

Request for Proposals

San Juan Capistrano Utility Systems
Municipal Services Review



Orange County Local Agency
Formation Commission

May 18, 2017

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RE: Request for Proposals: San Juan Capistrano Utility Systems Municipal Services Review

Dear Interested Parties:

The Local Agency Formation Commission of Orange County (OC LAFCO) invites established consulting firms to submit proposals to prepare a focused Municipal Services Review (MSR) on the potential transfer of the City of San Juan Capistrano's Water and Waste Water Utilities' operations and facilities to one or more successor public agencies.

To be considered, firms must provide submittals in accordance with the requirements, specifications, conditions, and provisions as described and set forth herein. Responses must satisfy all the objectives and work requirements specified in the Request for Proposal Scope of Work.

SUBMITTALS ARE DUE BY 3:00 PM on June 26, 2017 at the OC LAFCO office located at 2677 North Main Street, Suite 1050, Santa Ana, CA, 92705.

The tentative schedule calls for the interviews with the finalists to occur the week of July 10, 2017 with the contract award consideration by the Commission for September 13, 2017, a planned contract effective date of September 14, 2017, and a final submission of the MSR to the Commission on March 14, 2018.

Thank you for your interest.

Respectfully,



Carolyn Emery, Executive Officer
Orange County LAFCO

**OCLAFCO
REQUEST FOR PROPOSALS
CITY OF SAN JUAN CAPISTRANO UTILITY SYSTEMS
MUNICIPAL SERVICES REVIEW**

SECTION I

Introduction and Project Description

A. Introduction

Orange County Local Agency Formation Commission (OC LAFCO) invites professional consulting firms to submit proposals to perform a focused Municipal Services Review (MSR) on the potential transfer of the Water and Wastewater Utilities operations and facilities to a potential successor public agency or public agencies. Proposals may involve a team of consultants, provided that one firm acts as the lead.

The selected consultant will enter into a professional service agreement; perform a reconnaissance review of the condition, operations and financials of the City of San Juan Capistrano's Water and Wastewater Utilities; perform an analysis and make recommendations on the alternatives for transferring the operations and facilities of these utilities to another public agency or agencies; and prepare a comprehensive report (Municipal Service Review).

This RFP includes background information about OC LAFCO and the project, a description of the scope of work, proposal requirements and instructions for submitting a proposal, evaluation criteria, and selection criteria. Direct all inquiries regarding this RFP in writing to:

Debra Kurita, Assistant Executive Officer
OC LAFCO
2677 North Main Street
Santa Ana, CA 92705
dkurita@oclafco.org

**CITY OF SAN JUAN CAPISTRANO
FOCUSED MUNICIPAL SERVICE REVIEW (MSR)
FOR WATER AND WASTEWATER UTILITY SERVICES**

SCOPE OF SERVICES

MSR BACKGROUND

Orange County LAFCO received an application from the City of San Juan Capistrano to conduct a focused MSR to analyze and review the potential transfer of the City's water and wastewater operations and facilities to a successor public agency. As part of this effort, Orange County LAFCO will conduct a MSR analysis that will include an assessment of the City's systems and the potential transfer of those systems to one or a combination of three independent special districts with service boundaries adjacent to San Juan Capistrano: Moulton Niguel Water District, Rancho Santa Margarita Water District and South Coast Water District.

California Government Code §56430 requires LAFCO to conduct the review in order to develop information for updating spheres of influence (SOIs). The current statute requires LAFCO to prepare and adopt a written determination for each of the following considerations:

- (1) Growth and population projections for the affected area
- (2) The location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence
- (3) Present and planned capacity of public facilities, adequacy of public services, and infrastructure needs or deficiencies including needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection in any disadvantaged, unincorporated communities within or contiguous to the sphere of influence
- (4) Financial ability of agencies to provide services
- (5) Status of, and opportunities for, shared facilities
- (6) Accountability for community service needs, including governmental structure and operational efficiencies
- (7) Any other matter related to effective or efficient service delivery, as required by commission policy

The Focused MSR report will include determinations for each local agency covered in the MSR report, and may include recommendations regarding district SOIs. The City's SOI will not be updated in conjunction with this MSR.

California Government Code §56425 requires LAFCO, when determining an SOI, to prepare and adopt a written statement of determination for each city and district regarding the following considerations:

1. The present and planned land uses in the area, including agricultural and open-space lands.
2. The present and probable need for public facilities and services in the area.
3. The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide.
4. The existence of any social or economic communities of interest in the area if the commission determines that they are relevant to the agency.
5. For an update of an SOI of a city or special district that provides public facilities or services related to sewers, municipal and industrial water, or structural fire protection, that occurs pursuant to subdivision (g) on or after July 1, 2012, the present and probable need for those public facilities and services of any disadvantaged unincorporated communities within the existing sphere of influence.
6. The nature, location, and extent of any functions or classes of services provided by existing districts.

The MSR report will include a written statement of determination(s) if necessary.

MSR TASK OVERVIEW

The focused MSR process will be conducted in accordance with California Government Code and the Orange County LAFCO process. The MSR process requires a qualified consultant firm to perform a reconnaissance review of the City of San Juan Capistrano Water and Wastewater Utilities and identify various alternatives, with their respective advantages and disadvantages, and compare them with existing water and wastewater providers.

Preparation of the MSR will include the following steps, although other activities may be necessary:

1. Data Gathering and Document Review

- A. Collect and review applicable water and wastewater agency documents for relevant information about current services, facilities and operations. Attachment A includes a list of documents available for review.

2. Cost and Service Benefit Analysis

- A. Review and analyze water/wastewater utility infrastructure and facilities, including but not limited to: plants, pump stations, reservoirs, wells, pipelines,

motors, pumps, and casings; and prepare a condition assessment that includes but may not be limited to:

- Adequacy of infrastructure and facilities
- Present and planned capacity of infrastructure and facilities that includes water supply and water/wastewater system reliability
- Infrastructure serviceable life, needs and deficiencies
- Costs for infrastructure improvements or upgrades
- Infrastructure compatibility with adjacent or nearby service providers

B. Review and analyze the financial capacity of the water/wastewater utilities and prepare a ten-year financial projection that includes but may not be limited to:

- Ongoing operations and maintenance costs
- Infrastructure improvement and replacement costs
- Debt service obligations for water/wastewater utilities
- Rate structure and other ongoing revenues, including but not limited to assessments and surcharges
- Systems reserves and other funds
- Projected rates to customers based current service levels
- Other revenue sources

3. Identify and analyze potential governance alternatives for transferring of the City's water/wastewater operations and facilities to a single or multiple adjacent public water/wastewater provider(s):

- Analyze the financial ability and operational capacity of Moulton Niguel Water District, Santa Margarita Water District, and South Coast Water District to assume utilities by reviewing the following:
 - a. Agency Revenues and Expenditures
 - b. Agency Audited Financials
 - c. Agency Rate Studies and Projections
 - d. Agency Debt Obligations
 - e. Cost to existing and new rate payers
 - f. Current and projected staffing levels
 - g. Transition cost projections for assuming the City's utility systems
 - h. Assumption of any pending or ongoing litigation settlements or cases
- Identify potential governance alternatives for the City's water/wastewater operations and facilities that includes but not be limited, to the following:

- a. Transfer of the City's water/wastewater operations and facilities wholly to a single agency.
- b. Transfer of the City's water/wastewater operations and facilities to multiple service providers.
- c. Contractual service agreements.
- d. Other jurisdictional options as identified by consultant

To evaluate the options and the potential transfer to alternative service providers the following criteria will be considered:

- Service Costs and Impacts to Ratepayers
- Long-term Service Reliability
- Provider Experience and levels of existing service provision
- Efficiency of Service Provision
- Service Provider's Ability to address maintenance and improvement needs
- Service Provider's financial ability to provide services which includes assuming financial, debt service, operational, and regulatory liabilities
- Summary discussion on transitioning water and capacity rights and governance

4. Administrative Draft MSR Report

- Under direction of LAFCO staff, prepare an administrative draft MSR report including required findings for review by LAFCO and City staffs.
- The MSR report shall include a table of contents, agency profiles, an executive summary and agency maps (mapping will be provided by LAFCO), along with recommended determinations per 56430, governance/SOI update/boundary options.

5. Final MSR Report

- Prepare a final MSR report in consultation with LAFCO staff.
- Present final MSR report to LAFCO at a public hearing.

DATA MEASUREMENTS FOR EVALUATING UTILITY INFRASTRUCTURE AND OPERATIONS

May 2017

1. Water Utility:
 - a. Capacity and Reliability:
 - i. Number of service connections
 - ii. Other delivery commitments
 - iii. Volume of water treated
 - iv. Redundancy in supply, sources, and type of water
 - v. Reservoir storage capacity
 - vi. Emergency service connections
 - vii. Distribution system redundancy
 - viii. Preventative maintenance program (frequency)
 - ix. Infrastructure/facility replacement program
 - x. Emergency response capability
 - xi. Fire flow capabilities
 - b. Cost of Service/Financing
 - i. Source of supply costs
 - ii. Debt service costs
 - iii. Costs or revenues from existing ongoing agreements with other public agencies or private entities
 - iv. Infrastructure construction costs (new, replacement and rehabilitation)
 - v. Water systems operations and maintenance costs
 - c. Current Staffing Capacity:
 - i. Number and types of budgeted positions
 - ii. Training/expertise
 - iii. Certifications
 - iv. Depth of available staff
 - d. Customer Service
 - i. Call response time
 - ii. Customer satisfaction indices
 - iii. Breadth of services (number of services/type)

- e. Water Quality/Environmental Compliance
 - i. Types and frequency of violations and corrective actions taken
 - ii. Sampling frequency
 - iii. Quality control strategies

2. Wastewater Utility:

- a. Capacity and Reliability:
 - i. Capacity and redundant capabilities of treatment and disposal
 - ii. Reclamation capabilities and facilities
 - iii. Preventative maintenance (inspection, cleaning, lift station monitoring)
 - iv. Result of CCTV inspections
 - v. Infrastructure/facility replacement program
 - vi. Collection system redundancy
 - vii. Treatment capacity redundancy
- b. Cost of Service
 - i. Treatment and disposal costs
 - ii. Debt service costs
 - iii. Costs of existing ongoing agreements with other public agencies or private entities
 - iv. Infrastructure construction costs (new and replacement)
 - v. Collection systems operations and maintenance costs
- c. Customer Service/Financing
 - i. Call response time
 - ii. Customer satisfaction indices
 - iii. Breadth of services (number of services/type)
- d. Environmental Compliance
 - i. Emergency spills and repairs
 - ii. Quality control strategies
 - iii. Analysis capabilities

EXHIBIT A

The following documents will be available for review. The consultant may identify additional documents or reports necessary to conduct the assessment.

i. Water Utility

- Utility Asset Summary by HDR dated March 29, 2016
- AECOM Analysis of Ground Water Recovery Plant (Estimated completion date of June 2, 2017)
- City of San Juan Capistrano Urban Water Master Plan
- City of San Juan Capistrano 10-year CIP
- Water Supply Assessments
- City of San Juan Capistrano Budget for past 5 years
- City of San Juan Capistrano Audited Financial Statements for past 5 years
- City of San Juan Capistrano Annual Water Reports for past 5 years
- City of San Juan Capistrano Water Utility Rate Study

ii. Wastewater Utility

- Utility Asset Summary by HDR dated March 29, 2016
- City of San Juan Capistrano Sewer System Management Plan
- City of San Juan Capistrano Sanitary Sewer Master Plan
- City of San Juan Capistrano 10-year CIP
- Emergency spills and incident reports for last 5 years
- City of San Juan Capistrano Audited Financial Statements for past 5 years

iii. Potential Alternative Providers Documents

- Agency Budgets, Revenues and Expenditures for last 5 years
- Agency Audited Financials for last 5 years
- Agency Rate Studies and Projections
- Agency Debt Obligations

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MUNICIPAL SERVICES REVIEW**

SECTION II

**SUBMITTAL DIRECTIONS
AND RESPONSE REQUIREMENTS**

A. SUBMITTAL DIRECTIONS

1. Action Dates:

The following is an outline of the anticipated schedule for the review of responses, contract award and project completion. This schedule is subject to change.

RFP Posting, transmittal:	May 18, 2017
Submittal Deadline:	June 26, 2017 (To OC LAFCO by 3:00 PM)
Consultant Interviews	Week of July 10
Consultant Selection and Contract Preparation	Week of July 24
Commission Consideration Of Contract Award	September 13, 2017
Tentative Effective date:	September 14, 2017
Draft Report Delivery:	January 22, 2018
Presentation to Commission	March 14, 2018

2. Instructions to Proposers and Procedures for Submittal

The submittal shall include the following:

- One original (marked original) and four printed copies of the proposal
- One electronic copy in pdf format on CD, flash drive, or other electronic media.

The proposal must be submitted no later than 3:00 p.m. on the Submittal Date (June 26, 2017) in a sealed envelope bearing the name of the Proposer, marked *San Juan Capistrano MSR* and submitted to the following address:

Orange County LAFCO
2677 North Main Street, Suite 1050
Santa Ana, CA 92705
Attn: Debra Kurita, Assistant Executive Officer

Proposers are solely responsible for ensuring their proposal is received by OC LAFCO in accordance with the solicitation requirements, before Submittal Deadline, and at the place specified. Postmarks will not be accepted in lieu of actual delivery. No oral, telegraphic, electronic, facsimile, or telephonic proposals or modifications will be considered unless specified.

OC LAFCO shall not be responsible for any delays in mail or by common carriers or by transmission errors or delays or mistaken delivery. Delivery of proposals shall be made at the office specified in this Request for Qualifications. Deliveries made before the Submittal Deadline but to the wrong office will be considered non-responsive unless re-delivery is made to the office specified before the Submittal Deadline. All proposals shall become the property of OC LAFCO.

If discrepancies are found between the original and PDF version, the "ORIGINAL" will provide the basis for resolving such discrepancies. If one document is not clearly marked "ORIGINAL", OC LAFCO reserves the right to use any of the proposals as the Original. If no document can be identified as an original bearing original signatures, Proposer's proposal may be rejected at the discretion of OC LAFCO.

Late proposals will not be accepted and will be returned unopened.

B. RESPONSE REQUIREMENTS

It is imperative that all firms responding to the RFP comply exactly and completely with the instructions outlined below. Proposals must be concise but with sufficient detail to allow accurate evaluation and comparative analysis. Proposals should be straightforward and provide "layman" explanations of technical terms that are used. Emphasis should be concentrated on conforming to the RFP instructions, responding to the RFP requirements, and on providing a complete and clear description of the elements of the submittal.

Response items should be indexed in the following order with individual tabs:

A. Cover Letter

The submittal must be accompanied by a cover letter, signed by an individual authorized to bind the proposing entity. An unsigned proposal is grounds for rejection.

B. Submittal Summary

The summary provides a synopsis, prepared for management review, covering the interest and qualifications of the firm, and the salient features of the proposal including overall costs, conclusions, and general recommendations in a summary format.

C. Scope of Work

A detailed breakdown and description of the specific steps, services and study products to be provided as a result of the Scope of Work identified in Section I (c) of this RFP. Firms may elect to include in this section any innovative methods or concepts which might be beneficial to OC LAFCO as long as the minimum requirements as defined in this RFP are still met.

D. Company Data and Qualifications

1. Please submit the following Company Data information:

- a. Official name and address.
- b. Name, address, and telephone number of the firm's point of contact.
- c. Indicate what type of entity (corporation, company, joint venture etc.). Please enclose a copy of the Joint Venture Agreement if entity is a joint venture.
- d. Federal Employer I.D. Number.
- e. The address, telephone numbers and fax numbers of each of your firm's locations.
- f. A detailed statement indicating whether the firm is totally or partially owned by another business organization or individual.
- g. The firm has been in business under the present business name.
- h. Any failures or refusals to complete a contract and explanation.
- i. Financial interests in other lines of business.
- j. Known conflicts of interest. Proposer is expected to list all known or potential conflicts of interest that may impact the services provided to OC LAFCO. This should include a list of any business arrangements or agreements for work performed for the City or the potential successor agencies.

2. Provide a statement of the firm's qualifications for performing the requested consulting services including the number of years of experience the firm has had in providing required, equivalent, or related services.

E. Qualifications of Project Personnel

The firm shall furnish a personnel staffing plan with sufficient information for judging the quality and competence of the personnel dedicated to the project. In its assessment of the proposal, OC LAFCO will place considerable emphasis on the commitment by the Proposer to provide qualified personnel for the execution of the contract. The Proposer shall furnish resumes in outline form for key personnel committed to this account. Proposer shall also include the number and type of additional support personnel who will be assigned to the project. The substitution or addition of individuals shall be allowed only with prior written approval of OC LAFCO.

F. Cost Sheet and Rates

The firm is required to submit an itemized cost proposal by activity for the Municipal Services Review studies including all projected reimbursable costs for travel, professional services, supplies and other related costs, plus a not-to-exceed amount that would be contained in a potential agreement with the agency.

G. Project Completion Schedule

Detail the proposed implementation schedule including specific milestones in accordance with the Task Orders as identified in Exhibits A and B.

H. Additional Services (Optional)

Identify any other related and recommended services not specified in this RFP which the firm may consider essential or beneficial to the project. These services should be priced separately.

I. Certificate of Insurance

The firm shall demonstrate the willingness and ability to submit proof of the required insurance coverage as set forth in OC LAFCO's *Sample Professional Services Agreement (attached at end of this document)* prior to execution of the contract.

J. Client References

Provide five (5) references for which Proposer has provided similar project services performed in California of the nature and scope as set forth in the RFP within the last five (5) years. Include the name of business, name of contact person, telephone number of contact person, description of services provided. The Proposer shall also provide references for project manager specifically assigned to this project.

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SECTION III

RESPONSE EVALUATION AND SELECTION PROCESS

The selection of the Consultant will be based on the following criteria. These criteria are listed in random sequence and are not considered in any rank or order or importance.

The submittals will be evaluated on the basis of the response to all questions and requirements of this RFP. OC LAFCO shall use some or all of the following criteria in its evaluation:

1. Quality and completeness of the submittal
2. Understanding of the needs and requirements of OC LAFCO
3. Experience of the firm, particularly of staff assigned to administer this contract
4. Education and experience of staff members assigned to account
5. Demonstrated knowledge of public agencies and the MSR process
6. Proposed project schedule
7. Number and type of declared conflicts
8. Location of firm and availability of staff assigned to project
9. Quality of references
10. Proposed costs

Proposers may be required to participate in an oral interview.

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SECTION IV

GENERAL CONDITIONS

AUTHORIZED SIGNATURES. Every submittal must be signed by the person or persons legally authorized to bind the Proposer to a contract for the execution of the work. Upon request of OC LAFCO, any agent submitting a proposal on behalf of a Proposer shall provide a current power of attorney certifying the agent's authority to bind the Proposer. If an individual makes the proposal, his or her name, signature, and post office address must be shown. If a firm or partnership makes the proposal, the name and post office address of the firm or partnership and the signature of at least one of the general partners must be shown. If a corporation makes the proposal, the proposal shall show the name of the state under the laws of which the corporation is chartered, the name and post office address of the corporation and the title of the person signing on behalf of the corporation.

AWARD OF CONTRACT. Award will be made to the firm that presents the best qualifications and offers the best proposal after consideration by the OC LAFCO management staff. Evaluation criteria (Section III) are not listed in any order of preferences. OC LAFCO reserves the right to establish weight factors that will be applied to the criteria depending upon order of importance. Weight factors and evaluation scores will not be released until after award of proposal. OC LAFCO shall not be obligated to accept the lowest priced proposal, but will make an award in the best interests of OC LAFCO after all factors have been evaluated.

Discussions may, at OC LAFCO's option, be conducted with responsible Proposers who submit proposals determined to be reasonably susceptible of being selected for an award. Discussions may be for clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and written revision of proposals. In conducting discussions, OC LAFCO will not disclose information derived from submittals submitted by competing firms.

CANCELLATION OF SOLICITATION. OC LAFCO may cancel this solicitation at any time.

COMPLIANCE WITH LAWS. All submittals shall comply with current federal, state, and other laws relative thereto.

CONTRACT DOCUMENTS, EXAMINATION OF. It is the responsibility of the Proposer to carefully and thoroughly examine and be familiar with these RFP documents, general conditions, all forms, specifications, drawings, plans, and addenda (if any), referred to as Contract Documents. Proposer shall satisfy himself as to the character, quantity, and quality of work to be performed and materials, labor, supervision, necessary to perform the work as specified by the Contract Documents. The failure or neglect of the Proposer to examine the Contract Documents shall in no way relieve him from any obligations with respect to the solicitation or contract. The submission of a proposal shall constitute an acknowledgment upon which OC LAFCO may rely that the Proposer has thoroughly examined and is familiar with the contract documents. The failure or neglect of a Proposer to receive or examine any of the contract documents shall in no way relieve him from any obligations with respect to the Proposal. No claim will be allowed for additional compensation that is based upon a lack of knowledge of any solicitation document.

COSTS. OC LAFCO is not liable for any costs incurred by firms before entering into a formal contract. Costs of developing the proposal or any other such expenses incurred by the Proposer in responding to the RFP, are entirely the responsibility of the Proposer, and shall not be reimbursed in any manner by OC LAFCO. No reimbursable cost may be incurred in anticipation of award.

INTERPRETATION OF CONTRACT DOCUMENTS. OC LAFCO reserves the right to make corrections or clarifications of the information provided in this RFP. If any person is in doubt as to the true meaning of any part of the specifications or other contract documents, or finds discrepancies or omissions in the specifications, he may submit to OC LAFCO a written request for an interpretation or correction.

Oral statement(s) interpretations or clarifications concerning meaning or intent of the contents of this RFP by any person are unauthorized and invalid.

Requests for interpretations shall be made in writing and delivered to Scott Smith, Best, Best and Krieger, OC LAFCO Legal Counsel, at 18101 Von Karman Avenue, Suite 1000, Irvine, CA 92612 at least six (6) days before the Submittal Deadline.

The requesting party is responsible for prompt delivery of any requests. When OC LAFCO considers interpretations necessary, interpretations will be in the form of an addendum to the contract documents, and when issued, will be sent as promptly as is practical to all parties recorded by OC LAFCO as having received contract documents. All such addenda shall become a part of the contract. It is the responsibility of each

Proposer to ensure OC LAFCO has their correct business name and address on file. Any prospective Proposer who obtained a set of contract documents is responsible for advising OC LAFCO that they have a set of contract documents and wish to receive subsequent Addenda.

IRREGULARITIES. OC LAFCO reserves the right to waive non-material irregularities if such would be in the best interest of OC LAFCO as determined by OC LAFCO.

NON-EXCLUSIVE CONTRACT. The successful Proposer will enter a NON-EXCLUSIVE contract and OC LAFCO reserves the right to enter into agreements with other firms.

OFFERS OF MORE THAN ONE PRICE. Proposers are NOT allowed to submit more than one proposal.

NO OBLIGATION. The release of this RFP does not obligate or compel OC LAFCO to enter into a contract or agreement.

PAYMENT TERMS. Discounts for payments made within 20 days or more from receipt of invoice will be considered in award of proposal. Payment discounts must be clearly shown in the proposal.

PROPOSAL, REJECTION OF. OC LAFCO reserves the right to reject any or all proposals or any part of a Proposal. OC LAFCO reserves the right to reject the submittal of any firm who previously failed to perform adequately for OC LAFCO or any other governmental agency. OC LAFCO expressly reserves the right to reject the submittal of any firm who is in default on the payment of taxes, licenses or other monies due.

PROPRIETARY INFORMATION. Proposals must NOT be marked as confidential or proprietary. OC LAFCO may refuse to consider a proposal so marked. Information in proposals shall become public information and is subject to disclosure laws.

PUBLIC OPENING: There will be no public opening of proposals. Prices and other proposal information shall not be made public until the proposal is awarded. At that time the submitted proposal information and executed contract will become public information.

SEVERABILITY. If any provisions, or portion of any provision, of this contract are held invalid, illegal or unenforceable, they shall be severed from the contract and the remaining provisions shall be valid and enforceable.

SUBCONTRACTOR INFORMATION. If the proposal includes the use of subcontractors, Proposer must identify specific subcontractors and the specific requirements of this RFP for which each proposed subcontractor would perform services.

SUBCONTRACTOR REFERENCES. For all subcontractors that will be used on this project, Proposers must provide a minimum of two references from similar projects performed for any local government clients within the last three years. Information provided shall include:

- a. Client name;
- b. Project description;
- c. Dates (starting and ending);
- d. Staff assigned to reference engagement that will be designated for work per this RFP;
- e. Client project manager's name and telephone number.

TERMS OF THE OFFER. OC LAFCO reserves the right to negotiate final contract terms with the Proposer selected. The contract between the parties will consist of OC LAFCO Professional Services Agreement, the RFP together with any modifications thereto, the awarded Proposer's proposal, and all modifications and clarifications that are submitted at the request of OC LAFCO during the evaluation and negotiation process. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the final executed contract, the RFP, any modifications and clarifications to the awarded Proposer's proposal, and the awarded Proposer's proposal. Specific exceptions to this general rule may be noted in the final executed contract. Proposer understands and acknowledges that the representations above are material and important, and will be relied on by OC LAFCO in evaluation of the proposal. Proposer misrepresentation shall be treated as fraudulent concealment from OC LAFCO of the facts relating to the proposal.

VALIDITY. Proposal must be valid for a period of 90 days from the due date.

WITHDRAWAL OF PROPOSAL. Proposers' authorized representative may withdraw Proposals only by written request received by OC LAFCO before the Proposal Submittal Deadline.

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SAMPLE PROFESSIONAL SERVICES AGREEMENT

**ORANGE COUNTY LOCAL AGENCY FORMATION COMMISSION
PROFESSIONAL CONSULTANT SERVICES AGREEMENT**

This Agreement is made effective _____ by and between ORANGE COUNTY LOCAL AGENCY FORMATION COMMISSION (hereinafter referred to as "LAFCO"), organized and operating pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, as amended (Government Code Sections 56000 et seq.), and _____ ("Consultant").

RECITALS

A. LAFCO is a public agency of the State of California and is in need of professional consulting services for a Municipal Services Review on the Water and Wastewater Utilities of the City of San Juan Capistrano (hereinafter referred to as "the Project").

B. Consultant is qualified by virtue of experience, training, education and expertise to provide such services.

C. This Agreement is to establish the terms and conditions for LAFCO to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Term and Time of Performance.

The term of this Agreement shall be _____ unless terminated in accordance with the procedures outlined in Section 15 of this Agreement. Consultant shall perform its services hereunder in a prompt and timely manner and shall commence performance upon the execution of this Agreement.

2. Services.

Consultant shall provide LAFCO with the services described in the Scope of Services attached hereto as Exhibit "A."

3. Compensation.

a. Subject to paragraph 3(b) below, LAFCO shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit "B."

b. In no event shall the total amount paid for services rendered by Consultant pursuant to Exhibit "A" exceed the sum of _____.

c. Prior to the bi-weekly financial mail out, Consultant shall submit to LAFCO a statement for services and invoices itemizing the services rendered. Within fifteen (15) working days after receipt of invoice, LAFCO shall determine whether and to what extent Consultant has adequately performed the services for which payment is sought. If LAFCO determines that Consultant has not adequately performed such services, LAFCO shall inform Consultant of those acts which are necessary for satisfactory completion. LAFCO shall cause payment to be made to Consultant within thirty (30) working days from LAFCO's determination that Consultant has adequately performed those services for which LAFCO has been invoiced.

4. Additional Work

If changes in the work seem merited by Consultant or LAFCO, and informal consultations with the other party indicate that a change is warranted, it shall be processed by LAFCO in the following manner: Consultant shall forward a letter outlining the changes to LAFCO with a statement of estimated changes in fee or time schedule. An amendment to the Agreement shall be prepared by LAFCO and executed by both parties before performance of such services or LAFCO will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

5. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the Agreement period and for four (4) years from the date of final payment under the contract for inspection by LAFCO.

6. Delays in Performance.

Neither LAFCO nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government.

b. Consultant shall assist LAFCO in obtaining and maintaining all permits required of Consultant by Federal, State and local regulatory agencies.

8. Standard of Care.

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Sub-consultant.

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of LAFCO, which may be withheld for any reason. Nothing contained herein shall prevent Consultant from employing independent associates and sub-consultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Contractor.

It is agreed that Consultant shall act and be an independent contractor and is not an agent or employee of LAFCO and is not entitled to participate in any compensation plans or other benefits LAFCO provides for its employees. All services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the services, subject to the requirements of this Agreement. Any additional personnel performing the services under this Agreement on behalf of Consultant shall also not be employees of LAFCO and shall at all times be under Consultant's exclusive direction and control. Consultant shall be responsible for all reports and obligations respecting such personnel, including but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance and workers' compensation insurance.

11. Integration.

This Agreement represents the entire understanding of LAFCO and Consultant as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by both parties hereto. This is an integrated Agreement.

12. Insurance.

Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, all insurance set forth in Exhibit C hereto, in a form and with insurance companies acceptable to LAFCO.

13. Indemnification.

To the fullest extent permitted by law, Consultant shall defend, indemnify and hold LAFCO, its Board, members of the Board, employees, and authorized volunteers free and harmless

from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorney's fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

In addition, Consultant shall defend, with counsel of LAFCO's choosing and, to the extent permitted by Civil Code Section 2782.8, at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by this section that may be brought or instituted against LAFCO or its Board, members of the Board, employees, and authorized volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against LAFCO or its Board, members of the Board, employees, and authorized volunteers as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse LAFCO for the cost of any settlement paid by LAFCO or its Board, members of the Board, employees, or authorized volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for LAFCO's attorney's fees and costs, including expert witness fees. Consultant shall reimburse LAFCO and its Board, members of the Board, employees, and/or authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by LAFCO, its Board, members of the Board, employees, or authorized volunteers.

14. Laws, Venue, and Attorneys' Fees.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Orange, State of California. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees, as determined by the court.

15. Termination or Abandonment.

a. LAFCO has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, LAFCO shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. LAFCO shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by LAFCO and Consultant of the portion of such

task completed but not paid prior to said termination. LAFCO shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to LAFCO only in the event of substantial failure by LAFCO to perform in accordance with the terms of this Agreement through no fault of Consultant.

16. Key Personnel.

Consultant shall assign _____, as the Principal Consultant. The Principal Consultant shall not be removed from the Project or reassigned without the prior written consent of LAFCO.

17. Notice.

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

LAFCO:
Attn: Executive Officer
LAFCO
2677 Main Street, Suite 1050
Santa Ana, CA 92705

Consultant:

and shall be effective upon receipt thereof.

18. Third Party Rights.

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than LAFCO and the Consultant.

19. Severability.

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

20. Acknowledgment.

Consultant acknowledges that by executing this agreement, they are also, in good faith, determining that the appointment meets each of the requirements set forth in Government Code Section 7522.56, including the unemployment insurance requirement. That is, while LAFCO is not in a position to do so, by signing the acknowledgement at the conclusion of this agreement, the Consultant is certifying that they have not received unemployment insurance payments within

the past 12 months arising from work performed as a retiree for any public employer. Further, LAFCO has no way of monitoring the hours that Consultant works for another OCERS employer. As such, it is the responsibility of the Consultant to ensure that the total hours worked for LAFCO and any other OCERS employer do not exceed 960 hours in the aggregate during the fiscal year.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**ORANGE COUNTY LOCAL AGENCY
FORMATION COMMISSION**

INSERT NAME HERE

By: _____

By: _____

Dated: _____

Dated: _____

Approved as to form:

General Counsel, Orange County Local
Agency Formation Commission

EXHIBIT "A"
SCOPE AND SCHEDULE OF SERVICES

**EXHIBIT “B”
SCHEDULE OF CHARGES/PAYMENTS**

Consultant shall submit statements for services to LAFCO pursuant to paragraph 3(b) for the life of the Project or termination of the Agreement pursuant to paragraph 15(a) of the Agreement. Statements for services shall itemize charges as they relate to the completion of tasks defined in Exhibit A. Statements for services shall reflect only the actual hours incurred in performing the services under this Agreement, in accordance with the fee schedule set forth in this Exhibit B, and subject provisions of Section 2 of this agreement.

**EXHIBIT “C”
INSURANCE REQUIREMENTS**

1. Commercial General Liability

- a. The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to LAFCO.
- b. Coverage for Commercial General Liability insurance shall be at least as broad as the following: ISO Commercial General Liability coverage (Occurrence Form CG 0001)
- c. Commercial General Liability Insurance must include coverage for the following:
 - i. Bodily Injury and Property Damage
 - ii. Personal Injury/Advertising Injury
 - iii. Premises/Operations Liability
- d. All such policies shall give LAFCO, its Board, members of the Board, employees, and authorized volunteers insured status using ISO endorsement CG2010, CG2033, or equivalent.
- e. The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by LAFCO.

2. Automobile Liability

- a. At all times during the performance of the work under this Agreement the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to LAFCO.
- b. Coverage for Automobile Liability Insurance shall be at least as broad as: ISO Form Number CA 0001 covering automobile liability (Coverage Symbol 1, any auto).
- c. The automobile liability program may utilize deductibles, but not a self-insured retention, subject to written approval by LAFCO.

3. Workers' Compensation/Employer's Liability

- a. Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

- b. Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the “Workers' Compensation and Insurance Act,” Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period covered by the work under this Agreement, workers' compensation of the same type and limits as specified in this section.
- c. Such insurance shall include an insurer's Waiver of Subrogation in favor of LAFCO and will be in a form and with insurance companies acceptable to LAFCO.

4. Minimum Policy Limits Required

- a. The following insurance limits are required for the Agreement:

	Combined Single Limit
Commercial General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate for bodily injury, personal injury and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability/ Workers' Compensation	\$1,000,000 per occurrence/ Statutory

5. Evidence Required

- a. Prior to execution of the Agreement, the Consultant shall file with LAFCO evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 2010 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (ACORD Form 25-S or equivalent). All evidence of insurance shall be signed by a properly authorized officer, agent or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

6. Required Policy Provisions

- a. Certificates of insurance and policy endorsements shall require 30 days (10 days for non-payment of premium) notice of cancellation to LAFCO. Statements that the carrier “will endeavor” and “that failure to mail such notice shall impose no obligation and liability upon the company, its agents or representatives,” will not be acceptable on certificates. If any of the required coverage expires during the term of this Agreement, the Contractor shall deliver renewal certificate(s) including the General Liability

Additional Insured Endorsement to LAFCO at least ten (10) days prior to the expiration date.

- b. The Commercial General Liability policy shall contain a provision stating that Consultant's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by LAFCO or any named insureds shall not be called upon to contribute to any loss.
- c. The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three (3) years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period i) if the retroactive date is advanced past the effective date of this Agreement; ii) if the policy is canceled or not renewed; or iii) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

7. Qualifying Insurers

- a. All policies required shall be issued by acceptable insurance companies, as determined by LAFCO, which satisfy the following minimum requirements:
- b. Insurance carriers shall have a current AM Best rating of not less than "A-" policyholder's rating and a financial rating of not less than "Class VII," unless otherwise approved in advance by LAFCO.

8. Additional Insurance Provisions

- a. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by LAFCO, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.
- b. If at any time during the life of the Agreement, the Consultant fails to maintain in full force any insurance required by the Agreement documents LAFCO may terminate the Agreement.
- c. The Consultant shall include all subconsultants as insureds under its policies or shall furnish separate certificates and endorsements for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein.
- d. LAFCO may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.
- e. Neither LAFCO, its Board, members of the Board, employees, or authorized volunteers shall be personally responsible for any liability arising under or by virtue of the Agreement.