticipated by Contractor to perform services specified in Attachment A.

Company Name & Address	Contact Name and Telephone Number	Project Function
Hach Company PO Box 389 Loveland, CO 80539	Aaron Kwak (800)227-4224	Turbidity Meter Calibration & Service
Ozone Water Systems, Inc 5401 S. 39 th Street, Ste. 1 Phoenix AZ 85040	John Guadaur Bus: (480)421-2400 Cell: (949)422-7412	UV Disinfection System Maintenance
Tesco Controls, Inc. 3434 - 52 nd Ave Sacramento, CA 95823-9012	Dan Grilley Bus: (916)395-8800	SCADA Installation
Aero Compressor, Inc. 12966 Park Street Santa Fe Springs, CA 90670	Tiffany Kawahata Bus: (562)903-1557	Air Compressor Maintenance
Brithinee Electric 620 South Rancho Avenue Colton, CA 92324	Tom Fiorenza Bus: (909)825-2044	Electrical Systems Maintenance
MRC Technologies PO Box 1269 Lake Forest, CA 92609	Rick Morris Bus: (949)830-3929	Flowmeter Calibration & Service

ATTACHMENT F
SUBCONSULTANT INSURANCE REQUIREMENTS

In the event that the District employs subcontractors as part of the work covered by this contract, it shall be the District's responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified below. District and County shall be listed as additional insureds on subconsultant insurance coverage, except for Workers' Compensation..

Insurance Policy Type	Required Limits of Liability (Minimum)
Workers' Compensation Liability	In accordance with the Workers' Compensation Act of the State of California - statutory limit
General Liability – either commercial or comprehensive general liability	Combined single limit of \$1.0 million per occurrence with \$2.0 million policy aggregate limits.
Automotive/Vehicle	Combined single limit of \$1.0 million per occurrence.
Excess Liability	Use if necessary to meet limits for general liability and automotive/vehicle.