

ENGINEERING SERVICES AGREEMENT

This Engineering Services Agreement (“Agreement” or “Contract”) is dated _____ (“Effective Date”) and is between Sanitation District No. 2 of Los Angeles County, a county sanitation district organized and existing under the County Sanitation District Act, Health and Safety Code Section 4700 *et seq.*, (the “District”) and EwingCole (“Engineer” or “Proposer”). The District and the Engineer are collectively referred to in this Agreement as the “Parties.”

The District requested a proposal for Professional Architectural and Engineering Services for the AK Warren Water Resource Facility East Laboratory Building Biosafety Improvements (the “Project”) to perform work for the Project. The District has contracted or will contract for work relating to the Project including: preliminary, detailed, and final design, bid support, construction management support, and post construction services for the renovation of two existing laboratories to biosafety level 2 and 3 standards. The Parties desire to contract for the Engineer to complete work for the Project. The Request for Proposal (RFP) and the Engineer’s proposal for architectural and engineering services (Proposal) are included in this Agreement as described in Exhibit “A” to this Agreement (the “Work” or the “Scope of Work”).

The Parties therefore agree as follows:

1. **Engineer’s Services**

11 Scope of Services by Engineer. The Engineer shall provide design services as described in the Scope of Work and this Agreement. In performance of the Work, Engineer shall comply with all applicable Federal, State and local laws, rules, regulations, ordinances, and industry practices.

12 Engineer’s Standard of Care. The standard of care applicable to Engineer’s Work under the Agreement will be the degree of skill and diligence ordinarily employed by engineers performing the same or similar services, under the same or similar circumstances, in the State of California. The Engineer shall re-perform any Work not meeting this standard without additional compensation.

13 Engineer’s Estimates and Projections. Engineer’s opinions regarding the potential cost, financial analyses, economic feasibility projections, and schedules for potential future construction of the project are projections only and do not reflect: the ultimate cost or price of labor and material; unknown or latent conditions of existing equipment or structures that may affect operation and maintenance costs; competitive bidding procedures and market conditions; time or quality of performance of third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate project cost or schedule. Engineer does not warrant that the District’s actual project costs, financial aspects, economic feasibility, or schedules will not vary from Engineer’s opinions, analyses, projections, or estimates, but Engineer shall provide such projections in accordance with the standard of care set forth in Section 1.2 of this Agreement.

2. District's Obligations

21 District-Provided Information and Services. The District shall furnish the Engineer available drawings, studies, reports and other data pertinent to Engineer's services and obtain or authorize Engineer to obtain additional reports and data as required. The Engineer is entitled to use and rely upon all such information and services provided by the District or others in performing Engineer's services under the Agreement except as otherwise stated by the District in connection with the information and services provided.

22 Access. The District shall arrange for access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services hereunder. Engineer shall comply with all applicable laws and with the District's requirements for persons on the District's premises.

3. Compensation and Payment for Engineering Services

31 Engineer's Compensation: The compensation payable by the District for the engineering services performed by the Engineer is described in the Engineer's Design Service Fees portion of the Proposal resulting in a "Not to Exceed" costs for Project Tasks identified in the Scope of Work. The "Not to Exceed" amount for the entirety of the Work is \$509,280. Engineer shall not exceed this amount without the prior written authorization of the District.

32 Payment to Engineer. Engineer shall submit a monthly invoice to the District for payment. Engineer shall break the invoice into Project Tasks that are consistent with the Scope of Work. Invoicing shall be consistent with the guidelines provided in Condition No. 11 of the GENERAL CONDITIONS Section of the RFP.

33 Price. Any contemplated increase in the rate(s) shall be in accordance with Condition Nos. 4 and 12 of the GENERAL CONDITIONS Section of the RFP.

4. Duration, Schedule and Delay

41 Duration. Engineer's performance of the Scope of Work shall commence on the date identified in the District's Notice to Proceed with the Work. Engineer shall complete the Scope of Work no later than the durations specified in the Proposal for each project phase and subphase, except as its time to complete that item may be extended pursuant to this Agreement.

42 Project Schedule. Engineer shall present for the District's review a Project Schedule and any updates as required in the Scope of Work. The Project Schedule shall include each Task and the activities included within it, including the activities identified in Section 4.1, above.

43 Delay. The Engineer shall perform its services with due diligence and agrees to use its best efforts to complete the work involved in the Project in accordance with the Project Schedule. The Engineer shall immediately advise the District of any delay in the Project Schedule resulting from causes within or beyond its control. In the event of any such delay by causes within the Engineer's control, the Engineer shall promptly outline and implement

appropriate actions required to overcome such delay, including, but not limited to, one or more of the following:

- Assignment of additional personnel to the Project;
- Utilization of overtime at no increase in compensation by the District; and
- Change in management structure or approach.

The foregoing is not intended to relieve the Engineer of responsibility for delay for which it would be responsible under this Agreement.

In the event of delay by causes beyond its control, the Engineer shall promptly provide the District with written notice of the delay and take all reasonable action to mitigate the effect of such delay. If the delay is beyond Engineer's control and without its fault or negligence, the time for the performance of its services may be equitably adjusted by written amendment subject to the District's approval of the extent of such delay. If the District determines that the Engineer has suffered additional costs that could not reasonably have been avoided, the District will compensate the Engineer for those additional costs.

Neither of the Parties will be responsible for delays in the performance of their obligations hereunder caused by strikes, action of the elements, acts and/or decisions of any governmental agency or by third parties, other than either Parties' consultants or subconsultants, which could not reasonably have been foreseen or civil disturbances, or any other cause beyond its reasonable control. Engineer will not be responsible for any delay by the District in supplying information and reviewing submittals by the Engineer.

5. Changes and Extra Work

The District may make changes within the general scope of this Agreement and may request the Engineer to perform additional services not covered by the Scope of Work. If the Engineer believes that any proposed change or direction given by the District causes an increase or decrease in the cost and/or the time required for the performance of this Agreement, the Engineer shall so notify the District no later than five days after the date of receiving notification of a proposed change or the changed direction. The Engineer shall perform such services and will be paid for such services pursuant to a negotiated and mutually agreed change order signed by the Parties to this Agreement. If the Engineer determines that any work beyond the Scope of Work is necessary for completion of the Project, the Engineer shall notify the District and receive approval prior to starting that work. If the Parties do not agree whether the Engineer is entitled to additional compensation or the extent of such compensation for work the Engineer determines is extra or changed work, the Engineer shall proceed with the work and the issue of the compensation shall be reserved for later determination as provided in Section 15 of this Agreement.

6. Termination

Termination of this Agreement shall be in accordance with Condition No. 13 of the GENERAL CONDITIONS Section of the RFP.

7. Indemnity

Indemnity shall be in accordance with Condition No. 8 of the GENERAL CONDITIONS Section of the RFP.

8. Insurance

The Engineer shall secure and maintain, for the duration of the Project, such insurance as will protect it and the District in such a manner and at such amounts as set forth in Condition No. 10 of the GENERAL CONDITIONS Section of the RFP.

9. Cooperation with Others

Engineer shall not unnecessarily interfere with the operations of the A.K. Warren Water Resource Facility (WWRF), nor with District's forces engaged in site maintenance, operation or repairs, nor with any other Consultants or Contractors engaged in work at the WWRF. Engineer's employees shall follow safe driving habits while on District's property.

10. Non Disclosure of Information

Engineer shall not divulge to any third party, without the prior written consent of the District, any information developed or obtained through the District, in connection with the performance of this Agreement unless: a) the information is known to Engineer prior to obtaining it from the District; b) the information is, at the time of disclosure by the Engineer, then in the public domain; or c) the information is obtained by the Engineer from a third party that did not receive it, directly or indirectly, from the District.

11. Ownership of Documents

All reports as well as original reports, plans, studies, memoranda, computation sheets, survey data, computer hardware or software developed or purchased specifically for the Project, and other documents assembled or prepared by Engineer, or furnished to Engineer in connection with the Project will be the property of the District. Engineer may retain copies of such documents, but Engineer may not make such documents available to any individual or organization without the District's prior written approval. The District's reuse of such documents on an extension of the Project or on any other project by the District without written verification or adaptation by the Engineer for the specific purpose intended will be at District's sole risk and without liability or legal exposure to the Engineer. The District shall indemnify and hold Engineer harmless from all claims, damages, losses and expenses including attorney's fees, arising out of or resulting from any such reuse by the District. Any preliminary or working drafts, notes, or inter- agency or intra-agency memoranda which are not expected to be retained by the Engineer or the District in the ordinary course of business shall be exempt from disclosure under provisions of the California Public Records Act.

12. Access to Work and Records

Representatives of the District shall be allowed access to the Work whenever it is in preparation or in progress. Engineer shall provide proper facilities for such access and inspection. The District, or any authorized representatives of the District, shall have access to any books, documents, papers, and records of the Engineer that are pertinent to the Project for the purpose of making audits, examinations, excerpts, and transcriptions. The Engineer shall maintain and make available for reasonable inspection by the District accurate detailed records of its costs, disbursements and receipts with respect to items forming any part of the basis for billings to the District. Such inspections may be made during regular office hours at any time until one year after the District makes the final payment under this Agreement.

13. Personnel Assignment

Engineer agrees to utilize the key personnel as submitted to the District in its Proposal, including its Project Manager. The Project Manager will be the primary contact for the District and should have a thorough knowledge of all aspects of the Project and its status. During the term of this Agreement, no replacement of the Project Manager or any of the key personnel of Engineer's Project team or its sub-consultants may be made without the written approval of the District, which approval will not be unreasonably withheld. Nothing in this Section 13 is intended to or may be construed to prevent Engineer from employing or hiring as many employees as Engineer deems necessary for the proper and efficient performance of its services.

The District may request a change in the assignment of the key personnel. Engineer shall change key personnel to the satisfaction of the District within 30 days following written direction to change by the District.

14. Notices

All notices or other communications to either party by the other shall be deemed given when made in writing and delivered or mailed (not e-mailed) to such party at their respective addresses as follows:

County Sanitation Districts
of Los Angeles County
1955 Workman Mill Road
Whittier, California 90601
ATTN: Sunny Lo

EwingCole
401 West A Street, Suite 320
San Diego, CA 92101
ATTN: David Keith

Either party may change its address or representative for such purpose by giving notice thereof to the other in the same manner.

The above provide the designated party addresses for Condition No. 16.3 of the GENERAL CONDITIONS Section of the RFP.

15. Governing Law, Dispute Resolution and Litigation

Governing law, dispute resolution, and litigation shall be in accordance with Condition No. 15 of the GENERAL CONDITIONS Section of the RFP.

16. Severability

Severability shall be in accordance with Condition No. 16.7 of the GENERAL CONDITIONS Section of the RFP.

17. Confidentiality

Confidentiality shall be in accordance with Condition No. 16.2 of the GENERAL CONDITIONS Section of the RFP.

18. Third Parties

The services to be performed by Engineer are intended solely for the benefit of the District. No person or entity not a signatory to the Agreement may rely on Engineer's performance of its Work under this Agreement, and no third party will obtain any right to assert a claim against the Engineer by assignment of indemnity rights or otherwise accrue to that party as a result of this Agreement or Engineer's performance of the Work.

19. Entire Agreement

This Contract constitutes the entire agreement between the parties hereto with respect to the matters covered thereby. All prior negotiations, representations and agreements with respect thereto not incorporated in the Contract are hereby canceled. This Contract has been negotiated at arm's length and each Party has been represented by legal counsel. Accordingly, any rule of law (including without limitation California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the Party drafting it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effectuate the intent of the Parties and the purpose of this Contract.

20. Action by Chief Engineer

Except as otherwise provided in this Agreement, the Chief Engineer and General Manager of the District ("Chief Engineer") may take all actions on behalf of the District in connection with any approvals or actions required of or by the District under this Agreement, and Engineer may rely on any such actions by the Chief Engineer as having been approved or required by the District under all applicable laws.

21. Miscellaneous

Additional conditions are as described in the GENERAL CONDITIONS Section of the RFP. The following revised GENERAL CONDITIONS shall replace the corresponding conditions in the GENERAL CONDITIONS Section of the RFP.

15.1 Meet and Confer. In the event of a dispute, the Parties shall meet and confer in good faith in an effort to resolve such dispute. If the Parties are unable to resolve the

dispute, then the dispute shall be handled in the manner described in this Section 15. Proposer shall continue providing Services throughout the course of any dispute, and the Districts shall continue to make payments to Proposer unless the dispute involves the Districts' obligation to make particular payments. A condition precedent to either party making any claim, and/or availing itself of the dispute resolution procedures set forth herein, the claiming party shall first present a written claim setting forth that party's position, which must include the following: (i) a narrative of pertinent events; (ii) citation to contract provisions; (iii) theory of entitlement; (iv) complete pricing of all cost impacts; and (v) a complete analysis of all time delays showing impact to critical path activities. The claim shall be submitted within twenty (20) calendar days of the commencement of the events giving rise to the dispute and shall be priced like Change Orders according to the requirements of the Contract Documents and updated monthly if a continuing claim.

15.2 Litigation. Unless the Parties agree in writing to a binding dispute resolution method other than litigation, disputes not resolved pursuant to this section 15 will be resolved in a court of competent jurisdiction in Los Angeles County.

15.3 Attorney's Fees. If any Party initiates a legal proceeding or dispute resolution proceeding to enforce the terms hereof, or declare rights hereunder, the Prevailing Party (as hereinafter defined) in any such lawsuit or proceeding shall be entitled to reimbursement by the other party of reasonable attorney fees and disbursements. The term "Prevailing Party" shall include, without limitation, a party who substantially obtains or defeats the relief sought, whether by compromise, settlement, judgment, or abandonment by the other party of its claim or defense. The attorney's fee award shall not be computed in accordance with any court fee schedule but shall be such as to fully reimburse all attorney's fees reasonably incurred. With respect to the foregoing, and any other provision in this contract providing for payment or indemnification of attorney's fees, such fees shall be reasonable and shall include reasonable fees incurred through any applicable appeal process.

15.4 California Law, Venue. Enforcement of the Contract Documents shall be governed by the laws of the State of California, excluding its conflict of laws rules. The exclusive venue for all mediation, arbitration or litigation arising from or relating to the Contract documents or the Project shall be in Los Angeles County.

EwingCole, Inc.



Signature

Roger Rudy, PE

Director of Operations

Signature

Name
Vice President

**SANITATION DISTRICT No. 2 OF
LOS ANGELES COUNTY**

By: _____
Chairperson

Attest:

Secretary

Approved as to Form:

Lewis Brisbois Bisgaard & Smith LLP

By: _____
District Counsel