

DRAFT Agreement for Occidental to Graton Wastewater Pipeline Feasibility Study

This agreement ("Agreement") is by and between **Occidental County Sanitation District** ("District") and **Brelje and Race Consulting Engineers**, a California corporation ("Consultant"). The Effective Date of this Agreement is the date the Agreement is last signed by the parties to the Agreement, unless otherwise specified in Paragraph 5.1.

RECITALS

- A. Consultant represents that it is a duly qualified and licensed civil engineering firm, experienced in conducting feasibility studies for wastewater treatment systems and related services.
- B. District is currently hauling wastewater from District's lift station to the Airport/Larkfield/Wikiup Sanitation Zone (ALWSZ) treatment plant for treatment and disposal.
- C. District and Graton Community Services District (Graton) both have sewer service charges which are among the highest rates in California. The high rates are due to the cost associated with operating a small wastewater systems in areas with stringent wastewater treatment requirements.
- D. In an effort to minimize future rate increases by reducing District costs and providing Graton with an additional source of stable revenue, District and Graton have agreed to conduct a feasibility study to assess options to transport untreated wastewater from District to Graton for treatment and disposal.
- E. Sonoma County Water Agency operates and manages District under contract with District. References to District employees are understood to be Sonoma County Water Agency employees acting on behalf of District.
- F. Under this Agreement, Consultant will evaluate the feasibility of pipeline and hauling alternatives for transporting District's wastewater to Graton for treatment and disposal. In addition, the study will provide a preliminary rate structure for Graton to charge District in order to receive, treat, and dispose of District's wastewater.

In consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1. RECITALS

- 1.1. The above recitals are true and correct.

2. **LIST OF EXHIBITS**

2.1. The following exhibits are attached hereto and incorporated herein:

- a. Exhibit A: Scope of Work
- b. Exhibit B: Schedule of Costs
- c. Exhibit C: Estimated Budget for Scope of Work
- d. Exhibit D: Map
- e. Exhibit E: Insurance Requirements

3. **SCOPE OF SERVICES**

3.1. *Consultant's Specified Services:* Consultant shall perform the services described in Exhibit A (Scope of Work), within the times or by the dates provided for in Exhibit A and pursuant to Article 9 (Prosecution of Work). In the event of a conflict between the body of this Agreement and Exhibit A, the provisions in the body of this Agreement shall control.

3.2. *Cooperation with District:* Consultant shall cooperate with District in the performance of all work hereunder. Consultant shall coordinate the work with District's Project Manager. Contact information and mailing addresses:

District	Consultant
Project Manager: Parastou Hooshialsadat 404 Aviation Boulevard Santa Rosa, CA 95403-9019 Phone: 707-547-1961 Email: Parastou.Hooshialsadat@scwa.ca.gov	Contact: Dave Coleman 475 Aviation Boulevard, #120 Santa Rosa, CA 95403 Phone: (707) 636-3756 Email: coleman@brce.com
Remit invoices to:	Remit payments to:
Accounts Payable Same address as above or Email: ap_agreements@scwa.ca.gov	Same address as above

3.3. *Performance Standard and Standard of Care:* Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with the standards of a reasonable professional having specialized knowledge and expertise in the services provided under this Agreement and in accordance with all applicable federal, state and local laws, including all state and local orders and guidance related to COVID-19 as may be amended from time to time, it being understood that acceptance of Consultant's work by District shall not operate as a waiver or release. District has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. If District determines that any of Consultant's work is not in accordance with such level of competency and standard of care, District, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with District to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 6 (Termination); or (d) pursue any and all other remedies at law or in equity.

3.4. *Assigned Personnel:*

- a. Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time District, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from District.
- b. Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by District to be key personnel whose services were a material inducement to District to enter into this Agreement, and without whose services District would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of District.
- c. With respect to performance under this Agreement, Consultant shall employ the following key personnel:

<i>Title</i>	<i>Name</i>
Project Manager	Dave Coleman

- d. In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness, or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

4. **PAYMENT**

4.1. *Total Costs:* Total costs under this Agreement shall not exceed \$156,900.

- a. Total costs for Tasks 1-5 shall not exceed \$141,900.
- b. Total costs for Optional Task 6, if requested in writing by District, shall not exceed \$15,000.
- c. No more than \$132,700 will be paid until the Draft Feasibility Study Report is submitted.

4.2. *Method of Payment:* Consultant shall be paid in accordance with the following terms:

- a. Consultant shall be paid in accordance with Exhibit B (Schedule of Costs). Billed hourly rates shall include all costs for overhead and any other charges, other than expenses specifically identified in Exhibit B. Expenses not expressly authorized by the Agreement shall not be reimbursed.

- 4.3. *Invoices:* Consultant shall submit its bills in arrears on a monthly basis, based on work completed for the period, in a form approved by District. The bills shall show or include:
- a. Consultant name
 - b. Name of Agreement
 - c. District's Project-Activity Code 00050D014
 - d. Task performed with an itemized description of services rendered by date
 - e. Summary of work performed by subconsultants, as described in Paragraph 14.4
 - f. Time in quarter hours devoted to the task
 - g. Hourly rate or rates of the persons performing the task
 - h. List of reimbursable materials and expenses
 - i. Copies of receipts for reimbursable materials and expenses
- 4.4. *Cost Tracking:* Consultant has provided an estimated breakdown of costs, included in Exhibit C (Estimated Budget for Scope of Work). Exhibit C will only be used as a tool to monitor progress of work and budget. Actual payment will be made as specified in Paragraph 4.2 above.
- 4.5. *Timing of Payments:* Unless otherwise noted in this Agreement, payments shall be made within the normal course of District business after presentation of an invoice in a form approved by District for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by District.
- 4.6. *Taxes Withheld by District:*
- a. Pursuant to California Revenue and Taxation Code (R&TC) section 18662, District shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this Agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.
 - b. If Consultant does not qualify, as described in Paragraph 4.6.a, District requires that a completed and signed Form 587 be provided by Consultant in order for payments to be made. If Consultant is qualified, as described in Paragraph 4.6.a, then District requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, Consultant agrees to promptly notify District of any changes in the facts. Forms should be sent to District pursuant to Article 15 (Method and Place of Giving Notice, Submitting Bills, and Making Payments) of this Agreement. To reduce the

amount withheld, Consultant has the option to provide District with either a full or partial waiver from the State of California.

5. TERM OF AGREEMENT AND COMMENCEMENT OF WORK

5.1. *Term of Agreement:*

- a. This Agreement shall expire on December 31, 2022, unless terminated earlier in accordance with the provisions of Article 6 (Termination).
- b. District shall have two options to extend this Agreement for a period of one year each by providing written notice to Consultant thirty days in advance of the expiration date noted in this Article and of the first extension option.

5.2. *Commencement of Work:* Consultant is authorized to proceed immediately with the performance of this Agreement upon the Effective Date of this Agreement.

6. TERMINATION

6.1. *Authority to Terminate:* District's right to terminate may be exercised by Sonoma County Water Agency's General Manager.

6.2. *Termination Without Cause:* Notwithstanding any other provision of this Agreement, at any time and without cause, District shall have the right, in its sole discretion, to terminate this Agreement by giving 5 days written notice to Consultant.

6.3. *Termination for Cause:* Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, District may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

6.4. *Delivery of Work Product and Final Payment Upon Termination:* In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to District all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement subject to Paragraph 12.9 and shall submit to District an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

6.5. *Payment Upon Termination:* Upon termination of this Agreement by District, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment;

provided, however, that if services are to be paid on a per-hour or per-day basis, then Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to termination multiplied by the applicable hourly or daily rate; and further provided, however, that if District terminates the Agreement for cause pursuant to Paragraph 6.3, District shall deduct from such amounts the amount of damage, if any, sustained by District by virtue of the breach of the Agreement by Consultant.

7. INDEMNIFICATION

- 7.1. Consultant agrees to accept responsibility for loss or damage to any person or entity, including Sonoma County Water Agency and Occidental County Sanitation District, and to defend, indemnify, hold harmless, and release Sonoma County Water Agency and Occidental County Sanitation District, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on Sonoma County Water Agency or Occidental County Sanitation District's part, but, to the extent required by law, excluding liability due to Sonoma County Water Agency or Occidental County Sanitation District's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

8. INSURANCE

- 8.1. With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit D (Insurance Requirements).

9. PROSECUTION OF WORK

- 9.1. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

10. EXTRA OR CHANGED WORK

- 10.1. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Changes to lengthen time schedules or make minor modifications to the scope of work,

which do not increase the amount paid under the Agreement, may be executed by Sonoma County Water Agency's General Manager in a form approved by County Counsel. The parties expressly recognize that District personnel are without authorization to order all other extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of District.

11. CONTENT ONLINE ACCESSIBILITY

- 11.1. *Accessibility:* District policy requires that all documents that may be published to the Web meet accessibility standards to the greatest extent possible, and utilizing available existing technologies.
- 11.2. *Standards:* All consultants responsible for preparing content intended for use or publication on a District managed or District funded web site must comply with applicable federal accessibility standards established by 36 C.F.R. section 1194, pursuant to section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. section 794(d)), and District's Web Site Accessibility Policy located at <http://sonomacounty.ca.gov/Services/Web-Standards-and-Guidelines/>.
- 11.3. *Certification:* With each final receivable intended for public distribution (report, presentations posted to the internet, public outreach materials), Consultant shall include a descriptive summary describing how all deliverable documents were assessed for accessibility (e.g., Microsoft Word accessibility check; Adobe Acrobat accessibility check, or other commonly accepted compliance check).
- 11.4. *Alternate Format:* When it is strictly impossible due to the unavailability of technologies required to produce an accessible document, Consultant shall identify the anticipated accessibility deficiency prior to commencement of any work to produce such deliverables. Consultant agrees to cooperate with District staff in the development of alternate document formats to maximize the facilitative features of the impacted document(s); e.g., embedding the document with alt-tags that describe complex data/tables.
- 11.5. *Noncompliant Materials; Obligation to Cure:* Remediation of any materials that do not comply with District's Web Site Accessibility Policy shall be the responsibility of Consultant. If District, in its sole and absolute discretion, determines that any deliverable intended for use or publication on any District managed or District funded Web site does not comply with District Accessibility Standards, District will promptly inform Consultant in writing. Upon such notice, Consultant shall, without charge to District, repair or replace the non-compliant

materials within such period of time as specified by District in writing. If the required repair or replacement is not completed within the time specified, District shall have the right to do any or all of the following, without prejudice to District's right to pursue any and all other remedies at law or in equity:

- a. Cancel any delivery or task order
- b. Terminate this Agreement pursuant to the provisions of Article 6 (Termination); and/or
- c. In the case of custom Electronic and Information Technology (EIT) developed by Consultant for District, District may have any necessary changes or repairs performed by itself or by another contractor. In such event, Consultant shall be liable for all expenses incurred by District in connection with such changes or repairs.

- 11.6. *District's Rights Reserved:* Notwithstanding the foregoing, District may accept deliverables that are not strictly compliant with District Accessibility Standards if District, in its sole and absolute discretion, determines that acceptance of such products or services is in District's best interest.

12. REPRESENTATIONS OF CONSULTANT

- 12.1. *Status of Consultant:* The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of District and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits District provides its employees. In the event District exercises its right to terminate this Agreement pursuant to Article 6 (Termination), Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.
- 12.2. *No Suspension or Debarment:* Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration.
- 12.3. *Taxes:* Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold District harmless from any liability which it may incur to the United States or to the State of California or to any other public entity as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case District is audited for compliance regarding any withholding

or other applicable taxes, Consultant agrees to furnish District with proof of payment of taxes on these earnings.

- 12.4. *Records Maintenance:* Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to District for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.
- 12.5. *Conflict of Interest:* Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if required by law or requested to do so by District, Consultant shall submit a completed Fair Political Practices Commission Statement of Economic Interests (Form 700) with District within 30 calendar days after the Effective Date of this Agreement and each year thereafter during the term of this Agreement, or as required by state law.
- 12.6. *Statutory Compliance/Living Wage Ordinance:* Consultant agrees to comply, and to ensure compliance by its subconsultants or subcontractors, with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.
- 12.7. *Nondiscrimination:* Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.
- 12.8. *Assignment of Rights:* Consultant assigns to District all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to District in this Agreement, and to refrain from taking any action which would impair those

rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as District may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of District. Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of District.

- 12.9. *Ownership and Disclosure of Work Product:* All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of District. District shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to District all such documents, which have not already been provided to District in such form or format as District deems appropriate. Such documents shall be and will remain the property of District without restriction or limitation. Consultant may retain copies of the above described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of District.
- 12.10. *District Liability:* District is a separate legal entity from Sonoma County Water Agency, operated under contract by Sonoma County Water Agency. To the extent any work under this Agreement relates to District activities, Consultant shall be paid exclusively from District funds. Consultant agrees that it shall make no claim for compensation for Consultant's services against Sonoma County Water Agency funds and expressly waives any right to be compensated from other funds available to Sonoma County Water Agency.

13. DEMAND FOR ASSURANCE

- 13.1. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the

aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article 13 limits District's right to terminate this Agreement pursuant to Article 6 (Termination).

14. ASSIGNMENT AND DELEGATION

- 14.1. *Consent:* Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.
- 14.2. *Subcontracts:* Notwithstanding the foregoing, Consultant may enter into subcontracts with the subconsultants specifically identified herein. If no subconsultants are listed, then no subconsultants will be utilized in the performance of the work specified in this Agreement.
- 14.3. *Change of Subcontractors or Subconsultants:* If, after execution of the Agreement, parties agree that subconsultants not listed in Paragraph 14.2 will be utilized, Consultant may enter into subcontracts with subconsultants to perform other specific duties pursuant to the provisions of this Paragraph 14.2. The following provisions apply to any subcontract entered into by Consultant other than those listed in Paragraph 14.2:
 - a. Prior to entering into any contract with subconsultant, Consultant shall obtain District approval of subconsultant.
 - b. All agreements with subconsultants shall (a) contain indemnity requirements in favor of District in substantially the same form as that contained in Article 7 (Indemnification), (b) contain language that the subconsultant may be terminated with or without cause upon reasonable written notice, and (c) prohibit the assignment or delegation of work under the agreement to any third party.
- 14.4. *Summary of Subconsultants' Work:* Consultant shall provide District with a summary of work performed by subconsultants with each invoice submitted under Paragraph 4.3. Such summary shall identify the individuals performing work on behalf of subconsultants and the total amount paid to subconsultant, broken down by the tasks listed in the Scope of Work.

15. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS, AND MAKING PAYMENTS

- 15.1. *Method of Delivery:* All notices, bills, and payments shall be made in writing and shall be given by personal delivery, U.S. Mail, courier service, or electronic means. Notices, bills, and payments shall be addressed as specified in Paragraph 3.2.
- 15.2. *Receipt:* When a notice, bill, or payment is given by a generally recognized overnight courier service, the notice, bill, or payment shall be deemed received

on the next business day. When a copy of a notice, bill, or payment is sent by electronic means, the notice, bill, or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill, or payment is deposited in the U.S. mail and postmarked on the date of the electronic transmission (for a payment, on or before the due date), (2) the sender has a written confirmation of the electronic transmission, and (3) the electronic transmission is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills, and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this Article 15.

16. MISCELLANEOUS PROVISIONS

- 16.1. *No Bottled Water:* In accordance with District Board of Directors Resolution No. 09-0920, dated September 29, 2009, no District funding shall be used to purchase single-serving, disposable water bottles for use in District facilities or at District-sponsored events. This restriction shall not apply when potable water is not available.
- 16.2. *No Waiver of Breach:* The waiver by District of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.
- 16.3. *Construction:* To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and District acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and District acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- 16.4. *Consent:* Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.
- 16.5. *No Third-Party Beneficiaries:* Except as provided in Article 7 (Indemnification), nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

- 16.6. *Applicable Law and Forum:* This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or in the forum nearest to the City of Santa Rosa, in the County of Sonoma.
- 16.7. *Captions:* The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 16.8. *Merger:* This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure section 1856. Each Party acknowledges that, in entering into this Agreement, it has not relied on any representation or undertaking, whether oral or in writing, other than those which are expressly set forth in this Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
- 16.9. *Survival of Terms:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- 16.10. *Time of Essence:* Time is and shall be of the essence of this Agreement and every provision hereof.
- 16.11. *Digital Signature(s):* If Consultant uses digital signature(s) to execute this Agreement, the digital signature(s) shall comply with Government Code section 16.5. By using digital signature(s), Consultant warrants and represents that it intends the digital signature to have the same force and effect as the use of a manual signature.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date last signed by the parties to the Agreement.

Reviewed as to funds:

TW 20/21-040

By: _____
Sonoma County Water Agency
Division Manager - Administrative
Services

Approved as to form:

By: _____
Adam Brand, Deputy County Counsel

Insurance Documentation is on file with
District

Date/TW Initials: _____

Occidental County Sanitation District

**Brelje and Race Consulting Engineers, a
California corporation**

By: _____
Grant Davis
General Manager
Authorized per Sonoma County Water
Agency's Board of Directors Action on
April 13, 2021

By: _____

(Please print name here)

Title: _____

Date: _____

Date: _____

Exhibit A

Scope of Work

1. **TASKS**

- 1.1. Task 1: Project Kick off Meeting
 - a. Meet with District to accomplish the following:
 - i. Discuss scope, schedule, and budget
 - ii. Identify background information and documents to be provided by District and Graton
 - iii. Discuss key issues and objectives related to the study
 - iv. Discuss items requiring coordination with District and Graton
 - v. Review project schedule and key milestone dates
 - b. Prepare and distribute meeting agenda
 - c. Record and distribute meeting minutes
 - d. Sonoma Water will provide, as available:
 - i. Previous studies concerning District collection, pumping and treatment facilities.
 - ii. Record drawings and performance data for existing District lift station and equalization pond.
 - iii. Existing Graton wastewater treatment plant (WWTP) capacity, existing and future loading information.
 - iv. Current trucking program information including truck trip data and cost information.
 - e. Majority of pipe alignment is assumed, for the purposes of the feasibility study, to be installed along Graton Road and Ross Road in public right of way as generally shown on the map in Exhibit D.
 - f. Sonoma Water will assist in requesting road mapping from County of Sonoma Department of Transportation and Public Works.
 - g. Sonoma Water will assist in requesting necessary information from Graton.

Deliverable	Due Date
Meeting with District	Within 14 calendar days of Effective Date
Meeting agenda	No later than one business day prior to meeting
Meeting minutes	Within seven calendar days following meeting

- 1.2. Task 2: Pipeline Construction and Operations Analysis
- a. Acquire and review available information from District and Graton regarding existing wastewater infrastructure and flows related to the proposed pipeline.
 - b. Determine project design criteria, including design flows, loads, seasonal flow patterns, equalization storage capability, and pipeline sizing criteria.
 - c. Evaluate options to determine a recommended pipeline operational mode (gravity flow, force main, or combination) and pipeline diameter.
 - d. Acquire and review available information from County of Sonoma, District, and Graton regarding existing public right-of-way and easement information germane to the pipeline alignment and related facilities.
 - e. Conduct windshield survey of pipeline alignment (or alignments, as necessary) to generally determine physical constraints affecting pipeline design and assist in confirming identification of a recommended pipeline alignment. The likely alignment is anticipated to be routed substantially along Graton/Ross Road.
 - f. Perform desktop geotechnical evaluation of alignment including field windshield survey and review of available published documents.
 - g. Evaluate the following sewer interception/pumping locations in District:
 - i. Existing lift station located at 4200 Occidental Camp Meeker Road, Occidental, CA 95495.
 - ii. Up to one other location in District sewer system to be determined in coordination with District.
 - h. Evaluate the following sewer receiving locations in Graton:
 - i. Existing wastewater treatment plant located at 250 Ross Lane, Sebastopol, CA 95472.
 - ii. Up to two other locations in Graton sewer system to be determined in coordination with District and Graton.
 - i. Evaluate District flow equalization facilities and determine equalization capacity and conceptual operational approach with and without equalization storage.
 - j. Evaluate Graton treatment and conveyance capacity to receive additional flow from District during current dry and wet weather flows.
 - k. Develop estimates of construction cost and annual operations and maintenance (O&M) costs for the pipeline and facilities (or portion of facilities) exclusively related to the function of the pipeline.
 - l. For construction cost, prepare both present value costs and annualized costs based on financing assumptions acceptable to District. For the purposes of the O&M estimate, assume Graton will provide O&M labor.
 - m. Evaluate the basis for determining a connection fee to be paid by District to Graton for pipeline and related wastewater flows. Develop an estimate of

the recommended connection fee. If a separate prior connection fee were to be paid for a Graton trucking alternative (Task 3), consider whether any additional or separate connection fee is warranted for the subsequent pipeline connection.

- n. Conduct first progress meeting with the project team summarizing analyses and findings conducted under this Task 2.
 - i. Prepare and distribute meeting agenda
 - ii. Record and distribute meeting minutes

Deliverable	Due Date
First progress meeting	Upon completion of this Task 2
Meeting agenda	No later than one business day prior to meeting
Meeting minutes	Within seven calendar days following meeting

1.3. Task 3: Trucking Analysis

- a. Evaluate feasibility of trucking District wastewater to Graton for treatment and disposal.
- b. Compare the pros and cons of a Graton trucking alternative versus District's existing trucking operation to Airport WWTP for year-round flows (both dry and wet weather conditions). It is anticipated that Graton may not be initially capable of receiving year-round flows (especially wet weather flows) from District. As appropriate, the Airport trucking alternative shall assume continued year-round trucking to Airport WWTP and the Graton trucking alternative shall assume primary trucking to Graton with secondary trucking to Airport WWTP only during limited periods that Graton is unable to receive District wastewater due to treatment and capacity limitations.
- c. Evaluate the pros and cons of the Airport trucking alternative and the Graton trucking alternative and attribute the benefits and drawbacks separately for both District and Graton.
 - i. Consider the comparative annual operational and maintenance implications and costs attributable to District and to Graton.
 - ii. Identify new measures and costs incurred and existing measures and costs eliminated or modified with implementation of a Graton trucking alternative.
 - iii. Identify and consider measures and costs necessary to initially implement the Graton trucking alternative, including identification of any necessary or recommended new facilities and any connection fee that District may be required to pay Graton.
- d. Relative to the existing Airport trucking alternative, identify the net cost savings and increases associated with the Graton trucking alternative, and attribute those costs separately for District and Graton.

- e. Develop a preliminary recommended rate structure for Graton to charge District in order to receive, treat, and dispose of District's wastewater. Preliminary rate structure shall be volume based unless otherwise approved or requested by District prior to development. All estimates of District or Graton labor costs shall utilize the applicable labor rates of each respective entity.

1.4. Task 4: Trucking versus Pipeline Analysis

- a. Summarize and assess the costs, fees, and charges for pipeline and trucking alternatives developed in Tasks 2 and 3 to estimate District's and Graton's net change in annual revenue and expenses for each alternative.
- b. Determine the estimated change in customer sanitation rates (sewer service charges) for both District and Graton resulting from implementation of each alternative.
- c. Summarize options to optimize affordability of the alternatives for both District and Graton.
- d. Develop a concept-level cost estimate for Graton to expand treatment capacity to accommodate year-round discharges from District, including wet weather peak discharges.
- e. Conduct second progress meeting with the project team at the completion of this Task 4. Provide meeting agenda and minutes.
 - i. Prepare and distribute meeting agenda
 - ii. Record and distribute meeting minutes

Deliverable	Due Date
Second progress meeting	Upon completion of this Task 4
Meeting agenda	No later than one business day prior to meeting
Meeting minutes	Within seven calendar days following meeting

1.5. Task 5: Feasibility Study Report

- a. Prepare a report that includes, but is not limited to, the items below.
 - i. Table of Contents
 - ii. Project introduction and background
 - iii. Description of pipeline alternatives evaluated and costs
 - iv. Pipeline design and construction schedule
 - v. Description of wastewater trucking alternatives evaluated and costs
 - vi. Summary of findings and recommendations compiled from Task 2 through Task 4
 - vii. A detailed description of the work performed, including methodology, literature reviewed, and individuals and agencies contacted
 - viii. Other information as requested by District

- b. Review. Submit to District for review.
 - i. First Draft: Prepare the report in draft form and submit to District for review and approval in accordance with the date listed for this deliverable. District will return the draft report to Consultant with comments or approval in writing.
 - ii. Subsequent Draft(s): If District requests revisions, revise the draft report and resubmit for District approval.
- c. Final: Following District approval and prior to District's acceptance of work under this Agreement, submit the final approved report to District in accordance with the date listed for this deliverable.

Deliverable	Due Date
Draft Feasibility Study Report	Within 5 months after Kick off Meeting
Final Feasibility Study Report	Within 14 calendar days of District approval of draft

1.6. Task 6: Optional Task 6: Additional Services

- a. Do not proceed with this task unless requested in writing by District.
- b. Perform additional services as requested by District to support the work under this Agreement. The additional services will be agreed to by Consultant and District and described in writing by District.

Deliverable	Due Date
To be determined	To be determined

2. DELIVERABLES

- 2.1. In addition to the requirements above, if any, submit one electronic copy in PDF format (emailed, on USB flash drive, or via internet) of each final deliverable to District.
- 2.2. Comply with requirements of Article 11 (Content Online Accessibility).

Exhibit B

Schedule of Costs

PROFESSIONAL SERVICES

Senior Principal.....	\$225.00/hour
Associate Principal.....	210.00/hour
Senior Project Advisor.....	200.00/hour
Associate.....	195.00/hour
Senior Engineer.....	190.00/hour
Engineer.....	170.00/hour
Engineering Technician.....	145.00/hour
Senior Planner.....	175.00/hour
Planner.....	145.00/hour
Senior Surveyor.....	175.00/hour
Surveyor.....	160.00/hour
Survey Technician.....	140.00/hour
CAD Technician Supervisor.....	150.00/hour
CAD Technician.....	140.00/hour
Construction Engineer.....	160.00/hour
Construction Technician 2.....	145.00/hour
Construction Technician 1.....	125.00/hour
Technical Writer.....	110.00/hour

EXPERT WITNESS & MEDIATION SERVICES

\$500.00/hour

FIELD SURVEYING

One-man Party (Including Survey Equipment & Vehicle)	\$195.00/hour
Two-man Party (Including Survey Equipment & Vehicle)	\$252.00/hour
Three-man Party (Including Survey Equipment & Vehicle)	\$320.00/hour

CLERICAL SERVICES

\$85.00/hour

OUTSIDE CONSULTANTS

Cost + 10% Handling Charge

OUTSIDE PLOTTING AND REPRODUCTION

Cost + 10% Handling Charge

IN-HOUSE PLOTTING

Vellum or Bond	\$8.00/sheet
Mylar	20.00/sheet

Exhibit C

Estimated Budget for Scope of Work

	TASK	SCHEDULE (Month-Year)	Associate Principal	Associate	Senior Engineer	Engineer	Engineering Technician	CAD Technician	Technical Writer
Task 1: Project Kickoff Meeting	1.01 Meet with District	Jan-21	4			4	4		
	1.02 Prepare and distribute meeting agenda		2						
	1.03 Record and distribute meeting minutes		2				2		
Task 2: Pipeline Construction and Operations Analysis	2.01 Acquire and review available information	Feb-21	8	4	4	12	24		
	2.02 Project design criteria		4	4		8	12		
	2.03 Pipeline operational mode		8			16	8		
	2.04 Existing public right-of-way and easement information		4	8		8	2	8	
	2.05 Windshield survey of pipeline alignment		8		8	16	8		
	2.06 Desktop geotechnical evaluation		4		24	2	4	4	
	2.07 Sewer interceptor/pumping locations in OCSD		4			4	8	8	
	2.08 Sewer receiving locations in Graton		4			4	8	8	
	2.09 District flow equalization facilities		8			4	16	4	
	2.10 Graton treatment and conveyance capacity		8	8		8	24		
	2.11 Estimates of construction cost and annual operations and maintenance (O&M) costs		4	8		8	8		
	2.12 Present value costs and annualized costs		4	8		8	4		
	2.13 Connection fee to be paid by District to Graton for pipeline and related wastewater flows		16	8		4	12		
	2.14 Progress meeting #1		6			2	2		
Task 3: Trucking Analysis	3.01 Feasibility of trucking District wastewater to Graton	Mar-21	8			12	8		
	3.02 Graton treatment and conveyance capacity		8			4	8		
	3.03 Compare alternatives		4			8	8		
	3.04 Compare existing Airport trucking alternative to Graton trucking alternative		4	8		4	12		
	3.05 Preliminary rate structure		8	16		16	8		
Task 4: Trucking versus Pipeline Analysis	4.01 Summarize and assess the costs	Apr-21	8	8		8	16		
	4.02 Estimated change in customer sanitation rates		4	4		4	8		
	4.03 Summarize options		8	8		8	4		
	4.04 Concept-level cost estimate		12	8		16	24		
	4.05 Progress meeting #2		6			2	4		
Task 5: Feasibility Study Report	5.01 Draft Feasibility Study Report	Mar-21	16	8	4	24	40	24	8
	5.02 Final Feasibility Study Report	Jun-21	8	4	2	8	16	16	4
Task 6: Optional Task	7.01 Optional Task	TBD							
Total Hours			192	112	42	222	156	72	12
Hourly Rate			\$210	\$195	\$190	\$170	\$145	\$140	\$110
Subtotal Cost			\$40,320	\$21,840	\$7,980	\$37,740	\$22,620	\$10,080	\$1,320
SUBTOTAL			\$141,900						
			\$15,000						
TOTAL			\$156,900						

Exhibit D

Map

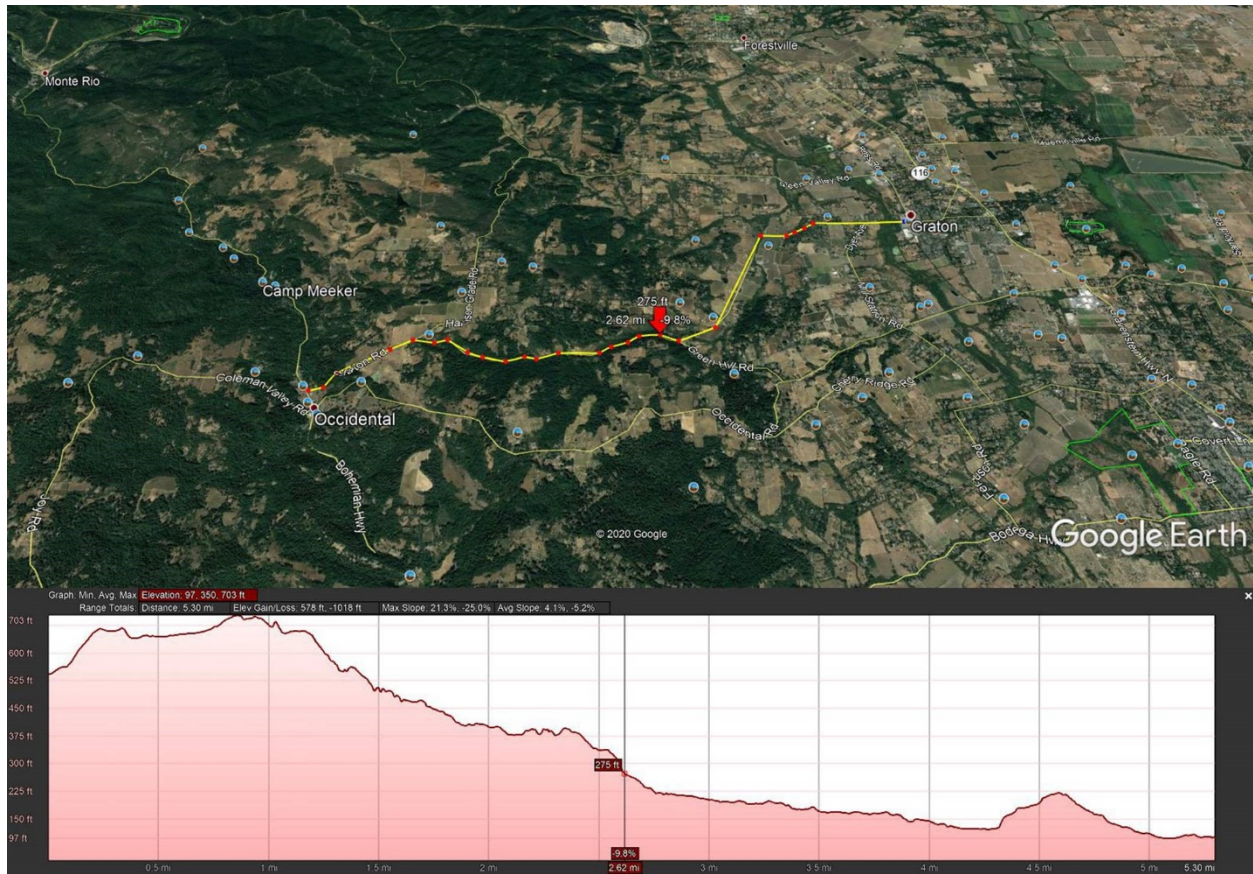


Exhibit E

Insurance Requirements

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

District reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

1. INSURANCE

1.1. Workers Compensation and Employers Liability Insurance

- a. Required if Consultant has employees as defined by the Labor Code of the State of California.
- b. If Consultant currently has no employees as defined by the Labor Code of the State of California, Consultant agrees to obtain the above-specified Workers Compensation and Employers' Liability insurance should employees be engaged during the term of this Agreement or any extensions of the term.

1.2. General Liability Insurance

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance. If Consultant maintains higher limits than the specified minimum limits, District requires and shall be entitled to coverage for the higher limits maintained by Consultant.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by District. Consultant is responsible for any deductible or self-insured retention and shall fund it upon District's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving District.

- d. Occidental County Sanitation District, its officers, agents, and employees, shall be endorsed as additional insureds for liability arising out of operations by or on behalf of Consultant in the performance of this Agreement.
- e. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- f. The policy definition of “insured contract” shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the “f” definition of insured contract in Insurance Services Office form CG 00 01, or equivalent).
- g. The policy shall cover inter-insured suits between the additional insureds and Consultant and include a “separation of insureds” or “severability” clause which treats each insured separately.
- h. Required Evidence of Insurance:
 - i. Copy of the additional insured endorsement or policy language granting additional insured status, and
 - ii. Certificate of Insurance.

1.3. Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limit may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance.
- b. Insurance shall cover all owned autos. If Consultant currently owns no autos, Consultant agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. Required Evidence of Insurance: Certificate of Insurance.

1.4. Professional Liability/Errors and Omissions Insurance

- a. Minimum Limit: \$1,000,000 per claim or per occurrence; \$1,000,000 annual aggregate.
- b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by District.
- c. If Consultant’s services include: (1) programming, customization, or maintenance of software: or (2) access to individuals’ private, personally identifiable information, the insurance shall cover:
 - i. Breach of privacy; breach of data; programming errors, failure of work to meet contracted standards, and unauthorized access; and
 - ii. Claims against Consultant arising from the negligence of Consultant, Consultant’s employees and Consultant’s subcontractors.

- d. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
- e. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.
- f. Required Evidence of Insurance: Certificate of Insurance specifying the limits and the claims-made retroactive date.

1.5. Standards for Insurance Companies

- a. Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

1.6. Documentation

- a. The Certificate of Insurance must include the following reference:
TW 20/21-040.
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Evidence of Insurance on file with District for the entire term of this Agreement and any additional periods if specified in Sections 1.1, 1.2, 1.3, or 1.4 above.
- c. The name and address for mailing Additional Insured endorsements and Certificates of Insurance is: Occidental County Sanitation District, c/o Sonoma County Water Agency, 404 Aviation Boulevard, Santa Rosa, CA 95403-9019.
- d. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. Consultant shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

1.7. Policy Obligations

- a. Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

1.8. Material Breach

- a. If Consultant fails to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. District, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, District may purchase the required insurance, and without further notice to

Consultant, District may deduct from sums due to Consultant any premium costs advanced by District for such insurance. These remedies shall be in addition to any other remedies available to District.