

**PROFESSIONAL SERVICES AGREEMENT
Instrumentation Data Management Software
Specification No. CS-2020-1102**

THIS AGREEMENT is made and entered into as of the date fully executed below, by and between Orange County Sanitation District, with a principal place of business at 10844 Ellis Avenue, Fountain Valley, CA 92708 (hereinafter referred to as "OCSD") and [REDACTED] with a principal business at [REDACTED] (hereinafter referred to as "Consultant") collectively referred to as the "Parties".

WITNESSETH

WHEREAS, based on Consultant's expertise and experience, OCSD desires to temporarily engage Consultant to provide Instrumentation Data Management Software "Services" as described in Exhibit "A"; and

WHEREAS, Consultant submitted its Proposal, dated [REDACTED]; and

WHEREAS, OCSD has chosen Consultant to conduct Services in accordance with Ordinance No. OCSD-52; and

WHEREAS, on [REDACTED], the **[Board of Directors or Operations Committee]** of OCSD, by minute order, authorized execution of this Agreement between OCSD and Consultant; and

[Or]

WHEREAS, as of the date fully executed below, the **[General Manager or Contracts, Purchasing and Materials Management Division Manager]** authorized execution of this Agreement between OCSD and Consultant; and

NOW, THEREFORE, in consideration of the mutual promises and mutual benefits exchanged between the Parties, the Parties mutually agree as follows:

1. Introduction

- 1.1 This Agreement and all exhibits hereto (called the "Agreement") is made by OCSD and Consultant. The terms and conditions herein exclusively govern the purchase of Services as described in Exhibit "A".
- 1.2 Exhibits to this Agreement are incorporated by reference and made a part of this Agreement as though fully set forth at length herein.

Exhibit "A"	Scope of Work
Exhibit "B"	Proposal
Exhibit "C"	Acknowledgement of Insurance Requirements
Exhibit "D"	OCSD Safety Standards
Exhibit "E"	Human Resources Policies

- 1.3 In the event of any conflict or inconsistency between the provisions of this Agreement and any of the provisions of the exhibits hereto, the provisions of this Agreement shall in all respects govern and control.

- 1.4 This Agreement may not be modified, changed or supplemented, nor may any obligations hereunder be waived or extensions of time for performance granted, except by written instrument signed by both Parties.
- 1.5 The various headings in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any paragraph or provision hereof.
- 1.6 The term "workday". Workdays are defined as all days that are not Saturday, Sunday, or OCSD observed holidays. Meetings with OCSD staff shall be scheduled from Monday through Thursday between the hours of 8 a.m. and 4 p.m. (exception is operations staff who maintain plant operations 24/7 and work a rotated 12-hour shift) and shall conform to OCSD work schedules. OCSD review periods shall not include OCSD observed holidays.
- 1.7 OCSD holidays (non-working days) are as follows: New Year's Day, Lincoln's Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve, and Christmas Day.
- 1.8 The term "days", when used in the Agreement, shall mean calendar days, unless otherwise noted as workdays.
- 1.9 Work Hours: The work required under this Agreement may include normal business hours, evenings, and weekends.
- 1.10 Consultant shall provide OCSD with all required premiums and/or overtime work at no charge beyond the price provided under "Compensation" below.
- 1.11 Except as expressly provided otherwise, OCSD accepts no liability for any expenses, losses, or action incurred or undertaken by Consultant as a result of work performed in anticipation of purchases of said services by OCSD.
- 1.12 Goods and Services, whether stated separately or in conjunction with each other, shall mean Instrumentation Data Management Software and the services related to the provision of such as described in Exhibit "A".
- 1.13 Construction of Agreement. This Agreement is the product of joint discussions and negotiations at arms' length between the Parties, both of whom are sophisticated and knowledgeable in business matters and both of whom have relied on the advice of independent legal counsel. Any rule of law which would require interpretation of this Agreement against the party that drafted it shall have no application to this Agreement.

2. Miscellaneous

- 2.1 Access to Premises. OCSD shall provide Consultant with reasonable and timely access to the sites and personnel necessary for Consultant to perform its obligations under this Agreement. OCSD shall allow Consultant personnel reasonable access to OCSD site and facilities (telephone, parking, etc.) during normal business hours and at other reasonable times as requested by Consultant and pre-approved by OCSD. The assistance or presence of OCSD's personnel will not relieve Consultant of any responsibilities under this Agreement.
- 2.2 Amendments. No amendment or modification to this Agreement is valid unless it is contained in a writing signed by both Parties.

- 2.3 Approvals in Writing. All approvals or consents required or contemplated by this Agreement must be in writing to be effective.
- 2.4 Background Checks and Removal of Personnel. Prior to being allowed to perform any work on this project, all non-OCSD personnel assigned to the project may be required to submit to and pass a background check by the Fountain Valley, California Police Department. In addition, OCSD shall have the sole and exclusive right to require Consultant to immediately remove any individual from the project for any reason deemed to be in the best interests of OCSD. Consultant shall replace any employee removed from the project within ten (10) business days of said removal.
- 2.5 Compliance with Work Rules. Consultant will ensure that, while it is on OCSD premises, Consultant's personnel and its subconsultant(s) will comply with OCSD's working rules and policies, including OCSD's security procedures.
- 2.6 Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties and their respective successors and assigns.
- 2.7 Advertising. Consultant shall not refer to the existence of this Agreement in any press release, advertising or materials distributed to prospective customers without the prior written consent of OCSD.
3. **Scope of Work** General requirements for the work of this project are listed below. A detailed list of tasks and responsibilities are included in Exhibit "A".
- 3.1 Subject to the terms of this Agreement, Consultant shall perform the Services identified in Exhibit "A". Consultant warrants that all of its Services shall be performed in a competent, professional and satisfactory manner.
- 3.2 Modifications to Equipment and Facilities. OCSD shall be responsible for making OCSD-approved modifications identified in an OCSD approved, site analysis report. Thereafter, Consultant will be precluded from asserting that it is unable to perform its obligations under this Agreement because of any pre-existing condition. During implementation, any changes to the system or any costs that may be incurred in order to complete the requirements of this Agreement but were not identified in the site analysis report will be the sole and exclusive responsibility of Consultant. In addition, if the system is unable to meet the functional, performance and reliability specifications and requirements in this Agreement after the identified upgrades and changes have been made, then Consultant will be responsible, at its own expense, for making any further upgrades or changes necessary to achieve this result.
- 3.3 User Qualifications. OCSD shall use its best efforts to ensure that persons operating the system will be qualified, supervised, and trained in the use of personal computers and normal operations. Consultant will ensure that all training on the system or system components will be conducted professionally and effectively so that each operator trained by Consultant is proficient in its use.
- 3.4 Transition. Consultant will work with OCSD to ensure a smooth and efficient transition from OCSD's current systems to the new system and to minimize disruption to current operations, even if it necessitates working late evening, early morning, or weekend hours. Any required disruptions to OCSD's operations shall be scheduled in advance and approved by OCSD.

4. **Compensation** Compensation to be paid by OCSD to Consultant for the Services provided under this Agreement shall be a total amount not to exceed [REDACTED] Dollars (\$[REDACTED].00).
5. **Payment**
- 5.1 OCSD shall pay, net thirty (30) days, upon receipt and approval, by OCSD's Project Manager or designee, of itemized invoices submitted for Milestones completed in accordance with Exhibit "A".
- 5.2 OCSD, at its sole discretion, shall be the determining party as to whether the tasks and deliverables for each milestone have been satisfactorily completed.
6. **Invoices**
- 6.1 OCSD shall pay within thirty (30) days of completion and receipt and approval by OCSD Project Manager or designee of an itemized invoice, in a form acceptable to OCSD to enable audit of the charges thereon.
- 6.2 Invoices shall be emailed by Consultant to OCSD at APStaff@OCSD.com. Specification No. CS-2019-1102 and Purchase Order number shall both be referenced in the subject line.
7. **Audit Rights** Consultant agrees that, during the term of this Agreement and for a period of three (3) years after its termination, OCSD shall have access to and the right to examine any directly pertinent books, documents, and records of Consultant relating to the invoices submitted by Consultant pursuant to this Agreement.
8. **Performance** Time is of the essence in the performance of the provisions hereof.
9. **Term**
- 9.1 The Services provided under this Agreement shall be completed within one hundred eighty (180) calendar days from the effective date of the Notice to Proceed.
- 9.2 Effect on Project Schedule. The time periods and requirements set forth in Exhibit "A", will not excuse Consultant from complying with the completion date set forth in this Agreement.
10. **Termination**
- 10.1 OCSD reserves the right to terminate this Agreement for its convenience, with or without cause, in whole or in part, at any time, by written notice from OCSD. Upon receipt of a termination notice, Consultant shall immediately discontinue all work under this Agreement (unless the notice directs otherwise). OCSD shall thereafter, within thirty (30) days, pay Consultant for work performed (cost and fee) to the date of termination. Consultant expressly waives any claim to receive anticipated profits to be earned during the uncompleted portion of this Agreement. Such notice of termination shall terminate this Agreement and release OCSD from any further fee, cost or claim hereunder by Consultant other than for work performed to the date of termination.
- 10.2 OCSD reserves the right to terminate this Agreement immediately upon OCSD's determination that Consultant is not meeting the requirements, if the level of service is inadequate, or any other default of this Agreement.
- 10.3 OCSD may also immediately cancel for default of this Agreement in whole or in part by written notice to Consultant:
- if Consultant becomes insolvent or files a petition under the Bankruptcy Act; or

- if Consultant sells its business; or
- if Consultant breaches any of the terms of this Agreement; or
- if total amount of compensation exceeds the amount authorized under this Agreement.

10.4 All OCSD property in the possession or control of Consultant shall be returned by Consultant to OCSD on demand, or at the termination of this Agreement, whichever occurs first. In addition, Consultant will deliver to OCSD all work product currently in existence and for which payment has been made.

11. **Indemnification and Hold Harmless Provision** Consultant shall assume all responsibility for damages to property and/or injuries to persons, including accidental death, which may arise out of or be caused by Consultant's services under this Agreement, or by its subconsultant(s) or by anyone directly or indirectly employed by Consultant, and whether such damage or injury shall accrue or be discovered before or after the termination of the Agreement. Except as to the sole active negligence of or willful misconduct of OCSD, Consultant shall indemnify, protect, defend and hold harmless OCSD, its elected and appointed officials, officers, agents and employees, from and against any and all claims, liabilities, damages or expenses of any nature, including attorneys' fees: (a) for injury to or death of any person or damage to property or interference with the use of property, arising out of or in connection with Consultant's performance under the Agreement, and/or (b) on account of use of any copyrighted or uncopyrighted material, composition, or process, or any patented or unpatented invention, article or appliance, furnished or used under the Agreement, and/or (c) on account of any goods and services provided under this Agreement. This indemnification provision shall apply to any acts or omissions, willful misconduct, or negligent misconduct, whether active or passive, on the part of Consultant or anyone employed by or working under Consultant. To the maximum extent permitted by law, Consultant's duty to defend shall apply whether or not such claims, allegations, lawsuits, or proceedings have merit or are meritless, or which involve claims or allegations that any of the parties to be defended were actively, passively, or concurrently negligent, or which otherwise assert that the parties to be defended are responsible, in whole or in part, for any loss, damage, or injury. Consultant agrees to provide this defense immediately upon written notice from OCSD, and with well qualified, adequately insured, and experienced legal counsel acceptable to OCSD. This section shall survive the expiration or early termination of the Agreement.

12. **Force Majeure** Neither party shall be liable for delays caused by accident, flood, acts of God, fire, labor trouble, war, acts of government or any other cause beyond its control, but said party shall use reasonable efforts to minimize the extent of the delay. Work affected by a Force Majeure condition may be rescheduled by mutual consent or may be eliminated from the Agreement.

13. **Insurance** Consultant and all subconsultant(s) shall purchase and maintain, throughout the life of this Agreement and any periods of warranty or extensions, insurance in amounts equal to the requirements set forth in Exhibit "C" Acknowledgement of Insurance Requirements. Consultant shall not commence work under this Agreement until all required insurance is obtained in a form acceptable to OCSD, nor shall Consultant allow any subconsultant to commence service pursuant to a subcontract until all insurance required of the subconsultant has been obtained. Failure to maintain required insurance coverage shall result in termination of this Agreement.

14. **Key Personnel** Personnel, as provided in Exhibit "B", are considered "key" to the work under this Agreement and will be available for the term of the Agreement. No person designated as

key under this Agreement shall be removed or replaced without prior written consent of OCSD. If OCSD asks Consultant to remove a person designated as key under this Agreement, Consultant agrees to do so immediately regardless of the reason, or the lack of reason, for OCSD's request. Consultant shall assign only competent personnel to perform services pursuant to this Agreement.

15. Confidentiality and Non-Disclosure

15.1 Consultant acknowledges that in performing the Services hereunder, OCSD may have to disclose to Consultant orally and in writing certain confidential information that OCSD considers proprietary and has developed at great expense and effort.

15.2 Consultant agrees to maintain in confidence and not disclose to any person, firm, or corporation, without OCSD's prior written consent, any trade secret or confidential information, knowledge or data relating to the products, process, or operation of OCSD.

15.3 Consultant further agrees to maintain in confidence and not to disclose to any person, firm, or corporation any data, information, technology, or material developed or obtained by Consultant during the term of this Agreement.

15.4 Consultant agrees as follows:

- To use the confidential information only for the purposes described herein; to not reproduce the confidential information; to hold in confidence and protect the confidential information from dissemination to and use by anyone not a party to this Agreement; and to not use the confidential information to benefit itself or others.
- To restrict access to the confidential information to its Consultant or personnel of Consultant who (1) have a need to have such access and (2) have been advised of and have agreed in writing to treat such information in accordance with the terms of this Agreement.
- To return all confidential information in Consultant's possession upon termination of this Agreement or upon OCSD's request, whichever occurs first.
- To hold in confidence information and materials, if any, developed pursuant to the Services hereunder.

15.5 The provisions of this section shall survive termination or expiration of this Agreement and shall continue for so long as the material remains confidential.

16. Ownership of Documents All drawings, specifications, reports, records, documents, memoranda, correspondence, computations, and other materials prepared by Consultant, its employees, subconsultants, and agents in the performance of this Agreement shall be the property of OCSD and shall be promptly delivered to OCSD upon request of the Project Manager or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by OCSD of its full rights of ownership of the documents and materials hereunder. Any use of such completed documents for other projects and/or use of incomplete documents without specific written authorization by the Consultant will be at OCSD's sole risk and without liability to Consultant. Consultant shall ensure that all its subconsultants shall provide for assignment to OCSD of any documents or materials prepared by them.

17. Ownership of Intellectual Property

17.1 Consultant agrees that all designs, plans, reports, specifications, drawings, schematics, prototypes, models, inventions, and all other information and items made during the course of

this Agreement and arising from the Services (hereinafter referred to as "New Developments") shall be and are assigned to OCSD as its sole and exclusive property.

17.2 Consultant agrees to promptly disclose to OCSD all such New Developments. Upon OCSD's request, Consultant agrees to assist OCSD, at OCSD's expense, to obtain patents or copyrights for such New Developments, including the disclosure of all pertinent information and data with respect thereto, the execution of all applications, specifications, assignments, and all other instruments and papers which OCSD shall deem necessary to apply for and to assign or convey to OCSD, its successors and assigns, the sole and exclusive right, title and interest in such New Developments. Consultant agrees to obtain or has obtained written assurances from its employees and contract personnel of their agreement to the terms hereof with regard to New Developments and confidential information.

17.3 Consultant warrants that Consultant has good title to any New Developments, and the right to assign New Developments to OCSD free of any proprietary rights of any other party or any other encumbrance whatever.

17.4 The originals of all computations, drawings, designs, graphics, studies, reports, manuals, photographs, videotapes, data, computer files, and other documents prepared or caused to be prepared by Consultant or its subconsultants in connection with these Services shall be delivered to and shall become the exclusive property of OCSD. OCSD may utilize these documents for OCSD applications on other projects or extensions of this project, at its own risk.

18. **Infringement Claims** If an infringement claim occurs, Consultant has thirty (30) days after the receipt of OCSD's written notice of the claim or the date on which Consultant first becomes aware of the claim, whichever is sooner, to either: (a) procure for OCSD the right to continue using the affected product, service, subsystem, component or interface and deliver or provide the product, service, subsystem, component, or interface to OCSD; or (b) repair or replace the infringing product, service, subsystem, component, or interface so that it becomes non-infringing, provided the performance of the system or any subsystems, components, or interfaces is not adversely affected by the replacement or modification. In the event Consultant is unable to comply with either subsection (a) or (b) of this paragraph within thirty (30) days, OCSD may terminate this Agreement without any further obligation to Consultant. In the event of termination, in addition to any other legal remedies available to OCSD, Consultant will refund OCSD within ten (10) days of OCSD's notice of termination, the license fees OCSD paid to Consultant for the product, service, subsystem, component or interface. If the inability to comply with either subsection (a) or (b) of this paragraph causes the system to fail to meet the functional, performance and reliability specifications and requirements or to otherwise become ineffective, Consultant will refund OCSD all fees paid to Consultant under this Agreement.

19. **No Solicitation of Employees or Subcontractors**

19.1 Consultant agrees that it shall not, during the term of this Agreement and for a period of one (1) year immediately following termination of this Agreement, or any extension hereof, call on, solicit, or take away any of the employees or subcontractors about whom Consultant became aware as a result of Consultant's Services to OCSD.

19.2 Consultant acknowledges that OCSD's employees are critical to its business. Consultant agrees not to employ or otherwise engage OCSD's employees or subcontractors during the term of this Agreement and for a period of one (1) year following termination of this Agreement. Should Consultant violate this provision, Consultant will pay OCSD fifty percent (50%) of the former employee's annual salary which payment is in addition to OCSD's rights and remedies.

20. Independent Contractor Capacity

20.1 The relationship of Consultant to OCSD is that of an independent contractor and nothing herein shall be construed as creating an employment or agency relationship.

20.2 Consultant shall act independently and not as an officer or employee of OCSD. OCSD assumes no liability for Consultant's action and performance, nor assumes responsibility for taxes, funds, payments or other commitments, implied or expressed, by or for Consultant.

20.3 Consultant shall not be considered an agent of OCSD for any purpose whatsoever, nor shall Consultant have the right to, and shall not, commit OCSD to any agreement, contract or undertaking. Consultant shall not use OCSD's name in its promotional material or for any advertising or publicity purposes without expressed written consent.

20.4 Consultant shall not be entitled to any benefits accorded to those individuals listed on OCSD's payroll as regular employees including, without limitation, worker's compensation, disability insurance, vacation, holiday or sick pay. Consultant shall be responsible for providing, at Consultant's expense, disability, worker's compensation or other insurance as well as licenses and permits usual or necessary for conducting the Services hereunder.

20.5 Consultant shall be obligated to pay any and all applicable Federal, State, and local, payroll and other taxes incurred as a result of fees hereunder. Consultant hereby indemnifies OCSD for any claims, losses, costs, fees, liabilities, damages or penalties suffered by OCSD arising out of Consultant's breach of this provision.

20.6 Consultant shall not be eligible to join or participate in any benefit plans offered to those individuals listed on OCSD's payroll as regular employees. Consultant shall remain ineligible for such benefits or participation in such benefit plans even if a court later decides that OCSD misclassified Consultant for tax purposes.

21. Licenses and Permits Consultant represents and warrants to OCSD that it has obtained all licenses, permits, qualifications and approvals of whatever nature that are legally required to engage in this work. Any and all fees required by Federal, State, County, City and/or municipal laws, codes and/or tariffs that pertain to work performed under the terms of this Agreement will be paid by Consultant.

22. Governing Law This Agreement shall be governed by and interpreted under the laws of the State of California and the Parties submit to jurisdiction in Orange County, in the event any action is brought in connection with this Agreement or the performance thereof.

23. Environmental Compliance Consultant shall, at its own cost and expense, comply with all Federal, State, and local environmental laws, regulations, and policies which apply to the Consultant, its sub-consultants, and the Services, including, but not limited to, all applicable Federal, State, and local air pollution control laws and regulations.

24. Applicable Laws and Regulations Consultant shall comply with all applicable Federal, State, and local laws, rules, and regulations. Consultant also agrees to indemnify and hold harmless from any and all damages and liabilities assessed against OCSD as a result of Consultant's noncompliance therewith. Any permission required by law to be included herein shall be deemed included as a part of this Agreement whether or not specifically referenced.

25. Consultant's Representations In the performance of duties under this Agreement, Consultant shall adhere to the highest fiduciary standards, ethical practices and standards of care and

competence for their trade/profession.

26. Familiarity with Work By executing this Agreement, Consultant warrants that: 1) it has investigated the work to be performed; and 2) it understands the facilities, difficulties and restrictions of the work under this Agreement. Should Consultant discover any latent or unknown conditions materially differing from those inherent in the work or as represented by OCSD, it shall immediately inform OCSD of this and shall not proceed, except at Consultant's risk, until written instructions are received from OCSD.

27. Dispute Resolution

27.1 In the event of a dispute as to the construction or interpretation of this Agreement, or any rights or obligations hereunder, the Parties shall first attempt, in good faith, to resolve the dispute by mediation. The Parties shall mutually select a mediator to facilitate the resolution of the dispute. If the Parties are unable to agree on a mediator, the mediation shall be conducted in accordance with the Commercial Mediation Rules of the American Arbitration Agreement, through the alternate dispute resolution procedures of Judicial Arbitration through Mediation Services of Orange County ("JAMS"), or any similar organization or entity conducting an alternate dispute resolution process.

27.2 In the event the Parties are unable to timely resolve the dispute through mediation, the issues in dispute shall be submitted to arbitration pursuant to California Code of Civil Procedure, Part 3, Title 9, Sections 1280 et seq. For such purpose, an agreed arbitrator shall be selected, or in the absence of agreement, each party shall select an arbitrator, and those two (2) arbitrators shall select a third. Discovery may be conducted in connection with the arbitration proceeding pursuant to California Code of Civil Procedure Section 1283.05. The arbitrator, or three (3) arbitrators acting as a board, shall take such evidence and make such investigation as deemed appropriate and shall render a written decision on the matter in question. The arbitrator shall decide each and every dispute in accordance with the laws of the State of California. The arbitrator's decision and award shall be subject to review for errors of fact or law in the Superior Court for the County of Orange, with a right of appeal from any judgment issued therein.

28. Attorney's Fees If any action at law or inequity or if any proceeding in the form of an Alternative Dispute Resolution (ADR) is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable, attorney's fees, costs and necessary disbursements in addition to any other relief to which he may be entitled.

29. Waiver The waiver of either party of any breach or violation of, or default under, any provision of this Agreement, shall not be deemed a continuing waiver by such party of any other provision or of any subsequent breach or violation of this Agreement or default thereunder. Any breach by Consultant to which OCSD does not object shall not operate as a waiver of OCSD's rights to seek remedies available to it for any subsequent breach.

30. Survival All provisions of this Agreement that by their nature would reasonably be expected to continue after the termination of this Agreement will survive the termination of this Agreement.

31. Right to Review Services, Facilities, and Records

31.1 OCSD reserves the right to review any portion of the Services performed by Consultant under this Agreement, and Consultant agrees to cooperate to the fullest extent possible.

31.2 Consultant shall furnish to OCSD such reports, statistical data, and other information pertaining to Consultant's Services as shall be reasonably required by OCSD to carry out its rights and responsibilities under its agreements with its bondholders or noteholders and any

other agreement relating to the development of the project(s) and in connection with the issuance of its official statements and other prospectuses with respect to the offering, sale, and issuance of its bonds and other obligations.

- 31.3 The right of OCSD to review or approve drawings, specifications, procedures, instructions, reports, test results, calculations, schedules, or other data that are developed by Consultant shall not relieve Consultant of any obligation set forth herein.
32. **Severability** If any section, subsection, or provision of this Agreement, or any agreement or instrument contemplated hereby, or the application of such section, subsection, or provision is held invalid, the remainder of this Agreement or instrument in the application of such section, subsection or provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, unless the effect of such invalidity shall be to substantially frustrate the expectations of the Parties.
33. **OCSD Safety Standards** OCSD requires Consultant and its subconsultant(s) to follow and ensure their employees follow all Federal, State, and local regulations as well as OCSD Safety Standards while working at OCSD locations. If during the course of the Agreement it is discovered that OCSD Safety Standards do not comply with Federal, State, or local regulations, then the Consultant is required to follow the most stringent regulatory requirement at no additional cost to OCSD. Consultant and all of its employees and subconsultants, shall adhere to all applicable OCSD Safety Standards attached hereto in Exhibit "D" and the Human Resources Policies in Exhibit "E".
34. **Damage to OCSD's Property** Any OCSD property damaged by Consultant will be subject to repair or replacement by Consultant at no cost to OCSD.
35. **Freight (F.O.B. Destination)** Consultant assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Agreement.
36. **Assignments** Consultant shall not delegate any duties nor assign any rights under this Agreement without the prior written consent of OCSD. Any such attempted delegation or assignment shall be void.
37. **Changes in Control of Consultant** In the event of a change in control of Consultant, OCSD shall have the option of terminating this Agreement by written notice to Consultant. Consultant shall notify OCSD within ten (10) days of the occurrence of a change in control. As used in this section, "control" is defined as the possession, direct or indirect, of either:
- the ownership or ability to direct the voting of fifty-one percent (51%) or more of the equity interests, value, or voting power in Consultant; or
 - the power to direct or cause the direction of the management and policies of Consultant, whether through ownership of voting securities, by contract, or otherwise.
38. **Third Party Rights** Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than OCSD and Consultant.
39. **Non-Liability of OCSD Officers and Employees** No officer or employee of OCSD shall be personally liable to Consultant, or any successor-in-interest, in the event of any default or breach by OCSD or for any amount which may become due to Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

40. Conflict of Interest and Reporting

40.1 Consultant shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

40.2 Consultant affirms that to the best of its knowledge there exists no actual or potential conflict between Consultant's families, business or financial interest or its Services under this Agreement, and in the event of change in either its private interests or Services under this Agreement, it will raise with OCSD any question regarding possible conflict of interest which may arise as a result of such change.

41. Authority to Execute The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the Parties are formally bound.

42. Read and Understood By signing this Agreement, Consultant represents that he has read and understood the terms and conditions of the Agreement.

43. Entire Agreement This Agreement constitutes the entire agreement of the Parties and supersedes all prior written or oral and all contemporaneous oral agreements, understandings, and negotiations between the Parties with respect to the subject matter hereof.

DO NOT SUBMIT

44. Notices All notices under this Agreement must be in writing. Written notice shall be delivered by personal service or sent by registered or certified mail, postage prepaid, return receipt requested, or by any other overnight delivery service which delivers to the noticed destination and provides proof of delivery to the sender. Any facsimile notice must be followed within three (3) days by written notice. Rejection or other refusal to accept or the inability to deliver because of changed address or which no notice was given as provided hereunder shall be deemed to be receipt of the notice, demand or request sent. All notices shall be effective when first received at the following addresses:

OCSD: Jackie Lagade
Principal Buyer
Orange County Sanitation District
10844 Ellis Avenue
Fountain Valley, CA 92708

Consultant: [Contact Name]
[Contact Title]
[Company Name]
[Street Address]
[City, State, Zip Code]

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands the day and year indicated below.

ORANGE COUNTY SANITATION DISTRICT

Dated: _____ By: _____
Chair, Board of Directors or Operations Committee

Dated: _____ By: _____
Kelly A. Lore, Clerk of the Board

Dated: _____ By: _____
Ruth Zintzun, Purchasing and Contracts
Manager

COMPANY

Dated: _____ By: _____

Print Name and Title of Officer

IRS Employer's I.D. Number

EXHIBIT B-1

CONSULTANT'S SOFTWARE LICENSE TERMS

GRANT OF LICENSE

Except for New Developments, any software product (the "Program Product" or "software") delivered to OCSD by Consultant is only licensed, not sold. It remains the property of Consultant (or its licensors, as the case may be), which grants a non-exclusive, non-transferable license to the individual and/or corporate licensee (hereinafter "you", "licensee" or "OCSD") to use the enclosed Program Product. The Program Product includes all computer programs, machine-readable and printed materials as provided by Consultant in accordance with the terms and conditions set forth in this License Agreement. The Program Product includes all codes, techniques, software tools, formats, designs, concepts, methods and ideas associated with this Program Product, and any updates which Consultant may provide to you and backup copies which you may make.

TERM

This license is effective from the date of receipt of this Program Product and shall remain in force until terminated. You may terminate this Agreement at any time by returning all contents of the Program Product and destroying any portions of the Consultant Program Product merged in any form. Consultant may terminate this Agreement for breach if you violate any provision of this Agreement and do not rectify such breach within 30 days from receiving Consultant's breach notice.

USE OF PROGRAM PRODUCT

This Agreement limits the number of simultaneous users who may use the Program Product. The use of the Program Product is limited to the building or plant area where or to the company to which it is licensed. The limitations depend on whether you purchased an individual copy of the program or a network license.

INDIVIDUAL LICENSE (LOCAL)

You may use the Program Product in accordance with this Agreement on a single microcomputer at any one time. The Program Product may be placed on a network as long as there is no possibility of it being used simultaneously by more than one user at one location. You may not use the Program Product on more than one microcomputer at any given time unless additional licenses for the additional microcomputers (or additional users on a network) are purchased

CONCURRENT LICENSE (NETWORK)

You may use the Program Product in accordance with this Agreement on a licensed local area network. A computer network is any combination of two or more terminals that are electronically linked and capable of sharing the use of a single Program Product. The Program Product is delivered with purchased amount of licenses. You may not use the Program Product on more computers or terminals than the number licensed, as shown on your invoice or other documents from Consultant. You may install the Program Product on computers attached to a network, or remove it from one computer and install it on another one, provided that there is no possibility of simultaneous use of the Program Product on more computers than the number licensed.

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[End of Exhibit B-1.]

EXHIBIT B-2
Yearly Maintenance and Support Agreement Details

➤ **Software Updates**

Software updates for the Beamex's standard software products and/or OCSD custom configured components that will be included in the CMX Software as well as within the scope of Services with the Beamex Business Bridge to Maximo. Such services will include the following: New Software Versions, Software Revisions, patches and hotfixes made available to the OCSD, which may (i) substantially rectify Errors or other Defects in the then-current revision of the Software; (ii) improve performance of the CMX and Business Bridge software in the specified operational environment; and (iii) contain other new and/or improved software functionality.

➤ **Remote Helpdesk**

Remote helpdesk support is included within the scope of Services for both the CMX and Business Bridge software. Such services will include the following: Maintenance standby accessible by phone, fax or email in accordance with the service hours from Monday to Friday, 9 AM to 4 PM ET, excluding public holidays. The remote helpdesk support is available at minimum in English language. Error diagnostic services and using reasonable efforts in aiming to repair Errors.

➤ **Provision of Support Services**

Beamex shall perform the tasks and duties related to the Support Services in its location as a remote operation, unless otherwise mutually agreed in writing. Repairing or correcting a software defect or error can be also executed (a) with a workaround that bypasses the defect or error; (b) by delivering written instructions to OCSD, which it can use to bypass the defect or error; or (c) by delivering New Software Version or Software Revision to OCSD that will correct or bypass the defect or error. The Support Services that Beamex performs against an agreed recurring support fee do not include services related to repair or correction of an error or default caused by (a) using the software contrary to an agreement or other instructions given by the Beamex or the OCSD's negligence or default in complying with the written instructions on the use of all of Beamex software; (b) using the software in an operational environment not specified or approved by the Beamex or (c) a modification, correction or repair made to Beamex software by the OCSD or a third party. If it is confirmed that the defect or error reported by the OCSD is not covered by the scope of Support Services in our agreement, then Beamex will be entitled to invoice for the analysis and repair of the error in accordance with its then current price list.

1. Service Levels

1.1 Beamex, Inc. shall address Software issues as follows:

BEAMEX SLA

Severity Level	Response Time	Target Resolution Time
Level 1 (“critical”)	8 hours	3 business days
Level 2 (“moderate”)	16 hours	5 business days
Level 3 (“minor”)	5 business days	20 business days
Level 4 (“low”)	5 business days	Commercially reasonable efforts

1.2 As used in clause 1.1 above or elsewhere in this Annex:

“Level” is a relative measure of the impact an issue has on the use of the Software.

- a) “Level 1” shall mean that the Software is in non-conformance with the Specifications and OCSD can demonstrate that a plant critical function, system or server is down or inoperable due to the non-conformance and no workaround is available.
- b) “Level 2” shall mean that the Software is in non-conformance with the Specifications and OCSD can demonstrate that a major function, system or server is severely impaired due to the non-conformance.
- c) “Level 3” shall mean that (i) the Software is in non-conformance with the Specifications, which results only in non-critical loss of functionality of the Software; or (ii) there are only cosmetic errors in the Software including errors in the documentation.
- d) “Level 4” shall mean general usage questions or enhancement ideas OCSD has regarding the Software.

“Response Time” refers to the maximum time it takes for Beamex, Inc. to make an e-mail, telephone, or in-person acknowledgement of a technical support request made by OCSD.

“Target Resolution Time” refers to the maximum time from the receipt of OCSD’s technical support request until Beamex, Inc. has informed OCSD how the non-conformance or other issue related to the use of the Software could be resolved.

“Specifications” refers to (i) technical specifications of the Software as specified in the Agreement concluded between Beamex, Inc. and OCSD; or (ii) Beamex Inc.’s applicable user guide for the Software.

2 SLA Times

2.1 All times referred to in Section 1 as Response Times or Target Resolution Times shall be calculated in accordance with Beamex, Inc.'s Service Hours, which are as follows:

2.1.1 Monday to Friday, 9 AM to 4 PM (Eastern Standard Time), excluding public holidays.

2.2 Therefore by way of example, if OCSD makes a technical support request regarding a Level 1 issue on Monday at 2 PM, Beamex, Inc. must provide an acknowledgment of the request to OCSD on Tuesday 3 PM, at the latest.

2.3 If the Response Time or Target Resolution Time is a specific number of days, then the day when the technical support request was made is not taken into consideration when calculating the passage of time.

3. SLA material breach and termination

3.1 In the event of two (2) or more Level 2 or worse issues that have not been addressed by Beamex, Inc. in accordance with the service levels defined in clause 1.1 above during any calendar month, OCSD may terminate this Agreement for material breach in accordance with the terms and conditions herein, provided the OCSD notifies the Consultant in writing of the termination within five (5) business days of the end of such calendar month. In the event of termination pursuant to this clause, OCSD shall be entitled to a refund of the unused portion of the already paid Compensation for the yearly software maintenance and support (if any).

[End of Exhibit B-2.]