

## INSPECTION AND TESTING AGREEMENT

This Inspection and Testing Agreement (“Agreement”) is dated \_\_\_\_\_, 2022 (“Effective Date”) and is between County Sanitation District No. 2 of Los Angeles County, DIR Agency ID Number 100010096 (the "District"), organized and existing under the County Sanitation District Act, Health and Safety Code Section 4700 *et seq.*, and Twining, Inc., a California corporation, DIR Registration Number 1000005568 (“Consultant”). The District and the Consultant are collectively referred to in this Agreement as the “Parties.”

The District requested proposals for consultants to provide construction inspection, special inspection, and materials sampling and testing services on an on-call basis for various existing and future construction projects (the “Project”). The DIR Registration Number for the Project is \_\_\_\_\_. Consultant’s proposal to provide such construction inspection, sampling and testing services under this Agreement is set forth in Exhibit “A” to this Agreement (the “Proposal”). The services to be provided by Consultant pursuant to the Proposal are set forth in Sections 2.2 of the District’s Request for Proposals (“RFP”) which constitutes the Work (“Work”). The RFP, which also includes additional terms and conditions for this Agreement, is attached as Exhibit “B” to this Agreement and is incorporated by this reference.

The Parties therefore agree as follows:

### 1. **Agreement**

The RFP and the Proposal are incorporated into this Agreement. In the event that there is any conflict or inconsistency between the provisions of the RFP, the Proposal and/or this Agreement, the provisions of this Agreement will prevail.

### 2. **Consultant’s Work**

**2.1 Scope of Services by Consultant.** Consultant shall perform the Work as set forth in this Agreement. In its performance of the Work, Consultant shall comply with all applicable Federal, State and local laws, rules, regulations, ordinances, and industry practices.

**2.2 Consultant’s Standard of Care.** The standard of care applicable to Consultant’s Work under the Agreement will be the degree of skill and diligence ordinarily employed by consultants performing the same or similar Work, under the same or similar circumstances, at the time the Work is performed. Consultant shall re-perform any Work not meeting this standard, if directed by the District, without additional compensation.

**2.3 Payment of Prevailing Wage Rates.** Pursuant to applicable provisions of the Labor Code of the State of California, the Consultant and its subconsultant(s) shall pay to all workmen performing Work contemplated under the Agreement, not less than the general prevailing wage rate of per diem wages and not less than the general prevailing rate of per diem wages for legal holiday and overtime work, for each craft or type of worker needed to execute

the Work contemplated under this Agreement, as ascertained by the Director of the Department of Industrial Relations.

### **3. Application of Prevailing Wages**

#### **3.1 Wage Rates, Travel, and Subsistence.**

a. **Wage Rates.** Pursuant to the provisions of Article 2 Chapter 1, Part 7, Division 2, of the Labor Code (section 1770 *et seq.*), the District has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this work of improvement is to be performed for each craft, classification, or type of worker needed to perform the Work contemplated under this Agreement from the Director of the Department of Industrial Relations ("DIR"). These rates are listed in Exhibit "C" to this Agreement, on file with the District, and copies will be made available to any interested party on request. Consultant shall post a copy of such wage rates at the work site.

For any worker employed to perform work, where such work is not covered by any classification listed in the published general prevailing wage rates determinations or per diem wages determined by the DIR, said worker shall be paid not less than the minimum rate of wages specified in the classification which most nearly corresponds to the employment of such person in such classification.

b. **Holiday and Overtime Pay.** Holiday and overtime work, when permitted by law, shall be paid for at a rate set forth in the prevailing wage determinations issued by the DIR or at least one and one-half (1½) times the specified basic rate of per diem wages, plus employer payments, unless otherwise specified in this Agreement, or authorized by law

c. **Wage Rates Not Affected By Other Contracts.** Consultant shall pay and shall cause to be paid to each employee to whom prevailing wage rates apply not less than the general prevailing rate of per diem wages determined by the DIR, regardless of any contractual relationship which may be alleged to exist between Consultant and employee.

d. **Travel And Subsistence.** Consultant shall pay and shall cause to be paid to each employee performing Work, travel and subsistence payments, as such travel and subsistence payments are defined by the DIR and in accordance with Labor Code section 1773 *et seq.*, including but not limited to Labor Code section 1773.1.

e. **Change In Prevailing Wage During Bid or Construction.** If the DIR issues a change in any prevailing rate of per diem wages in the locality in which this public work is to be performed, Consultant must comply with current prevailing wages at all times pursuant to determinations by the DIR and Labor Code section 1773 *et seq.* Prevailing wage determination rates are issued twice a year, in February and August and, as of the date of this contract, the effective date of a determination is 10 days after the issue date of the determination. So, for example, if the prevailing wage determination is issued February 22nd, the effective dates for implementing said new rate is March 3rd in leap years, and March 4th in non-leap years.

f. Any worker employed to perform Work, which work is not covered by any craft or classification listed in the general prevailing rate of per diem wages determined by the DIR, shall be paid not less than the minimum rate of wages specified therein for the craft or classification which most nearly corresponds to the work to be performed by them, and such minimum wage rate shall be retroactive to time of initial employment of such person in such craft or classification.

g. **Per Diem Wages.** Consultant shall pay and shall cause to be paid to each employee performing Work per diem wages including, but not limited to, employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Labor Code section 1773.1.

h. **Posting of Wage Rates.** Prior to commencing any work, Consultant shall post the required notice/poster required under the California Code of Regulations and Labor Code section 1771.4 in both English and Spanish at a conspicuous, weatherproof area at the work site. The required notice/poster is available on the Labor Commissioner's website.

i. **Forfeiture and Payments.** Pursuant to Labor Code section 1775, Consultant shall forfeit to District not more than Two Hundred Dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of per diem wages, determined by the DIR, for such craft or classification in which such worker is employed for any work performed. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on consideration of Consultant's mistake, inadvertence, or neglect in failing to pay the correct prevailing rate of per diem wage, the previous record of Consultant in meeting his or her prevailing rate of per diem wage obligations, or Consultant's willful failure to pay the correct prevailing rate of per diem wages. A mistake, inadvertence, or neglect in failing to pay the correct prevailing rate of per diem wage is not excusable if Consultant had knowledge of it or the obligations under this part. The difference between such prevailing rate of per diem wage and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing rate of per diem wage shall be paid to each worker by Consultant.

j. **Monitoring and Enforcement by Labor Commissioner.** Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/Department of Labor Standards Enforcement (DLSE). Consultant shall be required to furnish, at least monthly, certified payroll records directly to the Labor Commissioner in accordance with Labor Code section 1771.4. All payroll records shall be furnished in a format required by the Labor Commissioner. Consultant must sign up for, and utilize, the Labor Commissioner's electronic certified payroll records submission system. The District will have direct and immediate access to all CPRs for work performed under this Agreement that are submitted through the Labor Commissioner's system. The District can use this information for any appropriate purpose, including monitoring compliance, identifying suspected violations, and responding to Public Records Act requests.

The Labor Commissioner and DLSE may conduct various compliance monitoring and enforcement activities including, but not limited to, confirming the

accuracy of payroll records, conducting worker interviews, conducting audits, requiring submission of itemized statements prepared in accordance with Labor Code section 226, and conducting random in-person inspections of the work site ("On-Site Visits"). On-Site Visits may include inspections of records, inspections of the work site and observation of work activities, interviews of workers and others involved with the work site, and any other activities deemed necessary by the Labor Commissioner/DLSE to ensure compliance with prevailing wage requirements. The Labor Commissioner/DLSE shall have free access to any construction site or other place of labor and may obtain any information or statistics pertaining to the lawful duties of the Labor Commissioner/DLSE.

Any lawful activities conducted or any requests made by the Labor Commissioner/DLSE shall not be the basis for any delays, claims, costs, damages or liability of any kind against the District by Consultant. Consultant and all employees shall cooperate and comply with any lawful requests by the Labor Commissioner/ DLSE. The failure of the Labor Commissioner, DLSE, or any other entity related to the Department of Industrial Relations to comply with any requirement imposed by the California Code of Regulations, Title 8, Chapter 8 shall not of itself constitute a defense to the failure to pay prevailing wages or to comply with any other obligation imposed by Division 2, Part 7, Chapter 1 of the Labor Code.

### **3.2 Records of Wages Paid: Certified Payroll Submissions and Inspection.**

#### **a. Payroll Records.**

(i) Pursuant to section 1776 of the Labor Code, Consultant shall keep an accurate payroll record showing the name, address, social security number, work classification and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the work.

(ii) All payroll records as specified in Labor Code section 1776 of Consultant shall be certified and furnished directly to the Labor Commissioner in accordance with Labor Code section 1771.4(a)(3) on a monthly basis (or more frequently if required by the District or the Labor Commissioner) and in a format prescribed by the Labor Commissioner. Payroll records as specified in Labor Code section 1776 shall be certified and submitted to the District in hard copy (not electronic) with each application for payment or invoice. All payroll records shall be available for inspection at all reasonable hours at the principal office of Consultant on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of the District, the Division of Labor Standards Enforcement or the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to Paragraph (2) above, the requesting party shall, prior to being provided the records, reimburse the costs, according to law for the preparation by Consultant, and the entity through which the request was made. The public shall not be given access to such records at the principal office of Consultant.

(iii) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division of Labor Standards Enforcement.

(iv) Consultant shall file a certified copy of all payroll records with the entity that requested such records within 10 calendar days after receipt of a written request.

(v) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or redacted to prevent disclosure of an individual's name, address and social security number. The name and address of the Consultant awarded the work shall not be marked or redacted. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or redacted only to prevent disclosure of an individual's name and social security number. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records.

(vi) Consultant shall inform the District of the location of all payroll records, including the street address, city and county, and shall provide notice of a change of location and address within five (5) days of same.

(vii) Consultant shall have 10 calendar days in which to comply subsequent to receipt of a written notice requesting payroll records. In the event that Consultant fails to comply within the 10-day period, the Consultant shall, as a penalty to the District, forfeit One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from payments then due to Consultant.

(viii) Responsibility for compliance with this Article shall rest upon Consultant.

**b. Withholding of Contract Payments & Penalties.**

The District may withhold or delay contract payments to Consultant if:

- (i) The required prevailing rate of per diem wages determined by the DIR is not paid to all employees performing work;
- (ii) Consultant fails to submit all required certified payroll records with each application for payment or invoice, but not less than once per month;
- (iii) Consultant submits incomplete or inadequate payroll records;
- (iv) Consultant fails to comply with the Labor Code requirements concerning apprentices; or
- (v) Consultant fails to comply with any applicable state laws governing workers on public works projects.

**3.3 Apprentices.**

a. **Apprentice Wages and Definitions.** All apprentices employed by Consultant to perform Work shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for which he or she is employed, as determined by the DIR, and shall be employed only at the work of the craft or trade to which he or she is registered. Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards that have been approved by the chief of the Division of Apprenticeship Standards and who are parties to written apprenticeship agreements under Chapter 4 (commencing with section 3070) of Division 3, are eligible to be employed under this Agreement. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training, or in accordance with the rules and regulations of the California apprenticeship Council.

b. **Apprentice Labor Pool.** When Consultant employs workers in any apprenticeable craft or trade, Consultant shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the site of the work, for a certificate approving the Consultant under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving Consultant, shall arrange for the dispatch of apprentices to Consultant in order to comply with this section. Consultant shall submit the contract award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the Agreement, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the crafts or trade in the area of the site of the work, to ensure equal employment and affirmative

action and apprenticeship for women and minorities. Consultant shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who shall be employed in the craft or trade at the site of the work, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this section, in no case shall the ratio be less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one (1) apprentice for each five (5) journeymen.

c. **Journeyman/Apprentice Ratio; Computation of Hours.** Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the joint apprenticeship committee, is employed at the job site and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. Consultant shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a joint apprenticeship committee, may order a minimum ratio of not less than one (1) apprentice for each five (5) journeymen in a craft or trade classification.

d. **Journeyman/Apprentice Ratio.** Consultant, if covered by this section upon the issuance of the approval certificate, or if previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by Consultant that it employs apprentices in the craft or trade in the state on all of its contracts on an annual average of not less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman, or in the land surveyor classification, one (1) apprentice for each five (5) journeymen, the Division of Apprenticeship Standards may grant a certificate exempting Consultant from the 1-to-5 hourly ratio as set forth in this section. This section shall not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contracts of general contractors or those specialty contractors involve less than Thirty Thousand Dollars (\$30,000) or twenty (20) working days. Any work performed by a journeyman in excess of eight (8) hours per day or forty (40) hours per week, shall not be used to calculate the hourly ratio required by this section.

e. **Apprenticeable Craft or Trade.** "Apprenticeable craft or trade" as used in this Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting Consultant from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions is met:

(i) Unemployment for the previous three-month period in the area exceeds an average of fifteen percent (15%).

(ii) The number of apprentices in training in such area exceeds a ratio of 1-to-5.

(iii) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth (1/30) of its journeymen annually through the apprenticeship training, either on a statewide basis or on a local basis.

(iv) Assignment of an apprentice to any work performed under this Agreement would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

f. **Ratio Exemption.** When exemptions are granted to an organization which represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

g. **Apprentice Fund.** If Consultant employs journeymen or apprentices in any apprenticeable craft or trade and is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the site of the work site, to which fund or funds other contractors in the area of the site of the work site are contributing, Consultant shall contribute to the fund or funds in each craft or trade in which he or she employs journeymen or apprentices on the work site in the same amount or upon the same basis and in the same manner as the other consultants do, but if the trust fund administrators are unable to accept the funds, Consultant shall pay a like amount to the California Apprenticeship Council. Consultant may add the amount of the contributions in computing its bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in the Labor Code section 227.

h. **Consultant Compliance.** The responsibility of compliance with paragraph 3.3 and section 1777.5 of the Labor Code for all apprenticeable occupations is with Consultant.

i. **Decisions Of Joint Apprenticeship Committee.** All decisions of the joint apprenticeship committee under this paragraph 3.3 and Labor Code section 1111.5 are subject to Labor Code section 3081.

j. **No Bias.** It shall be unlawful for an employer or a labor union to refuse to accept otherwise qualified employees as registered apprentices on any public works on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in the Labor Code section 3077.

k. **Violation of Labor Code.** Pursuant to Labor Code section 1777.7, in the event Consultant willfully fails to comply with the provisions of this paragraph 12.3 and Labor Code section 1777.5:



(i) The DIR shall deny to Consultant the right to bid on, or to receive, any public works contract for a period of up to one year for the first violation and for a period of up to three years for the second and subsequent violations. Each period of debarment shall run from the date the determination of noncompliance by the Administrator of Apprenticeship becomes an order of the California Apprenticeship Council.

(ii) If Consultant violates section 1777.5 it shall forfeit as a civil penalty the sum of two hundred dollars (\$200) for each calendar day of noncompliance. Notwithstanding section 1727, upon receipt of a determination that a civil penalty has been imposed, District shall withhold the amount of the civil penalty from the contract progress payments then due or to become due.

(iii) In lieu of the penalty provided for in subdivision (a) or (b), the DIR may for a first time violation and with the concurrence of the joint apprenticeship committee, order Consultant to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

(iv) Any funds withheld by District pursuant to this section shall be deposited in the General Fund if the awarding body is a state entity, or in the equivalent fund of an awarding body if the awarding body is an entity other than the state.

(v) The interpretation and enforcement of section 1777.5 and this section shall be in accordance with the rules and procedures of the California Apprenticeship Council.

### **3.4 DIR Registration.**

a. **Registration by Consultant and Subconsultants of Any Tier.** Strict compliance with all DIR registration requirements in accordance with Labor Code sections 1725.5 and 1771.1 is a material obligation of Consultant under the Agreement. The foregoing includes, without limitation, compliance with DIR registration requirements at all times during performance of the Work by Consultant. The failure of Consultant to be properly registered with DIR at all times during performance of the work is a material breach of the Agreement and subject to termination for cause. An affirmative and ongoing obligation of Consultant under the Agreement is the verification that all subconsultants of any tier are at all times during performance of the Work in full and strict compliance with the DIR registration requirements. Consultant shall not permit or allow any subconsultant of any tier to perform any Work without Consultant's verification that all subconsultants are in full and strict compliance with the DIR registration requirements. Any subconsultants of any tier not properly registered with DIR shall be substituted in accordance with Labor Code section 1771.1. Consultant or its subconsultants of any tier shall not be entitled to any additional costs or time arising from or in any way related to compliance with the DIR registration requirements.

### **3.5 Project Labor Agreement**

If the Consultant works on the JWPCP Effluent Outfall Tunnel, the Consultant shall deliver to the District adequate documentation that the Consultant has agreed to be bound by the Project Labor Agreement for that project.

#### **4. District's Obligations**

**4.1 District-Provided Information and Services.** The District shall furnish the Consultant with available schedules, drawings, specifications and other data pertinent to the Work and obtain or authorize Consultant to obtain additional reports and data as required.

**4.2 Access.** The District shall arrange for the Consultant to access and enter upon public and private property as required for Consultant to perform the Work. Consultant shall comply with all applicable laws and with the District's requirements for persons entering the District's premises.

#### **5. Compensation and Payment for Services Performed**

**5.1 Consultant's Compensation:** The payment by the District to Consultant for the Work will be, as defined in this Section 4.1, the sum of: (a) Direct Hourly and Overtime Costs and (b) Indirect Reimbursables and Other Costs. All work shall be performed on a "Time and Materials" basis, at the rates as provided in Exhibit "A." The amount to be paid by the District for the Work shall not exceed \$1,500,000 ("Not to Exceed Amount") except as otherwise provided in this Agreement. The District will not pay Consultant any amount above the Not to Exceed Amount without the prior written authorization of the District.

a. **Direct Costs.** Direct Costs will be the hourly rates paid by the Consultant to its employees for time directly chargeable to the Work, including direct time and overtime, and shall include all overhead, profit and all other costs that are not specifically defined as Indirect Reimbursables as defined below. Consultant shall ensure that its employees maintain accurate records of the time chargeable to the Work.

b. **Indirect Reimbursables and Other Costs.** Indirect Reimbursables and Other Costs are those specific costs are not covered by the Consultant's hourly rates for which it expects reimbursement from the District and were identified in the Proposal. All costs not separately and specifically defined as Indirect Reimbursables or other costs in the Proposal are included in Direct Costs.

**5.2 Payment to Consultant.** Consultant shall submit a monthly application for payment to the District that will include supporting information. The supporting information will include a detailed breakdown of work hours by person, project worked on and the specific service provided, along with the cost and a description of all other reimbursable expenses incurred. Any reimbursable expenses must be documented with receipts and invoices. The Consultant may also be required to provide weekly updates on hours and costs. Consultant may request annual rate increases up to, but not in excess of, the difference between the All Urban Consumers CPI for the Los Angeles-Riverside-Orange County areas between March of the current year compared to March of the previous year. The annual rate increase may only exceed this amount if the change in prevailing wages in a given year is in excess of this amount. If the annual prevailing wage increase is greater than the annual CPI increase, the annual rate increase granted to the Consultant will equal the annual prevailing wage increase.

## **6. Duration**

Consultant's performance of the Work shall commence on the Effective Date, and this Agreement shall remain effective for three years after the Effective Date, unless otherwise terminated as described in Section 7 of this Agreement. Consultant shall perform its Work in a timely manner. Time is a material condition in the performance of the Work.

## **7. Changes and Extra Work**

The District may make changes within the general scope of this Agreement and may request the Consultant to perform work not originally included in the Work. If Consultant 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 Consultant shall so notify the District in writing no later than five days after the date of receiving notification of a proposed change or changed direction. The Consultant shall perform such services and will be paid for such services pursuant to a negotiated and mutually-agreed change signed by the Parties. If the Consultant determines that any work not included within the Work is necessary for completion of the Project, the Consultant shall notify the District and receive approval prior to starting that work. Compensation for extra work will be in accordance with the hourly rate schedule included in this Agreement and the District shall not pay any additional markups on the rates in that schedule or on associated expenses. The Consultant shall include extra work costs in its monthly application for payment, with the extra work clearly separated from the Work set forth in the application.

## **8. Termination**

**8.1 Termination for Convenience.** The District may terminate the Agreement without cause following the District's written notice to Consultant of the District's election to terminate. Consultant shall suspend Work immediately after receiving notice of termination by the District, and Consultant shall submit an invoice to the District for any balance due the Consultant for the performance of the Work through the date of its receipt of the District's termination notice. No later than three days after receiving the termination notice, the Consultant shall return to the District all materials associated with the Work. The Consultant will not be entitled to payment for any outstanding balance due until it returns all Work-related materials to the District. If the District terminates the Agreement for convenience, and upon Consultant's completion of its obligations set forth in this Section 7.1, the District shall compensate the Consultant and its subconsultants for all agreed-upon services performed and costs incurred up to the effective date of termination for which the Consultant had not previously been compensated. The Consultant will be entitled to payment of all costs incurred up to the date of termination as approved by the District.

**8.2 Termination for Cause by District.** The District may terminate the Agreement for cause following written notice to Consultant of the District's determination to

terminate and election to terminate. Consultant shall suspend Work immediately after receiving notice of termination by the District, and Consultant shall submit an invoice to the District for any balance due the Consultant for the performance of the Work through the date of its receipt of the District's termination notice. No later than three days after receiving the termination notice, the Consultant shall return to the District all materials associated with the Work. In the event of termination for cause, the rights and obligations of the Parties will be determined in accordance with applicable principles of law and equity.

**8.3 Termination for Cause by Consultant.** The Consultant may terminate the Agreement in the event that the District substantially fails to perform the Agreement through no fault of the Consultant. No termination for cause by the Consultant will be effective unless: a) the District is given not less than seven calendar days written notice (delivered by certified mail return receipt requested) of the Consultant's intent to terminate; and b) the District is given an opportunity to consult with the Consultant before the seven calendar days notice period has elapsed. Late payment by the District of approved invoices will not constitute a substantial failure to perform unless the District has received written notification of overdue payment and payment is not made within 30 days after the District receives such notification.

## **9. Indemnity**

The Consultant shall defend, indemnify and hold free and harmless the District, its officers, agents and employees, and the other County Sanitation Districts of Los Angeles County ("Indemnitees") from and against any and all claims, demands, actions, loss or liability, to the extent caused by the negligent, grossly negligent, or intentional errors, omissions or acts of the Consultant or its subconsultants in performing the Consultant's obligations under this Agreement. The Consultant shall defend, indemnify and hold free and harmless the Indemnitees from any failure by Consultant or subconsultants to pay the proper prevailing wage rate to any employee working on the Project or otherwise under this Amendment, or failure to otherwise comply in all respects with California prevailing wage laws applicable to District projects, including under the *Kaanaana v. Barrett Business Services, Inc., et al.* (2021) 11 Cal.5th 158 decision. This indemnity shall extend to the payment of all costs of litigation including reasonable attorney's fees with respect to any cause of action referred to above. The Consultant shall have sole discretion in determining the attorneys it shall employ. The Consultant shall indemnify the District against and hold it harmless from any and all loss, damage, costs, expenses, and reasonable attorney's fees suffered or incurred as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any patent and arising out of the use of the equipment or materials furnished under this Agreement by the Consultant, or out of the processes or actions employed by, or on behalf of, the Consultant in connection with the performance of this Agreement. The Consultant shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing equipment, materials or processes, or to modify at its expense such infringing equipment, materials, and processes so they become non-infringing, provided that such substituted and modified equipment, materials, and processes shall meet all the requirements and be subject to all the provisions of this Agreement.

## **10. Insurance**

The Consultant shall secure and maintain, until the completion of the Work, such insurance as will protect it and the District in such a manner and at such amounts as set forth below. The premiums for said insurance coverage shall be paid by the Consultant.

The Consultant shall deliver to the District certificates of insurance and endorsements verifying the insurance coverage as required by this Agreement no later than seven calendar days after the Effective Date. The District reserves the right to require complete and accurate copies of all insurance policies required under this Agreement subject to negotiation with the Consultant as to the conditions under which such policy copies will be produced.

The insurance policies certified for compliance with this Agreement shall be primary coverage. Consultant shall provide the District with no less than 30 days' prior written notice of a policy cancellation or reduction in coverage without right of contribution of any other insurance carrier or on behalf of the District. Consultant shall provide insurance coverage through insurers that have at least an "A" policyholders and Financial Size Category ("FSC") of "X" in accordance with the *Current Guide to Best's Ratings* published by A.M. Best Company, Inc.

The insurance provided under this Agreement shall include policies providing coverage to include each of the requirements set forth below in amounts that meet or exceed the minimums set forth herein.

**10.1 Workers' Compensation.** The Consultant shall maintain Workers' Compensation Insurance as required by law in the State of California and Employers' Liability Insurance (including disease coverage) in an amount not less than \$1,000,000 per occurrence. This insurance shall also waive all right to subrogation against the District, its employees, representatives and agents.

**10.2 General Liability.** The Consultant shall maintain general liability insurance including provisions for contractual liability, independent consultants, and broad form property damage coverage. This insurance shall have an endorsement naming the District as an additional insured and a standard cross-liability clause or endorsement. The limit for this insurance shall be not less than \$1,000,000 per occurrence, \$3,000,000 aggregate, combined single limit for bodily injury and property damage.

**10.3 Automobile Liability.** The Consultant shall maintain automobile liability insurance with coverage for any vehicle including those owned, leased, rented or borrowed. This insurance must have an endorsement naming the District as an additional insured and with a standard cross liability clause or endorsement. The limit amount for this insurance shall be not less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

**10.4 Professional Liability.** The Consultant shall maintain professional liability insurance with coverage for wrongful acts, errors, or omissions committed by Consultant in the course of work performed for the District under this Agreement. This insurance shall include coverage for liability assumed under this Agreement when such liability is caused by Consultant's negligent or grossly negligent acts, errors, or omissions. The limit for this

insurance shall be not less than \$1,000,000 per occurrence, \$3,000,000 aggregate, on a claims-made basis. The effective dates for this insurance shall begin no later than seven days after the Effective Date and shall be valid for five calendar years beyond end date of this Agreement.

**11. Relationship of the Parties**

The legal relationship between the Consultant and the District is that of an independent contractor, and neither Consultant or Consultant's employees are employees of the District. Consultant shall pay all salaries, wages, benefits, employer social security taxes, unemployment insurance taxes, and all other federal and state payroll taxes relating to employees, and shall be responsible for withholding all required taxes. As such, Consultant's employees are not entitled to California Public Employees Retirement System ("Cal PERS") benefits or any other benefit to which employees of the District may be entitled. Consultant shall defend, hold harmless, and indemnify the District from and against any and all claims, demands, liability or loss, including but not limited to fees, taxes, or penalties arising out of or related to Consultant's failure to comply with the provisions of this Agreement with the District. Consultant's employees are employed by Consultant to exercise their judgment based upon their education, experience, and expertise in performing Work for the Consultant on behalf of the District. The District will not control the manner or method of the Work performed by Consultant's employees.

**12. Ownership of Documents**

All reports as well as original reports, schedules, drawings, specifications, electronic files, plans, studies, memoranda, presentation aids, computation sheets, survey data, computer hardware or software developed or purchased specifically for the Project, and other documents assembled or prepared by Consultant, or furnished to Consultant in connection with the Work are the property of the District. Consultant may retain copies of such documents, but Consultant may not make such documents available to any individual or organization without the District's prior written approval.

**13. Non Disclosure of Information**

Consultant 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 Consultant prior to obtaining it from the District; b) the information is, at the time of disclosure by the Consultant, then in the public domain; or c) the information is obtained by the Consultant from a third party that did not receive it, directly or indirectly, from the District.

**14. Access to Work and Records**

The Consultant shall provide the District, or any authorized representative of the District, with access to the Work whenever it is in preparation or in progress. Consultant shall provide proper facilities for such access and inspection. The Consultant shall also provide the District, or any authorized representative of the District, with access to any books, electronic files, documents, papers, and records of the Consultant that are pertinent to the Work for the purpose of making audits, examinations, excerpts, and transcriptions. The Consultant 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 by the District during regular office hours at any time until one year after the District makes the final payment under this Agreement.

**15. Personnel Assignment**

During the duration of this Agreement, the Consultant may not replace the personnel listed in the Consultant's Proposal that are engaged in the Work without the prior written approval of the District. The District may request a change in the assignment of Consultant's personnel. Consultant shall change personnel to the satisfaction of the District no later than seven days following its receipt of written direction to change by the District.

**16. 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 District No. 2  
of Los Angeles County  
1955 Workman Mill Road  
Whittier, California 90601  
ATTN: Russell Vakharia

Consultant: Twining, Inc.  
Address: 2883 E. Spring Street, Suite 300, Long Beach, CA 90806  
ATTN: Sam Sajed

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

**17. Governing Law, Dispute Resolution and Litigation**

Consultant's performance of this Agreement shall be governed and construed in accordance with the laws of the State of California. Venue for any action relating to this Agreement will be the Superior Court of the County of Los Angeles, State of California.

**18. Severability**

Should any provision of this Agreement be found or be deemed invalid, this Agreement will be construed as not containing that provision, and all other provisions, which are otherwise lawful, will remain in full force and effect. To this end, the provisions of this Agreement are declared to be severable.

**19. Entire Agreement**

This Agreement represents the entire understanding between District and Consultant as to those matters contained herein. No prior oral or written understanding is of any force or effect with respect to those matters covered in this Agreement.

**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 Consultant may rely on any such actions by the Chief Engineer as having been approved or required by the District under all applicable laws.

**TWINING, INC.**



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Steve Schiffer, Senior Vice President



Approved as to Form:

By: \_\_\_\_\_  
Counsel for Twining, Inc.

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

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

Attest:

\_\_\_\_\_  
Secretary

Approved as to Form:

**Lewis Brisbois Bisgaard & Smith LLP**

By: \_\_\_\_\_  
Districts' Counsel