

**AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES FOR
ANDERSON SPRINGS SEWER PROJECT**

THIS AGREEMENT, is entered into this _____ day of _____, 2017 by and between the County of Lake – Anderson Springs Sewer Project, hereinafter "COUNTY" and Brejle & Race Engineering, hereinafter "CONSULTANT".

RECITALS

WHEREAS, COUNTY, in response to the 2015 Valley Fire, has identified a need to design a sewer collection system; and

WHEREAS, construction management services will be required to oversee construction of the sewer collection system, hereinafter referred to as "PROJECT"; and

WHEREAS, COUNTY contracted with CONSULTANT for engineering services to design the PROJECT; and

WHEREAS, CONSULTANT is a licensed engineering firm in the State of California and is qualified and willing to provide said services; and

WHEREAS, the parties desire to complete those duties; and

WHEREAS, the parties agree to enter into a new agreement for the above-described purpose.

NOW, THEREFORE, based on the foregoing recitals, the parties hereto agree as follows:

I.

CONSULTANT'S RESPONSIBILITIES

- A. **Scope of Work:** CONSULTANT shall perform the services described in the October 6, 2017 proposal attached as Exhibit 1 and hereinafter called Scope of Work.
- B. **Access to CONSULTANT's Accounting Records:** The CONSULTANT will maintain accounting records, in accordance with generally accepted accounting principles and practices. The records will be available to COUNTY during CONSULTANT's normal business hours for a period of three (3) years after CONSULTANT's final invoice for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder. COUNTY may only audit accounting records applicable to cost-reimbursable type compensation.

II.
COUNTY'S RESPONSIBILITIES

The COUNTY's responsibilities will include the payment for the CONSULTANT's services and the time period within which payment must be made. Additionally, the COUNTY may agree to provide certain information, documents, work space, and/or materials.

- A. **COUNTY Furnished Data:** COUNTY will provide to CONSULTANT all data in COUNTY's possession relating to CONSULTANT's services on the PROJECT.
- B. **Access to Facilities and Property:** COUNTY will make its facilities accessible to CONSULTANT as required for CONSULTANT's performance of its services. COUNTY will be responsible for all acts of COUNTY's personnel.
- C. **Advertisements, Permits, and Access:** Unless otherwise agreed to in the Scope of Services, COUNTY will obtain, arrange and pay for all permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for CONSULTANT's services.
- D. **Timely Review:** COUNTY will examine CONSULTANT 's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as COUNTY deems appropriate; and render in writing decisions required by COUNTY in a timely manner.
- E. **Prompt Notice:** COUNTY will give prompt written notice to CONSULTANT whenever COUNTY observes or becomes aware of any development that affects the scope or timing of CONSULTANT's services, or of any defect in the work of CONSULTANT.
- F. **Environmental Clearances:** COUNTY will be responsible for all environmental documentation, studies and clearances.
- G. **Asbestos or Hazardous Substances and Indemnification:** If asbestos or hazardous substances in any form are encountered or suspected, CONSULTANT will stop its own work in the affected portions of the PROJECT to permit testing and evaluation.

If asbestos is suspected, CONSULTANT will if requested, manage the asbestos remediation activities using a qualified subconsultant at an additional fee and contract terms to be negotiated.

If hazardous substances other than asbestos are suspected, CONSULTANT will conduct tests to determine the extent of the problem and will perform the necessary studies and recommend the necessary measures at an additional fee and contract terms to be negotiated.

To the maximum extent permitted by law, COUNTY will indemnify CONSULTANT and CONSULTANT's officers, employees, subcontractors, and affiliated corporations from all claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation or dispute resolution expenses arising out of or relating to the presence, discharge, release, or escape of hazardous substances, contaminants, or asbestos on, under, or from the PROJECT.

III.
CONSULTANT'S REPORT AND/OR MEETINGS

- A. The CONSULTANT shall submit progress reports on each project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for the COUNTY's Project Manager to determine if the CONSULTANT is performing to expectations or is on schedule, to provide communication of interim findings and to afford occasions for airing difficulties or special problems encountered so remedies can be developed.
- B. The CONSULTANT's Project Manager shall meet with the COUNTY's Project Manager as needed to discuss progress on the project(s).

IV.
PREVAILING WAGE

Prevailing wage laws of the State of California apply to certain work performed on this public works construction project. Construction includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection (soils and materials testing) and land surveying work.

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county, in which the work is to be done have been determined by the Director of the California Department of Industrial Relations. These wages are set forth in the General Prevailing Wage Rates for this project, available at the Department of Public Works, County of Lake and available from the California Department of Industrial Relations' Internet web site at <http://www.dir.ca.gov>. The Federal minimum wage rates for this project as predetermined by the United States Secretary of Labor and published on April 8, 2005, are included herein by reference and copies may be examined at the offices of the COUNTY. Future effective general prevailing wage rates, which have been predetermined and are on file with the California Department of Industrial Relations are referenced but not printed in the general prevailing wage rates.

Attention is directed to the Federal minimum wage rate requirements in Clause IV of the sample agreement referenced in Addendum 1 to the Request for Proposals for this project and included herein by reference. If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the general prevailing wage rates determined by the Director of the California Department of Industrial Relations for

similar classifications of labor, the CONSULTANT and sub-consultants shall pay not less than the higher wage rate. The Department will not accept lower State wage rates not specifically included in the Federal minimum wage determinations. This includes "helper" (or other classifications based on hours of experience) or any other classification not appearing in the Federal wage determinations. Where Federal wage determinations do not contain the State wage rate determination otherwise available for use by the CONSULTANT and sub-consultants, the CONSULTANT and sub-consultants shall pay not less than the Federal minimum wage rate which most closely approximates the duties of the employees in question.

V.
COMPENSATION AND TERMS OF PAYMENT

Payment to CONSULTANT will be made as follows:

- A. **Invoices and Time of Payment:** Monthly invoices will be issued by CONSULTANT for all services performed under this AGREEMENT. Invoices are due and payable upon receipt.

Upon completion of services enumerated in ARTICLE I herein, the final payment of any balance will be due upon receipt of the final invoice.

- B. **Interest:** Interest at the rate of 1-1/2% per month, or that permitted by law if lesser, will be charged on all past-due amounts starting sixty (60) days after receipt of invoice and required documentation. Payments will first be credited to interest and then to principal.

In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. COUNTY will exercise reasonableness in contesting any bill or portion thereof. No interest will accrue on any contested portion of the billing until mutually resolved.

If COUNTY fails to make payment in full to CONSULTANT for services within sixty (60) days of the date due for any uncontested billing, CONSULTANT may, after giving seven (7) days written notice to COUNTY, suspend services under this AGREEMENT until paid in full, including interest. In the event of suspension of services, CONSULTANT will have no liability to COUNTY for delays or damages caused by COUNTY because of such suspension of services.

- C. **Compensation:** Compensation by COUNTY to CONSULTANT for services will be on a Lump Sum basis. The amount invoiced each month will be based on an estimate of the percentage of completion for each task multiplied times the lump sum amount. The lump sum amount shall not exceed **\$357,000.00** without prior written authorization by COUNTY. The breakdown of task cost is provided in Exhibit 1 of this AGREEMENT. The lump sum is based on authorization to proceed and timely completion of the project. If the project timing deviates from the assumed schedule for causes beyond

CONSULTANT's control, CONSULTANT reserves the right to request renegotiation of those portions of the lump sum affected by the time change.

VI.
TERM

This Agreement shall commence on the date hereinabove entered into and shall terminate five hundred forty (**540**) calendar days from the date of the notice to proceed, unless extended, or terminated earlier as hereinafter provided.

VII.
DUE PERFORMANCE - DEFAULT

Each party to this Agreement undertakes the obligation that the other's expectation of receiving the performance due under the terms of this Agreement will not be impaired. Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default. If the party in default does not cure the default within ten (10) days of the date of that notice (i.e. the time to cure) then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure shall be in writing executed by both parties and must specify the reason(s) for the extension and the date the extension of time to cure expires.

Notice given under this provision shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable time period. No such notice shall be deemed a termination of this Agreement, unless the party giving notice so elects in that notice, or so elects in a subsequent written notice after the time to cure has expired.

VIII.
TERMINATION

This Agreement may be terminated as follows:

- A. By mutual written consent of the parties; or
- B. By COUNTY upon thirty (30) days written notice to CONSULTANT.
- C. By CONSULTANT upon thirty (30) days written notice thereof to COUNTY in the event that COUNTY fails to perform its obligations under this AGREEMENT.

Upon termination prior to the full and satisfactory completion of CONSULTANT's performance under this Agreement, COUNTY shall not be liable to pay CONSULTANT the total compensation set forth in Provision V of this Agreement, but CONSULTANT shall be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the CONSULTANT covered by

this Agreement.

IX. INSURANCE

CONSULTANT shall not commence work under this Agreement until he has obtained all the insurance required herein, certificates of insurance have been submitted to COUNTY, and said insurance has been approved by COUNTY. The certificates of insurance shall contain a provision that coverage afforded under the policies will not be cancelled until at least thirty (30) days prior written notice has been given to COUNTY, ten (10) days notice if cancellation is due to nonpayment of premium.

CONSULTANT shall not allow any subconsultant to commence work on his subcontract until the insurance required of the subconsultant has been obtained.

Any failure of CONSULTANT to maintain the insurance required by this provision, or to comply with any of the requirements of this provision, shall constitute a material breach of the entire Agreement.

Certificates evidencing the issuance of the following insurance shall be filed with COUNTY within ten (10) days after the date of execution of this Agreement by CONSULTANT and prior to commencement of work hereunder.

- A. **Compensation Insurance.** CONSULTANT shall procure and maintain, at CONSULTANT's own expense during the term hereof, Workers' Compensation Insurance and Employer's Liability Insurance as required by the State of California, for all employees to be engaged in work. In any case of such work sublet, CONSULTANT shall require subconsultant similarly to provide Employer's Liability Insurance and Workers' Compensation Insurance for all of the latter's employees to be engaged in such work, unless such employees are covered by the protection afforded by CONSULTANT's Workers' Compensation Insurance and Employer's Liability Insurance. Employer's Liability Insurance shall be in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.

- B. **Commercial General Liability.** CONSULTANT shall procure and maintain, at CONSULTANT's own expense during the term hereof, upon himself and his employees at all times during the course of this Agreement, Commercial General Liability Insurance (Occurrence Form CG 0001) for bodily injury, personal injury, and broad form property damage, in an amount not less than One Million dollars (\$1,000,000.00) combined single limit coverage per occurrence, including but not limited to endorsements for the following coverages: Personal and advertising injury, Premises-operations, Products and completed operations, Blanket contractual, and Independent CONSULTANT's liability. If such policy includes an aggregate limit, such aggregate limit shall be at least double the per occurrence limit required herein.

- C. **Automobile Liability Insurance.** CONSULTANT shall procure and maintain, at CONSULTANT's own expense during the term hereof, Comprehensive Automobile Liability Insurance, both bodily injury and property damage, on owned, hired, leased, and non-owned vehicles used in connection with CONSULTANT's business in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit coverage per occurrence.
- D. **Professional Liability Insurance.** CONSULTANT shall procure and maintain, at CONSULTANT's own expense during the term hereof, Professional Liability Insurance for protection against claims arising out of the performance of services under this Agreement caused by errors, omissions, or other acts for which CONSULTANT, its employees, sub-consultants, and agents, are liable. Said insurance shall be written with limits of not less than One Million Dollars (\$1,000,000.00) per claim and in the aggregate. If said insurance is written on a "claims made" form, insurance shall be maintained and evidence of insurance must be provided for at least one (1) year after completion of the work under this Agreement.
- E. **Sub-consultants.** CONSULTANT shall include all sub-consultants as insured under the aforesaid policies or shall furnish separate certificates and endorsements to the COUNTY for each subconsultant which shall be subject to review and approval by County. All insurance coverages for sub-consultants shall be subject to each of the requirements hereinabove and contain the additional insured endorsements required of CONSULTANT described with particularity hereinbelow.
- F. **Additional Insured Endorsement.** The Commercial General Liability and Automobile Liability Insurance must each contain, or be endorsed to contain, the following provision:

The COUNTY and County of Lake, its officers, officials, employees, designated agents, and appointed volunteers are to be covered as additional insureds and shall be added in the form of an endorsement to CONSULTANT's insurance on Form CG 20 10 11 85 or blanket endorsement equivalent. CONSULTANT shall not commence work under this Agreement until he has had delivered to COUNTY the Additional Insured Endorsements required herein. This provision is not intended to extend to construction contractors contracted by the COUNTY to perform the work of improvement.

Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under subdivision (b) of California Civil Code Section 2782.

- G. **Other Insurance Provisions.** For any claims related to the work performed under this Agreement by Consultant, the CONSULTANT's insurance coverage shall be primary insurance as to the COUNTY, County of Lake, its officers, officials, employees, designated agents and appointed volunteers. Any insurance or self-

insurance maintained by COUNTY, its officers, officials, employees, designated agents or appointed volunteers shall be in excess of the CONSULTANT's insurance and shall not contribute with it.

Any deductibles or self-insured retentions must be declared to and approved by COUNTY. At the option of COUNTY, either CONSULTANT shall reduce or eliminate such deductibles or self-insurance retentions as they apply to COUNTY or CONSULTANT shall provide a financial guarantee satisfactory to COUNTY guaranteeing payment of losses and related investigations, claim administration, and defense and defense-related expenses.

Insurance coverage required of CONSULTANT under this Agreement shall be placed with insurers with a current A.M. Best rating of no less than A:VII.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the CONSULTANT for liability in excess of such coverage, nor shall it preclude COUNTY from taking other action as is available to it under any other provision of this Agreement or applicable law. Failure of COUNTY to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at a later date.

If any insurance coverage required by this Agreement is provided on a "Claims Made", rather than "occurrence" form, CONSULTANT agrees to maintain required coverage for a period of three years after the expiration of this Agreement (hereinafter, "Post Agreement Coverage") and any extensions thereof. CONSULTANT may maintain the required Post Agreement Coverage by renewal or purchase of prior acts or tail coverage. This subprovision is contingent upon Post Agreement Coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for Post Agreement Coverage shall be deemed to be reasonable.

CONSULTANT agrees to waive all rights of subrogation against COUNTY, County of Lake, its officers, officials, employees, agents, and volunteers for losses arising from work performed by CONSULTANT under this Agreement.

COUNTY shall include a provision in its contract with the general contractor hired to perform the work of improvement a provisions requiring that the general contractor and all of its subcontractors maintain general liability insurance of not less than \$1,000,000 and that such insurance include the COUNTY, County of Lake, its officers, officials, employees, designated agents, appointed volunteers and CONSULTANT as additional insureds.

X.
INDEMNIFICATION - HOLD HARMLESS

Each party shall indemnify and hold the other harmless against all actions, claims, demands and liabilities and against all losses, damage, cost expenses, and attorney's fees arising directly or indirectly out of an actual or alleged injury to a person or a property in the same proportion that its own acts and/or omissions are attributed to said claim, demand, liability, loss, damage, cost, expenses, and/or attorney's fees. This provision shall not extend to any claim, liability, loss, damage, cost, expenses, and/or attorney's fees covered by the insurance of either party. CONSULTANT's obligations under this Section shall survive the termination of the AGREEMENT.

COUNTY shall include in its contract with the general contractor hired to construct improvements designed under this AGREEMENT and any contracts with subcontractors that they shall respectively indemnify, defend and hold harmless COUNTY, County of Lake and its officers, employees, designated agents, appointed volunteers and CONSULTANT from any and all claims, losses, damages and liability for damages, including attorney's fees and other costs of defense incurred resulting from the general contractor's or its subcontractors' negligent acts, errors or omissions or other wrongful conduct, except to the extent caused by the negligence or willful wrongful conduct of the indemnified parties.

CONSULTANT's obligations under this Section shall survive the termination of the Agreement.

XI. CONSULTANT'S WARRANTIES

CONSULTANT hereby makes the following representations and warranties:

- A. **Standard of Care.** CONSULTANT represents that it is specially trained, licensed, experienced, and competent to perform all the services, responsibilities, and duties specified herein and that such services, responsibilities, and duties shall be performed, whether by CONSULTANT or designated sub-consultants, in a manner according to generally accepted practices of the engineering profession.
- B. **Non-Discrimination in Employment.** In the performance of the work authorized under this Agreement, CONSULTANT shall not unlawfully discriminate against any qualified worker because of race, religious creed, color, sex, sexual orientation, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or age.

CONSULTANT shall, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, creed religion, sex, sexual orientation, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or age.

- C. **Adherence to Applicable Disability Law.** CONSULTANT shall be responsible for

knowing and adhering to the requirements of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, (42 U.S.C. Sections 12101, et seq.). California Government Code Sections 12920 et seq., and all related state and local laws.

- D. **HIPAA Compliance.** CONSULTANT will adhere to Titles 9 and 22 and all other applicable Federal and State statutes and regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and will make his best efforts to preserve data integrity and the confidentiality of protected health information.
- E. **Safety Responsibilities.** CONSULTANT will adhere to all applicable CalOSHA requirements in performing work pursuant to this Agreement. CONSULTANT agrees that in the performance of work under this Agreement, CONSULTANT will provide for the safety needs of its employees and will be responsible for maintaining the standards necessary to minimize health and safety hazards.
- F. **Interest of CONSULTANT.** CONSULTANT hereby covenants that he/she has, at the time of the execution of this Agreement, no interest, direct or indirect, and that he shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONSULTANT further covenants that in the performance of this work, no person having such interest shall be employed.
- G. **Covenant Against Contingent Fees.** The Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the consultant, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, the Local Agency shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

XII. **ASSIGNMENT**

CONSULTANT shall not assign any interest in this Agreement and shall not transfer any interest in the same without the prior written consent of COUNTY, except that claims for money due or to become due the CONSULTANT from COUNTY under this Agreement may be assigned by the CONSULTANT to a bank, a trust company, or other financial institution without such approval. Written notice of any such transfer shall be furnished promptly to the COUNTY. Any attempt at assignment of rights under this Agreement except for those specifically consented to by both parties or as stated above shall be void.

XIII.
INDEPENDENT CONTRACTOR

It is specifically understood and agreed that, in the making and performance of this Agreement, CONSULTANT is an independent contractor and is not an employee, agent or servant of COUNTY. CONSULTANT is not entitled to any employee benefits. COUNTY agrees that CONSULTANT shall have the right to control the manner and means of accomplishing the result contracted for herein.

CONSULTANT is solely responsible for the payment of all federal, state, and local taxes, charges, fees, or contributions required with respect to CONSULTANT and CONSULTANT's officers, employees, and agents who are engaged in the performance of this Agreement (including without limitation, unemployment insurance, social security, and payroll tax withholding).

XIV.
MODIFICATION

- A. This Agreement may only be modified by a written amendment thereto, executed by both parties. However, matters concerning scope of services which do not affect the agreed price may be modified by mutual written consent of CONSULTANT and COUNTY executed by Special COUNTY's Administrator.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by the COUNTY's Project Manager.
- C. There shall be no change in the CONSULTANT's Project Manager or key members of the project team, as listed below without prior consultation with and approval by the COUNTY's Project Manager.

Key Staff

David Coleman, Associate Principal
Ben Bryant, Engineer

Project Manager
Planning Project Engineer

XV.
ATTORNEYS FEES AND COSTS

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.

XVI.
OWNERSHIP OF DOCUMENTS

All non-proprietary reports, drawings, renderings, information, and/or other documents or materials prepared by and/or submitted to CONSULTANT hereunder shall become the property of COUNTY. In the event of the termination of this Agreement for any reason whatsoever, CONSULTANT shall promptly turn over all said reports, drawings, renderings, information, and/or other documents or materials to COUNTY without exception or reservation.

All designs, drawings, specifications, documents, and other work products of the CONSULTANT, whether in hard copy or in electronic form, are instruments of service for this PROJECT, whether the PROJECT is completed or not. Reuse, change, or alteration by COUNTY or by others acting through or on behalf of COUNTY of any such instruments of service without the written permission of the CONSULTANT will be at COUNTY's sole risk. COUNTY agrees to indemnify CONSULTANT and its officers, employees, subcontractors and affiliated corporations from all claims, damages, losses, and costs, including but not limited to, litigation expenses and attorney's fees, arising out of or related to such unauthorized reuse, change, or alteration.

XVII.
RETENTION OF RECORDS / AUDIT

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et. Seq., when applicable, and other matters connected with the performance of the contract pursuant to Government Code 10532, the CONSULTANT, sub-consultants and the COUNTY shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract. The COUNTY, the County Auditor, the State Auditor, or any duly authorized representative of the Federal government shall have access to any books, records, and documents of the CONSULTANT that are pertinent to the contract for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

XVIII.
JURISDICTION AND VENUE

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue of any action or proceeding regarding this Agreement or performance thereof shall be in Lake County, California. CONSULTANT waives any right of removal it might have under California Code of Civil Procedure Section 394.

XIX.
RESIDENCY

All independent CONSULTANTS providing services to COUNTY for compensation must file a State of California Form 590, certifying California residency or, in the case of a corporation, certifying that they have a permanent place of business in California.

XX.

NO THIRD-PARTY BENEFICIARIES

Nothing contained in this AGREEMENT shall be construed to create, and the parties do not intend to create, any rights in or for the benefit of third parties.

XXI.

SEVERABILITY

If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall be severable and not affected thereby.

XXII.

NON-APPROPRIATION

In the event COUNTY is unable to obtain funding at the end of each fiscal year for professional engineering services required during the next fiscal year, COUNTY shall have the right to terminate this Agreement, without incurring any damages or penalties, and shall not be obligated to continue performance under this Agreement. To the extent any remedy in this Agreement may conflict with Article XVI of the California Constitution or any other debt limitation provision of California law applicable to COUNTY, CONSULTANT hereby expressly and irrevocably waives its right to such remedy.

XXIII.

CLAIMS FILED BY COUNTY'S CONSTRUCTION CONTRACTOR

- A. If claims are filed by the COUNTY's construction contractor relating to work performed by CONSULTANT's personnel and additional information or assistance from the CONSULTANT's personnel is required in order to evaluate or defend against such claims, CONSULTANT agrees to make its personnel available for consultation with the COUNTY's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT personnel that the COUNTY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from the COUNTY. Consultation or testimony will be reimbursed at the same rates, including travel costs, which are being paid for the CONSULTANT's personnel services under this Agreement.

- C. Services of the CONSULTANT's personnel in connection with the COUNTY's construction contractor claims will be performed pursuant to a written supplement, if necessary, extending the termination date of this Agreement in order to finally resolve the claims.
- D. Any subcontract in excess of \$25,000, entered into as a result of this contract, shall contain all of the provisions of this Article.

XXIV.
CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to the COUNTY's operations, which is designated confidential by the COUNTY and made available to the CONSULTANT in order to carry out this contract, shall be protected by the CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion or public hearing held by the COUNTY relating to the contract, shall not authorize the CONSULTANT to further disclose such information or disseminate the same on any other occasion.
- C. The CONSULTANT shall not comment publicly to the press or any other media regarding the contract or the COUNTY's actions on the same, except to the COUNTY's staff, CONSULTANT's own personnel involved in the performance of this contract, at public hearings, or in response to questions from a Legislative committee.
- D. The CONSULTANT shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this contract without prior review of the contents thereof by the COUNTY and receipt of the COUNTY's written permission.
- E. Any subcontract, entered into as a result of this contract, shall contain all of the provisions of this Article.
- F. All information related to the construction estimate is confidential and shall not be disclosed by the CONSULTANT to any entity, other than the COUNTY.

XXV.
NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code, Section 10296, the CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal court has been issued against the CONSULTANT within the immediately preceding two-year period because of the CONSULTANT's failure to comply with an order of a Federal court that orders the CONSULTANT to comply with an order of the National Labor Relations Board.

XXVI.
INSPECTION OF WORK

The CONSULTANT and any sub-consultants shall permit the COUNTY and State to review and inspect the project activities at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

XXVII.
NON-DISCRIMINATION

- A. During the performance of this Agreement, CONSULTANT and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, nation origin, physical disability (including HIV and AIDS), mental disability, mental condition (cancer), age (over 40), marital status, and denial of family care leave. CONSULTANT and sub-consultants shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. CONSULTANTS and sub-consultants shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900.0 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a party hereof as if set forth in full. CONSULTANT and its sub-consultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- B. The CONSULTANT shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this contract.
- C. CONSULTANT shall comply with Title VI of the Civil Rights Act of 1964, as amended. Accordingly, 49 CFR 21 through Appendix C and 23 CFR 710.405(b) are applicable to this contract by reference.

XXVIII.
NOTICES

All notices that are required to be given by one party to the other under this Agreement shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited with the United States Post Office for delivery by registered or certified mail addressed to the parties at the following addresses, unless such addresses are changed by notice, in writing, to the other party.

County of Lake, Special Districts Administration

230 Main Street
Lakeport, California 95453
Attn: Jan Coppinger, Administrator

Brelje & Race Consulting Engineering
475 Aviation Blvd. Ste. 120
Santa Rosa, CA 95403
Attn: David Coleman, P.E.

XXIX.
FORCE MAJURE

The CONSULTANT is not responsible for damages or delays in performance caused by acts of God, strikes, lockouts accidents, or other events beyond the control of the CONSULTANT.

XXX.
ADDITIONAL PROVISIONS

This Agreement shall be governed by the laws of the State of California. It constitutes the entire Agreement between the parties regarding its subject matter. This Agreement supersedes all proposals, oral and written, and all negotiations, conversations or discussions heretofore and between the parties related to the subject matter of this Agreement.

COUNTY and CONSULTANT have executed this Agreement on the day and year first written above.

COUNTY OF LAKE:

CONSULTANT:

Chair, Board of Directors

John Locey, Senior Principal

ATTEST: CAROL J. HUCHINGSON
Clerk of the Board
of Supervisors

APPROVED AS TO FORM:
ANITA L. GRANT
County Counsel

By: _____

By: _____

EXHIBIT 1

CONSTRUCTION MANAGEMENT SERVICES
for
LAKE COUNTY SPECIAL DISTRICTS
ANDERSON SPRINGS SEWER PROJECT
prepared by
BRELJE & RACE CONSULTING ENGINEERS (CONSULTANT)
OCTOBER 6, 2017

PROJECT UNDERSTANDING AND BACKGROUND

The District has requested that Brelje & Race provide Construction Management services for the Anderson Springs Sewer Project. The County will provide full time Resident Inspection Services (Inspector). There will be two concurrent construction contracts:

1. Sewer Mains – 18 month duration
2. On-Site Pumping Equipment – 12 months duration

Construction Management Services will be performed for both contracts concurrently.

SCOPE OF SERVICES

The following phases of work and associated tasks describe Brelje and Race's recommended scope of work for the Anderson Springs Sewer Project construction management services:

Phase 1: Task 1: Construction Management Services

- 1.01 Administration of Consultant Services
 - a. Coordinate efforts of the project team
 1. Coordination with Special Districts Staff including telephonic and e-mail communications.
 2. Coordinate with Resident Inspector supplied by Special Districts
 - b. Contract Administration
 1. Cost monitoring
 2. Monthly billing to the District
- 1.02 Project Coordination and Correspondence
 - a. Coordinate between contractor, the District, and Caltrans.
 - b. Status updates to the District including meetings and written reports
 - c. Provide District all required documentation
 - d. Coordinate with District for operational changes or anticipated modifications to the system facilities associated with the Project.

1.03 Schedule Management, Progress Meetings, Site Visits and Reports

- a. Review the contractor's construction schedule.
 1. Identify critical path items and milestones.
 2. Monitor updates of the construction schedule and assess the potential impacts of weather or other delays and change orders on progress of the work.
- b. Attend, and administer the preconstruction conference including:
 1. Prepare the conference agenda.
 2. Identify information and submittals to be provided by the contractor at the preconstruction conference including the contractor's proposed work plan.
 3. Provide responses and clarification to questions raised at the conference and prepare and distribute minutes from the conference.
- c. Construction Progress Meetings and Site Visits
 1. Attend weekly meetings
 2. Keep meeting notes, and resolve conflicts.
 3. Conduct Site Visits on a weekly basis – will occur in conjunction with weekly construction progress meetings.
 4. Consult with Inspector on project issues and significant site condition issues.
 5. Review conformance with project mitigation measures and special project procedures.
 6. Inform the District of important or pending issues.
- d. Prepare a monthly progress report to the District that includes:
 1. Key issues
 2. Cost status
 3. Schedule status

1.04 Documentation Assistance

- a. Review DVD (Digital Video Disk) recording and photographs of the project area as prepared by Inspector
- b. Review Contractor's initial cost breakdown.
- c. Progress Payment Requests
 1. Prepare for payment requests
 2. Review monthly progress payment requests submitted by the Contractor and approved by Inspector.
 3. Negotiate differences and prepare and submit recommended payment requests to District representatives.
- d. Review daily and weekly inspection reports as prepared by inspector that include a summary of construction activities, changed conditions, mitigation compliance, safety issues and geotechnical field testing and results.
- e. Review and comment on the contractor's progress schedule and work plan.
- f. Coordinate and conduct final inspection with Inspector, Contractor and District staff.
- g. Prepare record drawings of the completed construction documenting changes during

construction and locations of found utilities.

- 1.05 Change Order and Claims Management
 - a. Perform and maintain a log of change order claims, responses, and status.
 - b. Review claims and coordinate requests with District representatives.
 - c. Negotiate and draft proposed change orders.
- 1.06 Submittal Management
 - a. Develop a submittal distribution list.
 - b. Receive, stamp, log and distribute submittals.
 - 1. Distribution and coordination with Caltrans will be provided as necessary.
 - c. Review and process construction submittals and other construction documents including:
 - 1. Material submittals
 - 2. Equipment submittals
 - 3. Work plan submittals
 - d. Verify that submittals meet specified criteria.
- 1.07 Records Management and Document Control
 - a. Set up and maintain project field files.
 - b. Maintain logs of RFIs, proposed and final change orders.
 - c. Monthly copies of special reports, tests, and logs to the District.
 - d. Submit necessary documentation to District.
- 1.08 Contract Closeout
 - a. Complete all documentation and submit to the District.
 - b. Prepare final punch list and monitor progress on correcting deficiencies noted.
- 1.09 Construction Staking (Note: Assume that services are to be performed by Contractor with exception of staking and punching of survey monuments.)
 - a. Coordinate construction survey analysis and construction staking.
 - b. Perform all construction staking and surveying for contractor placement of survey monuments.
 - c. Furnish brass monuments
 - d. Field mark (punch) installed monuments.
- 1.10 Requests for Information
 - a. Review and process Requests for Information (RFIs) from the Contractor.
 - b. Prepare responses to RFIs, incorporating information from the District.
 - c. Meetings with the Contractor, District, inspector, and design team (internal) to resolve RFIs if needed.
- 1.11 Coordination of Testing and Startup
 - a. Coordination with on-site inspector.
 - b. Coordination with District staff.

- c. Provide site visits (up to 5) from Geotechnical Sub-consultant (Bauer Associates) to observe specific site conditions (soil suitability, encountered rock, etc.) including written report.
- d. Provide oversight for initial pressure sewer operation. Provide final acceptance report.
- e. Coordinate with LACOSAN Middletown WWTP staff as required for wastewater treatment facility acceptance of Anderson Springs testing and sewage flows.

FEES

Brelje & Race proposes to accomplish the work described in our proposal for a lump sum fee of \$357,000. This is based on the effort levels indicated on the attached fee sheet with a 10% “contingency” factor applied to account for future rate schedule revisions (2018 and 2019).

SCHEDULE

The construction contracts are anticipated to be executed concurrently, with the Sewer Main contract commencement early this winter (November 2017) and the On-Site Pumping Equipment contract commencing 6 months later. Both contracts would be finalized at the same time.

PERSONNEL

Our proposed team includes Dave Coleman (Associate Principal) and Ben Bryant (Engineer). These key members provide the experience, expertise, and the effective communications needed to coordinate and complete the project successfully and on time, while keeping LACOSAN fully apprised of progress. Dave will serve as Project Manager and will review all final work products. Other BRCE staff will be utilized on an as-needed basis.

ASSUMPTIONS AND EXCLUSIONS

1. Construction contract duration will be 18 months for sewer mains and 12 months for on-site pumping equipment, and will be concurrent.
2. County will provide full time Resident Inspector for the duration of the projects. Inspector will be generally knowledgeable and experienced with observing pipeline utility installation, soil compaction and certified in HDPE fusing.
3. Survey services will be limited to that necessary for installation of survey monuments (32) in project area roadways including post-construction marking. All other survey work, including construction stakeout, will be performed by others.
4. Testing and Sampling (concrete, soils, other materials) will be performed by the County or third party hired by the County and coordinated by the Resident Inspector.

5. Site visits will generally be made in conjunction with weekly progress meeting attendance.
6. County will provide a qualified Archaeologist, Arborist, Biologist, and coordination for tribal monitoring services as required by the CEQA documents.

