

## **CONSULTANT AGREEMENT**

THIS AGREEMENT is made this **28<sup>th</sup>** day of **June** 2022, by the GARDEN GROVE SANITARY DISTRICT, a California special district ("DISTRICT"), and ARDURRA GROUP, INC., a California Corporation ("CONSULTANT").

### **RECITALS**

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Board authorization dated **June 28, 2022.**
2. DISTRICT desires to utilize the services of CONSULTANT to provide **Civil Engineering Design Service and Construction Management/Inspection Services of Garden Grove Sanitary District Sewer Rehabilitation Plan Phase I-Sewer Main Lining and Spot Repair Project No.5 and 6.**
3. CONSULTANT is qualified by virtue of experience, training, education and expertise to accomplish services.

### **AGREEMENT**

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement:** This Agreement shall cover services rendered from date of this Agreement until the services are completed, compensation reaches the not to exceed amount, or sooner terminated per Section 3.5
2. **Services to be Provided:** The services to be performed by CONSULTANT shall consist of the services as further specified in CONSULTANT'S proposal attached hereto as Exhibit A and incorporated herein by reference. CONSULTANT agrees that is provision of Services under this agreement shall be within accepted accordance with customary and usual practices in CONSULTANT'S profession. By executing this Agreement, CONSULTANT warrants that it has carefully considered how the work should be performed and fully understands the facilities, difficulties, and restrictions attending performance of the work under this agreement.
3. **Compensation.** CONSULTANT shall be compensated as follows:
  - 3.1 **Amount.** Compensation under this Agreement shall be per fee schedule included in the Proposal.
  - 3.2 **Not to Exceed.** Compensation under this Agreement shall not exceed **\$493,077.**

- 3.3 Payment. For work under this Agreement, payment shall be made per monthly invoice. For extra work not a part of this Agreement, a written authorization by DISTRICT will be required.
- 3.4 Records of Expenses. CONSULTANT shall keep complete and accurate records of payroll costs, travel and incidental expenses. These records will be made available at reasonable times to DISTRICT.
- 3.5 Termination. DISTRICT and CONSULTANT shall each have the right to terminate this Agreement, without cause, by giving thirty-(30) days written notice of termination to the other party. If DISTRICT terminates the project, then the provisions of paragraph 3 shall apply to that portion of the work completed.

#### 4. **Insurance Requirements**

- 4.1 Commencement of Work CONSULTANT shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the DISTRICT. All insurance required by this Agreement shall require the carrier or agent to notify the DISTRICT of any material change, cancellation, or termination at least thirty (30) days in advance.
- 4.2 Workers Compensation Insurance For the duration of this Agreement, CONSULTANT and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable. The insurer shall waive its rights of subrogation against the DISTRICT, its officers, officials, agents, employees, and volunteers.
- 4.3 Insurance Amounts CONSULTANT shall maintain the following insurance for the duration of this Agreement:
  - a) Commercial general liability in the amount of \$1,000,000 per occurrence; (claims made and modified occurrence policies are not acceptable); Insurance companies must be admitted and licensed in California and have a Best's Guide Rating of A-, Class VII or better, as approved by the DISTRICT;
  - b) Automobile liability in the amount of \$1,000,000 per occurrence; (claims made and modified occurrence policies are not acceptable) Insurance companies must be admitted and licensed in California and have a Best's Guide Rating of A-, Class VII or better, as approved by the DISTRICT.
  - c) Professional liability in the amount of \$1,000,000 per occurrence; Insurance companies must be acceptable to DISTRICT and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the DISTRICT. If the policy is written on a "claims made" basis, the policy shall be continued in full force and effect at all

times during the term of the agreement, and for a period of three (3) years from the date of the completion of services provided. In the event of termination, cancellation, or material change in the policy, professional/consultant shall obtain continuing insurance coverage for the prior acts or omissions of professional/consultant during the course of performing services under the term of the agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier.

An Additional Insured Endorsement, **ongoing and completed operations**, for the policy under section 4.3 (a) shall designate DISTRICT, its officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONSULTANT. CONSULTANT shall provide to DISTRICT proof of insurance and endorsement forms that conform to DISTRICT's requirements, as approved by the DISTRICT.

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate DISTRICT, its officers, officials, employees, agents, and volunteers as additional insureds for automobiles owned, lease, hired, or borrowed by CONSULTANT. CONSULTANT shall provide to DISTRICT proof of insurance and endorsement forms that conform to DISTRICT's requirements, as approved by the DISTRICT.

For any claims related to this Agreement, CONSULTANT's insurance coverage shall be primary insurance as respects to DISTRICT, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the DISTRICT, its officers, officials, employees, agents, or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.

*If CONSULTANT maintains higher insurance limits than the minimums shown above, CONSULTANT shall provide coverage for the higher insurance limits otherwise maintained by the CONSULTANT.*

5. **Non-Liability of Officials and Employees of the DISTRICT.** No official or employee of DISTRICT shall be personally liable to CONSULTANT in the event of any default or breach by DISTRICT, or for any amount, which may become due to CONSULTANT.
6. **Non-Discrimination.** CONSULTANT covenants there shall be no discrimination against any person or group due to race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry, in any activity pursuant to this Agreement.
7. **Independent Contractor.** It is understood and agreed that CONSULTANT, including CONSULTANT's employees, shall act and be independent

contractor(s) and not agent(s) or employee(s) of DISTRICT, and that no relationship of employer-employee exists between the parties. CONSULTANT's assigned personnel shall not obtain or be entitled to any rights or benefits that accrue to, or are payable to, DISTRICT employees, and CONSULTANT shall so inform each employee organization and each employee who is hired or retained under this Agreement. DISTRICT is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of this Agreement, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT hereby expressly assumes all responsibility and liability for the payment of wages and benefits to its assigned personnel, and all related reporting and withholding obligations. CONSULTANT hereby agrees to indemnify and hold DISTRICT harmless from any and all claims or liabilities that DISTRICT may incur arising from any contention by any third party, including, but not limited to, any employee of CONSULTANT or any federal or state agency or other entity, that an employer-employee relationship exists by reason of this Agreement, including, without limitation, claims that DISTRICT is responsible for retirement or other benefits allegedly accruing to CONSULTANT's assigned personnel.

8. **Compliance With Law.** CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government. CONSULTANT shall comply with, and shall be responsible for causing all contractors and subcontractors performing any of the work pursuant to this Agreement, if any, to comply with, all applicable federal and state labor standards, including, to the extent applicable, the prevailing wage requirements promulgated by the Director of Industrial Relations of the State of California Department of Labor. The DISTRICT makes no warranty or representation concerning whether any of the work performed pursuant to this Agreement constitutes public works subject to the prevailing wage requirements.
9. **Disclosure of Documents.** All documents or other information developed or received by CONSULTANT are confidential and shall not be disclosed without authorization by DISTRICT, unless disclosure is required by law.
10. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT shall be the property of DISTRICT. CONSULTANT shall provide DISTRICT with copies of these items upon demand or upon termination of this Agreement.
11. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
12. **Notices.** All notices shall be personally delivered or mailed to the below listed addresses, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.

(a) Address of CONSULTANT is as follows:

Ardurra Group, Inc.  
3737 Birch St, Suite 250  
Newport Beach, CA 92660

(b) Address of DISTRICT is as follows (with a copy to):

Engineering:	General Counsel
Garden Grove Sanitary Dist.	Garden Grove Sanitary District
P.O. Box 3070	P.O. Box 3070
Garden Grove, CA 92840	Garden Grove, CA 92840

13. **CONSULTANT'S Proposal.** This Agreement shall include CONSULTANT'S proposal, Exhibit "A" hereto, which shall be incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.
14. **Licenses, Permits and Fees.** At its sole expense, CONSULTANT shall obtain a **Garden Grove Business License**, all permits and licenses as may be required by this Agreement.
15. **Familiarity With Work.** By executing this Agreement, CONSULTANT warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the facilities, difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any latent or unknown conditions materially differing from those inherent in the work or as represented by DISTRICT, it shall immediately inform DISTRICT of this and shall not proceed, except at CONSULTANT's risk, until written instructions are received from DISTRICT.
16. **Time of Essence.** Time is of the essence in the performance of this Agreement.
17. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability and reputation of CONSULTANT, its principals and employees were a substantial inducement for DISTRICT to enter into this Agreement. CONSULTANT shall not contract with any other entity to perform the services required without written approval of the DISTRICT. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of DISTRICT. If CONSULTANT is permitted to subcontract any part of this Agreement, CONSULTANT shall be responsible to DISTRICT for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and DISTRICT. All persons

engaged in the work will be considered employees of CONSULTANT. DISTRICT will deal directly with and will make all payments to CONSULTANT.

18. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.
19. **Indemnification.** To the fullest extent permitted by law, CONSULTANT agrees to protect, defend, and hold harmless DISTRICT and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damages of any nature, including interference with use of property, arising out of, or in any way connected with the negligence, recklessness and/or intentional wrongful conduct of CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT in the performance of the Agreement. The only exception to CONSULTANT'S responsibility to protect, defend, and hold harmless DISTRICT, is due to the negligence, recklessness and/or wrongful conduct of DISTRICT, or any of its elective or appointive boards, officers, agents, or employees.

This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT.

20. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual written agreement executed by DISTRICT and CONSULTANT.
21. **Waiver.** All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the DISTRICT and CONSULTANT.
22. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Orange County Superior Court.
23. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties
24. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

*[SIGNATURES ON FOLLOWING PAGE]*

**IN WITNESS THEREOF**, these parties hereto have caused this Agreement to be executed as of the date set forth opposite the respective signatures.

**"DISTRICT"  
GARDEN GROVE SANITARY DIST.**

Dated: \_\_\_\_\_, 2022

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

\_\_\_\_\_

General Manager

**ATTEST**

**"CONSULTANT"**

\_\_\_\_\_  
Secretary

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

Dated: \_\_\_\_\_, 2022

Dated: \_\_\_\_\_, 2022

**APPROVED AS TO FORM:**

If CONSULTANT/CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to DISTRICT

\_\_\_\_\_  
General Counsel

Dated: \_\_\_\_\_, 2022